

Deloitte.

Tax & Customs Newsletter

November 2022



Highlights in this issue:



Tax Administration

- Refund of overpaid tax and interests
- Procedures for certifying the fulfillment of tax obligations to the State Budget

Indirect Tax

- Declaration of Value Added Tax for construction activities located in another province other than the province of the head quarter
- Adjustment of tax declaration dossiers due to invoice issuance at incorrect Value Added Tax rate
- Value Added Tax and invoice for compensation
- Value Added Tax for machinery and equipment leasing activity to enterprises located in the export processing zones
- Value Added Tax for capital contribution by using machinery and equipment

Foreign Contractor Withholding Tax

- Foreign Contractor Withholding Tax levied on income from providing the right to use of trademark in Vietnam
- Foreign Contractor Withholding Tax levied on income from providing service and selling goods through forward and option contracts

Contact us

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale

Corporate Income Tax

- Overtime expenses paid for employee
- Income from trading activities are not entitled to Corporate Income Tax incentives

Personal Income Tax

- Personal Income Tax on the overseas insurance contribution
- Taxable income from receiving gifts and winning prizes
- Guidance on the dependent deduction
- Guidance on Personal Income Tax finalization declaration
- Guidance on Personal Income Tax return submission

Trade & Customs

- Decision on publication of management procedures related to tax debts and other collections on imported and exported goods
- Customs procedures for on-spot import and export
- General Department of Customs' guidance for on-spot export, and import
- Duties treatment and use of customs mode for goods imported from the bonded warehouse to domestic market for export manufacturing
- Concerns on the termination of the list for import duty exemption



Tax Administration

Guidance ruling

Refund of overpaid tax and interests

In cases where an enterprise has fully paid tax, penalty and late payment interest according to the decision on handling tax violations, and subsequently the court recognizes that the lawsuit against the sanctioning decision is correct, then the enterprise and Tax Authority shall carry out the procedures for handling overpaid tax, late payment interest and penalty according to regulations.

(Official Letter No. 3783/TCT-KK dated 13 October 2022 issued by the General Department of Taxation)

Procedures for certifying the fulfillment of tax obligations to the State Budget

If taxpayers need to certify the fulfillment of tax obligations to the State Budget, they shall prepare the requested application according to the Form No. 01/DNXN issued together with the appendix I, Circular 80/2021/TT-BTC to the Tax Authority.

(Official Letter No. 53415/CTHN-TTHT dated 04 November 2022 issued by Hanoi Tax Department)



Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Corporate Income Tax

Guidance ruling



Overtime expenses paid for employee

If a Company organizes overtime working for employees, the Company should make a notification in writing to get the approval from competent authorities. The expenses in line with the approved overtime serving for the Company's business activities are deductible when determining the taxable income for CIT purposes.

(Official Letter No. 3674/CTBNI-TTHT dated 08 November 2022 issued by Bac Ninh Tax Department)

Income from trading activities are not entitled to Corporate Income Tax incentives

If a Company which enjoys CIT incentives for incentivized location, supplements its business with trading activity but does not increase capital or not expand its investment to increase assets, the income from the trading activity would not be eligible for CIT incentives.

(Official Letter No. 3593/CTBNI-TTHT dated 31 October 2022 issued by Bac Ninh Tax Department)

Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Indirect Tax

Guidance ruling

Declaration of Value Added Tax for construction activities located in another province other than the province of the head quarter

If cases where a construction works Company does not directly enter into any contracts with the investor to execute construction works in another province other than the province of the Company's head quarter, then the company is not required to declare VAT for construction works with the Tax Authority of the province where such construction works are performed.

(Official Letter No. 53393/CTHN-TTHT dated 04 November 2022 issued by Hanoi Tax Department)



Adjustment of tax declaration dossiers due to invoice issuance at incorrect Value Added Tax rate

If a Company declared VAT under the credit method applied an incorrect VAT rate to the rental activity, the Company must issue an adjustment invoice to revise the VAT rate.

Based on the adjustment invoice, the Company and its client would make the additional VAT declaration dossiers in the period when the error arose, according to the principles specified in clause 1, Article 47, the Law on Tax Administration No. 38/2019/QH14 dated 13/06/2019 and clause 4, Article 7, Decree 126/2020/ND-CP dated 19/10/2020.

(Official Letter No. 3539/CTHPH-TTHT dated 01 November 2022 issued by Hai Phong Tax Department)

Value Added Tax and invoice for compensation

If a Company rents a warehouse and receives compensation for damaged goods from the lessor due to a water leakage in the warehouse, the VAT and invoice treatment is as follows:

- Regarding VAT: The Company is allowed to credit the input VAT warehouse rental expenses if the conditions for payment vouchers and invoices as prescribed are satisfied;
- Regarding to invoices: The Company is not required to issue an invoice but rather a receipt for the compensation received from the lessor.

(Official Letter No. 3359/CTHPH-TTHT dated 20 October 2022 issued by Hai Phong Tax Department)



Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Indirect Tax

Guidance ruling

Value Added Tax for machinery and equipment leasing activity to enterprises located in the export processing zones

In the situation where:

- a Company imported machinery and equipment to produce export goods,
- paid VAT at the import stage and was refunded VAT for this batch of machinery, and subsequently
- leased this machinery and equipment to an enterprise located in the export processing zone under an operating lease,

the Company could apply the VAT rate of 0% - provided that the lease service agreement with the company located in the export processing zone, bank payment vouchers and other documentation as prescribed are available.

(Official Letter No. 3464/CTHPH-TTHT dated 25 October 2022 issued by Hai Phong Tax Department)

Value Added Tax for capital contribution by using machinery and equipment

If a Company which declares VAT under the credit method buys machinery and equipment to contribute as capital to establish another company:

- The Company is allowed to claim the creditable input VAT on the purchased machinery and equipment for capital contribution – provided the conditions for creditable input VAT and supporting documents on capital contribution by assets, as prescribed under regulations are satisfied.
- The Company is not required to issue VAT invoices to the organization receiving the capital contribution of assets, or declare and pay output VAT. However, it has to maintain the minutes of receiving the capital contribution, the delivery note of asset transfer, the minutes on assets valuation together with the dossiers sustaining the asset origin.

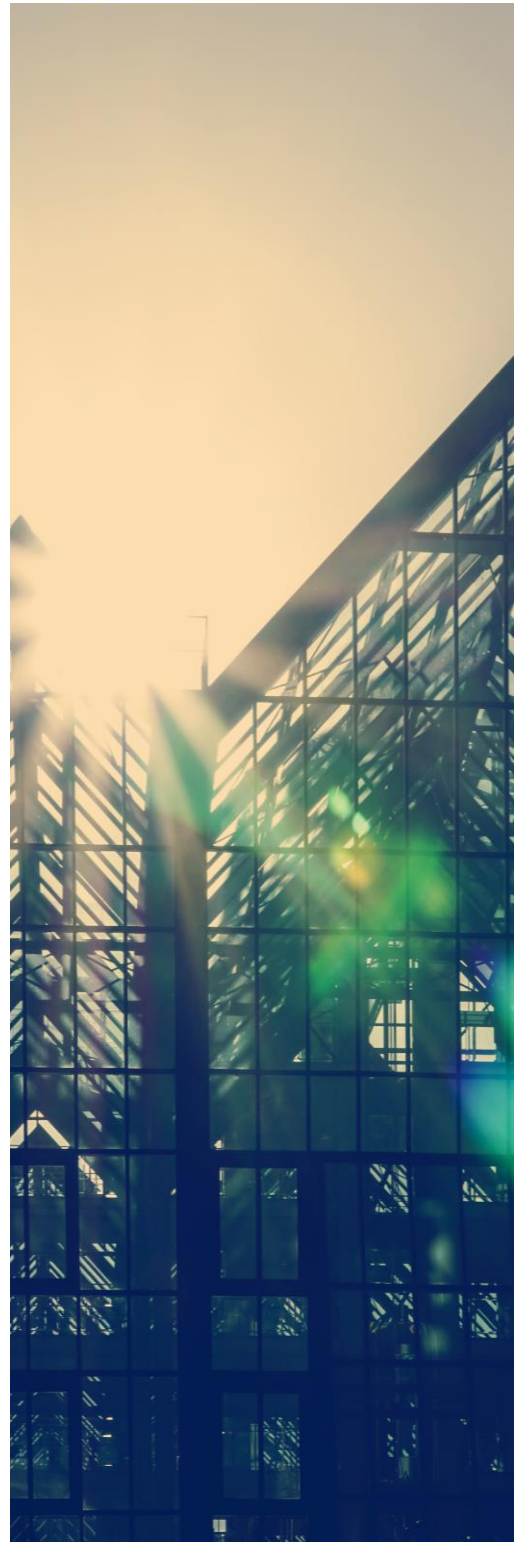
(Official Letter No. 3121/CTHPH-TTHT dated 07 October 2022 issued by Hai Phong Tax Department)

Contact us

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale





Personal Income Tax

Guidance ruling



Personal Income Tax on the overseas insurance contribution

If a foreign individual who works in Vietnam receives only one source of income paid by the Vietnam company; does not work abroad; and has no overseas source income, then the insurances contributed abroad during their working period in Vietnam will be not deducted from taxable income for Vietnamese PIT purpose.

(Official Letter No. 6017/CTVPH-HKDCN dated 22 July 2022 issued by Vinh Phuc Tax Department)

Taxable income from receiving gifts and winning prizes

If a Company offers gifts-in-kind to all employees, and those gifts do not fall into categories prescribed in clause 10, Article 2, Circular No. 111/2013/TT-BTC dated 15 August 2013 issued by the Ministry of Finance, then such gifts shall not be subject to PIT.

If employees receive prizes-in-kind from participating in games, contests and other forms of winning prizes organized by the company, such prizes shall be treated as income and subject to PIT as regulated.

(Official Letter No. 40222/CTHN-TTHT dated 16 August 2022 issued by Hanoi Tax Department)

Guidance on the dependent deduction

In cases where:

- an employee's grandmother is in retirement age (having no income or the monthly average income during the year from all source income not exceeding VND 1 million)
- it has been confirmed, by the local competent authorities, where the dependent resides, and that the employee directly takes care his/her grandmother with sufficient required documents such as the photocopy of identification card or the birth certification and legitimate documents for sustaining the responsibility in line with the regulations,

then the employee shall be eligible to register his/her grandmother for a dependent deduction when calculating Vietnam PIT.

(Official Letter No. 51877/CTHN-TTHT dated 27 October 2022 issued by Hanoi Tax Department)

Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Personal Income Tax

Guidance ruling

Guidance on Personal Income Tax finalization declaration

An income-paying Company carrying out PIT finalization declaration on behalf of its employees (with the employees' authorizations) must have the employees' individual tax code.

If the income-paying Company only declares the employees' identity card number, the Company shall instruct the employees to carry out the tax registration procedure as prescribed in Circular No. 105/2020/TT-BTC and make the PIT declaration amendment as regulated.

(Official Letter No. 50820/CTHN-TTHT dated 20 October 2022 issued by Hanoi Tax Department)

Guidance on Personal Income Tax return submission

If the income-paying Company and individual do not incur withholding PIT in the concerned month/ quarter, then the income-paying Company and individual are exempted from filing PIT dossiers in such month/ quarter.

(Official Letter No. 10087/CTBRV-KK dated 09 November 2022 issued by Ba Ria Vung Tau Tax Department)



Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Foreign Contractor Withholding Tax

Guidance ruling

Foreign Contractor Withholding Tax levied on income from providing the right to use of trademark in Vietnam

If a Vietnamese Company pays a foreign vendor to use a trademark in Vietnam, then in accordance with the regulations on intellectual properties, this income shall be subject to FCWT at rates:

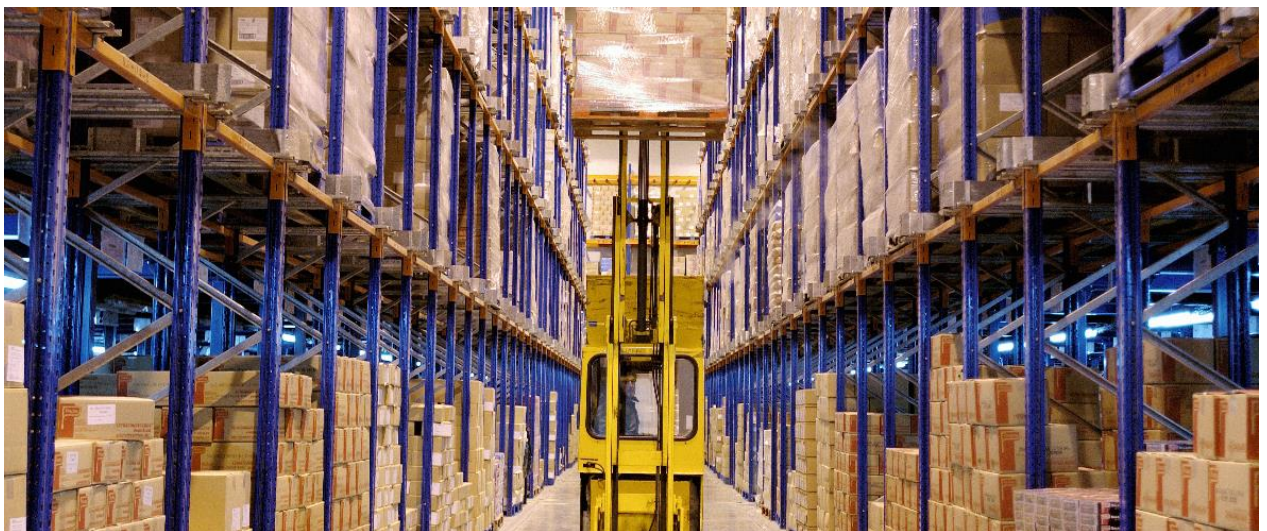
- CIT calculated on taxable revenue is 10% and
- VAT is 10% (if applying the creditable method) or the rate (%) of VAT on taxable revenue is 5% (if applying the deemed method).

(Official Letter No. 51874/CTHN-TTHT dated 27 October 2022 issued by Hanoi Tax Department)

Foreign Contractor Withholding Tax levied on income from providing service and selling goods through forward and option contracts

If activities of providing services and selling goods through forward and options contracts at the commodity exchange are determined to be a derivative financial service as prescribed, the income received by foreign contractors do not subject to VAT and subject to CIT as of 2% on the taxable revenue.

(Official Letter No. 3334/TCT-CS dated 09 September 2022 issued by the General Department of Taxation)



Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Trade & Customs

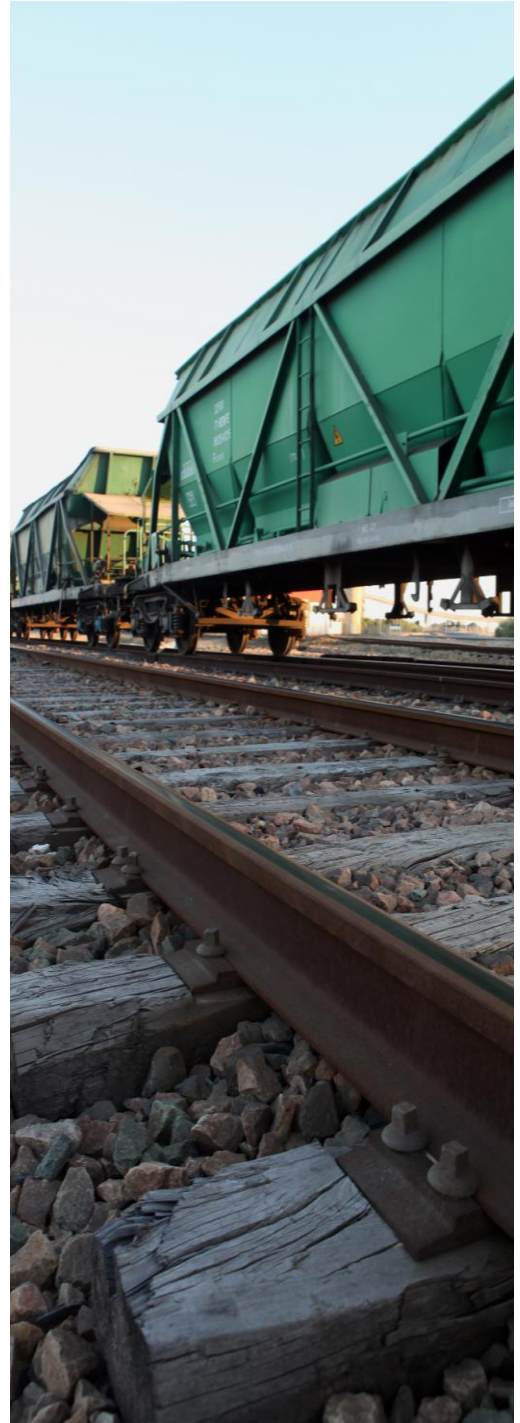
New regulations

Decision on publication of management procedures related to tax debts and other collections on imported and exported goods

On 24 October 2022, General Department of Customs issued the Decision No. 2317/QĐ-TCHQ regulating management procedures for tax debts and other collections on imported and exported goods. In particular:

- Guiding, on a step-by-step basis, the procedures to be adopted for tariff classification, fully monitor, timely urge on tax debts, handle tax and other collections of taxpayers that must be paid to the State Budget;
- Stipulating that the guidance applies to Customs authorities at all levels, including General Department of Customs, Customs Departments of provinces and cities, Post – Clearance Audit Department, Anti – smuggling Investigation Department, Sub-department of Customs and Sub-department of Post Customs Clearance Audit - when performing tasks relating to management of tax debts and other collections on imported and exported goods

(Decision No. 2317/QĐ-TCHQ dated 24 October 2022 issued by the General Department of Customs)



Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale



Trade & Customs Information document



Customs procedures for on-spot import and export

On 25 October 2022, Sub-customs Department of Trang Bang Industrial zone issued Notification No. 3140/TB-HQTB on the customs procedures for on-spot import and export, as follows:

- Upon the registration of on-spot import/export declarations, as designated by foreign principals, the local Vietnam enterprise must ensure that foreign principal has no the presence in Vietnam (i.e. no investment and business activity in Vietnam as well as no representative office and branch in Vietnam).
 - If the foreign principal fails to meet the “no presence in Vietnam” condition above, the local Vietnam enterprise is not eligible to perform on-spot import and export customs declaration as regulated.
 - The local Vietnam enterprises have responsibilities to review and notify the Sub-customs Department for handling in accordance with the law the cases whose conditions of “no presence in Vietnam” were not met but the customs clearance has been completed already.
- When carrying out customs procedures in the form of on-spot import and export as designated by foreign principals who have no presence in Vietnam, the local Vietnam enterprises must:
 - consider whether investors are foreign enterprise, which is mentioned in the investment registration certificates of designated enterprises, and then
 - make a written commitment (to local Customs, if requested), that the foreign principals designating the good delivery/ receipt has no presence in Vietnam as regulated.

(Notification No. 3140/TB-HQTB dated 25 October 2022 issued by the Sub-customs Department of Trang Bang Industrial zone)

Contact us

Website: [deloitte.com/vn](https://www.deloitte.com/vn)

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale

Trade & Customs Guidance ruling

General Department of Customs' guidance for on-spot export and import

On 17 October 2022, General Department of Customs ("GDC") issued Official Letter No. 4357/TCHQ-GSQL providing the guidance for on-spot export and import. Specifically:

Regarding foreign principal having no the presence in Vietnam:

The guidance on foreign principal having no the presence in Vietnam are regulated in clause 5, Article 3, Law on Foreign Trade Management No. 05/2017/QH14 dated June 12, 2017.

The local Vietnam enterprises (the declarants) have responsibilities under regulations, to determine that foreign principal has no presence in Vietnam.

Regarding the implementation of export, and import rights for foreign principal having no the presence in Vietnam

GDC requests Customs Department of Binh Duong, to follow the regulations of Decree No. 90/2007/ND-CP dated May 31, 2007.

(Official Letter No. 4357/TCHQ-GSQL dated 17 October 2022 issued by the General Department of Customs)



Contact us

Website: deloitte.com/vn

Email: deloittevietnam@deloitte.com

For reference only, not for distribution or sale

Duties treatment and use of customs mode for goods imported from the bonded warehouse to domestic market for export manufacturing

Goods imported from bonded warehouse to the domestic market, for export manufacturing purposes, will be exempted from import duty and not subject to import VAT if the conditions as regulated are satisfied.

Accordingly, customs code "E31 – Imported materials for export manufacturing" would be used when the company imports the materials/supplies, from non-tariff zones, for export manufacturing

(Official Letter No. 2843/HQTPHCM-GSQL dated 18 October 2022 issued by Ho Chi Minh City Customs Department)

Concerns on the termination of the list for import duty exemption

If project owners notify their needs to discontinue importing goods as stated in the registered list of import duty exemption, the Customs authority, and project owner, can choose the following approaches:

- Apply the handling procedure for the usage termination of the list for duty exemption in accordance with point c.1, and c.2, clause 1, Article 5 regulating the tax exemption procedures issued with the Decision No. 3394/QD-TCHQ; or
- Adjust the remaining quantity of goods that not yet imported in the list for import duty exemption to zero or adjust the list for import duty exemption to the expiration date of the expected import period.

(Official Letter No. 4450/TCHQ-TXNK dated 24 October 2022 issued by the General Department of Customs)

Contact Us



Thomas McClelland
National Tax Leader
+84 28 7101 4333
tmcclelland@deloitte.com



Bui Ngoc Tuan
Tax Partner
+84 24 7105 0021
tbui@deloitte.com



Bui Tuan Minh
Tax Partner
+84 24 7105 0022
mbui@deloitte.com



Phan Vu Hoang
Tax Partner
+84 28 7101 4345
hoangphan@deloitte.com



Dinh Mai Hanh
Tax Partner
+84 24 7105 0050
handinh@deloitte.com



Tat Hong Quan
Tax Partner
+84 28 7101 4341
quantat@deloitte.com

Hanoi Office

15th Floor, Vinaconex Building,
34 Lang Ha Street, Dong Da
District, Hanoi, Vietnam
Tel: +84 24 7105 0000
Fax: +84 24 6288 5678



Vo Hiep Van An
Tax Partner
+84 28 7101 4444
avo@deloitte.com



Vu Thu Nga
Tax Partner
+84 24 7105 0023
ngavu@deloitte.com



Bob Fletcher
Director, Trade and Customs
+84 28 7101 4398
fletcherbob@deloitte.com

Ho Chi Minh City Office

18th Floor, Times Square
Building,
57-69F Dong Khoi Street,
District 1, Ho Chi Minh City,
Vietnam
Tel: +84 28 7101 4555
Fax: +84 28 3910 0750

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

About Deloitte Vietnam

In Vietnam, services are provided by separate and independent legal entities, each of which may be referred to or known as Deloitte Vietnam.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.