

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE
OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 2
Implementation of the Standard
in Practice

GABON



Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Gabon 2016

PHASE 2:
IMPLEMENTATION OF THE STANDARD IN PRACTICE

July 2016
(reflecting the legal and regulatory framework
as at May 2016)

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to www.oecd.org/tax/transparency and www.eoi-tax.org.

Abbreviations

ANIF	National Agency for Financial Investigations (<i>Agence nationale d'investigations financières</i>)
AUDCG	Uniform Act on General Commercial Law (<i>Acte uniforme relatif au droit commercial général</i>)
AUSCGIE	Uniform Act on Commercial Companies and Economic Interest Groups (<i>Acte uniforme relatif au droit des sociétés commerciales et du groupement d'intérêt économique</i>)
AUHCE	Uniform Act on the Organisation and Harmonisation of Business Accounting (<i>Acte Uniforme portant organisation et harmonisation des comptabilités des entreprises</i>)
BEAC	Bank of Central African States (known by its French acronym BEAC)
CGI	General Tax Code (<i>Code Général des Impôts</i>)
CEMAC	Central African Economic and Monetary Community (known by its French acronym CEMAC)
CIMA	Inter-African Conference on Insurance Markets (<i>Conférence Interafricaine des Marchés d'Assurances</i>)
CIME	Medium-sized company tax centre (<i>Centre des Impôts des Moyennes Entreprises</i>)
COBAC	Central African Banking Commission (known by its French acronym COBAC)
CRCA	Regional Commission for Insurance Supervision (<i>Commission Régionale de Contrôle des Assurances</i>)
CRE	Information Exchange Unit

DGE	Department for Large Corporations (<i>Direction des Grandes Entreprises</i>)
DGI	Directorate-General for Taxation (<i>Direction Générale des Impôts</i>)
EOI	Exchange of Information
EOIR	Exchange of Information on Request
LCB/FT	Anti-Money Laundering and Combating the Financing of Terrorism (<i>Lutte contre le Blanchiment et le Financement du Terrorisme</i>)
OHADA	Organisation for the Harmonisation of Business Law in Africa
RCCM	Trade and Personal Property Credit Register (<i>Registre du Commerce et du Crédit Mobilier</i>)
SA	Public Limited Company (<i>société anonyme</i>)
SARL	Private Limited Company (<i>société à responsabilité limitée</i>)
SAS	Simplified Joint-Stock Company (<i>société par actions simplifiées</i>)
SCS	Limited Partnership (<i>sociétés en Commandite Simple</i>)
SNC	General Partnership (Sociétés en Nom Collectif)
ToR	Terms of Reference
UEIR	International Information Exchange Unit (<i>Unité d'Exchange International des Renseignements</i>)

Executive summary

1. The present report summarises Gabon’s legal and regulatory framework for transparency and exchange of information as well as its implementation and effectiveness in practice. The international standard, which is set out in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain access to that information and, in turn, whether that information can be effectively exchanged with its exchange of information partners.

2. Gabon is committed to implementing the international standard on transparency by joining the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2012.

3. Generally speaking, Gabon’s legal and regulatory framework ensures the availability of information about the ownership of companies and other entities. Companies and other legal persons are required to register with the public authorities, including the tax authorities. This report has retained two recommendations from Phase 2 regarding the element A.1:

- Firstly, Gabon must improve its system for monitoring compliance with obligations to declare the identity and ownership of companies under OHADA law and under taxation laws.
- Secondly, the Gabonese authorities must monitor the effective implementation of the new tax obligations concerning public limited companies (SA), SAS and assimilated companies, namely to hold a register of registered shares at their registered office, and to enforce the relevant sanctions if necessary.

4. Company law permits the creation of bearer shares in public limited companies and simplified joint-stock companies, but since the end of 2014 has required all corporate securities to be dematerialised. However, there is not sufficient information about the practicalities of the process to guarantee dematerialisation of all bearer shares, including those created before the new legislation came into force. Dematerialisation has not yet been put in place in practice. During the peer review period, there was no applicable

obligation regarding the identification of the owners of bearer shares issued by Gabonese public limited companies. It is recommended that Gabon take the necessary measures to ensure the dematerialisation of all bearer shares.

5. Under accounting and tax law, accounting records and the underlying documentation must be kept for a minimum of ten years. These obligations are respected by operators in practice, under the supervision of the tax authorities.

6. Banking and anti-money laundering regulations in Gabon guarantee the availability of banking information.

7. The Gabonese Tax Code gives the tax authorities, which are the competent authority, extensive powers to gather information, including banking information, which may be used for information exchange purposes without any restriction related to domestic tax interest. There is no right of notification in Gabon, and tax disputes may neither prevent nor delay the response to an information request made under an information exchange agreement in force in Gabon. In practice, these powers were only implemented at the national level, as Gabon did not receive any requests during the peer review period.

8. Since signing the Convention on Mutual Administrative Assistance in Tax Matters as amended (the multilateral Convention) in July 2014, Gabon has had an extensive network of exchange of information agreements covering 98 jurisdictions. Several tax treaties are also being negotiated or in the process of ratification.

9. Since 2013, Gabon has deployed many human and financial resources and has made substantial efforts to conform to international standards of information exchange. Thanks to these efforts, at the end of the peer review period, an exchange of information (EOI) unit was operational and had adequate resources. Gabon has also drawn up an EOI Manual. It is recommended that Gabon ensures that, within the framework of the new EOI organisation in place, requests from EOI partners are dealt with in a satisfactory manner and within a reasonable timeframe.

10. Gabon has been rated on each of the 10 essential elements, and has also been given an overall rating. The ratings for the essential elements are based on the analysis contained in this report, taking into account the Phase 1 determinations and the recommendations formulated with regards to the legal framework in Gabon and the effectiveness of the information exchange in practice. On this basis, Gabon has been rated as follows: Compliant for elements A.2, A.3, B.1, B.2, C.1, C.2, C.3 and C.4; largely compliant for element C.5 and partially compliant for the element A.1. Given the rating for each of the essential elements taken as a whole, the overall rating for Gabon is “Largely compliant”.

11. A follow-up report on the measures taken by Gabon in response to the recommendations made in the present report must be presented to the Secretariat in June 2017 and then in subsequent years, in accordance with the procedure set out in the Methodology for the Second Round of Reviews.

Introduction

Information and methodology used for the Peer Review of Gabon

12. The assessment of Gabon’s legal and regulatory framework as well as the implementation and effectiveness in practice of this framework was based on the international standards for transparency and exchange of information on request as described in the Global Forum’s Terms of Reference and was prepared using the Global Forum’s Methodology for Peer Reviews and Non-Member Reviews. The assessment was based on *(i)* the laws, regulations and exchange of information mechanisms in force on 1 May 2016, *(ii)* on the observations made during the onsite visit to Libreville from 18-20 January, *(iii)* on Gabon’s responses to the questionnaires for Phase 1 and Phase 2 and other material provided by Gabon and *(iv)* information supplied by partner jurisdictions.

13. This analysis incorporates the evaluation of Phase 1, published in October 2015, on the legal framework in Gabon and the evaluation of Phase 2, on the practical application and effectiveness of this framework during the three-year evaluation period between 1 January 2012 and 31 December 2014.

14. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information and (C) exchanging information. This review assesses Gabon’s legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element the review concludes whether *(i)* the element is in place, *(ii)* the element is in place but certain aspects of its legal implementation need improvement, or *(iii)* the element is not in place. These conclusions are accompanied by recommendations for how certain aspects of the system in Gabon could be improved.

15. Recommendations are made on the practical implementation of each of these essential elements by Gabon. Each element can be given a grade, as follows: *(i)* compliant, *(ii)* largely compliant *(iii)* partially compliant or

(iv) non-compliant. As indicated in the Assessment Criteria note, at the end of a phase 2 evaluation of a jurisdiction, an “overall” rating is given in order to illustrate the overall situation of the jurisdiction.

16. The assessment was conducted by a team consisting of two expert assessors and a representative of the Global Forum Secretariat: Nisrine Roudies, Head of the Office to Monitor Implementation of International Tax Conventions, General Directorate of Taxes, Morocco; Pascal Feurtet, Inspector, Tax Services Directorate, Monaco; and Séverine Baranger for the Global Forum Secretariat.

Overview of Gabon

17. Gabon, officially called the Gabonese Republic, is a country situated on the Equator in central Africa. Its neighbours are the Republic of Congo to the east, south-east and south, Equatorial Guinea to the north-west and Cameroon to the north. A former French colony, Gabon has been independent since 1960. Extensively covered in rainforest, its fauna and flora are preserved and protected by 13 national parks, including Lopé National Park, a UNESCO World Heritage site. Gabon had 1 800 000 inhabitants in 2013.

18. According to the United Nations, Gabon has the highest human development index in sub-Saharan Africa and the second highest income per capita, behind Equatorial Guinea and ahead of Botswana.

19. Gabon’s official language is French. The currency is the African Financial Community franc, called the CFA franc (currency code: XAF). One euro is worth XAF 655.957. Gabon’s economy is based on the extraction of oil and the exploitation of natural resources, especially forestry and mining (manganese). Oil and gas account for nearly 50% of GDP, 60% of tax revenues and 80% of exports. Gabon had GDP of USD 19.34 billion in 2013¹. GDP rose by more than 6% per year over the period 2010-12.

20. The separation of powers (executive, legislative, judicial) is a constitutional principle. Gabon has a presidential system with a President of the Republic, who is the head of the executive and Head of State, and a government headed by a prime minister. Gabon is a member of the Central African Economic and Monetary Community (known by its French acronym CEMAC). A sub-regional international organisation, CEMAC emerged from the community construction process in Central Africa instituted by the N’djamena Treaty of 16 March 1994, which entered into force in 1999. With six Member States (Cameroon, the Republic of Congo, Gabon, Equatorial Guinea, the Central African Republic and Chad), it is the outcome of a

1. World Bank.

historical process begun in June 1959. Its activities are now based on the Regional Economic Programme, which aims to make CEMAC an emerging integrated economic area where security, solidarity and good governance prevail for the benefit of human development.

21. Unlike CEMAC's founding treaty, which needed to be ratified by the Member States before it could enter into force, secondary CEMAC legislation, including all anti-money laundering (AML) regulations, is incorporated into the law of contracting States as soon as it takes effect, without any prior formality. Article 21 of the CEMAC Treaty states that all laws and regulations adopted by the Community should be directly applied by all Member States.

22. Gabon is also a member of the Organisation for the Harmonisation of Business Law in Africa (known by its French acronym OHADA), created by the Treaty on the Harmonisation of Business Law in Africa, adopted on 17 October 1993 and revised on 17 October 2008.

General information on the legal and tax system

Legal system

23. As Gabon is not a federal state, its legal system is based on a single corpus of law which applies in all provinces and local authorities with the same binding force.

24. The Gabonese legal system is based on a hierarchy of norms. The Constitution, established by the Constitutional Act of 18 January 1996 as amended, is at the top of the hierarchy, followed by international conventions and treaties duly ratified by Gabon. Under Articles 113 and 114 of the Constitution, international conventions do not apply until it has been verified that they are consistent with it. If there is a conflict between the Constitution and an international treaty, the Constitution has to be amended when the international treaty is ratified. It is the role of the Constitutional Court to verify the conformity of the international treaty with the Gabonese Constitution within a 30-day period, reduced to eight days in case of urgency. National laws and equivalent statutory instruments, i.e. ordinances ratified by Parliament, rank below international conventions and treaties². In the hierarchy of norms, regulations are one tier below national laws. This category covers decrees, which the President of the Republic and the Prime Minister

2. This hierarchy stems from the reading of articles 113 and following of the Constitution. The Constitutional Court has confirmed this interpretation in an opinion No027/GCC of 13 August 2013.

are empowered to enact, ministerial orders, prefectural orders, which apply to a department, and municipal orders, which apply to a commune.

Business law

25. Gabon’s ratification of the treaty instituting the Organisation for the Harmonisation of Business Law in Africa strengthened the predominance of a system based on the civil law tradition. The purpose of the OHADA Treaty is to harmonise business law in contracting states through the preparation and adoption of simple, modern common rules suited to their economic situation, the introduction of appropriate legal procedures and the encouragement of arbitration to settle contractual disputes. The Treaty allows for the issuance of legislation in the business sphere, known as Uniform Acts. Thus, OHADA contracting states share the same rules in business, company and accounting law.

26. However, the criminal penalties for infringing Uniform Acts are determined by the criminal law of each contracting state. Article 5 of the OHADA Treaty states that “Uniform Acts may include provisions to give rise to criminal liabilities. Contracting states commit themselves to enforce sentences of offences.” Thus, each contracting state must pass domestic legislation to sanction infringements of Uniform Acts.

27. Under Article 10 of the OHADA Treaty, “Uniform Acts are directly applicable and obligatory in the contracting states notwithstanding any prior or subsequent provision to the contrary in domestic law”. There is thus no need to transpose them into domestic law. In addition, OHADA law prevails over domestic law in case of conflict.

28. The Uniform Act relating to commercial companies and economic interest groupings (Uniform Companies Act) and the Uniform Act on the organisation and harmonisation of the accounting systems of undertakings (Uniform Accounting Act) govern legal persons and other arrangements in Gabon. The Uniform Companies Act defines the corporate forms available in OHADA contracting states, how they are instituted and how they operate, procedures for the appointment and dismissal of senior managers and for winding up companies. The Uniform Accounting Act institutes standards for keeping accounts and defines book-keeping procedures, accounting principles and rules for evaluating and determining business profits and losses.

Tax system

29. The Gabonese tax system is based on the provisions of the Gabonese Tax Code, which lays down rules for the taxation of income, assets and transactions in Gabon.

30. Corporate tax is levied on the income generated in Gabon by Gabonese and foreign companies and other legal persons. In accordance with the territoriality principle, income generated by Gabonese companies in other countries through foreign subsidiaries is exempt from taxation in Gabon. However, resident companies are taxable on passive income (dividends, interest, royalties, etc.) of both Gabonese and foreign origin. Subject to the provisions of international treaties, the earnings of legal persons whose activity or operations are located in Gabon are taxable at their registered office or principal place of business.

31. Corporate tax is levied on the earnings generated over a twelve-month period corresponding to the calendar year which runs from 1 January to 31 December. The standard rate is 30% and 35% for mining companies. The assessment base is determined in accordance with the relevant accounting requirements under OHADA law.

32. Partnerships are not liable to corporate tax unless their partners decide to opt for it. The option is irrevocable; it must be agreed by all the partners and notified to the relevant tax centre within three months of the start of the tax year.

33. Personal income tax is levied on the taxpayer's total net income. The annual total net income on which income tax is levied is the sum of net income per category minus deductible expenses, without prejudice to specific provisions applicable to certain categories of income.

34. Gabon introduced VAT in 1994.

35. Gabon joined the Global Forum in 2012 and is committed to implementing international transparency standards. Its network of tax treaties includes six double tax treaties, two of which are regional treaties, and covers 10 jurisdictions. Further, Gabon signed the Convention on Mutual Administrative Assistance in Tax Matters as amended (the Multilateral Convention) on 3 July 2014, considerably expanding its treaty network from 10 to 99 jurisdictions. The Multilateral Convention has not yet been ratified by Gabon.

36. The competent authority in Gabon is the Minister of Economy, who has delegated this power to the Director General of Tax.

Overview of the financial sector and the relevant professions

37. Through its membership of CEMAC, Gabon is part of the CFA zone of countries whose common currency is the CFA franc. They have a common central bank, the Bank of Central African States (known by its French acronym BEAC). Commercial banks are regulated by the Central African

Banking Commission (known by its French acronym COBAC) and insurance companies by the Inter-African Conference on Insurance Markets (known by its French acronym CIMA). There is also a stock exchange which is managed and co-ordinated by the Central Africa Stock Exchange (known by its French acronym BVMAC).

38. Six commercial banks, a development bank and a housing bank currently have an establishment in Gabon. There are also six main insurance companies with branches throughout the country. In October 2015, the total net asset value of the banks in Gabon amounted to XAF 185 billion (EUR 384 560 000). The number of bank clients in Gabon stood at 407 000 individuals, for some 627 000 bank accounts.

39. The stock market is organised, operated and supervised as follows:

- the supervisory authority is the Central African Financial Market Supervisory Commission (known by its French acronym COSUMAF), which regulates the operation and activity of the stock market (Article 11 of CEMAC-CAMU Regulation no. 06-03 relating to the organisation, operation and supervision of the Central African Financial Market);
- BVMAC manages and co-ordinates the stock market (Articles 3 and 27 of CEMAC-CAMU Regulation no. 06-03). There is also another stock market in Cameroon, the Douala Stock Exchange (DSX). Steps are being taken to merge the two stock exchanges;
- the Regional Securities Depository (CRDV) acts as both central depository and clearing house. Under Articles 3 and 46 of CEMAC-CAMU Regulation no. 06-03, it is the custodian of transferable securities listed for trading. It also acts as the settlement and delivery agent;
- BEAC is the bank of settlement (Article 3 of CEMAC-CAMU Regulation no. 06-03);
- stock market intermediaries are mostly subsidiaries of CEMAC zone credit institutions. They have a monopoly on securities trading on the market for own account and for their customers (Article 38 et seq. of CEMAC-CAMU Regulation no. 06-03).

40. Measures to combat money laundering and the financing of terrorism (AML/CFT) in CEMAC countries are based on the adoption in 2002 of the statute of the Task Force on Money Laundering in Central Africa (known by its French acronym GABAC), set up to lead and co-ordinate the introduction of AML measures. Considerable progress has been made recently, especially in 2012 with the start of the first cycle of peer reviews (beginning with reviews of the systems in Gabon, Cameroon and the Central African

Republic, which had been reviewed by the World Bank in 2008 and 2010 respectively) and adoption by the CAMU Council of Ministers of the manual of procedures for peer reviews, published in the CEMAC Official Journal on 2 October 2012. As a result, GABAC was able to gain observer status with the FATF in February 2012.

41. The financial intelligence unit is the National Financial Investigation Agency (ANIF), which is empowered to investigate financial transactions of any kind. The agency carries out supplementary assignments to those of the Community task force, GABAC. In addition, the National Commission for the Fight against Illicit Enrichment (known by its French acronym CNLCEI) has powers relating to financial investigations and unlawful enrichment. Gabon's FIU is operational and has been accepted as a member of the Egmont group.

Recent developments

42. Gabon ratified the Multilateral Convention on 15 June 2015 by way of the simplified procedure provided for in the Gabonese Constitution.

Compliance with the Standards

A. Availability of information

Overview

43. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders in an entity or arrangement as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not retained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report assesses the adequacy of Gabon's legal and regulatory framework on availability of information as well as its implementation in practice.

44. Gabon has a sound legal and regulatory framework as regards the obligation to ensure that information concerning the identity of shareholders in partnerships and registered shareholders in companies is available.

45. All Gabonese companies are required to register in the Trade and Personal Property Credit Register (*registre du commerce et du crédit mobilier*, RCCM) within one month of their creation by filing a copy of their articles of association at the registry of the locally competent court. Information about the owners of partnerships and limited liability companies is available from the register and kept up to date. Information about the identity of the shareholders of public limited companies (SA) and simplified joint-stock companies (SAS) is available from the RCCM only when the company is created. In

practice, during the peer review period, the RCCM did not have a system in place to monitor whether these ownership obligations were being respected. The RCCM operated with limited resources which did not allow for an optimal functioning or an efficient archiving of registered data. It should be noted that the practical impact of these shortcomings is reduced by the applicable tax obligations.

46. Under Gabonese law, there is no requirement to notify the RCCM of changes to shareholders. However, information about the owners of registered shares in SA and SAS companies is available from the registers they are required to keep at their registered office. Before 2016, there were no penalties for failing to keep registers of shareholders. Since 2016, Gabon has introduced appropriate penalties into its tax legislation for failing to keep a register of registered shares in SA and SAS companies and foreign companies with a subsidiary in Gabon, which are treated for registration purposes as Gabonese SA and SAS. In addition, a new obligation to make an annual declaration to the DGI has been introduced, enforced by sanctions.

47. Gabonese law permits the creation of bearer shares in public limited companies. Following an amendment to company law in January 2014, all corporate securities, including bearer shares, must be dematerialised. However, the law as it stands is unclear on the practicalities of dematerialisation, especially the status of bearer shares that have not been dematerialised on expiry of the permitted two-year transition period (May 2016). Although draft legislation is in the process of being adopted, it is not yet in force. In addition, the Gabonese authorities are still working on the practical modalities of the dematerialisation.

48. Gabonese law does not permit the creation of trusts and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. However, there is nothing to prevent a trust from being administered from Gabon, or to prevent a foreign trust from owning assets located in Gabon. Under AML/CTF legislation, persons acting as trustees in a professional capacity are required to retain all information about their customer, including information about the settlers and beneficiaries of foreign trusts. In practice, these people are subjects to the same declaration obligations at the RCCM and with the tax authorities as any other person carrying out an economic activity in Gabon. Since 2016, a declarative obligation has been included in the CGI. However, during the peer review period, the authorities had not yet registered any declaration of a foreign trust administered in Gabon.

49. Information about the ownership of other relevant entities, such as economic interest groupings, co-operatives, non-trading companies and foundations, is available in Gabon.

50. All natural and legal persons liable to corporate tax, tax on industrial, commercial and agricultural profits and tax on non-commercial profits are required to keep accounts, accounting data and the related supporting documentation for at least ten years. Under tax law and AML/CTF legislation, associations, foundations and other entities not liable to taxes and duties are also required to keep accounts and retain the related documentation. In practice, the tax authorities ensure that companies registered in Gabon respect their accounting obligations, by carrying out regular accounting checks, which give them the right to verify the existence, compliance and exactitude of all the accounting documentation that companies are required to maintain, thus ensuring that this accounting information is available.

51. Banks and financial institutions are required to know their customers and to keep information about transactions carried out by them for 10 years. The COBAC is responsible for supervising banks, mainly through desk-based inspections and onsite visits (Bank inspection).

52. During the peer review period, Gabon did not have the opportunity to respond to a request for information that would have allowed the availability of information to be tested in practice.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

53. The OHADA Uniform Companies Act (AUDSGIE) provides for seven types of company:

- three types of company with share capital, described in Section A.1.1 companies with share capital: public limited companies (SA), limited liability companies (SARL) and simplified joint-stock companies (SAS);
- three types of partnership, described in Section A.1.3 *Partnerships*: limited partnerships (*sociétés en commandite simple*, SCS), general partnerships (*sociétés en nom collectif*, SNC) and joint ventures (*sociétés en participation*, SP); and
- economic interest groupings (EIG).

Companies with share capital (ToR A.1.1)

54. Companies with share capital must fulfil publication and registration formalities on their formation, comply with requirements to keep information and file tax returns, ensuring the availability of information about ownership and identity.

Types of company

55. Company law in Gabon mostly derives from OHADA law, especially the Uniform Companies Act, which was adopted in 1997 and amended in 2014 to include a new form of company, the simplified joint-stock company, and to provide for the dematerialisation of all transferable securities.

56. Three different types of company with share capital may be created under OHADA law.

- **Public limited companies** (*sociétés anonymes*, SA) are companies whose shareholders are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares (Article 385 of the Uniform Companies Act). Under Article 386, a public limited company may have only one shareholder. On 22 April 2016, there were 1853 SA registered with the tax authorities.
- **Limited liability companies** (*sociétés à responsabilité limitée*, SARL) are companies whose members are liable for corporate debts only up to the amount of their contribution; their rights are represented by shares. Some of the organisation rules of SARLs are of public order to protect the strong *intuitu personae*, which is prevalent for this type of company. They may be instituted by a natural or legal person or between two or more natural or legal persons (Article 309 of the Uniform Companies Act). On 22 April 2016, there were 18 311 SARL registered with the tax authorities.
- **Simplified joint-stock companies** (*sociétés par actions simplifiées*, SAS) are a new form of company introduced by the revision of the Uniform Companies Act, which came into force on 5 May 2014. They may be created by one or more members, who are liable for corporate debts only up to the amount of their contribution. The organisation and operation of the company are defined in the articles of association, subject to the mandatory provisions of the Uniform Companies Act. Members' rights are represented by shares (Article 863-1 of the Uniform Companies Act). On 22 April 2016, no SAS was registered with the tax authorities.

Publication, registration and maintenance formalities for ownership information

57. The following developments cover the registration and maintenance of ownership information for SA, SARL and SAS with the RCCM, the tax authorities and the ANPIG (previously CDE).

Registration and maintenance of ownership information with the RCCM

58. The creation of companies with share capital is governed by the Uniform Act on general commercial law (the Uniform Commercial Law Act). Under Article 27, incorporation is conditional on the company's registration in the RCCM one month at the latest after its formation. The RCCM receives applications from legal persons for registration, amendments and removal from the register.

59. Under Article 317 of the Uniform Companies Act, the identity of the founding members of companies with share capital is available in the company's articles of association at the time of its registration in the RCCM. However, only SARLs are required to inform the RCCM of subsequent changes to their membership. Under Article 52 of the Uniform Commercial Law Act, an application for an amendment or addition to the register must be made within 30 days of any such change.

60. The information contained in each RCCM is centralised in a national database. Under Article 36 of the Uniform Commercial Law Act, the information contained in each national database is centralised in a regional database kept by the OHADA Common Court of Justice and Arbitration. The RCCM in Gabon and the information used to establish it are transmitted to OHADA for publication in its official journal or in a journal carrying legal notices (national daily newspapers).

61. Registration in the RCCM is done at the CDE for newly created companies. The CDE is a single window that includes the RCCM and the Social Security Fund. The process for registering with the CDE is described below in the section entitled "Registering with the CDE in practice".

Operation of the RCCM in practice

62. During the peer review period, the RCCM clerks were assigned to the Court of First Instance. One RCCM clerk was present at the CDE, while four other clerks worked within the Court of First Instance to register all commercial acts and to register transfers of shares in SARLs and partnerships.

63. During the peer review period, supervision of the RCCM was carried out by the District Court (Tribunal de Grande Instance), to which the RCCM was attached. The RCCM worked slowly due to a shortage of resources. The RCCM was not computerised; archiving was done manually and in chronological order. In addition there was inadequate supervision of companies in general regarding their compliance with declarative obligations under OHADA law. However this shortcoming was reduced by the spot checks carried out on documentation at the time of registration and the filing of acts.

64. After the peer review period, the RCCM experienced shortfalls in means and resources. During 2015, the RCCM operated with reduced means as a result of supervision problems. Order No 15/PR/2015 of 11 August 2015 on the organisation and functioning of the Judicial Activities in Gabon provided for a change in competency, with the RCCM being attached to the Commercial Court. However this Order was invalidated by the Constitutional Council. During this interim period (from October 2015 to February 2016), only the clerk of the CDE stayed in post. The four other clerks working at the Court of First Instance were not posted elsewhere, and the RCCM did not operate. This situation created a backlog in registrations and the archiving of documents. Since the invalidation of the Order, the RCCM returned under the supervision of the Court of First Instance. The initial situation has been reinstated since February 2016.

65. Gabon has put in place an action plan to correct the shortfalls in means and resources of the RCCM. In the short term, it is planned for the RCCM to move its archives to a larger and more functional room. In addition, software should be developed based on the software existing at the DGI. This software will be developed to manage registrations and modifications to articles of association, and to build a computerised database. This is scheduled to be operational by June 2016. In the longer term, the plan is to move the RCCM to a separate building from the Court of First Instance, to increase its staff and to define the status (and outline a career plan) of the employees of the RCCM.

66. To conclude, ownership information about Gabonese companies at the time of registration is available from the RCCM but the operational and resource difficulties of the RCCM means the research takes a long time and the availability of the information is more uncertain. In addition, during the peer review period, the RCCM did not have a system in place to monitor whether the obligations regarding changes in ownership over the lifetime of the company were being respected.

67. During the peer review period, Gabon did not receive any requests for ownership information. The Gabonese authorities have indicated that their own experience shows that information was available from the RCCM. For example, the RCCM responded within 10 days to a request from the Court of

Auditors regarding information relating to companies who had been awarded public procurement contracts. This request covered seven companies.

68. With regards to the inadequate resources of the RCCM and the absence of supervision by the Court of First Instance, it is recommended that Gabon improves its system for monitoring ownership information obligations, in order to ensure that this information is kept up to date for all companies in Gabon.

Registration and maintenance of ownership information with the tax authorities

69. Information on company ownership is gathered by the tax authorities (i) when the company is registered, (ii) during the company lifetime when there is a change in ownerships and, since 2016, (iii) through the annual tax declaration.

Registration with the tax authorities

70. Under Article P-817 of the Gabonese Tax Code, any legal or natural person liable as a taxpayer for the payment of a tax must register with the tax authorities within two months of starting their activities. This requirement also applies to foreign taxpayers who carry on economic activities in Gabon without having a registered office there. Those concerned must appoint a solvent representative accredited to the tax authorities.

71. In practice, the tax administration intervenes twice during the creation of a company:

- Firstly, the company articles of association have to be registered with the Registration Unit, before they go before the CDE (see the section below entitled “Registration with all ANPIG administrations in practice”).
- Secondly, the company has to be registered with the tax authorities before it goes before the CDE.

Acts subject to the registration obligation

72. All acts modifying the statutes of a company – notably the transfer of shareholdings in a SARL or a partnership – must be made before the notaries and be registered. A fixed or variable fee is payable for the registration of these acts.

73. There is a Registration Unit in Libreville, Port Gentil and Franceville. Around 75% of the registrations are made in Libreville. The Libreville

Registration Unit has 20 employees, and has eight offices with computers. The Unit is divided into five departments: company deeds, leases and property deeds, banks, judicial acts and extrajudicial acts.

74. The Unit registers the date of the act or the operation subject to the registration requirement, the name of the parties on the contract, the object of the act being registered, and the amount of the fixed or proportional fee. The Unit keeps a copy for archiving. All operations are archived in registers in chronological order. They are then physically archived. Updates on the ownership of SARLs and partnerships are recorded in the LIIR software.

75. The following table shows the registrations of company articles of association (registration of articles of association and changes to articles of association):

	2013	2014	2015
Acts registered regarding the articles of association of companies (registration of articles of association or modifications to articles of association)	2 117	2 235	2 059

76. The taxpayer must respect the deadline for registration of acts (article 473 et seq. of the CGI) or risk the application of penalties which are often equal to the amount of the fees payable (article P-1011 et seq. of the CGI).

77. The Registration Unit checks that the notaries have registered the acts that were subject to registration. On a quarterly basis, notaries have to deposit their register and minutes, so that the Registration Unit can check that they are compliant. The Registration Unit in Libreville confirmed that co-operation with notaries is satisfactory.

Registration of taxpayers

78. Once the CDE formalities have been completed, the company or the individual entrepreneur must register with the registration department of the DGI. This department is centralised for all of Gabon's provinces and consists of a director and seven employees.

79. Once the file has been completed, the tax authority's software (LIIR) automatically assigns the taxpayer with a number. This identification number (*numéro d'identification fiscale*, NIF) is unique and applies for both direct and indirect taxes, customs and public procurement.

80. Registration is compulsory for all Gabonese companies, subsidiaries of international companies, individual entrepreneurs, foundations, associations and international organisations. The tax file is sent to the appropriate management centre. A copy is sent to the taxpayer. The other part of the paper file is sent to the management centre.

Maintenance of ownership information by the tax authorities

81. Any material change affecting operations, such as a change of senior manager or of the place of business or disposal or cessation of the business, must also be notified to the tax authorities within 15 days of the event. However, this obligation does not apply to changes of shareholders in SAs, SASs and SARLs, which are recorded in the shareholder registers (for SAs) or in the RCCM (for SARLs).

82. Before 1 January 2016, the tax authorities carried out some verifications on the shareholder register during their tax audits. This verification would be carried out along with checks regarding the amount of dividend withholding taxes levied on dividend distributions. The tax authorities did not keep track of specific sanctions or reassessment made on this particular aspect, as the sanctions mentioned in element A.2 for audits includes all reasons for tax reassessments. Since 1 January 2016, SA, SAS and assimilated entities (i.e. foreign companies assimilated to Gabonese SA and SAS) are required by the tax authorities to maintain a shareholder register, with failure to do so punishable by a fine (see section A.1.6 “Implementation of measures to ensure the availability of information”). The DGI has confirmed that tax declaration forms will be changed to include an annex in which should be listed all the shareholders at the start and the close of the tax year. In doing so, the Gabonese authorities have indicated their intention to create a centralised tax register on company ownership.

83. In addition, any statutory change of partners within a SARL (or a partnership) is subject to registration with the tax authorities. In practice, information on the transfer of shares in a SARL or a partnership is also available from the Registration Unit of the DGI. With regards to the transfer of shares (drawn up by private persons, and required to be registered), the tax payer must produce the document authorising the transfer, the transfer agreement, the updated statutes, the company accounts and the previous articles of association, so that the total number of partners or shareholders is known. Updates in company ownership are registered in the LIIR software.

84. The following statistics represent the registration of share transfers during the peer review period:

	2013	2014	2015
Number of share transfers	300	219	230

Incorporation of companies with the CDE

85. The Business Development Centre (CDE), established by Decree no. 730/PR/MECIT of 21 June 2011, is a public body whose role is to help companies with the administrative procedures and formalities of incorporation. Every company, regardless of its legal form, is required to register with the CDE. The CDE has been replaced by the national investment promotion agency, ANPIG (l'Agence National de promotion des Investissements du Gabon), under decree 311/MPIIHAT of 25 September 2014 on the creation and organisation of the ANPIG which will only become operational at the end of 2016. For the purposes of this report, reference is only made to the CDE.

86. The procedure for creating a company in Gabon involves the following stages:

- certification of the articles of association at the CDE (this applies only to those drawn up by private deed, in accordance with the Uniform Companies Act);
- registration of the articles of association with the tax authorities. The articles of association certified by the CDE, notarised copies and the minutes of the constitutive shareholders' meeting are registered with the relevant department of the General Tax Directorate against a fee;
- filing of the applications at the CDE single point of contact and issuance of a file number;
- registration in the RCCM;
- allocation of a tax identification number;
- certification by the Director General of the CDE;
- registration with Gabon Centre for Industrial Property (CEPIG) and the national social security fund (CNSS);
- publication in accordance with OHADA law in the journal of official notices of the Gabonese Republic.

Registration with the CDE in practice

87. There are a number of registration steps with the authorities to follow to incorporate a company in Gabon. These steps mainly involve the CDE.

1. The articles of association of the company to be formed firstly are sent to the Registration Unit of the DGI where they are subject to stamp duty. During this compulsory step, the Registration Unit keeps a hard copy of the articles of association which are archived in chronological order.

2. Within the CDE, the process is as follows
 - Constitution of the file, which includes the identity of the managers, and the articles of association duly registered by the tax authorities
 - A study of the articles of association’s compliance with OHADA law; and
 - Computer registration and attribution of a unique number for the CDE.
3. Once the formalities with the CDE have been completed, the company or the individual entrepreneur must register with the registration department of the tax authorities.

88. Once the company has been created, any subsequent modifications are recorded in the RCCM. In particular, this includes changes to the name, the activity, the head office, the directors, an increase in capital and transfers of shares in SARLs or partnerships.

89. The RCCM only checks companies at the time they are created. The registration number can only be attributed to a new company if the file includes all the documents required by the law. The various documents must include the mandatory provisions prescribed by OHADA law. After companies have been created, the DGI has broad powers to check that companies are respecting their tax and accounting obligations. This starts with the obligation to declare the existence of new companies. The practical implementation of these powers is analysed below, as part of the tax requirements.

90. The following statistics show the number of companies with share capital registered with the CDE during the peer review period:

	2012	2013	2014
SA	106	100	101
SARL	1 256	1 481	1 212

Operation of the CDE in practice

91. During the peer review period, the CDE was not computerised and archiving was done manually, by number and by year. This lack of computerisation made it harder and slower to find information.

92. During the transition period (2015), a number of structures merged. The CDE includes the commercial registry which is part of the Court of First Instance and registers the acts in the RCCM, the OGAPI (non-commercial) and the national social security register.

Information available from the company

Commercial law requirement

93. Under Article 317 of the Uniform Companies Act, the articles of association of SARLs, kept at the registered office, must state the identity of members. Share transfers *inter vivos* must be recorded in writing and registered in the RCCM. SAs and SASs, unlike SARLs, are not required to publish the identity of their shareholders in the RCCM. However, that information must be recorded in the register of shareholders which such companies are required to keep, though the requirement applies only to the holders of registered shares (Article 746-1 of the Uniform Companies Act). Registers of registered shares issued by a company are drawn up by the company or by a person authorised by the company for that purpose. The register contains information about transfers, conversions, pledges and escrow arrangements, *inter alia*; the date of the transaction; the name, first names and domicile of the old and new holder of the shares, in the event of transfer; and, where bearer shares are converted into registered form, the name, first names and domicile of the holder of the shares.

94. In the event of transfer, the name of the previous owner of the shares may be replaced by an order number whereby the name can be located in the registers. All entries in the registers must be signed by the company's legal representative or his delegate. Under Article 746-2 of the Uniform Companies Act as amended, companies are required to keep their share registers up to date. The auditor's report presented to the annual shareholders' meeting must ascertain the existence of the registers and give an opinion on their compliance with record-keeping requirements. A statement from the company's managers certifying that the registers are kept in compliance with the requirements is attached to the auditor's report.

95. Article 744-1 of the Uniform Companies Act, introduced in January 2014, provides for the dematerialisation of all transferable securities, whatever their form. However, dematerialisation is not yet effective in practice. The rules relating to dematerialisation are described and analysed in Section A.1.2 *Bearer shares*.

Tax law

96. Until 1 January 2016, there was no direct requirement in tax law to keep a register of shareholders. Since 1 January 2016, SA, SAS and assimilated entities (i.e. foreign companies assimilated to Gabonese SA and SAS) are required to create and hold at their registered office a register of registered shares (new article P-820 (2) of the CGI). This new obligation comes with sanctions (see Section A.1.6 Implementation of measures to ensure the availability of information).

Conclusion

97. Company law ensures that information on the identity of the holders of registered shares in companies with share capital is available. For SARLs, the information is available from the RCCM and the DGI both on incorporation of the company and on transfers of shares. Information about shareholders is available from the register of shareholders which those companies are required to keep, and since 2016 from the DGI.

98. In practice, the incorporation procedure in Gabon and the requirement to notify any subsequent changes means that information is available on the identity of company shareholders, either from the RCCM or the DGI. However the RCCM experienced resources and operational problems during and after the peer review period. These shortcomings have not allowed the RCCM to establish a system for supervising and monitoring the declarative obligations applicable under OHADA law. Although the tax authorities have monitored ownership obligations in Gabon, this has not always been a systematic element of accounting checks and tax audits of taxpayers. Furthermore, during the peer review period, the RCCM did not have a system in place to monitor whether ownership obligations were being respected. It is recommended that Gabon improves its system for monitoring obligations on ownership information for tax purposes and under OHADA law, in order to ensure that up-to-date ownership information is held for all companies in Gabon.

Foreign companies

99. The terms of reference require foreign companies to hold information about their shareholders where they have a sufficient link with a jurisdiction. That is the case in particular where the company is resident for tax purposes in that jurisdiction/in Gabon, for example because it has its centre of effective management in Gabon.

100. Information on the ownership of foreign companies carrying out business activities in Gabon is available as a result of business or tax reporting requirements.

Commercial law requirements

101. Under Articles 119 and 120-4 of the Uniform Companies Act, foreign companies with an office or subsidiary in Gabon must register their establishments in the RCCM. Under Articles 116 to 120 of the Uniform Companies Act, subsidiaries of foreign companies must incorporate as Gabonese companies after four years. Consequently, some information about the shareholders of foreign companies established in Gabon (see below) is available from the RCCM on registration.

102. The rules for registering subsidiaries of foreign companies in the RCCM are the same as for Gabonese companies. The registration application filed with the Business Development Centre includes a form which states, *inter alia*:

- the name of the foreign company which owns the subsidiary or establishment; its trade name; its acronym or brand name; the activity or activities carried on; the form of the company or legal entity; its nationality;
- the address of its registered office; where applicable, the name, first names and personal domicile of shareholders or members indefinitely and personally liable for corporate debts;
- the name, first names, date and place of birth of the natural person domiciled in Gabon empowered to represent and manage the subsidiary.

103. As the foreign company is thus treated in the same way as a Gabonese company, the registration of subsidiaries of foreign companies means that information about their ownership is available from the RCCM if they are limited liability companies or partnerships, because these types of entities must mandatorily provide updated information to the RCCM. If they are companies with share capital (SA and SAS), information about their ownership will not be available from the RCCM. However, this information will be available in the share register which the subsidiary is required to keep in the same way as any company with share capital under Gabonese law (Article 746-1 of the Uniform Companies Act).

104. As mentioned in Section A.1.6, there are no penalties in Gabonese law for failing to comply with the obligation to keep a register of shareholders.

Tax requirements

105. The Gabonese Tax Code does not give any definition of residence for tax purposes in relation to corporate tax, in contrast to personal income tax. Under Article 7, Gabon levies corporate tax on a territorial basis, such that earnings liable to corporate tax are determined taking into account only the profits generated by enterprises operated or transactions carried out in Gabon, subject to the provisions of international conventions.

106. Under Article P-87(4), foreign companies liable to corporate tax on a territorial basis must appoint a solvent representative accredited with the tax authorities. The General Tax Directorate issues a definitive single identity number after the taxpayer's effective location has been certified. The

penalties set forth at Article P-1002 apply in the event of non-compliance with these obligations (see Section A.1.6).

107. Since 1 January 2016, SA, SAS and assimilated entities (i.e. foreign companies assimilated to Gabonese SA and SAS) are required by the tax authorities to maintain a shareholder register, with failure to do so punishable by a fine (see section A.1.6 “Implementation of measures to ensure the availability of information”).

108. Gabon has confirmed that the legal representative is required to provide the DGI with all the information they may request in order to assess a tax, including information held by the foreign company, especially in connection with the control of transfer prices (Article 14-2). However, there is no direct obligation on foreign companies to keep information about their shareholders in Gabon.

109. In conclusion, information about the ownership of foreign companies carrying out business activities should be available either from the RCCM or from the foreign company, subject to the application of appropriate penalties (see Section A.1.6).

Application of commercial and tax law requirements in practice

110. In practice, the commercial registration procedure (with a number being attributed by the RCCM) and tax registration procedure (attribution of a tax identification number) for Gabonese subsidiaries of foreign companies is the same as for Gabonese companies. The same information is thus available in Gabon, notably information about the owners of the subsidiary.

111. Statistics for the registration of Gabonese subsidiaries of foreign companies with the CDE during the peer review period are as follows:

	2012	2013	2014
Subsidiaries of foreign companies	34	40	36

Information held by nominees

112. There are no specific provisions in Gabonese or OHADA law relating to the common law concept of nominee. On the contrary, OHADA law uses the term “*mandataire*” (authorised person), which is a civil law concept. Under OHADA law, in certain specific cases a company’s shareholders may be represented for various purposes by authorised persons. However, even if commercial law does not recognise the concept of nominee, persons acting as such in a professional capacity are covered by AML/CTF legislation and must identify their customers.

Commercial law

113. Under Article 315 of the Uniform Companies Act, any shareholder may be represented by a person of their choice on formation of the company or at a shareholders' meeting. In such a case, the authorised person acts expressly and publicly on a shareholder's behalf and does not have shareholder status with regard to third parties.

114. The authorised person must obtain a power of attorney from the principal, containing information about the principal's identity. Under Article 538 of the Uniform Companies Act, the power of attorney must state the principal's name, first name and domicile, the number of shares and voting rights held and the shareholders' meeting for which it is given. It must be signed by the principal, preceded by the words "*bon pour pouvoirs*" [good for power of attorney], and state the date. Consequently, although an authorised person acts for the principal, the beneficial owner's identity is known.

In practice

115. In practice, the representative of the CDE and the Registration Unit of the DGI have confirmed that the articles of association are received during the creation of a business always contain the identity of partners or shareholders in person and never those of an authorised person. This information is checked against the list of partners or shareholders that is required as one of the supporting documents of the business creation process.

Anti-money laundering and combating the financing of terrorism (AML/CTF) legislation

116. Although the common law concept of nominee does not exist in Gabonese law, AML/CTF customer identification requirements may be helpful in order to determine the identity of shareholders using a nominee to conceal their identity. These identification requirements apply only to a nominee acting as such in a professional capacity (a lawyer or notary, for example). They are set out in CEMAC-CAMU Regulation 01-03 on the prevention and suppression of money laundering and the financing of terrorism. Professionals of this type are subject to a know-your-customer (KYC) requirement. Nominees acting in a professional capacity are covered by the requirement, which covers "notaries and other members of the independent legal professions". The customer identification form and the suspicious activity report linked with the KYC requirement have boxes for the name and first names, address and residence of the persons to whom the report relates. In practical terms, the professionals concerned must know the identity of the natural or legal persons to whom they provide services.

117. Under Article 10 of CEMAC-CAMU Regulation 01-03, professionals covered by a KYC requirement must satisfy themselves of the “true identity of persons on whose behalf an account is opened or a transaction performed when they consider that the persons asking for the account to be opened or the transaction to be performed may not be acting on their own behalf”. In addition, a customer who is a lawyer, an accountant or a nominee acting as a financial intermediary may not invoke professional secrecy as grounds for refusing to disclose the beneficial owner’s identity.

118. As these requirements apply only to professionals, there is no means of obtaining the identity of a shareholder using a nominee who does not act in a professional capacity. However, as the concept of nominee does not exist in Gabonese law, this situation is unlikely to arise in practice.

In practice

119. The supervision of legal professions likely to practice their activity as a “nominee” is carried out by the National Agency for Financial Investigations (*Agence nationale d’investigations financières* (ANIF)). The ANIF is present in each member state of the CEMAC. The ANIF is a financial information unit operating under the authority of the Ministry of Finances. Its main duty is to prevent, detect and stop money laundering and the funding of terrorism. It is mandated to receive, process and transmit to the competent legal authorities a report on the operations that are the subject of a suspicion activity report, accompanied by all supporting documents other than the suspicion activity report itself. In addition, an additional mission is to raise awareness and train professionals in combating money laundering and the funding of terrorism.

120. By law, the ANIF supervises persons subject to AML legislation who do not have their own supervisory bodies (such as accountants, the legal professions and notaries). However, in practice, there is no plan to supervise the legal professions due to resource constraints.

121. The ANIF includes four analysts, two investigators and information technology specialists. Since last year, a plan to strengthen the ANIF is in place, with an increase of both human and material resources and the development of international co-operation based on technical assistance. In particular, ANIF has benefited from trainings organised by the Egmont Group, of which Gabon has been a member since 2012.

122. The ANIF only rarely applies sanctions as it does not have enforcement powers. The ANIF produces preliminary enquiries. Its objective is to observe and gather evidence, which it then transmits to the State Prosecutor. The State Prosecutor is the authority that will follow up on any lapses in procedures/findings surfaced by the ANIF.

Conclusion

123. As Gabonese law is based on the civil law tradition, the common law concept of nominee does not exist in Gabonese law, which uses the civil law concept of authorised person. In these specific cases, the shareholder's identity is known and the authorised person acts publicly on their behalf. The Gabonese authorities have confirmed that they have never encountered a case of nominees as the concept is unknown in domestic law.

Bearer shares (ToR A.1.2)

124. The Gabonese legal framework includes obligations for identifying the holders of bearer shares under both commercial and tax law. However, these obligations do not guarantee identification in all cases.

125. The Gabonese authorities have indicated that bearer shares are not often used by Gabonese operators. The DGE surveyed public limited companies with a sample representing 363 SA supervised by the Large Business Directorate (Direction des Grandes Entreprises (DGE)) over a total number of 1853 SA registered with the DGI. This sample corresponds to roughly 20% of all SA known to the DGI. Over the 363 SA under the supervision of the DGE, 16 SA provided in their articles of association for the issuance of bearer shares. In practice, only one SA effectively issues bearer shares. This sample survey appear to support the position of the Gabonese authorities, according to which the use of bearer shares is very rare in Gabon,

Commercial Law

126. Article 745 of the Uniform Companies Act states that transferable securities may be in bearer or registered form and issued in return for contributions in cash or kind. It also states that provisions of the Uniform Act or the company's articles of association may require them to be issued in registered form only. Thus, only SAs and SASs may issue bearer shares; SARLs may only issue registered shares.

127. Before January 2014, Gabon had no arrangements in place for identifying shares or bearer shares. The rules applicable to transferable securities in the OHADA area depended on whether the instruments representing them were in registered or bearer form (former Article 764-1).

- for registered shares, the holder's rights derived solely from their registration in the company's registers, since the certificate delivered by the issuer did not in itself confer title;
- for bearer shares, the bearer of the share was deemed to be its owner and shares could be transferred by hand.

128. However, companies making public offerings had the option of dematerialising their shares, i.e. registering their shares (whether in registered or bearer form) in an account opened in the owner's name and kept either by the issuer or by a financial intermediary approved by the Minister for the Economy, transmission then being effected by transfer from account to account (former Article 764-2).

129. Since January 2014, under Article 744-1 of the Uniform Companies Act as amended, "transferable securities, whatever their form, must be registered in an account in the name of their owner. They are transmitted by transfer from account to account. Transfer of title to transferable securities results from the registration of the transferable securities in the acquirer's securities account". Thus, bearer shares, like registered shares, must now be dematerialised (paper shares should no longer exist) and their owners should be identifiable.

130. Under Article 919 of the Uniform Companies Act as amended, as a transitional measure companies were given two years as of its entry into force to bring their articles of association into line with the new rules, including those on the dematerialisation of securities. All bearer shares issued before 5 May 2014 (the effective date of the new Uniform Companies Act) may remain in paper form until 5 May 2016 at the latest.

131. However, the new Uniform Act makes no provision for specific penalties against issuers or holders of bearer shares created before its entry into effect which are not registered in an account on expiry of the transitional period. According to the Gabonese authorities, bearer shares that have not been dematerialised on expiry of the transitional period will no longer be legally valid. The holders of such bearer shares would not be able to exercise their rights, especially the right to vote at shareholders' meetings and the right to dividends. However, that penalty is not expressly stated in any legal text.

Tax legislation

132. Under Article 191 of the Tax Code, persons liable to corporate tax must provide a statement explaining the conditions under which their earnings are distributed or shared between partners, limited partners, managing partners, co-participants or board members in consideration of their functions or contributions. Article 192 allows the Gabonese tax authorities to know the identity of the beneficiaries and details of the amounts allocated to them.

The statement of sums paid in respect of dividends provided to the tax centre gives the tax authorities information about the beneficiaries' identity and hence of all the shareholders, except where the claimant is acting for another person. However, the tax authorities consider that in practice authorised persons would

have to disclose the beneficial owner's identity in order not to be bound by the resulting tax obligation. The authorities would thus have information about the holders of bearer shares, provided that dividends are paid.

Conclusion

133. In light of the foregoing, information about the owners of bearer shares in SAs should be available in Gabon, from the tax authorities if dividends are paid and, in all events, from the company or a central depository (for listed companies). However, that is possible only if all companies actually dematerialise their securities as required under the Uniform Companies Act as amended, including those which had issued bearer shares before the new legislation came into force. Although a draft law is in the process of being adopted, it is not yet in force. In addition, the Gabonese authorities are working on the practical application of dematerialisation. Gabon is recommended to take steps to guarantee dematerialisation of all bearer shares in existence before 5 May 2014, the date at which the new version of the Uniform Companies Act came into force.

Partnerships (ToR A.1.3)

134. The Uniform Companies Act distinguishes the following types of partnership.

- **Limited partnerships** (*sociétés en commandite simple*, SCS), which have one or more partners who are indefinitely and jointly liable for the partnership's debts (managing partners) and one or more partners who are liable for the partnership's debts only up to the amount of their contribution (limited partners). The capital of an SCS is divided into shares (Article 293 of the Uniform Companies Act). On January 2016, there were three SCS registered with the DGI;
- **General partnerships** (*sociétés en nom collectif*, SNC), of which all the partners are traders and indefinitely and jointly liable for corporate debts (Article 270 of the Uniform Companies Act). On 1 January 2016, there were 13 SNC registered with the DGI
- **Joint ventures** (*sociétés en participation*, SP), where the partners agree that the company will not be registered in the RCCM and will not have legal personality. Joint ventures are not subject to a publication formality.

135. Information about the owners of partnerships and foreign partnerships having a subsidiary in Gabon (see A.1.1 regarding foreign companies) is available from the RCCM and the tax authorities.

Commercial law requirements

136. Partnerships, with the exception of joint ventures, are required to register in the RCCM in the same way as companies with share capital. Under Articles 46 and 52 of the Uniform Commercial Law Act, the following information is kept in the RCCM:

- the name, first names and personal domicile of partners who are indefinitely and personally liable for corporate debts, together with their date and place of birth and nationality;
- the name, first names, date and place of birth and domicile of managers, executives, directors or partners with a general power to commit the legal person or grouping;
- shareholdings;
- the address of the registered office and, where applicable, the principal place of business and each other establishment;
- amending, supplementing and secondary information.

137. Changes of partners must be notified to the RCCM. Thus, information on the identity of partners of partnerships is kept and regularly updated in the RCCM. That information is also available from the partnership, as partnerships must maintain an up-to-date shareholder register.

138. Because joint ventures do not have to be registered, they do not appear in the RCCM. However, their managers are required to register in the RCCM if they carry on a commercial activity. Under Article 856 of the Uniform Companies Act relations between the partners of joint ventures are governed by the rules applicable to general partnerships.

139. The following figures show the very low number of partnerships registered with the CDE during the peer review period.

Types of partnership	2012	2013	2014
SNC	4	5	13
SCS	2	0	1

Tax requirements

140. Under Article P-817 of the Tax Code, partnerships, like companies with share capital, must register with the tax authorities and report material changes affecting their operation (change of senior manager, disposal, cessation, change of the capital or shareholder structure).

141. SCSs, SNCs and joint ventures may be liable to corporate tax, but only if all the partners agree to choose that option. Once exercised, the option is irrevocable. Under Article 5 of the Tax Code, where a partnership has not opted for corporate tax liability, limited partners in SCSs and partners in SNCs and joint ventures that are not indefinitely liable or whose names and addresses have not been provided to the tax authorities are subject to tax on a personal basis. The share of earnings of general partners in SCS is subject to corporate tax, even in the absence of option to be subject to corporate tax.

142. In practice, the company creation and registration procedure in Gabon is the same irrespective of the type of company (see above, for companies with share capital). This procedure means that information on the identity of partners in partnerships is available in practice and is updated in the RCCM, the DGI database and the taxpayers' files. Because of the problems affecting the RCCM mentioned in A.1.1, the RCCM had no monitoring system in place during the peer review period. However, a monitoring system is in place and carried out by the DGI, particularly given that information on the ownership of partnerships is essential for gathering taxes. Checks on the maintenance of the shareholder register is carried out by the DGI during tax audits (see A.2 for statistics on tax audits).

Conclusion

143. In conclusion, information about the owners of partnerships is available through commercial and tax reporting requirements. The same observations as those made in A.1.1 on the activities of RCCM and the DGI in practice are applicable to partnerships.

Trusts (ToR A.1.4)

144. There is no law on trusts in Gabon and the country is not a signatory of the Hague Convention of 1 July 1985 on the Law Applicable to Trusts and on their Recognition. Consequently, it is impossible to create a trust or similar structure in Gabon. However, there is nothing in Gabonese law to prevent a trust created in a foreign country from being administered in Gabon or to prevent assets located in Gabon from forming part of a foreign trust. In such cases, there is no provision in commercial or tax law which requires the managers of foreign trusts or *fiducies* domiciled in Gabon to disclose the identity of the settlers or beneficiaries of the trust. However, record keeping requirements apply under AML/CTF legislation, but these requirements only apply to professionals subject to that AML/CTF legislation.

Commercial law requirements

145. Where a trust governed by the laws of a foreign country is administered in Gabon, there is no specific requirement to register with the public authorities. Under the prevailing legislation, however, all natural and legal persons, whether Gabonese or foreign, who carry on a commercial activity in Gabon are subject to a reporting requirement, which also applies to foreign trusts. Accordingly, persons or entities acting as trustees in Gabon must register with the RCCM if they engage in business activities. In such cases, the same information that is required of any persons (being individuals carrying on a business or an entity) on registration must be submitted to the Register.

Tax law requirements

146. Since 2016, a new obligation has been included in the CGI (article P-832 bis) according to which “any person established in Gabon who has formed an entity under a foreign law that could be classed as a trust by a foreign jurisdiction linked to Gabon by a tax agreement or a mutual administrative assistance agreement, must make a declaration to the EOI Unit.” This declarative obligation also applies to beneficiaries of foreign trusts who are resident in Gabon.

147. The declaration has to include certain information, notably including the identity of the trustee, the owner and the effective beneficiary of any income taken from the trust, the bank details of the trust and the constituent party. As this is a recent obligation, it is recommended that the Gabonese authorities ensure the practical monitoring of this obligation.

148. In practice, the Gabonese authorities have never come across the case of a foreign trust operating in Gabon or with a trustee resident in Gabon. They have, however, indicated that any person acting as a trustee in Gabon within the framework of their professional activity is required to register with the RCCM and the tax authorities. This procedure should allow the DGI to access information on other people implicated in a trust administered in Gabon. In effect, if the trustee resident in Gabon does not reveal the identity of the constituent party or the beneficiary, the DGI will consider the income generated by the trust as being that of the trustee and it will be taxed accordingly. This information should be updated when the annual statement of accounts is made.

Anti-money laundering legislation

149. Article 5 of CEMAC-CAMU Regulation 01-03 covers “notaries and members of other independent legal professions” where they constitute, manage or direct “*fiducies* or similar structures”. In such cases, those persons, acting as trustees, must comply with KYC rules.

150. Regulation no. 0004/CIMA/PCMA/PCE/SG/08 applicable to insurance and reinsurance companies and brokers operating in the CIMA area contains the same requirements as AML/CFT legislation to guarantee the availability of information about the identity of members of a trust if, through a trustee, it is involved in insurance business. Non-compliance may incur the disciplinary and pecuniary sanctions set forth at Articles 534-2 and 545 of the Insurance Code.

151. In practice, the ANIF, which supervises legal professions subject to the AML/CFT regulations, does not have enforcing powers, but can hand over its files onto the judicial authorities. These may in turn prosecute the taxpayers should there be serious shortcomings in their AML/CFT obligations.

Conclusion

152. Although Gabonese law does not permit the creation of trusts in Gabon, it does not prevent a trust created under the laws of a foreign country from being administered in Gabon. In such a case, commercial, tax and AML legislation ensures the availability of information about the members of the trust (settlers, trustees or beneficiaries) However, this situation is rare in a country with a civil law tradition and has never been seen in practice.

Foundations (ToR A.1.5)

153. Gabonese law permits the creation of foundations with a general-interest and non-profit purpose. Foundations are governed by Ordinance 2/99 of 30 July 1999, ratified by Act 2/2000 of 18 August 2000.

154. Under Article 9 of the Ordinance, there are two classes of foundation: those that have a public-interest purpose and those that do not. Foundations are required to operate in accordance with their purpose. Under Articles 17 and 22, they must therefore not seek to make a profit, failing which they are liable to penalties. The State may oppose the activity of a foundation under the conditions set forth at Article 22.

155. Foundations differ from associations insofar as their existence is based on the irrevocable allocation of assets. However, they are subject to the same tax rules. The 2011 Budget Act provides for an exceptional tax regime applicable to sponsorship or patronage. This applies to associations, foundations and all other similar structures governed by Act 35/62 on associations.

Legal requirements

156. In order to be approved, foundations must register with the Minister of the Interior and the minister responsible for the planned activity. They approve their articles of association and rules of procedure, which are submitted together with a list of the foundation's members giving their civil status and functions. Foundations have a board of directors and a management body.

157. Foreign foundations wishing to carry on an activity in Gabon must create a Gabonese foundation in accordance with the provisions of Ordinance 2/99.

Tax requirements

158. Foundations must register with the tax authorities if they are liable for any tax or duty. Consequently, they are subject to the same reporting requirements as companies. Generally speaking, foundations register with the tax authorities because they are legally liable for wage, social and employer's contributions.

159. Since 2016, a new measure has been included in the CGI (new article P-817 bis) to require foundations, associations and other assimilated organisations to register with the tax authorities within one month of obtaining their authorisation. The new article P-818 ter of the CGI specifies that declarations must include the first and last names and addresses of the legal owners and the final recipients, or be declared inadmissible. This obligation, although already applied in practice, is recent. It is therefore recommended that the Gabonese authorities monitor the application of this obligation.

160. The information required to register with the tax authorities is limited to identification of the president and of the manager, plus the articles of association and rules of procedure.

Conclusion

161. In light of their characteristics, Gabonese foundations are not relevant with regard to the exchange of information for tax purposes. However, information about their ownership is available in Gabonese law from both the administrative and the tax authorities.

Other entities

162. Other relevant entities and arrangements are non-trading companies, non-governmental organisations and co-operative societies. The issues regarding the availability of ownership, identity and accounting information are similar to those discussed in relation to companies with share capital and partnerships.

Non-trading companies (sociétés civiles)

163. Non-trading companies (sociétés civiles) are generally defined in opposition to commercial companies and generally carry on a non-commercial activity such as an intellectual, professional or real-estate activity. A distinction is drawn between real-estate companies and professional companies.

- Real-estate companies have a real-estate purpose and are intended to hold property assets acquired or contributed by the members in order to facilitate the management and/or transmission of the assets or optimise their yield.
- Professional companies have a professional purpose and are intended to allow natural or legal persons to carry on a regulated profession in common.

164. In all events, under Article 45 of the Uniform Commercial Law Act non-trading companies, whatever their nature, are governed by the same rules on creation as other types of company and must register in the RCCM (see Section A.1.1). They must also keep an up-to-date shareholder register.

165. From a tax standpoint, non-trading companies are generally regarded as transparent, though there are some broad exceptions. Under Article 5 of the Tax Code, non-trading companies are liable to corporate tax where:

- they carry out an activity or operations of a commercial, industrial, craft or agricultural nature;
- their members include one or more companies with share capital; and/or
- they have opted for corporate tax liability.

166. They are subject to reporting and payment requirements similar to those of companies with share capital and partnerships. The same penalties also apply.

Cooperative societies

167. Co-operative societies are governed by the OHADA Uniform Act on the law of co-operative societies adopted on 15 December 2010.

168. Article 4 of the Act defines a co-operative society as an autonomous grouping of persons, voluntarily united to fulfil their common economic, social and cultural aspirations and needs through a jointly-owned and managed enterprise where power is exercised democratically and according to co-operative principles. Under Article 9, it must keep a register of members, stating for each one the membership number, name, first name, identity document references, address, profession, number of shares subscribed and number of shares paid up.

169. A co-operative society is formed by drawing up articles of association in a private deed, which have the same function as those of a company. The society must apply for registration in the register of co-operative societies kept at the prefecture of the place where it has its registered office (Article 70 et seq.). Co-operative societies are liable in principle for corporate tax, though some of them (those involved in the production, processing, conservation and sale of crop and livestock farming products) are exempt for certain specific activities.

170. Reporting requirements and tax penalties are similar to those for companies with share capital.

Enforcement provisions to ensure the availability of information *(ToR A.1.6)*

171. Various penalties are available under Gabonese commercial, tax or AML/CFT law to ensure the availability of information on the identity of the owners of entities in existence in Gabon. However, penalties for failing to dematerialise transferable securities remain to be defined.

Penalties for failure to register

172. Under Articles 114 and 115 of the Uniform Companies Act, a company that fails to register in the RCCM is considered to be either a joint venture or a de facto company without legal personality and hence governed by the provisions of Articles 864 et seq. of the Act. There are no specific penalties in Gabonese law at present for failing to register in the RCCM.

173. In contrast, under Article P-1002 of the Tax Code, a flat-rate fine of XAF 250 000 (EUR 380) is imposed for failing to register with the tax authorities as required at Article P-817.

Requirements to keep information about ownership

174. The Uniform Commercial Law Act does not set a specific time for which information contained in the RCCM must be kept. Article 20 merely provides for the creation of a national RCCM database. The Gabonese authorities have confirmed that information about registered natural and legal persons is kept without any limitation.

175. The identity of the members of an SARL must be stated in the company's articles of association, which are kept at the registered office. Under Article 317 of the Uniform Companies Act, share transfers inter vivos must be recorded in writing and registered in the RCCM. There are at present no penalties in Gabonese law for failure to register transfers of shares in an

SARL in the RCCM. Under Article P-1002 of the Tax Code, however, the penalty for failing to file changes to information used for an initial registration is a flat-rate fine of XAF 250 000 (EUR 380). The Gabonese authorities have confirmed that they interpret this article to mean that members of an SARL who fail to inform the tax authorities of a change of membership would be liable to a penalty. In practice, the Gabonese authorities have confirmed that the obligation to declare a change in partner in a SARL is respected by taxpayers, particularly given that the new partner is listed in the form on the distribution of dividends.

176. Under the Uniform Companies Act, SAs and SASs are required to keep a register of registered shares at their registered office. Until the dematerialisation of corporate securities becomes fully effective in Gabon (see Section A.1.2), this register is the only source of comprehensive information on the ownership of registered shares. The requirement to keep a register of shareholders also applies to foreign public limited companies or simplified joint-stock companies which have a subsidiary in Gabon. However, there is no penalty for failing to keep such a register. However, since 1 January 2016, the tax laws require a register to be kept (see section A.1.1). This obligation, which applies to SA, SAS and assimilated entities (i.e. foreign companies assimilated to Gabonese SA and SAS) is accompanied by sanctions for non-application. New article P-1010 bis of the CGI states that “failing to hold and maintain a register of registered shares at the registered office” will result in a flat rate fine of XAF 10 million (EUR 15 200). This fine rises to XAF 50 million (EUR 76 000) for companies with a turnover that is equal to or greater than XAF 500 million (EUR 760 000). Given that this obligation and its penalty are recent and have not yet been tested in practice, Gabon is recommended to ensure the monitoring of both the effective implementation of the tax obligation requiring SA, SAS and assimilated entities to keep up-to-date a register of nominative shareholders at their registered office, as well as the associated sanction for failing to do so.

177. The tax authorities require all documents in respect of which they may exercise their right of audit to be kept for at least ten years as of the date of the last transaction or the date at which the documents were drawn up (Article P-821 of the Tax Code). These documents include share transfer registers and attendance sheets and minutes of shareholders’ meetings. However, as there are no penalties in Gabonese law for failing to keep the register of shareholders, it is not certain that these documents are kept in all cases.

Penalties for failing to comply with AML/CFT requirements

178. Even though the concept of nominee does not exist in Gabonese law, KYC requirements for AML/CFT purposes may be helpful in order to identify beneficial owners using a nominee to conceal their identity. The KYC requirements apply only to a nominee acting in a professional capacity, such

as a notary or lawyer. Under Article 18 of CEMAC-CAMU Regulation 01-03, persons who fail to comply with KYC requirements are liable to prosecution or to disciplinary procedures under the rules governing the profession in question (lawyers, notaries and accountants) on the initiative of the relevant disciplinary authority.

Penalties for failing to dematerialise bearer shares

179. The revised version of the Uniform Companies Act does not stipulate any specific penalties for issuers or holders of bearer shares created before it came into force who fail to register them by the time the transition period expires. Likewise, the practicalities of dematerialisation are not defined, this being a matter for individual contracting states.

180. Gabon has not yet introduced penalties for failing to comply with dematerialisation requirements, or defined practical arrangements for dematerialisation. Gabon is recommended to take steps to implement the revised version of the OHADA Uniform Act in order to ensure the dematerialisation of all bearer shares on expiry of the two-year transition period allowed to companies for that purpose.

Determination and factors underlying the recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	Recommendations
The new version of the OHADA Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period in which to comply. However, it does not precisely define the status of bearer shares which are not dematerialised on expiry of the transition period. There is currently no other provision in Gabonese law clarifying the terms and conditions of dematerialisation. Only 16 SA registered with the DGI may issue bearer shares under their articles of association, and only one SA has effectively issued bearer shares.	Gabon should take appropriate steps to implement the new version of the OHADA Uniform Act in order to ensure the dematerialisation of all bearer shares on expiry of the two-year transition period allowed to companies for that purpose.

Phase 2 Rating	
Partially compliant	
Factors underlying recommendations	Recommendations
Although there have been efforts made to monitor ownership obligations in Gabon by the tax authorities, this monitoring has not been systematically applied during the accounting and tax inspections of the taxpayer. In addition, over the peer review period, the RCCM did not have a system in place for monitoring the compliance with ownership obligations.	It is recommended that Gabon improves its system for monitoring obligations to provide ownership information under both tax law and OHADA law, in order to ensure that information is up to date for all companies in Gabon.
Although during the peer review period, no sanctions were applicable regarding the obligations of SA, SAS and assimilated companies to maintain a register of shareholders, Gabon recently adopted a tax provision that requires SA, SAS and assimilated companies to maintain a register of registered shares at their registered office, subject to penalties for non-compliance. However, it was not possible to test the implementation of this measure in practice	The Gabonese authorities must ensure effective monitoring of the tax obligation applicable to SA, SAS and assimilated entities to maintain an up-to-date register of nominative shareholders at their registered office and apply the appropriate sanction in case of non-compliance.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

181. The Terms of Reference define standards for keeping reliable accounting records and for how long such documents should be retained. They recommend that reliable accounting records should be kept for all relevant entities and arrangements. In order to be reliable, accounting records must (i) correctly record all transactions, (ii) be such that the financial situation of the entity or arrangement may be determined with reasonable precision at any time, and (iii) enable the preparation of financial statements.

Accounting records must also be supported by underlying documentation, such as invoices, contracts, etc., and be retained for at least five years.

182. With regard to the keeping of accounting records, Gabonese law requires legal entities and other entities to respect transparency requirements that comply with international standards as regards formal requirements for account-keeping, the documents which must be kept and the length of time for which they must be retained.

General requirements (ToR A.2.1)

183. Companies having their registered office in Gabon are required to keep accounts. The obligation is instituted by company law (Article 137 et seq. of the Uniform Companies Act), tax law (Article 17-1 of the Tax Code) and accounting law (Article 1 of the Uniform Accounting Act). These rules also apply to foreign companies and partnerships having a subsidiary in Gabon.

Accounting requirements and penalties under OHADA law

184. OHADA law contains accounting requirements which apply to all Gabonese entities, with penalties for non-compliance.

Accounting requirements under OHADA law

185. Under Article 13 of the OHADA Uniform Commercial Law Act, all traders, whether natural or legal persons, must keep a register in which their commercial transactions are recorded day by day. They must also keep a general ledger, with a trial balance, and an inventory register. These registers must be kept in compliance with the Uniform Act's provisions on the organisation and harmonisation of business accounts.

186. Article 1 of the Uniform Act on the organisation and harmonisation of business accounting systems (Uniform Accounting Act) states that undertakings must establish an accounting system to provide information for both internal and external use, to which end it must:

- classify, record and enter in its accounts all transactions that entail value movements which are carried out with third parties or are recorded or executed as part of its internal administration;
- after suitable processing of such transactions, render the accounts which it is required to draw up by law or pursuant to its articles of association, along with other information required to meet the needs of the various users.

187. Under Article 2, the following entities are required to establish a general accounting system:

- undertakings governed by the provisions of commercial law;
- state-owned corporations, parastatal organisations and semi-public undertakings;
- co-operatives and more generally entities that produce marketable or non-marketable goods and services, if they are habitually engaged in a principal or ancillary economic activity irrespective of whether or not financial gain is derived from that activity.

188. Companies and professionals acting as trustees of foreign trusts are required, as traders, to comply with the above-mentioned requirements of OHADA accounting law.

189. Under Article 15, the accounting system must ensure timely and complete recording of basic information on a day-to-day basis, processing of the recorded data at the appropriate time and delivery of mandatory reports to users within specified legal time limits. Article 3 is clear on the role of the accounting system, which must be accurate, reliable and transparent.

190. The accounting documents to be kept must comply with these requirements, even if they are not identical under the different accounting systems.

- Under the minimal cash-basis system, companies must keep a record of income and expenditure.
- Under the simplified system, companies must prepare a balance sheet, income statement and notes to the financial statements.
- Under the normal system, companies must prepare a balance sheet (showing assets and liabilities separately and in detail), an income statement (showing revenue and expenses, clearly distinguished), a table of source and application of funds (showing financing flows and capital expenditure) and notes to the accounts (describing material items not shown in the other financial statements and containing a statistical report where relevant).

191. Banks, credit institutions and insurance companies are subject to additional accounting requirements arising from COBAC regulations for banks and credit institutions and CIMA regulations for insurance companies.

Depositing accounts with the RCCM

192. Since 5 May 2014, OHADA law (article 269 of AUSCGIE) requires commercial companies (SA, SAS and SARL) to deposit their annual summary financial statements to the RCCM of their registered office within one month following approval of the annual accounts. The summary financial statements include the balance-sheet, the income statement, the statement of source and expenditure of funds and annexed statement. Should any interested party make a request, the competent jurisdiction can require the director of any commercial company to submit the documents outlined above, where the request has gone unheeded for thirty days.

Penalties for non-compliance

193. Article 111 of the Uniform Accounting Act institutes penalties for company managers who:

- for each accounting period, fail to draw up annual financial statements and, where applicable, a management report and social audit; or
- knowingly draw up and disclose financial statements which do not give a true and fair view of the assets and liabilities, financial situation and profit or loss for the period.

194. Under Article 890 of the Uniform Companies Act, managers who, on expiry of each accounting period and in order to conceal the company's true situation, knowingly publish or present to shareholders or members summary financial statements which do not give a true and fair view of the company's transactions, financial situation, assets and liabilities for the period are liable to imprisonment for one to five years and a fine of XAF 1 000 000 to XAF 10 000 000³ (EUR 1 524 to EUR 15 244).

195. Apart from these criminal penalties, OHADA law does not specify any penalties for non-compliance with accounting obligations, leaving it up to contracting states to determine them. There are not at present any penalties in Gabonese commercial law for failing to comply with accounting obligations, though there are penalties under tax law (see below) and criminal law.

3. Article 8 of Act 2003-008 of 8 July 2003 on the suppression of offences contained in certain OHADA Uniform Acts.

Tax requirements and penalties and implementation in practice

196. Under Article 17 of the Tax Code, taxpayers must keep their accounts in accordance with the OHADA accounting system. Under Article 18, if they fail to do so their accounts will be deemed irregular and non-probative.

197. Article P-819 requires taxpayers liable to tax to declare their income, supported by the necessary accounting documents to determine the basis of assessment. Foreign trusts are taxed under the territorial principle, so that only activities carried out by the foreign trusts in Gabon are taxable in Gabon. Foreign trusts are subject to withholding taxes at source levied by the trustee. The trustee is taxed on income derived from his professional trustee activities in Gabon.

198. A taxpayer who fails to file a return is served official notice to do so and has seven days in which to rectify the situation, failing which the tax authorities may make a discretionary assessment. Discretionary assessments are made inter alia where accounts are not kept or taxpayers fail to present all or some of their accounts or supporting documents, as ascertained in an official report. The burden of proof in such a procedure is reversed, since the taxpayer must prove that the tax authorities' assessment is unjustified, whereas in a normal procedure the burden of proof lies with the tax authorities.

199. In addition, under Article P-996, where the tax authorities have had to make a reassessment on account of deficiencies, omissions or inaccuracies which affect the assessment basis or elements of taxation, penalty interest is charged at 1.5% per month, up to a maximum of 50%, calculated on the basis of the tax charge to the taxpayer. Under Article P-997, the amount of tax payable is increased:

- by 100% in the case of bad faith; and
- by 150% in the case of fraud, without prejudice to the criminal penalties set forth in the Book of Tax Procedures.

200. The penalties for failure to file a return are harsher, since under Article P-999 the tax payable is increased by 100% (and 150% for a repeat offence). Various fines of up to XAF 250 000 (EUR 380) may also be imposed.

201. A fine equal to 100% of the value of the transaction, with a minimum of XAF 500 000 (EUR 760), is imposed on any sale of goods or provision of a service for which an invoice has not been issued. The fine is reduced to XAF 50 000 (EUR 76) for an erroneous or incomplete invoice issued or used by a professional.

202. As far as criminal penalties are concerned, under Article P-1025 any person who fails to make or to cause others to make accounting entries or causes inaccurate or fictitious entries to be made in the day books or stock books provided for by OHADA Uniform Acts or in the documents that replace them, and any person convicted of preparing or helping to prepare false balance sheets is liable to imprisonment for 15 days to one year and a fine of XAF 500 000 to 5 000 000 (EUR 760 to 7 600) or one only of those penalties.

Availability of accounting information by the tax administration in practice

203. The various departments in charge of direct taxation, whether they deal with taxpayers or companies, examine the accounting situation of the taxpayer during their tax inspections. If the accounts are not being maintained correctly, the tax administration will apply a flat-rate tax on the taxpayer. This rate applied is calculated according to the taxpayer's standard of living and other factual elements.

204. The tax inspection department is organised into a number of units:

- Tax inspection of private persons, individual companies and employees.
- The tax inspection unit of the CIME (centre for medium-sized enterprises) which covers companies with a turnover between XAF 400 000 and XAF 5 billion. The number of taxpayers managed by the CIME stood at 1 487 in 2012, 1 595 in 2013 and 1 655 in 2014.
- The inspection unit of the DGE (Department for Large Corporations), for companies with a turnover in excess of XAF 5 billion. The number of taxpayers managed by the DGE stood at 400 in 2012, 2013 and 2014.

205. The following tables show the rate of compliance by measuring the number of declarations received compared to the number of taxpayers registered with the DGE and the CIME. The companies registered with the DGE represent 80% of the tax revenue collection. The DGI has carried out an awareness campaign from September to December 2015, which should improve the compliance rate for the CIME.

Compliance statistics for the DGE

Types of tax declaration	2012	2013	2014
Value Added Tax (VAT)	86.5%	90%	88%
Statistical and Tax declaration (DSF)	65%	85%	87%
Annual payroll declaration (DAS)	85%	75%	85%

Compliance statistics for the CIME

Types of tax declaration	2012	2013	2014
Statistical and Tax declaration (DSF)	58%	55%	50%
Annual payroll declaration (DAS)	46%	51%	53%

206. The tax inspectors of the DGE and the CIME perform two types of tax inspection: (i) desk inspection and (ii) on-site inspection.

207. During a desk inspection, the inspectors examine the coherence between the declarations and the payments made, without giving the taxpayer prior notice. Any unjustified incoherencies result in a tax adjustment. In 2013 and 2014, 424 desk inspections were carried out each year by the DGE's tax inspectors. The CIME tax inspectors carried out 107 inspections in 2012, 105 inspections in 2013 and 123 inspections in 2014.

208. During an on-site inspection, the inspector examines the accounts at the company's registered head office or on its main site. The taxpayer receives prior notice of this inspection and has 20 days to provide comments.

209. The company's accounts are the starting point for the tax inspection. The DGI only accepts accounts based on OHADA standards, written in French and drawn up in XAF or EUR (as there is a fixed exchange rate between the two currencies). The tax inspection is based on the preparation of a precise road map, which is updated as the inspection progresses. If the accounting is done by a third party company, it is possible for the tax inspection to take place on the premises of this service provider. Any unjustified incoherencies, inadequacies, inaccuracies or omissions will give rise to adjustments.

210. The statistics for on-site inspections by the DGE between 2012 and 2014 are shown below:

	2012	2013	2014
Number of on-site inspections	10	14	18

Underlying documentation (ToR A.2.2)

211. Under Article 19 of the Uniform Accounting Act, the mandatory books of account and supporting documents are day books, the ledger, the general trial balance and the annual accounts book. The underlying documentation must also be kept, including invoices, quotes, consignment notes and delivery slips. Article 17 lays down the general principles for a proper accounting system. Inter alia, it states that accounting entries must be supported by dated receipts which are classified and filed in an order stipulated in the document describing the accounting system and procedures; they must

bear references to corresponding supporting documents and are deemed to have probative value.

212. These requirements ensure that mandatory accounting records in Gabon (see Section A.2.1 for commercial and tax accounting obligations and the related penalties) are sufficiently supported by the necessary documents to evidence the transactions performed.

213. In practice, during accounting audits, the tax administration ensures that taxpayers are not only maintaining ledgers but that these are accompanied by the appropriate documents. Accounting vouchers form part of the accounting documents, and failure to maintain them correctly is punishable in the same way as not maintaining accounting documents (see above). In addition, any cost that cannot be justified by an accounting voucher is not tax deductible.

Document retention (ToR A.2.3)

214. The system in place ensures that entities situated in Gabon keep accounting information.

215. Under Article P-821 of the Tax Code, accounting documents must be kept for ten years from the date of the last recorded transaction or the date on which the documents were drawn up.

216. Under Article 24 of the Uniform Accounting Act, accounting records and documents and the supporting documentation for accounting entries must be retained for the same period of at least ten years from the end of the period concerned.

217. In practice, the tax authorities confirmed that all taxpayers respect the obligation to keep accounting documents for a period of 10 years. The inspectors have not yet come across any failure to respect this obligation.

Conclusion

218. Gabonese commercial and tax law contains requirements for keeping accounting documents (including underlying documentation). Appropriate legal arrangements are in place in Gabon, including penalties to enforce accounting requirements.

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

A.3. Banking information

Banking information should be available for all account-holders.

219. Access to banking information is of interest to the tax authorities only if the bank has useful and reliable information on its customers' identity and the nature and amount of financial transactions.

Record-keeping requirements (ToR A.3.1)

220. The financial sector in Gabon mainly comprises credit institutions, financial institutions, microfinance institutions (MFI), insurance companies and foreign exchange and money transfer operators. The savings and credit activities of banks and MFIs are supervised at Community level by the Central African Banking Commission (COBAC), which is responsible for supervising credit activity in the CEMAC sub-region. CEMAC Regulations, and notably all AML/CFT regulations, have direct effect into the domestic law of the CEMAC Member States as soon as these regulations enter into force, without any other formal requirements (article 21 of the CEMAC Treaty). COBAC issues licences to carry on these professions and ensures that their operations are lawful. The Ministry of Economy also has a supervisory role with regard to banks, as the monetary authority, and foreign exchange dealers. Banking activity is governed by the Convention Harmonising Banking Regulation in Central African States (Banking Regulation Convention). Money transfer activities are mainly governed by postal legislation (Act of 29 December 2008 governing postal activity in Gabon).

221. Banks and financial institutions are subject to the same accounting requirements as other companies. These requirements are strengthened by Community banking regulations. Thus, Article 32 of the Annex to the Banking Regulation Convention states that banks and financial institutions must comply with rules relating to the consolidation of accounts and the disclosure of accounting documents and other information intended both for the competent authorities and for the public. Article 36 goes further, stating that they must provide all information, clarifications and justifications helpful for the exercise of regulatory or technical oversight.

Anti-money laundering legislation

222. CEMAC AML regulations applies to financial institutions, defined as credit institutions (banks and financial institutions) including branches, intermediaries in banking operations, the financial services of the Post Office, microfinance institutions, insurance and reinsurance companies and

brokers, stock markets, organisations acting as central depository or settlement bank, asset management companies, undertakings offering investment services and undertakings for collective investment in transferable securities (UCITS) and their management companies⁴.

223. CEMAC-CAMU Regulation 01-03 on the prevention and suppression of money laundering and the financing of terrorism stipulates a double requirement to identify customers (Article 9) and beneficial owners (Article 10). Non-compliance is punished by the penalties set forth at Article 46 of the Regulation. Thus, attempting, aiding or abetting or inciting such offences is punished by imprisonment for five to ten years and a fine of up to five times the amount of the laundered sums and not less than XAF 10 000 000 (EUR 10 254).

224. Article 13 of CEMAC-CAMU Regulation 01-03 states that documents relating to the identity of regular or occasional customers or to transactions performed by them must be kept for at least five years as of the closure of accounts, cessation of relations with the customer or performance of the transaction. Non-compliance is punished by the penalties set forth at Article 46 of the Regulation. Thus, attempting, aiding or abetting or inciting such offences is punished by imprisonment for five to ten years and a fine of up to five times the amount of the laundered sums and not less than XAF 10 000 000 (EUR 10 254).

Supervision of banks in practice

225. Gabon has 10 banks and three financial institutions, which are supervised by COBAC. The COBAC has a range of powers and competencies with regards to the regulation and organisation of banking activities, the most important of which include:

- Giving their approval on individual licensing and authorisation procedures which remain the prerogative of the national monetary authorities. The COBAC can take provisional measures by placing a credit institution under provisional administration and is authorised to appoint a liquidator for institutions that lose their licence.
- Establishing the accounting procedures applicable to credit establishments as well as establishing prudential standards for management (solvability, liquidity, division of risks, transformation, equity-to-asset ratios, etc.).

4. Article 6 of CEMAC-CAMU Regulation 01-03 on the prevention and suppression of money laundering and the financing of terrorism.

- Supervising and monitoring the respect of banking regulations by credit institutions. To do this, the General Secretariat organises and carries out on-site and desk inspections of these establishments. It is empowered to carry out any emergency inspections and simply reports the results of these inspections to the national monetary authority. The members of COBAC and people acting under its auspices are bound by professional secrecy requirements.
- Sanctions. COBAC is also a jurisdictional body and can apply sanctions, without prejudice to the sanctions applied by the national judicial authorities. The sanctions available include : warning, blame, a ban on carrying out certain operations or any other limit to banking activity, the suspension or revoking of statutory auditors, the suspension or automatic resignation of management and, finally, withdrawal of the establishment's licence.

226. COBAC has indicated that it carries out an on-site inspection roughly every three years. The inspections are based on an auditing programme. The onsite visits last around four weeks, although this may be extended. The statistics for on-site visits by COBAC to Gabonese banks and credit establishments during the peer review period are as follows:

	2012	2013	2014
On-site inspection	1	5	3

227. The Gabonese credit institutions were audited by different services of the Permanent control Department, within variable timeframe depending on the themes reviews, including:

- the collection, analysis, processing and exploitation of information and data of any kind by the banks and financial institutions;
- physical record keeping and electronic databases of banks and financial institutions;
- monitoring of the implementation of the recommendations related to previous audits; and
- application by the banks and financial institutions of the legal and regulatory provisions in force.

Tax requirements

228. Under Article 17 of the Tax Code, banks and financial institutions must present their accounts for tax purposes in accordance with the sectorial chart of accounts approved by UDEAC Act 4/79 as supplemented by UDEAC Act 2/80.

In practice

229. Gabon did not receive any requests during the peer review period. However the Gabonese authorities indicate that they received and responded to two requests after the peer review period. These pertained to banking information (see section B.1.5 and C.5 for more details).

Conclusions

230. The prevailing laws ensure the availability of information on bank accounts (account holder’s identity and transactions performed) in Gabon.

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

B. Access to information

Overview

231. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Gabon's legal and regulatory framework gives the authorities powers that cover all relevant persons and information and whether taxpayers' rights and safeguards are compatible with the effective exchange of information.

232. The DGI have extensive powers under the Tax Code (CGI) to access information relating to the assessment, audit and collection of tax. In particular, those powers allow the authorities to request information from any taxpayer or third party likely to be in possession of information required to assess income or collect tax.

233. Under the same provisions, banks, financial institutions, insurance companies and any natural or legal person taking on deposit or holding funds or assets for third parties are also required to provide the tax authorities on request with all information necessary for the assessment, audit and collection of tax.

234. There is no legislation in Gabon which grants the tax authorities specific powers to collect information solely for international exchange purposes. However, the CGI allows DGI tax officials to use their domestic information-gathering powers for administrative co-operation purposes. The DGI uses the same powers for the international exchange of information.

235. There is no restriction in the various information exchange agreements concluded by Gabon relating to the exchange of banking information. Likewise, professional secrecy is not an obstacle to information exchange in Gabon.

236. The rights and safeguards applicable to individuals in Gabon are compatible with effective information exchange. There is no requirement in Gabonese law for the DGI to inform the taxpayers concerned of requests for information received from foreign authorities.

237. The penalties for failing to provide information or documents appear sufficiently dissuasive to ensure that the Gabonese tax authorities can obtain the relevant information. Thus, the Gabonese authorities can have access to all types of information that must be retained by persons located in Gabon.

238. During the peer review period, the DGI did not use its access powers for EOI purposes. Nevertheless, the Gabonese authorities have satisfactory experience in collecting information for domestic purposes, using the same powers.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

239. Under the tax treaties concluded by Gabon, the competent authority for the exchange of information is the Minister of Economy or his duly appointed representative. By virtue of Ministerial Order No 23 of 15 July 2015, the Director General of Tax, who is the head of Gabon's tax authorities, has been empowered by the Minister of Economy for information exchange purposes. The tax authorities are under the aegis of the Minister of Economy.

240. The Gabonese tax authorities' information-gathering powers stem mainly from Articles P-881 to P-885 of the Tax Code, which institute a right of discovery and information in favour of the tax authorities which may be used to answer requests for information from foreign jurisdictions. Thus, taxpayers, banks, financial institutions, insurance companies and in general any natural or legal person who has custody of or holds funds or assets for a third party are required to provide the tax authorities upon request with the books that must be kept under OHADA business law and all accounting documents and receipt and expense vouchers which must be drawn up or issued under the prevailing regulations.

241. The Gabonese tax authorities may also obtain information by using their power of audit set forth at Article P-833 et seq. of the Tax Code.

Ownership and identity information (ToR B.1.1)/Accounting records (ToR B.1.2)

242. The Gabonese authorities have four different rights giving them access to ownership and identity information, accounting information and tax information, except where it relates to medical records or national security. They are (i) the right to information, which is the most important for domestic purposes; (ii) the right of discovery, which is the most used in EOI situations, introduced by the 2015 Budget Act, (iii) the right of audit and (iv) the right of investigation.

Powers of investigation and access to information

243. The two main means whereby the tax authorities can answer information requests are the right to information and the newly introduced right of discovery, which essentially enable the authorities upon request to obtain the documents and information they require for tax purposes. The Gabonese authorities have two other legal means namely the right of audit and the right of investigation. However, these two rights are not often used for information exchange purposes, with the exception of the right of investigation which only applies to indirect taxes, all access powers can be used concurrently for domestic or EOI purposes.

244. Under Article P-881 of the Tax Code, taxpayers are required to provide the DGI upon request with all mandatory documents and accounting records, together where relevant with accounting items specific to the nature of the activity carried on, to enable the authorities to determine the accuracy of the information contained in their tax returns. This requirement applies to all taxpayers, to the accredited representatives of foreign companies having an economic activity in Gabon and to the managers of trusts, *fiducies* and other similar structures domiciled in Gabon.

Right to information

245. The right to information is a legal means of gaining access to tax information for enquiry, cross-checking, programming and information-gathering purposes. It consists in the collection of information or copies of documents without an audit. No particular guarantee is extended to the person from whom the information is obtained since the right to information is neutral for them and cannot per se give rise to a reassessment. A notified person may not be the subject of an audit following a request made under the right to information. For that reason, the right to information generally applies to third parties.

246. Officials of the DGI having at least the rank of inspector may exercise the right to information, which indicates a certain degree of flexibility.

247. Under Article P-881 of the Tax Code, the right to information is very extensive and applies to natural or legal persons, public agencies, persons performing insurance transactions, banks, custodians of public documents and companies required to keep a register of shareholders. It may be exercised by correspondence or on-site. In all events, the authorities may make copies of hardcopy or computerised documents at its own expense.

248. The only restriction on exercise of the right to information is professional secrecy (see section B.1.5). The books, registers, documents and other information in respect of which the authorities may exercise their right to information must be kept for ten years as of the date of the last transaction recorded in them or the date at which they were drawn up.

Right of discovery

249. Article P-907 *bis* as amended of the Tax Code, introduced by the 2015 Budget Act and in force since 1 January 2015, institutes a right of discovery in favour of the tax authorities. This enables them to request information and documents about a taxpayer who is the subject of a request for information from a partner jurisdiction. It is exercised under the same conditions, in the same forms and within the same time limits as the right to information, though independently of any audit procedure and without any requirement to notify the taxpayer concerned beforehand.

250. Officials of the DGI having at least the rank of inspector are empowered to obtain information and documents held by the persons and organisations listed at Articles P-881 and P-882 in order to update their tax files independently of any tax audit procedure. Such information and documents may be communicated under Gabon's treaty obligations relating to the exchange of information for tax purposes, with no requirement to notify the taxpayer concerned beforehand.

251. The right of discovery is exercised in the same forms, under the same conditions and with the same penalties as the right to information.

Right of audit

252. Under Article P-833, the tax authorities have all powers to assess and audit taxes payable by a taxpayer. They audit tax returns and the various deeds or documents used to establish taxes, duties, contributions and fees of whatever kind. The purpose of an audit is to verify the accuracy and reliability of tax returns submitted by taxpayers and, where relevant, to make adjustments. The right of audit is used if the taxpayer concerned by

an information request is undergoing an audit procedure or if the authorities consider that the content of the information requested requires the means of discovery available in a tax audit. The right of audit may be exercised in three ways: on a documentary basis, requests for clarifications and justifications, or on-site.

253. A documentary audit enables the tax authorities to audit tax returns submitted by taxpayers in their own offices, without notifying the taxpayer beforehand. In this case, the tax authorities may request in writing all information, explanations and clarifications deemed necessary. They may hear the persons concerned when they consider a hearing to be helpful or when the persons concerned ask to provide oral explanations. However, a documentary audit is of limited use since under Article P-844 it is restricted to an examination of the consistency of tax returns, the documents used to assess taxes and duties and the documents filed in order to obtain deductions, rebates or reimbursements.

254. Under Article P-845, the tax authorities can ask taxpayers in writing for all information, justifications or clarifications relating to their tax returns and other documents filed, including for categories of income for which they are not required to keep accounts. Taxpayers must respond within 20 days of receiving the request. If they fail to do so, or if the tax authorities consider their response to be insufficient, a discretionary assessment is made in order to determine the taxes to which the request relates.

255. Under Article P-834, an on-site audit enables tax officials having at least the rank of inspector to verify the accounts and/or documents held by the taxpayer at the registered head office. When using the on-site audit procedure, the tax authorities must inform the taxpayer at least 15 days in advance by means of an audit notice. Under Article P-838, however, the authorities may conduct audits unannounced, in which case the audit notice is provided to the taxpayer at the start of the audit. An audit conducted on the day the notice is given to the taxpayer may only make findings of fact. Under Article P-842, where the accounting system is computerised, the tax authorities may be assisted by an expert appointed by them; professional secrecy may not be invoked against them.

Right of investigation

256. Under Article P-892, the right of investigation is reserved for the discovery of non-compliance with the rules on invoicing, account-keeping and the filing of tax returns which apply to taxpayers liable to indirect duties and taxes. It allows the tax authorities to access customs documents and to make findings of fact concerning physical elements of the operation (Article P-982-2). On the first visit, the tax officials provide the taxpayer with an

investigation notice bearing the stamp of their higher authority. The tax authorities may access all business premises, land and warehouses, transport vehicles and their loads during the taxpayer's normal business hours and thereafter with the authorisation of the competent public prosecutor. This particular means of search may be used only to audit indirect taxes. Thus, the Gabonese tax authorities may use it for information exchange purposes only where the requested information concerns indirect taxes, in accordance with the relevant information exchange agreement or convention.

Gathering ownership and identity information in practice

257. Gabon has not received any requests for information about the ownership of a company or on accounting documents during the peer review period. However, the DGI has already exercised its right to information for its internal usage.

258. In practice, once the request for information has been received by the EOI Unit, the investigation department is contacted. The investigation department only receives the elements needed to gather the information and does not have access to the content of the initial request.

259. The investigation department chooses the most appropriate procedure in the circumstances for carrying out the information gathering. If this information is not held in a tax file, the DGI can ask any other appropriate administration for it. All of the administrations interviewed confirmed that they were required to respond to a request for information from the DGI, and that in practice they collaborated regularly together.

260. The Gabonese authorities confirmed that they used the right of discovery in priority for gathering documents from taxpayers or third parties for EOI purposes. The right of discovery can apply at any time and requires no prior conditions. The Gabonese authorities confirmed that previously, the right to information was used without a tax investigation being opened. But after interrogation from the private sector, the law was clarified with the creation of a right of discovery which does not require the opening of a tax investigation.

261. The letter notifying the taxpayer or third party does not contain any justification. It only mentions the applicable article of the CGI and the list of documents requested. The right to information can be exercised on site or by an exchange of correspondence.

262. The right to investigation procedure allows for any non-compliance with VAT invoicing regulations to be identified. It is an unannounced procedure, which allows the authorities to examine invoicing and customs documents. It is carried out on-site and also allows warehouses to be inspected.

An investigation warrant is submitted to the directors with a report that is signed by both parties. The right to investigation has to be completed within three months, depending on the size of the company. The inspectors carefully examine all invoices, order forms and accounting documents (grand ledger) to reconstitute the company's turnover.

263. For domestic purposes, the preferred method of the inspectors is the unannounced site visit. The inspectors have an investigation warrant. This warrant includes the legal basis, the duration, the timeframe and the tax years being inspected. The visit can last eight days. Sanctions (of a maximum of XAF 5 million) are applied in the event of a refusal to communicate. In the most difficult cases, where the right to information and right to discovery are not enough, the investigation department can use the right to investigation and also the right to enter and seizure. This has only been used once for domestic purposes.

264. For the two requests received after the peer review period, certain information was already available from the DGI in the LIIR software. After contacting the competent department of the DGI, the Investigation department exercised its right to discovery with a bank. The bank responded within two days. The request only contained the name of the account holder, but not the account number.

Use of information-gathering measures in the absence of domestic tax interest (ToR B.1.3)

265. The concept of “domestic tax interest” describes situations in which a contracting party can only provide information to another contracting party if it has an interest in gathering such information for its own needs.

266. Under Article P-880 of the Tax Code, one of the purposes of the right to information is “to audit tax returns submitted by taxpayers”. The right of audit may be exercised in order to “audit the assessment basis for all taxes and duties payable by taxpayers” whose returns are verified by the tax authorities. This covers all the taxes and duties contained in the Tax Code, including income and sales taxes. However, although the information requested by Gabon's partners is not intended for the assessment of tax in Gabon, the tax authorities is able to use the right to information and the right of audit solely for information exchange purposes.

267. There is no provision in Gabonese law preventing the tax authorities from using their domestic information-gathering powers for information exchange purposes. In addition, treaties and conventions duly ratified by parliament take precedence over domestic law, though not the Constitution. For that reason, the provisions of Gabon's tax treaties relating to information exchange prevail over the provisions of the Tax Code relating to the right to

information and the right of audit. Once a tax treaty has entered into force, the tax authorities are required to implement its information-exchange provisions. They must use all their powers under the Tax Code in order to do so, including the right to information and the right of audit, since there is no provision in Gabonese law preventing the tax authorities from using their domestic information-gathering powers for information exchange purposes.

268. According to the Gabonese authorities, the provisions allowing information-gathering for tax assessment and audit purposes may be used in order to answer a request for information from a foreign tax authority if there is an international treaty between that country and Gabon. Thus, a tax audit may be performed in Gabon where the Gabonese tax authorities have received an information request from a partner country relating to taxes payable by a taxpayer from that country. The tax authorities decide according to their own criteria whether a tax audit is necessary or whether a request for documents under the right to information will suffice and can justify such requests on the grounds of the need to answer a request for information from a treaty partner.

269. The use of the right to discovery or the right of information depends on the circumstances of the case. When the EOI Unit collects directly the information to be exchanged, it will often use the right to discovery. If it requires the assistance of another service to collect the requested information (egg service surveys or control), it may use as part of its audit activities, the right of information. The timeframe for the right to discovery and information are left to the inspector to decide. However, the Gabonese authorities have confirmed that they consider EOI requests as a priority, requiring a rapid response (less than 20 days).

Enforcement powers (ToR B.1.4)

270. The tax authorities have powers to impose penalties for non-response or an insufficient response to a request for information. Without prejudice to other penalties, under Article P-1003 of the Tax Code a flat-rate fine of XAF 5 000 000 (EUR 7 600) is imposed on any person who attempts to avoid or oppose the right to information or the right of discovery. A daily fine of XAF 500 000 (EUR 760) per day of delay is imposed for any attempt to defer execution of the right to information.

271. The fines described above apply only after service of official notice to comply with the request within 15 days. If the authorities have not received an answer on expiry of the notice period, the fines may be imposed.

272. Under Article P-851 et seq., failure to provide the information requested in order to perform an audit results in discretionary assessment.

Under Article P-892 et seq., any person who avoids or opposes the right of investigation is served with official notice to comply.

273. Articles P-892 and P-897 also provide for a right of investigation and search. Under Article P-901, prior authorisation from the public prosecutor is required in order to conduct a search.

274. Under Article P-1003, a person who fails to respond or is late in responding to an information request is liable to:

- a fine of XAF 5 000 000 (EUR 7 600);
- a daily fine of XAF 500 000 (EUR 760) per day of delay.

275. In practice, the DGI has never had to apply sanctions for failure to provide documents in an EOI situation. However, the DGI has applied sanctions during domestic tax inspections for failure to provide information: once in 2012, twice in 2013 and once in 2014.

Secrecy provisions (ToR B.1.5)

276. Jurisdictions should not refuse to respond to an information request made under an information exchange mechanism on the grounds of secrecy rules (e.g. banking or business secrecy). There are several rules on secrecy and confidentiality in Gabonese law.

Banking secrecy

277. Banking secrecy is governed by the 1992 Convention Harmonising Banking Regulation in Central African States. Article 42 of the Annex to the Convention states that “any member of the board of directors or supervisory board of a credit institution, any person who participates in the direction or management of a credit institution or is employed by a credit institution is bound by a professional secrecy obligation under the conditions and subject to the penalties set forth in the Penal Code in that regard”.

278. Article 11 of the Annex stipulates a confidentiality or professional secrecy obligation, which merely means that banks may not disclose information about their customers to third parties. This confidentiality obligation is very restricted and may not be invoked against certain government agencies, including the tax authorities (Articles P-881 and P-886 of the Tax Code).

279. Tax officials are bound by a professional secrecy obligation and may not communicate information gathered in the performance of their duties. Although tax officials are required not to disclose information gathered in the performance of their duties, this obligation may not be invoked against certain public bodies (Article P-889-1) and may not prevent “the exchange of

information with tax authorities linked to Gabon by a reciprocal assistance agreement in tax matters” (Article P-889-4).

280. Various means are available to the tax authorities in order to access information held by banks.

281. The first is the right to information set forth at Article P-880 et seq. of the Tax Code. The right to information is not conditional on any administrative or judicial authorisation. Under Article P-888, it may be exercised in order to obtain any type of information with the exception of information covered by medical or defence secrecy.

282. In practice, the DGI cannot be opposed banking secrecy. It can directly exercise its right to information or right to discovery with a credit institution to obtain banking information (existence of an account, bank statements, etc.) Gabon did not receive any requests for information during the peer review period. For the two requests received after the peer review period, the Investigation department exercised a right of discovery with two banks. They answered rapidly (within two days). The request only included the name of the account holder and not the account number.

283. In conclusion, there is no restriction in Gabonese tax law as it stands on the tax authorities’ capacity to gather and communicate tax information held by a bank or financial institution. No restrictions apply in practice as well, although the collection and the communication of this information has taken place after the peer review period.

Other professional secrecy requirements

284. A professional secrecy obligation exists in Gabonese law for lawyers and, more generally, professionals who act as legal representatives (especially those holding a public office)⁵. Article 69 of the law governing the organisation of the legal profession enshrines the absolute professional secrecy of attorneys. However, the tax authorities have an extensive right to information against which professional secrecy may not be invoked (Article P-888), with the sole exception of “information relating exclusively to patients’ medical files or to national security with a top secret classification”.

285. Under Article P-881, the right to information and the right of discovery apply to “any natural or legal person carrying on a profession, persons performing insurance transactions, banks, professional stock exchange intermediaries, custodians of public documents and companies required to keep

5. Law no. 8/73 of 20 December 1973 (Notaries) and Law no. 013/2014 of 07 January 2015 establishing the framework of the lawyer’s profession in Gabon.

registers of share or bond transfers, attendance sheets for shareholders’ meetings, minutes of board of directors’ meetings and auditors’ reports”.

286. Since 2016, new article P-881 of the CGI clarifies the scope of attorney client privilege. It gives attorneys the right to oppose their professional privilege against the DGI, but only providing that the information or documents that they hold on their client “is directly linked to their strategy of defence in an ongoing court proceeding”. This new provision, which expands the scope of attorney-client privilege, allows the interaction between Article 69 of the law on attorneys and the measures of the CGI to be clarified.

287. In practice, the professional secrecy of attorneys, notary and certified accountants has never been opposed against the tax authorities.

288. Regarding the professional secrecy of attorneys, the representative of the Bar Council interviewed during the onsite visit indicated that the Bar Council consider attorney-client privilege to be absolute. He was of the opinion that attorney-client privilege can only be lifted by the client or a judge. The procedure for lifting the attorney-client privilege (Law no 13/2014 of 7 January 2015 determining the legal framework of the legal profession in Gabon) by a judge starts by an application to the President of the court. The President of the court signs an Order which requires the attorney to comply with the request from the DGI. The Gabonese authorities have indicated that this procedure allows the necessary information to be obtained with seven to 20 days. However this procedure has never been applied in practice.

289. The Gabonese authorities confirmed that they had never had to exercise the right of information or the right of discovery with an attorney. The DGI mentioned that it did not need to contact attorneys to gather information as this was generally available elsewhere. Consequently, the law, the procedure of informal appeal and the new measures applicable since 2016 have never been tested in practice. As the practical application of the laws governing professional secrecy of attorneys and the right to information remain uncertain, it is recommended that the Gabonese authorities monitor the guarantees given by the CGI (including the new measures in application since 2016) as well as the procedure before the judge to lift the attorney-client privilege in the area of EOI.

Conclusion

290. The Gabonese tax authorities have extensive powers to gather and access information which are not hindered by banking secrecy or other forms of professional secrecy.

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Rights and safeguards should not unduly prevent or delay exchange of information (ToR B.2.1)

291. Gabonese law guarantees taxpayers respect of their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures. However, such rights are not guaranteed to the detriment of effective information exchange; in particular, Gabon does not have procedures for prior notification of taxpayers.

292. The right to information does not apply to information contained in medical files or in security files with a top secret classification. The tax authorities cannot therefore access such information.

293. The right of audit is strictly regulated by the Tax Code, especially where the verification of accounts is concerned. The tax authorities must serve a notice of visit on the taxpayer at least eight days beforehand, stating the taxes to be audited and the period concerned. Under Article P-685, audited taxes may not be the subject of another audit for the same period. The audit may not last longer than three months, though this period may be extended to 12 months where the scope of the enquiry or the circumstances require (Article P-869). These taxpayer safeguards do not in any way hinder the exchange of information.

294. Even the three-month deadline (or 12 months in some cases) within which the tax authorities are required by law to complete an audit is favourable to information exchange, insofar as the standard requires the requested information to be provided within a reasonable time, or at least that a progress report is provided within 90 days. A tax audit initiated solely for information exchange purposes can easily be launched and the information be transmitted in under three months. The fact that an audit may be out of time or that a new audit is impossible does not prevent the exchange of information

because the tax authorities may always conduct a documentary audit which enables them to ask the taxpayer for information, or use the other powers at their disposal, such as the right to information, in order to obtain information, including from third parties.

295. Taxpayer safeguards with regard to the right of investigation (which relates only to indirect taxes and may not be used to access premises used solely for residential purposes) do not hinder or unduly delay effective information exchange.

296. Lastly, Gabonese law does not require the tax authorities to inform the person concerned in Gabon of a request for information received from a foreign authority under an international treaty. There is thus no provision in Gabonese law for notification before or after the event.

297. In practice, the Gabonese tax authority, which is the competent authority, has not exercised its access powers for EOI purposes during the peer review period. However, the same powers have been exercised for domestic purposes, without any impediment due to the implementation of the rights or safeguards of individuals.

Conclusion

298. Gabonese law guarantees taxpayers respect of their rights in their relations with the tax authorities, especially in tax audit and tax collection procedures, without them hindering or unduly delaying the exchange of information.

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

C. Exchanging information

Overview

299. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanisms for doing so. In Gabon, the legal authority to exchange information is derived from bilateral mechanisms (double tax conventions), multilateral mechanisms (the CEMAC Convention on Mutual Administrative Assistance in Tax Matters, or CEMAC Convention⁶, the General Convention on Tax Cooperation between the Member States of the Common Organisation of African States, Madagascar and Mauritius, or OCAM Convention, and the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, or Multilateral Convention) and domestic law. This section of the review considers whether Gabon has a network of information exchange agreements which enables it in practice to ensure effective information exchange.

300. Until July 2014, Gabon had a small network of three bilateral tax treaties⁷ and the CEMAC and OCAM regional multilateral conventions containing provisions relating to the exchange of information for tax purposes. Under these conventions, Gabon was able to exchange information with a total of ten jurisdictions. Gabon signed the Multilateral Convention on 3 July 2014, adding standard-compliant information exchange relations with 89 jurisdictions. Gabon has not yet ratified the Multilateral Convention.

301. Gabon has not formally been asked to conclude a Tax Information Exchange Agreement (TIEA). All information exchange mechanisms contain provisions relating to confidentiality and Gabonese domestic law also contains rules on the subject. These provisions apply equally to the information and documents concerned by the request received by the Gabonese competent authority and to the answers provided to the treaty partner.

6. Convention on Mutual Administrative Assistance in Tax Matters, Act 17/65-UDEAC-38 of 14 December 1965.

7. With Belgium, Canada and France.

302. All of the treaties entered into by Gabon provide that the parties involved will not be obliged to reveal information regarding an industrial, business or professional secret, or information subject to attorney-client privilege, or to disclose information that would be contrary to public policy.

303. During the peer review period, Gabon did not have a specific EOI unit. Since 2012, Gabon has dedicated important human and financial resources and has made substantial efforts to conform to international EOI standards. Thanks to the use of these resources, by the end of the peer review period, an EOI unit was operational and had adequate resources. Gabon also issued an EOI Manual, the content of which is in line with the standards.

304. The Gabonese authorities indicated that they had received two requests for information after the peer review period to which they had responded within a period of 90 days. It is recommended that Gabon ensures that, within the framework of the new EOI organisation in place, requests from EOI partners are dealt with in a satisfactory manner and within a reasonable timeframe

C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

305. Under Article 43 of Gabon's Constitution, the President of the Republic is empowered to sign and ratify treaties. This power may be delegated to the prime minister or other ministers.

306. Gabon has a network of three bilateral tax conventions containing provisions relating to the exchange of information. It is also party to two regional instruments containing provisions relating to the exchange of information:

- the CEMAC convention, concluded on 14 December 1965 by Cameroon, the Republic of Congo, Gabon, Equatorial Guinea, the Central African Republic and Chad. As the Convention contains provisions relating to the exchange of information for tax purposes, Gabon could therefore exchange information with seven jurisdictions. The Convention does not contain the most recent version of Article 26 of the OECD Model Convention.
- the General Convention on Tax Cooperation between the Member States of the Common Organisation of African States, Madagascar and Mauritius (OCAM) of 29 July 1971, in force in four jurisdictions. Although OCAM has been dissolved, Congo, Côte d'Ivoire, Gabon and Senegal continue to apply the tax convention which arose from it.

307. Until July 2014, Gabon had a small network of three bilateral tax treaties and two regional multilateral conventions covering ten jurisdictions

in all. However, Gabon gained an extensive network of information exchange partners when it became a party to the Multilateral Convention on 3 July 2014, giving it a standard-compliant agreement with 89 jurisdictions with which it had not previously had information exchange relations. Several tax treaties are being negotiated or in the process of ratification. No jurisdiction to date has said that it has contacted Gabon with a view to negotiating an EOI mechanism.

Standard of foreseeable relevance (ToR C.1.1)

308. The international standard in information exchange assumes that information should be exchanged upon request to the widest possible extent. However, it does not allow “fishing expeditions”, meaning speculative requests for information which appear to have no clear link with an ongoing audit or investigation. The balance between these two competing aspects is expressed in the concept of “foreseeable relevance” contained in Article 26(1) of the OECD Model Tax Convention, which states:

“The competent authorities of the contracting states shall exchange such information as is foreseeably relevant to the carrying out of the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting states or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.”

309. The three bilateral conventions in force in Gabon (with Belgium, Canada and France) contain the terms “necessary” or “useful”. The CEMAC Convention also provides for the exchange of tax information held by contracting states “that is useful in order to assess and collect taxes of all kinds and to prevent tax fraud”. The OCAM Convention refers to tax information which the tax authorities “have at their disposal and which is useful” in order to assess and collect the taxes covered by the convention and the enforcement, with regard to those taxes, of legal rules for the prevention of tax fraud. According to Gabon, “information at the disposal of the tax authorities” is interpreted broadly, covering both information in their possession and information to which they may have access by exercising the powers conferred on them by law. Gabon adds that the term “useful” is interpreted in the same way as “foreseeably relevant”. Concerning the treaty with France, France confirmed in its peer review⁸ that it supported this interpretation.

8. Paragraph 214, OECD (2011), *Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: France 2011: Combined: Phase 1 + Phase 2*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264114708-en>.

310. Thus, the treaties concluded by Gabon which are in force may be deemed to comply with the standard of foreseeable relevance. In addition, Belgium, Canada, France and Cameroon are covered by the Multilateral Convention, which complies with the international standard. Consequently, all Gabon's information exchange mechanisms comply with the standard of foreseeable relevance and the scope of the taxes covered by information exchange arrangements.

311. In practice, as Gabon did not receive any requests during the peer review period, Gabon was not able to apply its interpretation of the notion of foreseeable relevance into practice. The competent authority stated during the onsite visit that two requests for information had been dealt with after the peer review period with a non-restrictive application of foreseeable relevance.

312. The EOI Manual does not include a definition of "foreseeable relevance". However, the Gabonese authorities confirmed that they would apply the commentaries to Article 26 of the OECD Model Convention to interpret the concept. In addition, the EOI Manual requires agents to send requests for clarification to the requesting jurisdiction when an incomplete request is received.

In respect of all persons (ToR C.1.2)

313. Effective information exchange presupposes that the obligation of a jurisdiction to provide information should not be limited by the residence or nationality of either the person to whom the requested information relates or the person who possesses or holds the information requested. For this reason, the international standard in information exchange states that the mechanisms for exchange must permit an exchange of information concerning all persons.

314. Neither the bilateral tax conventions in force in Gabon nor the CEMAC or OCAM Conventions contain any express provision extending the scope of information exchange to persons who are not residents of the contracting states. However, all these treaties allow for the exchange of information necessary or useful to enforce their provisions or those of contracting states' domestic law.

315. As the domestic tax law of each contracting state applies equally to residents and non-residents, Gabon confirms that the information covered by the conventions also concerns non-residents. Thus, none of the information exchange mechanisms concluded by Gabon limits the scope of information exchange to one category of persons to the exclusion of others, such as those who are not deemed to be residents of one of the states.

316. In addition, Belgium, Canada, France and Cameroon are covered by the Multilateral Convention.

Obligation to exchange all types of information (ToR C.1.3)

317. Jurisdictions cannot undertake effective information exchange if they are unable to exchange information which is held by financial institutions, nominees or persons acting in an agency or fiduciary capacity. According to the OECD Model Convention and Model Tax Information Exchange Agreement (TIEA), which are the main sources of authority where the standard is concerned, banking secrecy may not be invoked as a ground for refusing to provide information, nor may a request for information be declined solely because the information is held by a nominee or a person acting in an agency or fiduciary capacity or because the information relates to ownership interests in a person.

318. Article 26(5) of the OECD Model Convention provides that a contracting state may not decline to supply information solely because it is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity, or because it relates to ownership interests in a person. Apart from the Multilateral Convention, no convention concluded by Gabon contains any such provision.

319. The conventions to which Gabon is a party were concluded before Article 26 of the OECD Model Convention was amended. However, the absence of a clause in the conventions does not systematically create a restriction on information exchange. The Commentary on the Model Tax Convention states that whilst paragraph 5 represents a change in the structure of Article 26, it should not be interpreted as suggesting that the previous version of the Article did not authorise exchanges of banking information or information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity.

320. There is no restriction on information exchange in Gabonese domestic law, and the powers attributed to the tax authorities by law – in this case the Tax Code – enable them to access and exchange all kinds of information, including information held by banks and by nominees, agents and fiduciaries.

321. In practice, Gabon did not exchange information in application of the mechanisms in force, during the peer review period. However, the tax authorities have exercised their powers of access to obtain all types of information for internal use, including banking information or information held by financial institutions.

Absence of domestic tax interest (ToR C.1.4)

322. The concept of domestic tax interest describes situations in which a contracting party can only provide information to another contracting party if it has an interest in obtaining the desired information for its own

tax purposes. Inability to provide information which is based on any such domestic tax interest does not comply with the international standard. The contracting parties should use domestic information-gathering powers, even if they are used solely for the purpose of obtaining information to be provided to the other contracting party.

323. Except for the Multilateral Convention signed on 3 July 2014 and the treaty with Canada concluded in 2002, none of the tax conventions concluded by Gabon contains Article 26(4) of the OECD Model Tax Convention, which requires contracting states to use their information-gathering measures to obtain the requested information even though they may not need it for their own tax purposes. However, the absence of such a provision does not mean that the conventions allow the assertion of domestic tax interest. Reference should therefore be made to the domestic law of the contracting states in order to see whether it prevents the competent authority from using its information gathering powers solely for information exchange purposes.

324. There is no provision in Gabonese domestic law creating a domestic tax interest (see Section B.1.3 above). Under the Tax Code, the Gabonese tax authorities use the same tax assessment and audit powers attributed to them by law in order to gather and exchange information with foreign partners. Gabon can therefore exchange information with its partners even if there is no interest for domestic tax collection and without any explicit allusion to domestic tax interest in its information exchange mechanisms.

Absence of dual criminality principles (ToR C.1.5)

325. The dual criminality principle states that assistance can only be provided if the matter under investigation (and prompting the request for information) would constitute a criminal matter in the requested country if it had arisen in that country. If it is to be meaningful, information exchange must not be restricted by the enforcement of a dual criminality principle.

326. None of the information exchange mechanisms established by Gabon provide for the application of the dual criminality principle.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

327. Communicating information may be necessary for both tax and criminal purposes. The international standard is not limited to exchanges of information for criminal purposes and may also include exchanges for tax purposes.

328. All information exchange mechanisms concluded by Gabon provide for the exchange of information in both criminal and civil matters.

Provide information in the specific form requested (ToR C.1.7)

329. In certain cases, a contracting party may need to receive information in a specific form in order to meet its evidentiary standards or other legal requirements. These forms may include witness statements and certified copies of original documents. Contracting parties must do their best to respond to such requests. The requested party may decline to provide information in the specific form requested if, for example, it is unknown or not authorised in its administrative practice. Declining to provide information in the requested form does not affect the requirement to provide the information.

330. The tax treaties concluded by Gabon do not contain any stipulations concerning the provision of information in a form specifically requested by a contracting party to satisfy its evidentiary or other legal requirements to the extent allowable under the laws of the requested party. However, there is nothing to prevent the Gabonese authorities from providing information in the form requested, provided that it is consistent with their administrative practice.

331. Notwithstanding the absence of an effective EOI during the peer review period, the Gabonese authorities confirmed that they would provide the information in the format requested, if this information could be obtained under the law or their administrative practices.

Be in force (ToR C.1.8)

332. The exchange of information cannot occur unless a jurisdiction has information exchange mechanisms in force. Where such mechanisms have been signed, the international standard requires a jurisdiction to complete the measures needed for them to take effect promptly.

333. Under Article 114 et seq. of the Gabonese Constitution, treaties may be ratified only by statute. In order for international conventions concluded by Gabon to be ratified, the signed instrument must first be approved by the government and then presented to Parliament, a bicameral institution comprising the National Assembly and the Senate. If the Constitutional Council, consulted by the President of the Republic or the President of the National Assembly or the President of the Senate or one-third of deputies or senators, finds that an international agreement includes a clause contrary to the Constitution, authorisation to ratify or approve it may be forthcoming only after the Constitution has been revised.

334. Once parliamentary authorisation has been obtained by a simple majority, the act of ratification is promulgated by the President of the Republic. Then a date of entry into force is decided jointly with the signatory country

by exchange of ratification instruments, a procedure overseen by the two countries' Ministries of Foreign Affairs. The convention finally enters into force at the agreed date. According to the Gabonese authorities, it is difficult to predict an average length of time for the ratification of conventions insofar as the procedure varies from one country to another and also depends on how determined the other party is and the state of its relations with Gabon (strong, medium or weak co-operation).

335. All the conventions concluded by Gabon are in force except for the Multilateral Convention and the DTC with Mauritius, signed on 3 July 2014 and 18 July 2013, respectively. There is no draft legislation to ratify the Multilateral Convention and the DTC with Mauritius in preparation. Gabon is recommended to rapidly ratify the Multilateral Convention and the DTC with Mauritius.

336. In practice, the ratification of international conventions, particularly tax conventions, under Gabonese law is a multi-stage procedure:

- Tax conventions are negotiated jointly by the Ministry of Foreign affairs and the tax authorities, and then signed;
- The draft law is proposed by the ministry for foreign affairs and submitted to the government and the State Council (to ensure the compliance of the draft legislation).
- The convention is submitted to the Constitutional Court before going before Parliament for validation of its compliance with the constitution.
- The Council of Ministers deliberates after receiving the opinion of the State Council.
- After it has been adopted by the Council of Ministers, the Prime Minister makes an order to submit it to the National Assembly.
- The text is debated at the National Assembly and the Senate.
- After adoption by both Houses, the draft law can be put to the Constitutional Court as being in compliance with the Constitution.
- After being definitively adopted, the law is published in the Official Journal.

337. In light of the complexity of the ratification procedure, a Commission has been created to simplify the procedure and reduce the time needed for ratification.

Be effective (ToR C.1.9)

338. In order for information exchange to be effective, the contracting parties must take the necessary measures to comply with their commitments.

339. Article 114 of the Gabonese Constitution states that treaties cannot take effect until they have been ratified. Before ratification, tax conventions are submitted to parliament for approval by statute. Once ratified, international treaties and conventions take precedence over domestic laws. Thus, a convention in force does not need any further measure in order to be effective. Thus, the Gabonese tax authorities use the same domestic tax assessment and audit powers for information exchange purposes. These powers allow the tax authorities to obtain information of all kinds, including banking information, except in certain specific cases (medical secrecy and national security).

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

C.2. Mechanisms for exchanging information with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

340. According to the international standard, jurisdictions should be able to exchange information with all relevant partners, meaning partners interested in concluding an EOI agreement. Agreements cannot be concluded solely with partners of no economic importance. If a jurisdiction refuses to conclude or negotiate agreements with partners, especially those which have reasonable grounds for seeking information from that jurisdiction in order to properly administer and enforce their tax laws, that fact may indicate a lack of commitment to implementing the standards.

341. Gabon has three bilateral tax conventions in force, all containing information exchange measures, and two regional conventions (the CEMAC and OCAM Conventions). These conventions cover a total of ten jurisdictions (Belgium, Cameroon, Canada, Central African Republic, Chad, Congo, Equatorial Guinea, France and Senegal). However, on 3 July 2014 Gabon

signed the Multilateral Convention, adding a further 89 jurisdictions to its network.

342. Gabon's main trading partners remain France, Morocco, People's Republic of China, the United States and South Africa. Trade flows with countries in the CEMAC zone account for only a small proportion of Gabon's trade: 3.6% on average since the CEMAC free-trade zone was established in 1999.

343. Gabon has not concluded any tax information exchange agreement to date but is a signatory to the Multilateral Convention, meaning that Gabon now has an information exchange mechanism with almost all its major economic partners. To make the EOI relationships effective with all its major economic partners, Gabon is recommended to rapidly ratify the Multilateral Convention.

344. Gabon is currently negotiating double taxation treaties incorporating information exchange provisions in accordance with the current OECD and UN models with the People's Republic of China, Ethiopia, the Czech Republic, and Qatar.

345. Gabon has not declined to conclude an information exchange mechanism with any country to date.

Determination and factors underlying the recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Gabon should continue to develop its network of information exchange mechanisms with all its relevant partners.
Phase 2 rating	
Compliant	

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use and safeguards (ToR C.3.1)

346. Governments could not become involved in exchanging information without being certain that the details communicated will be used solely for the purposes specified in the relevant information exchange agreement and that they will be kept confidential. Information exchange mechanisms should thus contain provisions indicating exactly the persons to whom the information may be circulated. Furthermore, the domestic legislation in force in the countries concerned usually contains strict regulations on protecting the confidentiality of information gathered for tax purposes.

International mechanisms

347. All the treaties concluded by Gabon contain provisions relating to confidentiality even though not all of them use the wording of Article 26(2) of the OECD Model Convention.

348. Generally speaking, there are two wordings of the confidentiality provisions in the conventions to which Gabon is a party. The CEMAC and OCAM Conventions state that “information exchanged in this way, which remains secret, may not be disclosed to persons other than those responsible for the assessment and collection of the taxes covered by the present convention”. According to Gabon, these persons include not only tax officials but also the judicial authorities (prosecution service and court registries), since the two conventions state that information exchange also applies to the “enforcement of legal rules for the prevention of tax fraud”.

349. The conventions with Belgium, Canada and France state that exchanged information “shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of or the determination of appeals in relation to the taxes to which the Convention relates. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.” This wording is even more precise and effectively guarantees the confidentiality of information within the meaning of the standard.

Gabonese law

350. Information obtained under administrative assistance agreements must be kept secret in the same way as information obtained under domestic law. In this regard, Article P-887 of the Tax Code clearly states that tax officials are bound by professional secrecy and may not communicate information gathered in the performance of their duties. This requirement also applies to information obtained from a foreign tax authority under procedures for mutual administrative assistance in tax matters in accordance with international conventions.

351. Under Article P-889, however, such information may be disclosed to persons with regard to whom tax officials are released from their professional secrecy obligation but who are themselves bound by professional secrecy, such as officials of the Government Audit Office, the Treasury, Customs and the Fraud Squad acting in the course of duty and foreign tax authorities acting in the framework of mutual administrative assistance in tax matters under the terms of an international convention.

352. Communications between the competent authorities of partner jurisdictions in the context of information exchange (other than the requested information per se) are also covered by professional secrecy.

353. The penalties for failing to comply with the professional secrecy obligation are applicable to the civil servants and provided for by the Public Service General Statutes. These penalties include warnings, reprovals and dismissals. In addition, offenders may be subject to criminal charges, on the basis of article 289 of the Penal Code, as amended by Law no. 19/2013. The criminal penalties may range from 6 months to one year imprisonment, and a fine ranging between XAF 5 million à XAF 20 million.

Other information exchanged (ToR C.3.2)

354. The provisions concerning confidentiality which are included both in the relevant agreements and in Gabon's domestic legislation do not distinguish between information received in reply to a request and information that forms part of the request. These provisions apply in the same manner to requests, attached documents, and all communications between the jurisdictions concerned by the exchange.

Application of confidentiality in practice

355. Confidentiality policy is based on (i) the application and general monitoring of confidentiality within the DGI, and (ii) measures specific to EOI.

General application and monitoring of confidentiality within the DGI

356. During the peer review period, no specific policy regarding confidentiality was in place for EOI purposes. Only the general texts were applied, with a general obligation of confidentiality applicable to all officials.

357. Officials of the DGI are ethically bound to respect strict professional secrecy (article P-887 du CGI). New officials are systematically trained in their obligations as officials of the DGI. Training programmes are dedicated to the rights and duties of civil servants, with professional secrecy being of great importance. In particular, they are reminded that the information with which they will come into contact during their work must remain confidential and only be used for professional purposes.

358. Each year the Tax Services Inspectorate carries out audits of departments to ensure that professional regulations are being respected, including those governing confidentiality. It also carries out unannounced inspections if a risk or a dysfunction is brought to its attention. These investigations undoubtedly have a dissuasive effect, in the sense that heavy penalties are applied if serious shortcomings are proven. Around 20 audits of the tax administration were carried out in 2011. These continued in 2012 with general audits and department checks.

359. The Gabonese authorities confirmed that during the peer review period, there had been no confidentiality problems and that no sanctions were applied for violation of professional secrecy.

360. The Gabonese authorities indicated that confidentiality had become a major priority for the DGI. The Director General of Taxation published memorandum No. 0013/MCCEPIP/SG/DGI/IS on 15 January 2016, concerning the rules of professional secrecy by which the civil servants and officials of the DGI are bound. This memorandum, which applied to all DGI officials, reminded them of the legal framework relating to confidentiality, the scope of application of confidentiality within the DGI, monitoring the respect of confidentiality, the role of managers and the sanctions applicable should confidentiality rules be violated.

Measures specifically related to EOIR

361. Measures specific to EOIR have been taken to ensure optimal respect of confidentiality rules.

362. At the material level, the new EOI Unit has its own office with secure access. The office has a fire-resistant fortified cabinet and a safe in which to keep EOI files. The office also has four computer with password-protected access. The director of the EOI Unit is the only person to have the keys to the office and the codes for the fortified chests. The procedure to be followed

for processing EOI requests from Gabon’s partners has been outlined in the EOI Manual.

363. A database specifically for information exchange has been created, one of its major priorities being respect for confidentiality.

364. Confidentiality is also respected during all the stages of the procedure for receiving and acting on EOI requests. This procedure is described in the EOI Manual.

365. If the information required to answer the request is not available from the tax authority’s database, the Investigation Department exercises one of the access powers from the tax authorities, namely the right of discovery. The notices sent to third parties to exercise the right of discovery do not indicate the reason for which the information is requested. There is no risk that the information holder, even in the case of a department of the tax authorities or a public administration, could be informed of the content of an information request received from a party to an EOI agreement.

Conclusion

366. The organisation and the procedures that were in place and operational during the onsite visit to Gabon guarantee the respect of confidentiality in the processing of EOI requests. However, these measures have not yet been tested in practice, as no request for information was received during the peer review period. It is recommended that Gabon ensures that the implementation of the new measures taken for processing EOI requests does respect confidentiality in practice.

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

367. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise.

Exceptions to the requirement to provide information (ToR C.4.1)

368. Most information exchange mechanisms concluded by Gabon ensure that the parties concerned are not required to supply information that would reveal an industrial, business or professional secret or the disclosure of which would be contrary to public policy.

369. Under Article P-887 of the Tax Code, information relating to medical records or national security may not be disclosed either in a domestic context or for information exchange purposes. Likewise, under tax information exchange agreements, information that would reveal an industrial, business or professional secret or the disclosure of which would be contrary to public policy are excluded from the scope of administrative assistance and may not therefore be communicated in response to an information request.

370. Although the provisions of Article P-886 et seq. clearly do not state that attorney-client privilege may be invoked against the tax authorities acting in accordance with their right to information, they should not be interpreted as authorising the tax authorities to obtain information covered by attorney-client privilege or relating to legal proceedings for information exchange purposes.

371. Gabon did not exercise its powers to access information during the peer review period in order to exchange information with its partners. However, as the powers are the same as those used for internal use, a disproportionate protection of the rights and safeguards of the taxpayers would have the same effect internally. And yet, the Gabonese authorities have indicated that in practice, the rights and safeguards of taxpayers and third parties are compatible with an effective exchange of information insofar as they cannot impede access to and transmission of information, other than in the cases covered by the information exchange mechanisms, namely relating to public order and commercial, industrial or professional secrecy. Professional secrecy and notably that of attorneys and other professions has never been invoked as the reason for refusing to transmit to the tax authorities information requested in application of tax legislation.

Determination and factors underlying the recommendations

Phase 1 determination
The element is in place.
Phase 2 Rating
Compliant

C.5. Speed of response to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

372. In the DTCs signed by Gabon, the expression “competent Gabonese authority” designates the minister in charge of the economy or their authorised representative. From an administrative perspective, by delegation, the Director General of Taxation takes on the role of competent authority. The department for legislation and litigation within the DGI is home to the International Relations Unit, in charge of the EOI via its EOI Unit (CER or Cellule d’Echange de Renseignements.)

Response within 90 days (ToR C.5.1)

373. For EOI to be effective, it must take place within a timeframe that allows the tax authorities to make good use of the information. If the response is received too late, the information may no longer be of use to the requesting authority. This aspect is particularly important in the context of international co-operation, as the cases here must be important enough to justify drafting an EOI request.

374. There is no provision in Gabonese law or in its EOI mechanisms concerning responses or time limits within which replies must be provided. There is no restriction as such concerning the ability of the Gabonese competent authorities to respond to requests within 90 days of receiving them, either by supplying the information requested or by indicating what stage the processing of the request has reached.

375. As part of the new process of managing EOI requests, the Gabonese authorities will inform the partner on the progress of their request if the time taken to process it exceeds 90 days (see below)

In practice

376. During the peer review period (1 January 2012-31 December 2014), the Gabonese authorities indicated that they received no EOI requests. Consequently, the capacity of the Gabonese authorities to respond rapidly to requests for information exchange from its partners has not been tested in practice. For the moment the volume of requests is not significant, but the ambition is to increase the number of requests received and issued, and to promote this tax collection tool.

Organisational process and resources (ToR C.5.2)

377. The organisational process and the resources dedicated to the EOI are examined in the following sections concerning (i) the competent Gabonese authority as regards EOI, (ii) the EOI process and (iii) EOI in practice.

The competent Gabonese authority

378. Under the terms of Gabon’s information exchange mechanisms, the competent authority is the Minister of Economy or his authorised representative. However, the General Tax Directorate (DGI), which is part of the Ministry of Economy, acts as competent authority for the processing of information requests received from other jurisdictions.

379. From an administrative point of view, the Director General of Taxation takes on the role of competent authority. Created by decree no. 0022/MEPIP/CAB-M/DGI, the CER is placed under the authority of the Director General of Taxation and is attached to the International Relations unit of the Legislation and Litigation department. It is made up of a Unit director and three central inspectors.

380. Over the peer review period (2012-14), no EOI requests were sent to Gabon. The time required for responding to an EOI request starts when the request is received and runs until the response is sent to the requesting jurisdiction. In Gabon, a request that involves a number of entities about which information is requested will be considered to form a single EOI request.

The EOI process

381. The EOI Manual sets out the procedure to follow when an EOI request is received from an EOI partner.

382. At the moment, the process for dealing with EOI requests is to register them and add a “confidential” stamp to each file. However the EOI Manual provides that the request should be entered into the EOI Unit’s software. The EOI Unit’s software is only installed on two computers in

the protected EOI premises and its access is password protected. Only the EOI staff is allowed to enter into that software. The registered file is then attributed to an official of the EOI Unit with a system of permissions that allows the officer to access the file and add comments and actions until it is exchanged and archived. To register the requests received and find them again, they are entered into an Excel file and, since early 2016, into the EOI software and onto the hard copy register stored in a safe.

383. When an EOI request is received, the first step is to check its validity (the legal basis of the request) and whether it is complete (identification of the taxpayer, details, etc.). Should an EOI request be unclear or incomplete, Gabon asks the requesting jurisdiction for clarification or additional information.

384. The EOI Unit can obtain the information directly and immediately by searching its file using the LIIR system. The Gabonese authorities indicated that it can also exercise its right to information remotely, with a response being generally received within an average of 20 days. Lastly, it can mandate inspectors to obtain this information by using the audit powers conferred upon it by Gabonese law. Within the framework of its activity, the EOI Unit ensures that the confidentiality of the information processed is respected, notably by not communicating the reasons why this information is required, to the inspectors, taxpayers or third parties.

385. Once the information requested has been obtained, the competent authority (via the EOI Unit) checks that the information gathered corresponds to the request and only exchanges the information requested by the foreign jurisdiction. The various sections of the EOI software are completed in order to leave a trace of the actions carried out. If the response is sent via email, it is authenticated by the Director General of Taxation and sent in a secure manner. If the response is sent via surface mail, the document is placed in an envelope stamped “confidential” then sent via registered post.

386. The EOI Unit occupies a secure office within the DGI and has substantial material resources (computer, printer, scanner, telephone, safe, etc.). The Gabonese authorities have indicated that depending on how the volume of EOI requests develops, additional human and material resources may be allocated to it. Given the low level of EOI requests currently received by Gabon, the human and material resources are adequate at the moment.

387. When a complete response cannot be provided within 90 days of receipt of the request for information, the competent Gabonese authority will inform the requesting competent authority on the current status of their request. This will be done via the new software dedicated to managing requests for information, which will send an automatic reminder to the EOI agent upon the expiry of the 90-day period.

388. Although the resources and the organisational process in place to deal with requests for information are adequate given the low number of demands received during the peer review period, Gabon did not actually respond to an EOI request as it did not receive any request. It is recommended that Gabon monitors the practical implementation of the organisation of the competent authority, as well as the resources allocated to EOI, particularly taking into account any changes in volume of requests, in order to ensure that both the processes and the allocated resources remain appropriate to ensure an effective exchange of information.

Restrictions on the exchange of information (ToR C.5.3)

389. There is no provision in Gabonese law or in its exchange of information agreements which contains restrictions on the exchange of information, other than those included in Article 26 of the OECD Model Convention or the OECD Model TIEA.

Determination and factors underlying the recommendations

Phase 1 determination	
This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.	
Phase 2 Rating	
Largely compliant	
Factors underlying recommendations	Recommendations
Gabon did not actually respond to an EOI request as it did not receive any request during the peer review period. However, it appeared that the current resources and the organisational process put in place to deal with requests for information at the end of the peer review period are adequate given the low number of demands received after the peer review period.	Gabon must monitor the operation of this new organisation for processing EOI requests, including the new EOI unit, in order to ensure that requests are processed quickly and efficiently.

Summary of determinations and factors underlying recommendations

Overall Rating
LARGELY COMPLIANT

Conclusion	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1)</i>		
<p>Phase 1 determination: The element is in place but certain aspects the legal implementation of the element need improvements.</p>	<p>The new version of the OHADA Uniform Act on commercial companies and economic interest groupings provides for the dematerialisation of securities and allows companies a two-year period in which to comply. However, it does not precisely define the status of bearer shares which are not dematerialised on expiry of the transition period. There is no currently other provision in Gabonese law clarifying the terms and conditions of dematerialisation. Only 16 SA registered with the DGI may issue bearer shares under their articles of association, and only one SA has effectively issued bearer shares.</p>	<p>Gabon should take appropriate steps to implement the new version of the OHADA Uniform Act to ensure the dematerialisation of all bearer shares on expiry of the two-year transition period allowed to companies for that purpose.</p>

Conclusion	Factors underlying recommendations	Recommendations
Phase 2 Rating: Partially compliant	<p>Although there have been efforts made to monitor ownership obligations in Gabon by the tax authorities, this monitoring has not been systematically applied during the accounting and tax inspections of the taxpayer. In addition, over the peer review period, the RCCM did not have a system in place for monitoring the compliance with ownership obligations.</p>	<p>It is recommended that Gabon improves its system for monitoring obligations to provide ownership information under both tax law and OHADA law, in order to ensure that information is up to date for all companies in Gabon.</p>
	<p>Although during the peer review period, no sanctions were applicable regarding the obligations of SA, SAS and assimilated companies to maintain a register of shareholders, Gabon recently adopted a tax provision that requires SA, SAS and assimilated companies to maintain a register of registered shares at their registered office, subject to penalties for non-compliance. However, it was not possible to test the implementation of this measure in practice</p>	<p>The Gabonese authorities must ensure effective monitoring of the tax obligation applicable to SA, SAS and assimilated entities to maintain an up-to-date register of nominative shareholders at their registered office and apply the appropriate sanction in case of non-compliance.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2)</i></p>		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
<p>Banking information should be available for all account-holders. <i>(ToR A.3)</i></p>		
Phase 1 determination: The element is in place.		

Conclusion	Factors underlying recommendations	Recommendations
Phase 2 Rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). <i>(ToR B.1)</i>		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2)</i>		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1)</i>		
Phase 1 determination: The element is in place.		
Conclusion of Phase 2 : Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2)</i>		
Phase 1 determination: The element is in place.		Gabon should continue to develop its exchange of information network with all relevant partners.
Phase 2 Rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3)</i>		
Phase 1 determination: The element is in place.		
Phase 2 Rating: Compliant		

Conclusion	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4)</i>		
Phase 1 determination: The element is in place.		
Conclusion of Phase 2 : Compliant		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5)</i>		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		
Conclusion of Phase 2 : Largely compliant	Gabon did not actually respond to an EOI request as it did not receive any request during the peer review period. However, it appeared that the current resources and the organisational process put in place to deal with requests for information at the end of the peer review period are adequate given the low number of demands received after the peer review period.	Gabon must monitor the operation of this new organisation for processing EOI requests, including the new EOI unit, in order to ensure that requests are processed quickly and efficiently.

Annex 1: Jurisdiction’s response to the review report⁹

Gabon would like to express its thanks and its gratitude to all stakeholders who contributed at different levels to the Phase 2 review that just ended on a happy note. The evaluation team on the Gabon review provided useful advice while peers have helped enrich the quality of the Phase 2 report by their comments and observations.

Gabon welcomes the findings of the Phase 2 Evaluation Report in which Gabon was found “largely compliant” and which were approved as such by the Peer Review Group (PRG). This overall rating certifies that the practical implementation of its legal framework by Gabon helps fight against fraudulent tax practices of any kind, especially those involving foreign aspects. This result represents an encouragement to maintain not only the quality of our laws and regulations and the efficiency of our field activities, but especially to improve them by adapting to changes in the international tax environment.

Notwithstanding the positive results of its peer review, Gabon remains aware that vigilance at all times should be kept as tax fraud schemes constantly evolve technically and in scope. This reality leads us to favorably receive the recommendations from peers of the Global Forum that are consistent with regard to what has been observed by the evaluation team. Efforts by Gabon will therefore continue and even intensify, so that transparency and exchange of information is definitely needed as key weapons in the fight against fraud and tax evasion. The recent ratification of the Multilateral Convention on Mutual Administrative Assistance and progress in the dematerialisation of securities testify, amongst others, that Gabon is fully committed to the Global Forum standard and intends to continue its efforts.

Ultimately, Gabon may consider, rightly, that it reached most of the goals it had set by joining the Global Forum on Transparency and Exchange of Information for Tax purposes.

9. This Annex presents the Jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

Annex 2: List of Gabon’s exchange of information mechanisms

Regional and multilateral EOI agreements

- Gabon is Party to the General Convention on Tax Cooperation between the Member States of the Common Organisation of African States, Madagascar and Mauritius (OCAM) of 29 July 1971. Although OCAM has been dissolved, Congo, Côte d’Ivoire, Gabon and Senegal continue to apply the tax convention which arose from it.
- On 3 July 2014, Gabon signed the Convention on Mutual Administrative Assistance in Tax Matters but has not yet ratified it; it is therefore not in force in Gabon.

Bilateral instruments

- Gabon has also signed bilateral information EOI agreements, namely double taxation agreements (DTC).

The following is a list, in alphabetical order, of exchange of information agreements signed by Gabon at 1 April 2016. Gabon signed the Convention on Mutual Administrative Assistance on Tax Matters as amended (the Multilateral Convention) on 3 July 2014 but has not yet ratified it.

	Jurisdiction	Type of agreement	Signature^{a/} Territorial extension	Date of entry into effect/Status
1	Albania	Multilateral Convention	Signed	In force in Albania
2	Andorra	Multilateral Convention	Signed	Not in force
3	Anguilla ^b	Multilateral Convention	Extended	In force in Anguilla
4	Argentina	Multilateral Convention	Signed	In force in Argentina
5	Aruba ^c	Multilateral Convention	Extended	In force in Aruba

	Jurisdiction	Type of agreement	Signature^{a/} Territorial extension	Date of entry into effect/Status
6	Australia	Multilateral Convention	Signed	In force in Australia
7	Austria	Multilateral Convention	Signed	In force in Austria
8	Azerbaijan	Multilateral Convention	Signed	In force in Azerbaijan
9	Barbados	Multilateral Convention	Signed	
10	Belgium	Multilateral Convention	Signed	In force in Belgium
		Double tax treaty	14 January 1993	13 May 2005
11	Belize	Multilateral Convention	Signed	In force in Belize
12	Bermuda ^b	Multilateral Convention	Extended	In force in Bermuda
13	Brazil	Multilateral Convention	Signed	Not in force
14	British Virgin Islands ^b	Multilateral Convention	Extended	In force in the British Virgin Islands
15	Bulgaria	Multilateral Convention	Signed	In force in Bulgaria
16	Cameroon	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
		Multilateral Convention	Signed	In force in Cameroon
17	Canada	Double tax treaty	18 November 2002	1 December 2008
		Multilateral Convention	Signed	In force in Canada
18	Cayman Islands ^b	Multilateral Convention	Extended	In force in the Cayman Islands
19	Central African Republic	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
20	Chad	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
21	Chile	Multilateral Convention	Signed	Not in force
22	China (People's Republic of)	Multilateral Convention	Signed	In force in China

	Jurisdiction	Type of agreement	Signature^{a/} Territorial extension	Date of entry into effect/Status
23	Colombia	Multilateral Convention	Signed	In force in Colombia
24	Congo	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
		OCAM Regional Convention	29 July 1971	1 January 1972
25	Costa Rica	Multilateral Convention	Signed	In force in Costa Rica
26	Croatia	Multilateral Convention	Signed	1 June 2014
27	Curaçao ^c	Multilateral Convention	Extended	In force in Curaçao
28	Cyprus ^d	Multilateral Convention	Signed	In force in Cyprus
29	Czech Republic	Multilateral Convention	Signed	In force in the Czech Republic
30	Denmark	Multilateral Convention	Signed	In force in Denmark
31	El Salvador	Multilateral Convention	Signed	Not in force
32	Estonia	Multilateral Convention	Signed	In force in Estonia
33	Faroe Islands ^e	Multilateral Convention	Extended	In force in the Faroe Islands
34	Finland	Multilateral Convention	Signed	In force in Finland
35	France	Double tax treaty	20 September 1995	1 March 2008
		Multilateral Convention	Signed	In force in France
36	Georgia	Multilateral Convention	Signed	In force in Georgia
37	Germany	Multilateral Convention	Signed	Not in force
38	Ghana	Multilateral Convention	Signed	In force in Ghana
39	Gibraltar ^b	Multilateral Convention	Extended	In force in Gibraltar
40	Greece	Multilateral Convention	Signed	In force in Greece
41	Greenland ^e	Multilateral Convention	Extended	In force in Greenland
42	Guatemala	Multilateral Convention	Signed	Not in force

	Jurisdiction	Type of agreement	Signature^{a/} Territorial extension	Date of entry into effect/Status
43	Guernsey ^b	Multilateral Convention	Extended	
44	Equatorial Guinea	CEMAC Tax Convention (Act 17/65-UDEAC-38)	14 December 1965	14 December 1965
45	Hungary	Multilateral Convention	Signed	In force in Hungary
46	Iceland	Multilateral Convention	Signed	In force in Iceland
47	India	Multilateral Convention	Signed	In force in India
48	Indonesia	Multilateral Convention	Signed	In force in Indonesia
49	Ireland	Multilateral Convention	Signed	In force in Ireland
50	Isle of Man ^b	Multilateral Convention	Extended	In force in the Isle of Man
51	Israel	Multilateral Convention	Signed	
52	Italy	Multilateral Convention	Signed	In force in Italy
53	Japan	Multilateral Convention	Signed	In force in Japan
54	Jersey ^b	Multilateral Convention	Extended	In force in Jersey
55	Kazakhstan	Multilateral Convention	Signed	Not in force
56	Kenya	Multilateral Convention	Signed	
57	Latvia	Multilateral Convention	Signed	In force in Latvia
58	Liechtenstein	Multilateral Convention	Signed	Not in force
59	Lithuania	Multilateral Convention	Signed	In force in Lithuania
60	Luxembourg	Multilateral Convention	Signed	In force in Luxembourg
61	Malta	Multilateral Convention	Signed	In force in Malta
62	Mauritius	Double tax treaty	18 July 2013	
		Multilateral Convention	Signed	Not in force
63	Mexico	Multilateral Convention	Signed	In force in Mexico
64	Moldova	Multilateral Convention	Signed	In force in Moldova
65	Monaco	Multilateral Convention	Signed	Not in force
66	Montserrat ^c	Multilateral Convention	Extended	In force in Montserrat
67	Morocco	Multilateral Convention	Signed	Not in force

	Jurisdiction	Type of agreement	Signature^{a/} Territorial extension	Date of entry into effect/Status
68	Nigeria	Multilateral Convention	Signed	In force in Nigeria
69	Netherlands ^b	Multilateral Convention	Signed	In force in the Netherlands
70	New Zealand	Multilateral Convention	Signed	In force in New Zealand
71	Niue	Multilateral Convention	Signed	
72	Norway	Multilateral Convention	Signed	In force in Norway
73	Philippines	Multilateral Convention	Signed	Not in force
74	Poland	Multilateral Convention	Signed	In force in Poland
75	Portugal	Multilateral Convention	Signed	In force in Portugal
76	Romania	Multilateral Convention	Signed	In force in Romania
77	Russian Federation	Multilateral Convention	Signed	In force in Russia
78	San Marino	Multilateral Convention	Signed	Not in force
79	Saudi Arabia	Multilateral Convention	Signed	In force in Saudi Arabia
80	Senegal	OCAM Regional Convention	29 July 1971	1 January 1972
		Multilateral Convention	Signed	
81	Seychelles	Multilateral Convention	Signed	In force in the Seychelles
82	Singapore	Multilateral Convention	Signed	Not in force
83	Sint-Maarten ^c	Multilateral Convention	Extended	In force in Sint-Maarten
84	Slovak Republic	Multilateral Convention	Signed	In force in the Slovak Republic
85	Slovenia	Multilateral Convention	Signed	In force in Slovenia
86	South Africa	Multilateral Convention	Signed	In force in South Africa
87	South Korea	Multilateral Convention	Signed	In force in South Korea
88	Spain	Multilateral Convention	Signed	In force in Spain

	Jurisdiction	Type of agreement	Signature^{a/} Territorial extension	Date of entry into effect/Status
89	Sweden	Multilateral Convention	Signed	In force in Sweden
90	Switzerland	Multilateral Convention	Signed	Not in force
91	Tunisia	Multilateral Convention	Signed	In force in Tunisia
92	Turkey	Multilateral Convention	Signed	Not in force
93	Turks and Caicos Islands ^c	Multilateral Convention	Extended	In force in the Turks and Caicos Islands
94	Uganda	Multilateral Convention	Signed	
95	Ukraine	Multilateral Convention	Signed	In force in Ukraine
96	United Kingdom	Multilateral Convention	Signed	In force in the United Kingdom
97	United States	Multilateral Convention	Signed	Not in force

Notes: a. For signature dates of the Multilateral Convention, see: http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf

b. Territorial extension by the United Kingdom.

c. Territorial extension by the Kingdom of the Netherlands.

d. Note by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

e. Territorial extension by the Kingdom of Denmark.

Annex 3: List of all laws, regulations and other material received

Constitution of the Gabonese Republic

Tax treaties signed by Gabon

Treaty of 14 January 1993 with Belgium to avoid double taxation and prevent the evasion of income tax and wealth tax

Treaty of 18 November 2002 with Canada to avoid double taxation and prevent the evasion of income tax and wealth tax

Treaty of 20 September 1995 with France to avoid double taxation and prevent tax evasion and fraud

Multilateral Convention on Mutual Administrative Assistance in Tax Matters signed by Gabon on 2 July 2014

CEMAC Tax Convention to avoid double taxation

General Convention on Tax Cooperation between the Member States of OCAM of 29 July 1971

CEMAC Convention on Mutual Administrative Assistance in Tax Matters

Domestic and Community commercial legislation

Ordinance 2/99 of 30 July 1999 defining the legal basis for foundations

Act 2/2000 of 18 August 2000 ratifying Ordinance 2/99 of 30 July 1999 defining the legal basis for foundations

Decree creating ANIF Gabon (National Financial Investigation Agency)

Rules of procedure of ANIF Gabon

Order 006 MECIT/CABM setting the regulation time limit for automatic reports

- Order 007 MECIT/CABM extending the professional categories governed by CEMAC-UMAC Regulation 01-03
- Order 011 MECIT/CABM setting the threshold for the automatic reporting of transactions in cash or by bearer shares to ANIF
- Order 016 MECIT/CABM setting disciplinary penalties and fines
- Order 017 MECIT/CABM delegating supervision and control
- Order 0145 MEED amending Articles 16 and 23 of Order 017 MECIT/CABM of 6 June 2011 delegating supervision and oversight
- Decree 730/PR/MECIT of 21 June 2011 creating and organising the Business Development Centre
- OHADA Uniform Act on the law of commercial companies and economic interest groupings
- OHADA Uniform Act on the organisation and harmonisation of the accounting systems of undertakings
- OHADA Uniform Act on general commercial law

Tax legislation

- Gabonese Tax Code 2015
- Gabonese Tax Code 2013
- Finance Law for 2016
- 2011 Budget Act (tax measures to encourage sponsorship and patronage)

AML/CTF legislation

- Decree 0739/PR/MEFBP of 22 September 2005 defining the organisation, operation and funding of the National Financial Investigation Agency
- Additional Act 09/00/CEMAC-086/CCE 02 creating the Task Force on Money Laundering in Central Africa (GABAC)
- COBAC Regulation R-98/01 of 15 February 1998 on the chart of accounts of credit institutions
- COBAC Regulation R-2003/01 of 27 February 2003 on the organisation of the accounting systems of credit institutions

COBAC Regulation R-2005/01 of 01 April 2005 on due diligence procedures for institutions governed by rules to prevent money laundering and the financing of terrorism in Central Africa

CEMAC-CAMU Regulation 01-03 to prevent and suppress money laundering and the financing of terrorism in Central Africa

CEMAC-CAMU Regulation 02-10 of 2 October 2010 revising CEMAC-CAMU Regulation 01-03 to prevent and suppress money laundering and the financing of terrorism in Central Africa

Regulation 08/05-UEAC-057-CM-13 adopting the Convention on the fight against terrorism in Central Africa

Banking, commercial and financial regulations

CEMAC-CAMU Regulation 06-03 on the organisation, operation and supervision of the Central African financial market

Rules governing professions

Act 25/08 of 17 December 2008 defining the conditions for exercise of the legal profession

Law No 13.2014 of 7 January 2015 determining the legal framework of the Legal Profession in Gabon

Decree 37/PR/MFPRAME of 26 May 2000 defining the membership, organisation and operation of disciplinary boards

General Civil Service Regulations

Other legislation

Gabonese Penal Code

Gabonese Civil Code

Annex 4: Persons met during the onsite visit

General Directorate of Taxes (DGI)

General Director of Taxes

Direction of legislation and litigation

- Director
- Deputy Director
- Information Exchange Unit

Management of Large Companies

Direction of national and international audits

- Head of Service of national and international audits
- Head of tax audit Services
- Auditors
- Head of Investigations and Overlap of the Service

Provincial Directorate of taxes Estuary

- Deputy Director, responsible for registration
- Provincial Control Brigade
- Centre for Tax Medium Enterprises
- Centre of Taxes small businesses and individuals (CIPEP) North
- Centre of Taxes small businesses and individuals (CIPEP) South

Directorate of centralization, Statistics and Emissions

Human Resources Department and Means

Inspection Services

Computer Management

Court of First Instance of Libreville

Trade register and mortgage financing (RCCM) of Libreville

Registry of the CRC

- ANPIG

CDE

- CFCE

Representatives of regulated professions in the private sector

Representative of the College of Notaries

Representative of the Auditors and chartered accountants

Representatives of the Bar Association

Financial sector

Representatives of the Association of Banks and credit institutions

Representative of the Banking Commission of Central Africa (COBAC)

Administrations and agencies

Representatives of the National Agency for Financial Investigation
(ANIF)

Representative of the National Commission for the Fight Against Illicit
Enrichment (CNLCEI)

Ministry of Foreign Affairs

- Director General of Legal and International Affairs

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 2: GABON

This report contains a “Phase 2: Implementation of the Standards in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework review” already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. “Fishing expeditions” are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please visit www.oecd.org/tax/transparency and www.eoi-tax.org.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264258792-en>.

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