

Association of Global Custodians
Middle East and Africa Focus Committee (“AGC ME&A”);
Subject to Supplemental Comments

The Cabinet Secretary
The National Treasury
Treasury Building, Harambee Avenue
P.O Box 30007
Postal code: 00100
Nairobi- Kenya

Dear Sir,

Re: Taxpayer Identification Numbers

The Association of Global Custodians Middle East & Africa (“AGC ME&A”) represents the international banking community¹.

Our letter seeks to highlight concerns raised by our members following the recent application requirement for a Tax Payer Personal Identification Number (‘PIN’). Our concerns are raised in the context of administrative burden reduction.

The AGC ME&A understand the usefulness of a tax payer PIN in allowing individuals and corporates with tax obligations in a tax jurisdiction to accurately report their income and pay their taxes. In such a context, it is an integral part of efficient tax administration. The AGC ME&A generally lends its support to tax administrative approaches that promote the development of a tax administration regime that:

1. is simple and efficient;
2. has no unnecessary obligations or regulations;
3. employs targeted enforcement mechanisms;
4. is growth focussed; and
5. takes account of the international context.

Global custodians need to open bank accounts in Kenya to facilitate the flow of funds from international investors to the local markets (investments in government securities and equities).

We have considered the recent approach to introduce a mandatory Tax Payer PIN for all natural and legal persons that hold bank accounts in Kenya. The AGC ME&A remains concerned about the impact of this requirement on foreign portfolio investors or global custodians that employ the services of licensed securities custodians in Kenya. Transactions undertaken by this category of persons are typically subject to withholding tax on interest and dividends. These taxes are withheld at source and remitted to the revenue authorities as part of the statutory obligations of the Issuer. As such the AGC ME&A requests for a review of the application of the PIN requirement to foreign portfolio investors or global custodians on the following basis:

1. There has been no assertion that current arrangements have created a tax gap that this measure would help to close.
2. The measure itself does not simplify tax administration for the tax payer or the revenue authority; and
3. There is a risk that future regulation may add onto the continuing obligations attached to having a PIN thereby increasing the regulatory compliance burden for foreign portfolio investors or global custodians who did not require the PIN in the first instance, eg by way of requiring tax filings for these entities in Kenya.

¹ *The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members’ common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.*


We therefore request that Section 12 of the Tax Procedures Act should be amended to exempt foreign portfolio investors and global custodians from the PIN requirement.

We would like to discuss this matter with you. The AGC ME&A Committee communication details are as follows:

Julia McKenny
Chair of AGC ME&A
1 Basinghall Street, London, EC2V 5DD
UNITED KINGDOM

Email: julia.mckenny@sc.com

Yours sincerely,



Prepared by the Middle East and Africa Association of Global Custodian Committee,
27 September 2018

cc:

The Commissioner General
Kenya Revenue Authority
Times Tower, Haile Selassie Avenue,
P.O.Box 48240 - 00100 GPO Nairobi
Tel: 020-310300, 020-281000

cc:

The Chief Executive Officer
Capital Markets Authority
Embankment Plaza, 3rd Floor
Longonot Road, off Kilimanjaro Avenue, Upperhill
P.O Box 74800
Postal code: 00200
Nairobi -Kenya

cc:

The Chief Executive Officer
Nairobi Securities Exchange
55 Westlands Road
P O Box 43633
Postal code: 00100
Nairobi – Kenya

cc:

The Chief Executive Officer
Kenya Bankers Association
13th Floor, International House
Mama Ngina Street
Postal Code: 00200
Nairobi Kenya

cc:

The Chief Executive Officer
The Central Depository & Settlement Corporation Limited (CDSC)

Nation Center, 10th Floor, Kimathi Street
P.O. BOX 3464
Postcode: 00100 GPO
Nairobi - Kenya

