

## Client Alert

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## NIK New Development

### Updates on Customs Registration Requirement

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Under Director General of Customs and Excise (“DGCE”) Regulation No. PER-4/BC/2017 on Customs Registration Implementation Guidelines (“**Regulation 4**”), all importers and exporters operating in Indonesia that intend to apply for, amend or renew their Customs Registration Number/*Nomor Induk Kepabeanan* (“**NIK**”) need to:

1. ensure that all of their foreign directors have work permits (“**IMTA**”)
2. provide a copy of the IMTAs to the DGCE with the NIK application

even if the foreign directors do not reside in Indonesia.

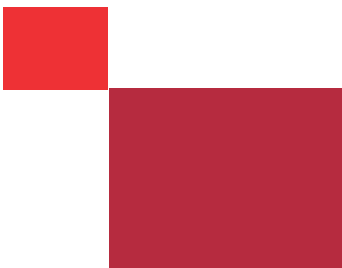
On September 2017, the DGCE applied a less onerous rule, ie, registration/updates in NIK still can be done if:

1. there is at least one resident director; and
2. any foreign director provides a statement letter stating that they reside abroad (as a waiver from the work permit requirement).

However, now the DGCE is implementing a stricter policy, ie, an IMTA is required for every foreign director even if they do not reside in Indonesia. In addition, based on our experience, the current Head of Section in Customs requires all foreign directors to obtain a Tax Registration Number/*Nomor Pokok Wajib Pajak* (“**NPWP**”) before the company applies for an NIK.

In light of the above, the DGCE offered an interim solution which requires a company to submit a statement letter stating that the company will process the IMTA and NPWP for foreign directors (who do not reside in Indonesia) within 90 days after the submission of the letter. Otherwise, the company’s NIK may be revoked by the DGCE. So in other words, the DGCE may approve the NIK first; however, the company should submit a copy of the IMTA and NPWP within 90 days as promised to the DGCE. Otherwise, the NIK will be revoked.

We should note that this revocation sanction is not regulated under Regulation 4. This is solely a policy implemented by the Customs. However, as this requirement is newly implemented by the DGCE, it is not certain whether this will be implemented consistently in the future, and whether the failure to comply with the IMTA requirement will actually cause a revocation of the NIK by the DGCE.





## Proposed Approach

There are two options that may be considered in relation to the above development when a company wishes to apply for, amend or renew its NIK:

### 1. Actions prior to the NIK application

In this option, the company will fulfil all the requirements under Regulation 4 and under the new policy of the DGCE (ie, the obligation of foreign directors to have an IMTA and NPWP) and then apply for NIK. Under this option, a statement letter will not be required anymore. To fulfil the requirements, the company has two options:

- a) The company processes the IMTA and NPWP of its foreign directors who do not reside in Indonesia.
- b) The company replaces the foreign directors due to the consideration that they do not reside in Indonesia and appoints new directors, either foreign directors whose IMTA and NPWP will be processed or Indonesian directors.

### 2. Actions after the NIK application

In this option, the company will apply for NIK by submitting the statement letter to the DGCE. However, after the submission, the company is still required to provide the IMTA and NPWP of its foreign directors to the DGCE. Therefore, within 90 days after the submission of the statement letter (as mandated in the statement letter), the company should obtain an IMTA and NPWP for the foreign directors.

There are two ways to do that:

- a) The company processes the IMTA and NPWP of its foreign directors ie, within 90 days after the submission of the statement letter.
- b) The company replaces its foreign directors due to the consideration that they do not reside in Indonesia and appoints new directors, either foreign directors who already have an IMTA and NPWP or Indonesian directors within 90 days after the submission of the statement letter.

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