

# Tax Bulletin

DECEMBER 2023



Tax

# Foreword



This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during November 2023.

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**Karachi**  
**December 18, 2023**

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# Executive Summary

| <b>Direct Tax – Notifications</b>      |   |   |                 |
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| 1.                                     | S.R.O. 1588(I)/2023                       | <p>FBR vide SRO dated November 21, 2023 notified the banking companies to be the specified sector for the purpose of application of section 99D of the Income Tax Ordinance, 2001 as to the application of Windfall Tax introduced through the Finance Act, 2023.</p> <p>The SRO also specifies the method for calculation of windfall income with illustrations, rate of 40% to be applied on such income and November 30<sup>th</sup> to be the date by which the payment of the additional tax for the purpose of the section 99D shall be made.</p> | 7               |
| 2.                                     | S.R.O. 1771(I)/2023                       | The FBR vide SRO dated December 5, 2023 has proposed introduction of rules for Real Time Access to Information and Databases under Chapter VIII A of the Income Tax Rules, 2002.  | 8               |
| <b>Direct Tax – Reported Decisions</b> |   |   |                 |
| 1.                                     | (2023) 128 TAX 368<br>(Sindh High Court)  | <p><b>NO EXEMPTION IS TO BE CONSIDERED IN RESPECT OF TAXATION UNLESS PROVIDED FOR IN THE ORDINANCE.</b></p> <p>SHC in its decision held that it is the prerogative of the parliament to confer and withdraw fiscal benefits, in the interest of the public at large.</p>  | 8               |
| 2.                                     | (2023) 128 TAX 404<br>(Lahore High Court) | <p><b>TRANSFER OF PROPERTY BY MEANS OF INHERITANCE CANNOT BE LABELLED AS ACQUISITION FOR COLLECTION OF ADVANCE TAX UNDER SECTION 236C OF THE ORDINANCE</b></p> <p>LHC held that inheritance of a person opens the moment he dies and all the legal heirs become owners to the extent of their respective shares there and then by operation of Islamic Personal Law. Thus, the transfer of property by means of inheritance cannot be labelled as acquisition and, accordingly, the provisions of section 236C of the Ordinance are not applicable.</p> | 10              |

| <b>Indirect Tax – Reported Decisions</b>                        |  |  |                 |
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| 1.  | 2023 PTD 393<br>(Islamabad High Court) | <p><b>PETITIONER'S FAILURE TO PAY A MANUFACTURER FOR TAX STAMPERS DUE TO ACCOUNT ATTACHMENT BY FBR DID NOT RELIEVE IT FROM ITS CONTRACTUAL OBLIGATIONS TO INSTALL NECESSARY EQUIPMENT BY THE DEADLINE</b></p> <p>IHC dismissed the petition seeking the setting aside of the STGO dated January 18, 2022, the addendum and notices issued by the FBR related to the implementation of the track and trace system for tobacco products.</p> <p>The IHC further held that allowing the petitioner to sell tobacco products without affixing tax stamps beyond extended due date would nullify the STGO, and that the petitioner's failure to pay a manufacturer for tax stampers due to FBR account attachment did not relieve it from its contractual obligations to install necessary equipment by the deadline.</p> | 11              |
| <b>Indirect Tax - Notifications - Sales Tax Rules, 2006</b>     |  |  |                 |
| 1.  | S.R.O. 1525(1)/2023                    | Amendments are made to Chapter XIV of ST Rules whereby option for issuance of E-invoice is withdrawn and the requirement for issuance of electronic sales tax invoices through E-invoicing system is made mandatory for registered persons from such date and in such manner to be notified by the Board.  | 12              |
| 2.  | S.R.O. 1775(I)/2023                    | Amendments are made to Chapter XIVAA of the ST Rules whereby POS integrated Tier-1 retailers are required to provide certain additional information and to strictly refrain from issuance of temporary or draft invoices through their (POS) systems.  | 13              |
| <b>Indirect Tax - Reported Decisions - KP Finance Act, 2013</b> |  |  |                 |
| 1.  | 2023 TAX 379<br>(Peshawar High Court)  | <p><b>AN AMENDMENT IN THE FISCAL STATUTE HAS ALWAYS PROSPECTIVE EFFECT UNLESS RETROSPECTIVE EFFECT IS GIVEN TO IT BY THE LEGISLATURE.</b></p> <p><b>IT IS ESTABLISHED THAT THE OBJECTIVE OF THE LAW OF LIMITATION IS TO HELP THE VIGILANT AND NOT THE INDOLENT</b></p> <p>PHC held that amendment in the fiscal statute has always prospective effect unless retrospective effect is given to it by the legislature. The sales tax withholding assessment made by the Department for the period prior to insertion of section (1A) in section 40 of the Act was declared illegal.</p>  | 14              |

| S.No. | Reference | Summary / Gist  | Page No. |
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|       |           | <p>PHC further observed that the appellant department in failed to provide any plausible explanation for the delay in filing the Sales Tax Reference. The Court refused to condone the delay in filing it holding that strict adherence to the time limit is required, and the objective of the law of limitation is to help the vigilant and not the indolent. Negligence in filing the Sales Tax Reference should have its consequences to punish the indolent.</p> |          |

# Income Tax Ordinance, 2001

## A. SROs

### 1. S.R.O. 1588(I)/2023 dated November 21, 2023

Through the above-mentioned SRO, under the provisions of sub-section 2 of section 99D of the Income Tax Ordinance, 2001 (the Ordinance), FBR has specified banking companies to be the sector on which additional tax on income, profit and gains under section 99D would apply. Further, it also states that:

- rate of 40% would apply on the windfall income;
- scope of windfall income, profits and gains shall be as computed in accordance with paragraph 2 of the SRO for the Calendar Years (CY) 2021 and 2022 corresponding to Tax Years (TY) 2022 and 2023 respectively, for the purpose of section 99D;
- fixed November 30, 2023 to be the date by which the payment of the additional tax for the purpose of the section 99D shall be made, or within such extended period not exceeding fifteen days, as the Commissioner, for reasons to be recorded in writing may allow, on an application in writing for extension of date by the taxpayer; and
- payment of the additional tax shall be made in the federal treasury through a prescribed challan or computerized payment receipt.

As per the SRO, the windfall income, profits, and gains shall be computed in accordance with the following formula namely:

**Windfall Income, profits, and gains for TY 2022 (CY 2021) = [Fx Income<sub>2021</sub> – AM<sub>2022</sub>]**

**Windfall Income, profits, and gains for TY 2023 (CY 2022) = [Fx Income<sub>2022</sub> – AM<sub>2023</sub>]**

AM<sub>2022</sub> = [Fx Income<sub>2015</sub> + Fx Income<sub>2016</sub> + Fx Income 2017 + Fx Income 2018 + Fx Income 2019 + Fx Income 2020] / 6;

AM<sub>2023</sub> = [Fx Income<sub>2016</sub> + Fx Income<sub>2017</sub> + Fx Income 2018 + Fx Income 2019 + Fx Income 2020 + Fx Income 2021-Windfall Income CY2021] / 6;

*Fx income means foreign exchange income as disclosed in the financial statements or notes thereto for the calendar years relevant to Tax Years 2016, 2017, 2018, 2019, 2020, 2021, 2022 and 2023.*

It is also provided that if windfall income for CY 2021 relevant to TY 2022, as computed above is negative, the value of said windfall income shall be taken as zero for the purpose of computation of AM<sub>2023</sub>.

Moreover, for the purpose of computation of AM<sub>2022</sub> or AM<sub>2023</sub>, where loss has been disclosed under the head of foreign exchange income in any calendar year, such amount of loss shall be excluded from the computation along with exclusion of number of year(s), as used in the denominator of above formula.

Subsequent to issuance of the SRO, banking sector challenged the notification before the Courts. The Islamabad High Court through an interim order dated November 11, 2023, allowed stay to the Petitioner till the next date of hearing. The Court commented that such SRO was required to be issued after approval of the National Assembly, which was a prerequisite as per section 99D and therefore SRO cannot but be taken to remain in abeyance until it is blessed by the National Assembly.

## 2. S.R.O 1771(I)/2023 dated December 5, 2023

The FBR has prescribed draft rules through the above-mentioned SRO considering section 175A of the Income Tax Ordinance, 2001 (the Ordinance) which provides for real time access of information and data base to FBR by specified entities/persons including but not limited to NADRA, FIA, Electricity suppliers, etc. Following rules have been prescribed under the above-mentioned SRO:

- The entities who are required to integrate their information databases have been termed as Integrated Organizations.
- Integrated Organizations shall integrate with FBR's Real-time Accessed Data Analysis Repository (RADAR) not later than 15th January, 2024 or such other date as may be specified for an organization separately.
- Until real-time access to information and database is made available, such information and data shall be provided periodically in such form, manner and by such date as may be specified by the Board through instructions on case to case basis.
- The information provided shall be true, correct, authenticated and complete.
- The Integrated Organizations shall make arrangements to provide information to FBR's RADAR on the format as specified by the Board, in a compatible format, encrypted and with authentication protocol or digital signature.
- An Integrated Organization must integrate each and every data set relating to the economic transactions performed with or reported to the said organization by any person.
- All records shall be maintained by the Integrated Organizations which FBR shall periodically inspect for:
  - recording and reporting of correct information;
  - checking if the IT platform complies with the guidelines set out by the Board from time to time;
  - checking the operation of the security protocols; and

- requiring Integrated Organization to provide relevant information and documents as necessary.

- If an Integrated Organization have been found to tamper the IT platform, fails to integrate with FBR's RADAR, refuses to furnish information or furnishes false, incorrect, incomplete or unauthenticated information the principal accounting officer or the principal officer of such organization shall be personally responsible for such default and shall be liable to a penalty and/or prosecution, in accordance with the relevant provisions of the Ordinance.
- Rule 39L of the Rules provides a list of agencies, authorities, institutions or organizations in four categories:
  - A. Federal Government and Semi-Autonomous Departments
  - B. Provincial Government Departments
  - C. Financial Institutions
  - D. Private / Others

These entities along with their attached departments, divisions, wings, institutes, sub-offices, and autonomous bodies are required to integrate with the Board's RADAR and shall furnish information under section 175A of the Ordinance. The FBR may issue notice from time to time to add/omit an entry or modify the table.

## B. Reported Decisions

### 1. NO EXEMPTION IS TO BE CONSIDERED IN RESPECT OF TAXATION UNLESS PROVIDED FOR IN THE ORDINANCE.

**(2023) 128 TAX 368  
SINDH HIGH COURT**

**INTERNATIONAL BRANDS LIMITED &  
OTHERS  
VS  
FEDERATION OF PAKISTAN &  
OTHERS**

**APPLICABLE SECTIONS: 59AA, 59B,  
Clause (103A) & (103C)**



### Brief Facts:

Through Finance Act, 2007, Clause (103A) was introduced in the Second Schedule which allowed exemption from taxation to the income derived from inter-company dividends to companies entitled as per sections 59AA or 59B of the Ordinance subject to certain conditions. However, through Finance Act 2016 the reference of section 59B was omitted from Clause (103A), thereby, withdrawing the benefit of exemption in respect of inter-company dividends for group companies entitled to group taxation under section 59B of the Ordinance.

Petition was filed in the High court on following grounds:

- That the exemption ought to perpetuate indefinitely for groups that had been formed per section 59B of the Ordinance, to take benefit of Clause (103A), prior to Finance Act, 2016.
- That by reorganization as holding company/subsidiaries, in the manner contemplated by section 59B, the petitioners had acquired a vested right, being their entitlement to exemption from taxation in respect of inter-company dividends, and the vesting of such entitlement may be deemed to be a past and closed transaction so that the withdrawal of exemption ought not have any effect in their instances.
- That the inclusion of the exemption from the payment of inter-company dividends was an integral constituent of group relief, provided vide section 59B of the Ordinance, and that the said benefit could not be excised during the tenancy thereof.
- Since Clause(103A), in its original form, extend the benefit to qualifying entities under sections 59AA and 59B of the Ordinance, therefore, excising 59B therefrom amounted to discrimination.

Tax authority being respondent argued that the parliament was endowed with the authority to confer and withdraw concession and no case was made out to extend any exemption post omission. It was further argued that while

petitioner enjoyed the exemption during its tenancy, no vested right existed to perpetuate the exemption perpetually and that also post clear and conscious withdrawal thereof by the parliament.

### Decision:

The SHC dismissed the petition as under:

- It is the prerogative of the parliament to confer and withdraw fiscal benefits, in the interest of the public at large. It is observed that no irrecoverable entwining of Clause (103A) with section 59B of the Ordinance could be demonstrated before us, hence the argument that exemption ought to subsist during the tenancy of section 59B found no favour before us.
- It has been maintained that remedial and curative legislation is enacted to correct existing law, in the interest of the public. Generally, such legislation is enacted to cure defects in common law or to remedy what the parliament might consider to be a problem in an existing statute. It is apparent that the plea of the petitioner falls under neither category.
- Section 59AA extends certain benefits to holding companies and 100% owned subsidiaries to be taxed as one fiscal unit. Whereas no concept of one fiscal unit exists in section 59B, wherein benefits include surrendering of losses offered to qualifying holding/subsidiary companies. Therefore, no case of discrimination could be found.
- Section 54 of the Ordinance is clear, and it states that no exemption is to be considered in respect of taxation unless provided for in the Ordinance. No exemption in respect of inter-company dividend is presently available to the petitioners and while the petitioners availed the benefit of the relevant exemption during its tenancy, however, no case was made out to perpetuate the benefit ad infinitum especially post conscious withdrawal of the said benefit by the parliament.

**2. TRANSFER OF PROPERTY BY MEANS OF INHERITANCE CANNOT BE LABELLED AS ACQUISITION FOR COLLECTION OF ADVANCE TAX UNDER SECTION 236C OF THE ORDINANCE**

**(2023) 128 TAX 404  
LAHORE HIGH COURT**

**MUHAMMAD ASLAM  
VS  
FEDERAL BOARD OF REVENUE  
THROUGH CHAIRMAN, LAHORE  
AND OTHERS**

**APPLICABLE SECTIONS: 133, 236C  
OF THE INCOME TAX ORDINANCE,  
2001 (THE ORDINANCE)**

**Brief Facts:**

The Petitioner's father was owner of agriculture land through inheritance from his predecessor. After his death during 2013, the petitioner, being legal heir of deceased, inherited the said property and got it incorporated during 2019 in the relevant revenue record of the government. Later on, the petitioner sold out some part of the property to another person. However, upon presentation of same before authorities for the purpose of registration in their record, it was noted that withholding tax under 236C of the Ordinance was payable on inheritance within three years from the date of mutation and thus confronted accordingly. The petitioner challenged the said note / observation / order through instant petition contending that the collection of such advance tax under section 236C of the Ordinance is not applicable to persons inheriting property, being legal heirs of the deceased.

The learned legal counsel of the respondent department contended that exemption of advance tax was beyond a period of three years in view of subsection (3) of section 236 of the Ordinance, as being in force at the time of subject matter under consideration. Further, it was highlighted that the petitioner is otherwise also liable to pay capital gain tax, as he is selling the property after holding it for a period under one as per section 37 of the Ordinance.

**Decision:**

The Lahore High Court allowed the petition and set aside the impugned note/observation/order being illegal and without lawful authority, on account of following propositions:

- Inheritance of a person opens the moment he dies and all the legal heirs become owners to the extent of their respective shares there and then by operation of Islamic Personal Law. Sanction of inheritance mutation and issuance of succession certificates are procedural matters regulated by the procedural laws just to make the records in order. Thus transfer of property by means of inheritance cannot be labelled as acquisition and, accordingly, the provisions of section 236C of the Ordinance are not applicable.
- In addition, for the case in hand, counting of the period of three or five years for the purpose of collection of advance tax under section 236C of the Ordinance would start from the date of death of the deceased and not from the date of mutation.

# Sales Tax Act, 1990

## A. Reported Decisions

### 1. PETITIONER'S FAILURE TO PAY A MANUFACTURER FOR TAX STAMPERS DUE TO ACCOUNT ATTACHMENT BR FBR DID NOT RELIEVE IT FROM ITS CONTRACTUAL OBLIGATIONS TO INSTALL NECESSARY EQUIPMENT BY THE DEADLINE.

**2023 TAX 393  
ISLAMABAD HIGH COURT**

**M/S KHYBER TOBACCO COMPANY  
LIMITED**

**Vs**

**FEDERAL BOARD OF REVENUE AND  
OTHERS**

**Applicable Provisions:** 40(2) of the ST Act, 1990. 150ZF of the ST Rules, 2006 and STGO no. 8 of 2022 dated January 18, 2022.

#### Brief Facts:

M/s Khyber Tobacco Company Limited entered into a tri-partite agreement with FBR and a consortium of companies to participate and implement in the track and trace system initiative. Under the agreement, the petitioner agreed to provide and install tax stampers or stamping/conveyor systems, as well as provide forecasts for the number of tax stamps required each quarter. The petitioner placed an order for four tax stampers from two manufacturers prior to executing the agreement. However, due to the FBR attaching the petitioner's bank accounts, payment for the stampers was delayed. The FBR issued a notification, stating that no tobacco products could be removed from production sites or factories without affixation of tax stamps or unique identification markings.

In this regard, the petitioner challenged several actions taken by the FBR related to

implementing a track and trace system for the tobacco sector through filing instant writ petition which include:

- Sales Tax General Order No.8 of 2022 dated January 18, 2022, which initially set a deadline for implementation and is later extended;
- A notice from the FBR instructing the petitioner, not to remove tobacco products without affixing tax stamps, and requiring the petitioner to place orders for tax stamps and receive deliveries by the extended due date;
- A letter from the FBR to Chief Commissioners at Karachi, Islamabad, and Peshawar directing them to ensure compliance with the FBR's directions not to allow tobacco products to be removed from factory premises without affixation of tax stamps beyond the extended due date.

#### Decision:

The Court dismissed the writ petition seeking the setting aside of the STGO dated January 18, 2022, the addendum and notices issued by the FBR related to the implementation of the track and trace system for tobacco products.

The Court held that the petitioner was aware of the STGO and its deadline, and had entered into a tri-partite agreement with the FBR and a consortium of companies to implement the system and FBR had extended the deadline due to the petitioner's request.

The Court further held that allowing the petitioner to sell tobacco products without affixing tax stamps beyond extended due date would nullify the STGO, and that the petitioner's failure to pay a manufacturer for tax stampers due to its account attachment by FBR did not relieve it from its contractual obligations to install necessary equipment by the deadline.

# Sales Tax Rules, 2006

## 1. S.R.O. 1525 (1)/2023 dated November 10, 2023

Prior to the issuance of above referred SRO, Chapter XIV of the ST Rules provided for option for issuance of electronic sales tax invoice by a registered person which was subject to the procedure and conditions specified under the said Chapter.

Consequent to the amendments introduced through the above referred SRO, the issuance of electronic invoice is no more optional and now, the requirement for electronic transmission of sales tax invoices by registered persons is made mandatory for the registered persons to be notified by the Board from such date and in such manner to be notified by the Board.

The updated rules are summarized as below:

- **Applicability - Rule 150Q:** Applicable for Registered persons from a date to be notified by the Board through notification in the official Gazette.
- **Eligibility to use E-invoicing system - Rule 150R:** The 'integrated suppliers' (i.e. registered persons notified under rule 150Q) shall install an electronic invoicing system provided by a licensed person under Chapter XIV-BB of the ST Rules, 2006, and prohibit sales or supplies without recording them in this system. No supplies shall be made by the integrated suppliers without being recorded in the e-invoicing system.
- **Issuance of E-invoice and record - Rule 150S:** Integrated suppliers shall issue real-time verifiable electronic sales tax invoices containing prescribed information and retain records and documents on electronic media for six years as required by section 24 of the ST Act.
- **Compliance related to E-invoicing - Rule 150T:** Integrated suppliers shall comply with all requirements specified by the Board for integration, recording, storage, issuance, and transmission of verifiable electronic invoices in real-time.
- **Use of invoice format - Rule 150U (Omitted):** Through omission of this rule, liberty provided to the registered persons to use any format of e-invoice, which contains particulars of section 23 of the ST Act, is withdrawn. Consequently, it is implied that the e-invoice shall be issued in the format prescribed by the Board.
- **Audit - Rule 150W:** The integrated supplier shall allow physical and online remote access to records, systems, logs, and documents maintained in electronic form as required by section 25 of the ST Act.
- **Noncompliance and transitional period - Rule 150Y:** Integrated suppliers notified under Chapter IV who contravene any of the provisions of this chapter will be liable to penal action as provided under relevant provisions of the ST Act.
- An extension in time for compliance with these provisions may be applied, which may be granted by the Commissioner Inland Revenue having jurisdiction for 60 days in aggregate (with 15 day intervals) from the date of issuance of notification under Rule 150Q.
- During this extended time period, the integrated suppliers shall continue to issue paper invoices.

**2. S.R.O. 1775(I)/2023 dated December 7, 2023**

- a. Sub-rule (2) to the Rule 150ZEB of Chapter XIVAA of the ST Rules, 2006 requires Tier-1 retailers to notify all their outlets to the Board through the computerized system and register each point of sale (POS) to activate the integration with duly providing the specific information.

Through this SRO, the Board has enhanced the list of requirements by requiring following further information:

- i. name and NTN of the POS solution provider;
  - ii. name and CNICs of the proprietors or the directors of the solution provider, as the case may be; and
  - iii. any other information required by the Board.
- b. Sub-rule (8) has been amended requiring the Tier-1 supplier to refrain from issuing temporary or draft invoices through POS system.

# KP Finance Act, 2013

## A. Reported Decisions

### **2023 TAX 379 PESHAWAR HIGH COURT**

#### **KHYBER PAKHTUNKHWA REVENUE AUTHORITY**

**Vs**

#### **M/S LEGACY PHARMACEUTICAL (PVT.) LIMITED**

**Applicable Provisions:** 30, 40, 40(1),  
40(1A), 64, 65, 68,68(2) & 89 of KP  
Finance Act, 2013

#### **Brief Facts:**

In the instant case, M/S Legacy Pharmaceutical (Pvt.) Limited was confronted for non-payment of withholding sales tax on taxable services received from various service providers between September 2015 and June 2018. A show cause notice (SCN) in this regard was served under section 40(2) and 68(2) of the KP Finance Act, 2013 read with Rule 11(1) of the Khyber Pakhtunkhwa Sales Tax on Services Special Procedures (Withholding) Regulation, 2015 (STWH Rules) wherein the respondent was required to deposit impugned sales tax.

The Appellant department relied upon section 40(1A) and section 68(2) of the Finance Act, 2013 read with STWH Rules. The respondent contended that section 40(1A) of the Act ibid (related to powers of officers to conduct assessment proceedings in case of failure to withhold sales tax by a withholding agent) was added through an amendment introduced in July 2019, and claim for recovery of amount in question relates to the periods prior to the said amendment. The respondent made submissions accordingly. However, the Deputy Collector (Withholding) passed order for recovery of sales tax along-with default surcharge and penalty.

Being aggrieved, the respondent filed appeal before the Collector Appeals, which was accepted and the impugned order was set aside. However, the appellant/Additional Collector (Withholding) filed an appeal before the Appellate Tribunal, which was dismissed by majority. This further led to the reference application before the Court.

#### **Decision:**

The Court dismissed the appeal of the Department holding that an amendment in the fiscal statute has always prospective effect unless retrospective effect is given to it by the legislature. The Court also held that it is an admitted fact that no retrospective effect has been given to section 40(1A) inserted in July 2019, therefore, it was rightly held by the learned Appellate Tribunal that the assessment made by the appellant for the period prior to insertion of section (1A) in section 40 of the Act was illegal.

Besides, the Court further observed that the sales tax reference was filed beyond the prescribed time limit of sixty days. Whereas it is established that the objective of the law of limitation is to help the vigilant and not the indolent, and strict adherence to the time limit is required. The Government department cannot be treated differently from a private individual in this regard. In support of this view, the Court relied on the cases of 2004 YLR 10, PID 2004 Peshawar 40, and 2009 MLD 82.

The Court found the appellant's failure to provide any plausible explanation for the delay in filing the STR and the court observed that negligence in filing the sales tax reference should have its consequences to punish the indolent. In light of these circumstances, the Court refused to condone the delay in filing the sales tax reference.

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