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U.N. Marwah

Dear Readers,

We are coming back to you after a considerable time, during which many interesting events have taken place. The gloom of 2009 has been replaced by a new sentiment of cautious optimism, a good Budget taking some tough economic decisions has come out and IPL season 3 is back in India.

RNM has also grown with the introduction of its new Corporate Finance Division and with the proposed opening of its new office in Gurgaon planned for Q2 of FY 2010-11.

RNM now provides Merger and Acquisition advisory, debt syndication, private placements as part of the repertoire of the Corporate Finance Division.

The new Perquisite Rules have been notified which clarifies the position on employee taxation with the abolition of the Fringe Benefit Tax (FBT) regime. Also the speculation on the treatment for advance tax on FBT has ended with the notification issued on the subject.

On the procedural front there have been some major changes by way of payments now being made in electronic mode for service tax, central excise and stamp duty.

Wishing all the readers the best for Ram Navami.

Regards,

U.N. Marwah

For and behalf of the RNM Alert Editorial Board

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Profits & Gain from Business & Profession

[Sec 37(1)] **General Deduction**

Any amount incurred to acquire the Membership card is capital in nature, hence not allowed u/s 37(1). [Deputy Commissioner of income tax circle Vs Khandwala Finance Ltd [2010] 122 ITD 111]

Company engaged in civil construction, expenditure incurred for the construction of hockey stadium on govt. land is a promotional event. Any expenses incurred to generate goodwill and facilitate promotion of these businesses and therefore expenses is allowable. [ITO Vs Velumanickam Lodge (2009)124ttj98(Chennai)]

Salary

[Sec 16]

Deduction from Salaries

Hypothetical tax is deductible. Deduction is however to be

made at the stage of computing the taxable perquisite and not the basic salary. [ITO Vs Lukas Fole (2009)124TTJ 965(Pune)]

Procedure for Assessment

Rectification of Mistake [Sec 154]

Where AO fails to mention specifically in assessment order for charging of interest under Section 234A, 234B & 234C, then non-charging of interest would become a mistake apparent from record, therefore AO is bound to charge the same through rectification u/s 154. [Income – tax officer Vs Dr. Sameer Kant Agarwal [2010]122 ITD 85 (LUCK)]

Set off or Carry forward and set off of losses [Section 71]

Interest payable to partners is allowable as deduction under sec 40 (b); loss arising to the assessee on account of interest to partners under the head “business income” would be set off against income under the head “income from other sources” as per the provision of sec 71. [Income Tax Officer Vs M.M. Textiles (2009) 125 TTJ (Mumbai) 14]

Exemption of Capital Gain [Sec 54]

Assessee is not entitled to exemption under sec 54-F on investment of capital gains in the construction of an additional floor in the existing house. [Assistant CIT Vs T.N. Gopal (2009) 125 TTJ (Chennai) (TM) 1]

Speculative Transaction [Sec 43(5)]

Cancellation charges for the non performance of contract are allowable as business loss and it can't be treated as speculative loss as there is no settlement of contract. [Volts International Ltd Vs Acit (2009)126TTJ 702(MUM)]

Deduction [Sec 10B]

Losses of earlier years have to be set off first against total income of relevant assessment year and, the balance income is only available for deduction u/s 10B. [Sword Global (I) (P) Ltd Vs Income tax officer, Co. Ward-II (1) [2010] 122 ITD 103 (CHENNAI)]

Ø Latest Notification/ News

Cost Inflation Index for F.Y. 2009-10

In exercise of the powers conferred by clause (v) of the Explanation to section 48 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Revenue),

Central Board of Direct Taxes, number S.O.709(E), dated the 20th August, 1998, namely :-

In the said notification, in the Table, after serial number 28 and the entries relating thereto, the following serial number and entries shall be inserted, namely:-

29	2009-10	632
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[Notification No. 67/2009
Dated 9-9-2009]

Exemptions to Notified persons, notified sporting events and specified income

[Sec 10(39)]

In exercise of the powers conferred by clause (39) of section 10 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby notifies the Organising Committee Commonwealth Games, 2010 Delhi, India as the person and specified income from:-

- International Broadcasting;
- domestic broadcasting;
- receipt of sponsorship;
- receipt of ticketing;
- receipt of licensed merchandise;
- Donations,



arising to Organising Committee Commonwealth Games, 2010 Delhi, India from the organising Commonwealth Games, 2010 Delhi,

India.[Notification No.91 /
2009, dated 8-12-2009]

Adjustment of advance tax in respect of fringe benefits for assessment year 2010-11 against advance tax

Finance (No. 2) Act, 2009 has abolished the FBT with effect from assessment year 2010-11. Some assesses have paid advance tax in respect of fringe benefits for assessment year 2010-11 during the current financial year 2009-10.

In such cases the Board has decided that advance tax paid in respect of fringe benefits for assessment year 2010-11 shall be treated as Advance Tax paid by assessee concerned for assessment year 2010-11.

The assessee can adjust such sum against its advance tax obligation in respect of income for assessment year 2010-11 or in case of loss etc. claim such payment as refund as advance tax paid in assessment year 2010-11. [Circular No. 2/2010, dated 29-1-2010]

*Section 194A of the
Income-tax Act, 1961 -
Deduction of tax at source
- Interest other than
interest on securities -
Notified institution*

In exercise of the powers conferred by sub-clause (f) of clause (iii) of sub-section (3) of

section 194A of the Income-tax Act, the Central Government hereby notifies the Rural Electrification Corporation Ltd. (RECL), New Delhi for the purpose of said clause. Hence there is no need to deduct TDS on the payment of interest made on the Bonds issued by RECL. [Notification No. 1/2010 [f.

No. 275/12/2009-it(b)], dated 4-1-2010]

NEW TDS RATES FROM 01.10.2009 PASSED IN FINANCE ACT (2) 2009 PASSED ON 19.08.2009				
Particulars			NEW TDS RATES%	
Section	Nature of Payment	CUT OFF AMOUNT	INDL/HUF	OTHER
194A	Interest from a Banking Company	Rs. 10,000/- p.a	10.00	20.00
194A	Interest other than from a Banking Co.	Rs. 5,000/- p.a	10.00	20.00
194C	Payment to sub-contractor/Advertisement contracts	Rs.20,000/- per contract or Rs. 50,000/- p.a	1.00	2.00
194C	other Contractors	Rs.20,000/- per contract or Rs. 50,000/- p.a	1.00	2.00
194C	transport contractors engaged in business of plying, hiring or leasing goods carriages.	---	Nil *	
194H	Commission or Brokerage	Rs. 2,500/- p.a	10.00	10.00
194I	Rent other than Plant, Mach.&Eqp.	Rs. 1,20,000/- p.a	10.00	10.00
194I	Rent of Plant , Machinery & Equipments	Rs. 1,20,000/- p.a	2.00	2.00
194J	Professional Charges	Rs.20,000/-p.a	10.00	10.00
* The nil rates will be applicable if the transporter quotes his PAN. If PAN is not quoted the rate will be 1% for an individual/ HUF transporter and 2% for other transporters upto 31.3.2010				
** The rate of TDS will be 20 per cent in all cases, if PAN is not quoted by the deductee w.e.f. 1.04.2010				
No surcharge and cess is to be added from 01.04.2009 on tax deducted on non-salary payments made to resident taxpayers. It means that surcharges &cess is not be included in basic TDS rates various situation are tabulated in table given below				

VARIOUS SITUATION SURCHARGE CESS APPLICABILITY				
STATUS		PAYMENT	SUR CHARGE	CESS
Resident	Corporate	Other than Salaries	N	N
Resident	Non-corporate	Other than Salaries	N	N
Resident	Non- Corporate	Salaries	N	Y
Non-Resident	Corporate	<= 1 crore	N	Y
Non-Resident	Corporate	> 1 crore	Y	Y
Non-Resident	Non-Corporate		N	Y

Furnishing of information under sub-section (6) of section 195

In exercise of the powers conferred by section 295 read with sub-section (6) of section 195 of the Income-tax Act, 1961, the Central Board of Direct Taxes hereby makes the Income-tax (Seventh Amendment) Rules, 2009, which shall come into force with effect from 1st July, 2009.

In the Income-tax Rules, 1962, after rule 37BA, rule 37BB shall be inserted. As per this rule:-

(1) The information under sub-section (6) of section 195 shall be furnished by the person responsible for making the payment to a non-resident, not being a company, or to a foreign company, after obtaining a certificate from an accountant as defined in the

Explanation to section 288 of the Income-tax Act, 1961.

(2) The information to be furnished under sub-section (6) of section 195 shall be furnished electronically in Form No. 15CA to the website designated by the Income-tax Department and thereafter signed printout of the said form shall be submitted prior to remitting the payment. [Notification No. 30/2009 [F. No. 142/19/2007-TPL]/S.O. 857(E), Dated 25-3-2009]

New Perquisite Valuation Rules, 2009

[Notification No. 94/2009/F.NO. 142/25/2009-SO (TPL), dated 18-12-2009]

In exercise of the powers conferred by section 295 read with sub-section (2) of section 17 of the Income-tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby makes the Income-tax (13th

Amendment) Rules, 2009 to amend the Income-tax Rules, 1962 in respect of valuation of the perquisites. These rules has been amended mainly due to abolition of the FBT from 01.04.2009 i.e. FY 2009-10 by The Finance (No. 2) Act, 2009. The new rules shall applicable from the 01.04.2009 means applicable from FY 2009-10.

It may be noted that for most perquisites the valuation rules which were contained in the old Rule 3 (as it applied to those employees who, or to items of perquisites which, were not subject to FBT) have remained unchanged.

INDIRECT TAX

Customs, Central Excise & Service Tax

Ø Case Laws

Procedural Lapse Is not fraud

Procedural lapse does not amount to fraud, therefore, Rule 15 of Central Excise Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 are not attracted. [Commissioner of Central Excise, Ludhiana Vs. Malwa Cotton Spinning Mills Ltd. 2009 (244) E.L.T. 503 (P & H)]

Delay in Payment due to Change in Management Is Not Fraud

There was change in the management due to the financial difficulty. Assessee submits that there was no intention to evade the payment of duty of the new and the old management as they clear the goods under the cover of an invoice. It was held that the appellant has paid the entire

duties with interest and as observed that there was no mala fide intention because of fraud, suppression or misstatement to evade payment of duty. Hence, section 11AC would not be applicable. Maximum penalty under Rule 27 of Central Excise Rules, 2002 of Rs. 5,000/- would get attracted. [Shaligram Laminates Pvt. Ltd. Vs Comm. Of CE, Ahmedabad 2009 (244) E.L.T. 570 (Tri.-Ahmd.)]

Cenvat Credit cannot be Utilized If Payment of Duty through PLA

If assessee is required to pay duty through PLA under Rule 8 of Central Excise Rules, 2002 but he has paid it by utilizing the Cenvat Credit, it was held that such clearance are treated as without payment of duty and penalty for this purpose is imposable under Rule 25 of Central Excise Rules, 2002. [Krishna Chemicals Vs Commissioner Of CE, Ahmedabad- I 2009 (244) E.L.T. 580 (Trib.-Ahmd.)]

All excisable goods are inputs

Cenvat Credit is available for all excisable goods as inputs in or in relation to the manufacture of finished goods.

It is, therefore clarified that the input credit is admissible irrespective of the presence of the input in the final product. [Commissioner of CE, Surat-I Vs Reliance Industries Ltd. 2009 (244) E.L.T. 583 (Trib.-Ahmd.)]

Evidence of suppression is must

If there was bon fide belief of the assessee that welding electrodes are being used within their factory, though by the job workers, there is no obligation on their part to reverse the credit or pay the duty. But there was no evidence on the part of the appellant regarding suppression or mis-statement. Therefore demand was dropped. [Hivoltrans Electrols (P) Ltd. Vs Commissioner Of Central Excise & Custom, Vadodara 2009 (244) E.L.T. 593 (Tri.-Ahmd.)]

Demand barred by Limitation cannot be recovered

In these cases, assessee submits that the demand of tax, interest & penalties are barred by limitation as revenue has failed to establish that there were suppression of facts on the part of the assessee. Tribunal held that demands are not

sustainable on the ground that they are barred by limitation and therefore, set aside the impugned orders. [S Rajendran, K Srinivasan, K R Venkatachalam, N Saravanakumar Vs Commissioner Of Central Excise, Salem 2010-Tiol-84-Cestat-Mad]

Excess Payment of Service Tax Cannot Be Adjusted For Short Payment of Tax of the Earlier Period

The appellant has made excess payment of service tax during the month of June & August, 2005, which they want to adjust against the short payment for the earlier period from Jan. to May, 2005. Assessee also submits that the excess amount paid in the subsequent period may be treated as mere deposit which can be adjusted against the earlier short payment & it may be paid along with interest.

Tribunal, after considering the provision of Rule 6(3) of STR, 1994 held that there is no provision for adjustment for short payment of tax earlier period against excess payment of tax in the subsequent period. Also excess amount of service tax cannot be treated as mere deposit. Hence the demand of

tax on this issue is justified. [M/S Lilason Breweries Ltd Vs Cce, Bhopal 2010-Tiol-15-Cestat-Del]

Ø Latest Notification/ News

Exemption to Business Auxiliary Service

Business Auxiliary Service provided by the service provider in the course of manufacture or processing of alcoholic beverages for or on behalf of the service receiver is exempt from service tax subject to the conditions that no Cenvat Credit has been taken, documentary proof indicating the value of input and the separate accounts of receipt production, inventory, dispatches of goods as well as financial transactions relating thereto shall be maintained. Quantum of exemption is equivalent to the value of inputs. (N/N 39/2009 ST Dated 23.09.2009)

Service tax on the services mentioned in N/N 34/2009 as mentioned above was not being levied as a result of general practice during the period commencing from the 1st day of Sept, 2009 and ending with

the 22nd day of Sept, 2009, shall not be required to be paid. (N/N 43/2009 ST, Dated 02.12.2009)

Mandatory electronic payment and filing of return for service tax for amount Rs. 10 lakhs and above

Central Government vide Service Tax (Amendment) Rules, 2010, has made mandatory for assessee whose total Service Tax payment including utilization of CENVAT credit for the preceding financial year is Rs. 10 lakh or more as against the existing threshold of Rs. 50 lakh or more and electronic filing of half-yearly return has been made mandatory for assessee whose total Service Tax payment including utilization of CENVAT credit in the preceding financial year is Rs. 10 lakh or more with effect from April 1, 2010. [Notification No. 01/2010-Service Tax, dated, 19.02.2010]



Mandatory electronic payment and filing of return for central excise for amount Rs. 10 lakh and above

Central Government vide Central Excise (Amendment) Rules, 2010, has made mandatory for assesseees whose total duty payment including utilization of CENVAT credit for the preceding financial year is Rs. 10 lakh or more as against the existing threshold of Rs. 50 lakh or more without considering the payment by utilizing CENVAT credit and electronic filing of monthly or quarterly return, as the case may be, has been made mandatory for assesseees whose total duty payment including utilization of CENVAT credit in the preceding financial year is Rs. 10 lakh or more. [Notification No. 04/2010-

Central Excise (N. T.) dated February 19, 2010]

Increase in rate of DVAT

DVAT has been increased by 1% from 4% to 5% w.e.f.13-01-2010. The shift to the 5% slab will impact the prices of medicines, surgical and medical equipment, IT and electronic products like computers and software, and industrial inputs, among other things. The 5% slab will cover 170-odd items.

COMPANY LAW

Latest Updates

Collection of Stamp duty in electronic mode

In Scheme for Filing of Statutory Documents and other Transactions by Companies in Electronic Mode (Amendment) Scheme, 2009, the Central Government has decided to substitute annexure 'A', in paragraph 4, for sub-paragraph (8) to dispense with the physical submission of documents and collect stamp duty electronically. [Notification No. -S.O. 2276 (E), Dated: 7th September, 2009]

No physical submission of documents in which stamp duty is paid electronically

As per newly inserted proviso to Rule 3(1) of Companies (Electronic Filing and Authentication of Documents) Amendment Rules, 2009, the Companies are not required to make physical submission of documents in which stamp duty is paid electronically through MCA portal w.e.f. 13.09.2009. However in respect of certain documents upon which stamp duty payable in respective state is equal to or less than one hundred rupees, the company shall scan such stamped documents complete in all respects and file electronically for evidencing by the Registrar and shall not be required to such documents except those which are required to be filed for compounding of offences under clause (a) of sub-section (4) of section 621A of the Companies Act, 1956, in the physical form separately. The company shall retain such documents duly stamped in original for a minimum period of three years from the date of filing. [Notification no G.S.R. 642 (e) dated 7.09.2009]

Second Amendment of Scheme for Filing of Statutory Documents and other Transactions by Companies in Electronic Mode

The central government has made 2nd amendment to the same i.e. after receiving authorization from the State of Kerala and Lakshadweep, has started collection of stamp duty on their behalf also w.e.f. 18th November, 2009 and therefore, has extended the transition period from 1-1-2010 to 31-3-2010. The 1st day of April, 2010, shall be the effective date, for a company to compulsorily make payment electronically for stamp duty in respect of all the States which have authorized to the Central Government. In respect of the other, the company shall continue to pay stamp duty outside the MCA portal. [Notification No. S.O. 3314 (E), Dated 31st December, 2009]

Companies (Central Government's) General Rules and forms, (Fourth Amendment) Rules, 2009 (Revision of e-forms 1, 5, 44 and 67)

<i>Particulars</i>	<i>Effective from</i>
Form 1 (Application and Declaration for incorporation of a Company)	13.09.2009
Form 5 (Notice of consolidation, division, etc. or increase in share capital or increase in number of member)	
Form-44 (Documents delivered for registration by a foreign company)	
Form-67 (Form for filing addendum for rectification of defects or incompleteness)	

Companies (Central Government's) General Rules and forms (Fifth Amendment) Rules, 2009 (Revision of e-forms 24B and 25A)

<i>Particulars</i>	<i>Effective from</i>
Form 24B (Application and Declaration for incorporation of a Company)	13.09.2009
Form 25A (Form for application to the central government for approval of appointment or reappointment and remuneration or increase in remuneration or waiver for excess or over payment to managing or whole-time director(s) or manager and commission or remuneration or expression of opinion to directors)	

FOREIGN EXCHANGE MANAGEMENT ACT & RBI REGULATIONS



RBI UPDATES

RBI Master Circulars

The following Master Circulars were issued by the Reserve Bank of India on July 1, 2009 in regard to Foreign Exchange :-

- Master Circular- Appointment & Delisting of Brokers and Payment of Brokerage on Relief / Savings Bonds
- Master Circular-The Securitisation Companies and Reconstruction Companies (Reserve Bank) Guidelines
- Master Circular- Corporate Governance
- Master Circular-Direct Investment by Residents in Joint Venture / Wholly Owned Subsidiary Abroad
- Master Circular- Foreign Investment in India
- Master Circular- External Commercial Borrowings and Trade Credits
- Master Circular- Miscellaneous Remittances from India – Facilities for Residents
- Master Circular- Remittance Facilities for NRI/Persons of Indian Origin/Foreign Nationals
- Master Circular- Non-Resident Ordinary Rupee (NRO) Account
- Inspection and Audit Systems in Primary (Urban) Co-operative Banks
- Collection of DSirect Taxes-OLTAS

Press Note No. 6 (2009): Foreign Direct Investment(FDI) into a SSI/ MSE and in Industrial Undertaking manufacturing items reserved for SSI/ MSE – clarification

A Small Scale industrial undertaking (SSI) was defined in terms of: (i) investment in fixed assets in plant and machinery and (ii) equity participation (both domestic and foreign) in the SSI, by other industrial undertakings prior to 2006.

With the promulgation of the MSMED Act, 2006, the ceiling for equity participation (both domestic and foreign) in the micro and small enterprises, by other enterprises, was removed and Micro and Small Enterprises (MSE) (earlier small scale industries) were defined solely on the basis of investment in plant & machinery (for micro and small enterprise engaged in

manufacturing) and equipment (for micro and small enterprise engaged in providing or rendering of services). Accordingly, this change was notified by Notification No. S.O. 563(E) dated 27th February 2009 of Department of Industrial Policy & Promotion, Ministry of Commerce & Industry.

***Press Note No. 7 (2009):
Guidelines for Foreign
investment in Commodity
Exchanges***

Government of India had laid the guidelines for foreign investment in Commodity Exchanges vide Press Note 2(2008) dated 12th March 2008. As per the guidelines, a composite ceiling for foreign investment of 49% was allowed with prior Government approval, subject to the condition that investment under the Portfolio Investment Scheme will be limited to 23% and that under the FDI Scheme will be limited to 26%. Further, no foreign investor/entity including persons acting in concert will hold more than 5% of the equity in these companies.

Difficulties have been brought to the notice of the government in complying with the provisions of the Press Note

within the stipulated time frame. Accordingly, all such Commodity Exchanges are hereby advised to adhere to the conditions of Press Note 2(2008) by 31.03.2010.

Non-compliance of the conditions of Press Note 2(2008) after 31.03.2010 would be a violation of the Foreign Exchange Management Act, 1999.

***Press Note No. 8 (2009):
Liberalization of Foreign
Technology Agreement
policy***

The existing policy of Government of India on the payment of royalties under Foreign Technology Collaboration provides for automatic approval for foreign technology transfers involving payment of lump sum fee of US\$ 2 million and payment of royalty of 5% on domestic sales and 8% on exports.

In addition, Technology transfers involving payments above 2% for exports and 1% for domestic sales on use of trademarks and brand names of foreign collaborator required prior permission of the Government of India (Project Approval Board, Department

of Industrial Policy and Promotion).

The Government of India has reviewed the extant policy and it has been decided to permit, with immediate effect, payments for royalty, lump sum fee for transfer of technology and payments for use of trademark/brand name on the automatic route i.e. without any approval of the Government of India. All such payments will be subject to Foreign Exchange Management (Current Account Transactions) Rules, 2000 as amended from time to time.

***Press Note No. 2010
FDI REGULATORY
FRAMEWORK***

Foreign Direct Investments by non-resident in resident entities through transfer or issue of security to person resident outside India is a 'Capital account transaction' and Government of India and RBI regulate this under the FEMA 1999 and its various regulations. Keeping in view the current requirements, the Government comes up from time to time with new regulatory framework which consists of Acts, Regulations, Press Notes, Press Releases, Clarifications, etc.

This Press Note consolidates into one document all the prior regulations on FDI and reflects the current 'regulatory framework' on FDI. It is the intent and objective of the Government to have a regulatory framework which is transparent, predictable, understandable, simple and clear to reduce the regulatory burden and promote foreign direct investment.

This Press Note will have a sunset clause of six months and will automatically lapse on 30th September, 2010. A new press Note on Regulatory Framework would be issued every six months which will incorporate and reflect all the changes in the regulations during the last intervening period of six months. Thus the Government will issue Press Note on FDI Regulatory Framework twice a year in April and October which would be the current regulatory framework on that date.

Ø **LATEST
NOTIFICATION /
NEWS**

Exchange Foreign (EEFC) Clarification **Earner's Currency Account –**

The Authorized Dealer-1 category banks have clarified that all categories of foreign exchange earners and SEZ developers are allowed to open, hold and maintain EEFC Account and to credit up to 100 per cent of their foreign exchange earnings which have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) [AP (DIR Series) Circular No. 22, Dated: December 29, 2009]

Establishment of Branch Office (BO)/Liaison Office (LO) in India by Foreign Entities - Eligibility Criteria and Procedural Guidelines

Foreign entities required prior approval of RBI for establishing BO / LOs in India. Under the current regulations, the applications from foreign entities are considered by the Reserve Bank under two

routes: Reserve Bank Route and Government Route.

With the objective of achieving greater transparency, it has been decided to place the eligibility criteria and the procedural guidelines for establishment of BO and LO in India, in the public domain. Accordingly, the broad criteria regarding eligibility for opening of BO / LOs, documentation, etc., are given in Annex A and the scope of activities permitted and other procedural guidelines regarding functioning of the BO / LO in India are given in Annex B to this circular. [AP (DIR Series) Circular No. 23, Dated: December 30, 2009]

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