

Six Days Learning Program on GST

Topic: Introduction to GST, Levy and Supply

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Old Regime and Constitutional Amendment

- Under previous regime -
 - Centre levied Excise duty on manufacture, Service tax on services etc.
 - States levied VAT, Entry Tax, Luxury Tax etc on sale / purchase of goods.
- Need for 101st Constitution Amendment Act
 - Creating a unified system of taxation by subsuming existing indirect taxes and duties;
 - Assigning concurrent powers to Centre and States to levy GST on all supplies of goods or services or both.
- Constitution (101st Amendment) Act, 2016 was passed on 08.09.2016 and 16th Sept 2016 was made the appointed day from which the provisions of this Act would come into force.
- Section 12 of the Act (GST Council Provisions) made effective by GOI on 12th September 2016; First GST Council met on 22nd September 2016.

Goods and Services Tax – Key Features

- Destination based Consumption tax.
- Value Addition Model
- Dual model
- Levied on supplies
- Technology Driven System
- Removes cascading effect

Tax Components of GST

■ CGST

- It refers to Central Goods and Service Tax
- Applicable to supplies within the state (Intra State Supplies)
- Tax revenue belongs to Centre.

■ SGST

- It refers to State Goods and Service Tax
- Applicable to supplies within the state (Intra State Supplies)
- Tax revenue belongs to State.

■ IGST

- It refers to Integrated Goods and Service Tax
- Applicable to interstate and import transactions
- Tax revenue shared between States and Centre.

GST Laws

- The Central Goods and Services Tax Act, 2017
- The Integrated Goods and Services Tax Act, 2017
- The Union Territory Goods and Services Tax Act, 2017
- The Goods and Services Tax (Compensation to States) Act, 2017
- States Goods and Services Tax Acts

Section 9 of CGST Act- Levy and collection

- Section 9(1) - Subject to the provisions of sub-section (2), there shall be levied a tax called the **central goods and services tax** on all ***intra-State supplies*** of ***goods or services or both***, except on the **supply of alcoholic liquor for human consumption**, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as **may be notified** by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- Section 9(2) - The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as **may be notified** by the Government on the recommendations of the Council.

Section 9 - Levy and collection

- **Intra State Supply** – When the location of supplier and the place of supply of goods / services is in the same state or UT (Section 8 of IGST Act 2017)
- **Inter State Supply** – Where the location of the supplier and the place of supply are in –
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory,(Section 7 of IGST Act 2017)

Section 9 - Levy and collection

- **Section 2(52) “goods”** means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- **Section 2(102) “services”** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation.—For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;

Section 7 – Scope of Supply

- Section 7(1) - For the purposes of this Act, the expression “supply” **includes**—
 - (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a **consideration** *by a person* in the **course or furtherance of business**;
 - (b) import of **services** for a consideration *whether or not in the course or furtherance of business*; and
 - (c) the activities specified in Schedule I, made or agreed to be made *without a consideration*;

Section 2(31) - Consideration

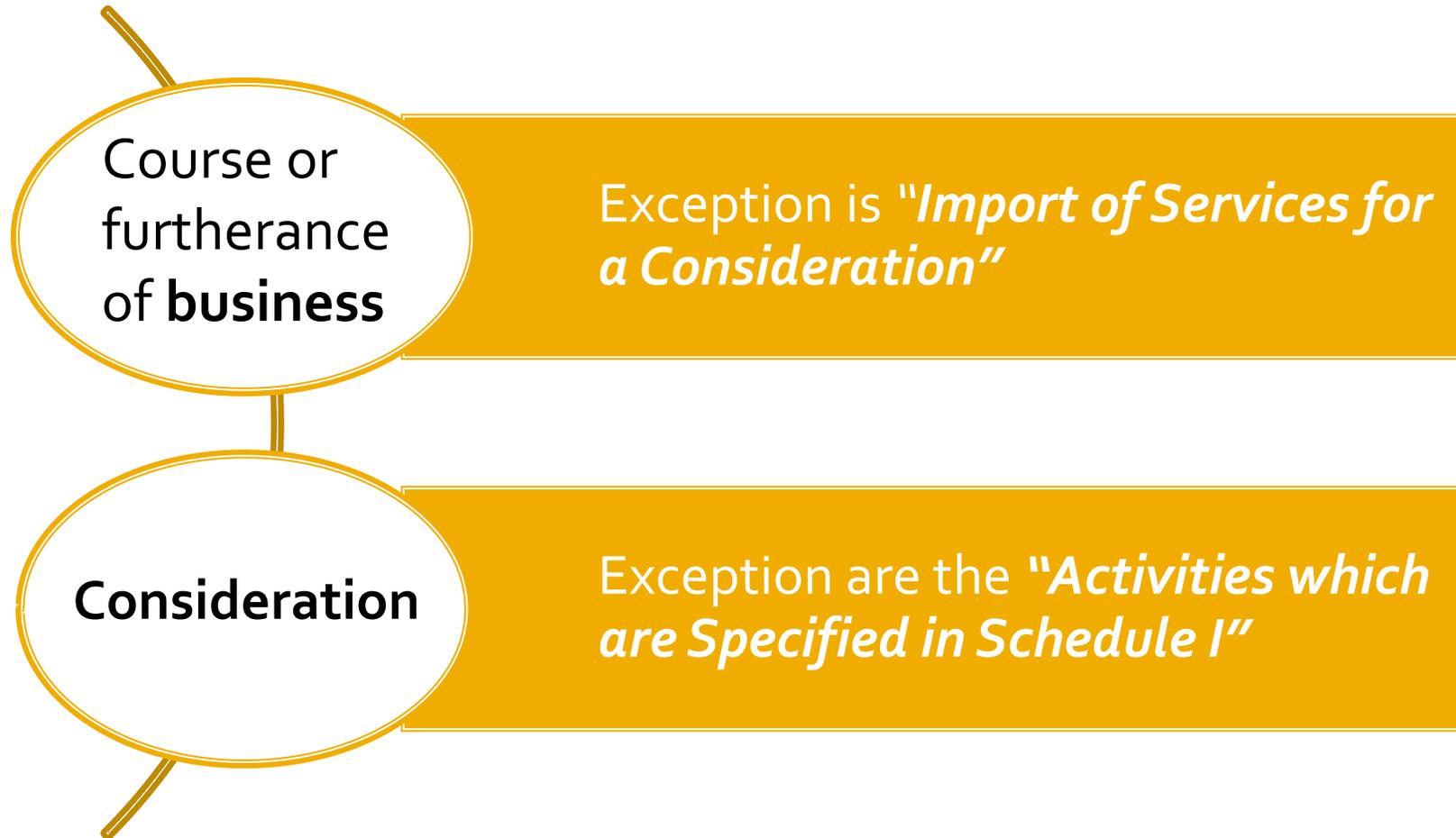
“**consideration**” in relation to the supply of goods or services or both includes—

- (a) **any payment** made or to be made, **whether in money or otherwise**, in respect of, in response to, or for the inducement of, the supply of goods or services or both, **whether by the recipient or by any other person** but shall not include any subsidy given by the Central Government or a State Government;
- (b) **the monetary value of any act or forbearance**, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:
- Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Section 2(17) - Business

- (17) “**business**” includes—
- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, ***whether or not it is for a pecuniary benefit***;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), ***whether or not there is volume, frequency, continuity or regularity of such transaction***;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) **provision by a club, association, society, or any such body** (for a subscription or any other consideration) of the facilities or benefits to its members;
- (f) admission, for a consideration, of persons to any premises;
- (g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Key ingredients of "Supply"



Schedule I of CGST Act

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

- 1. Permanent *transfer or disposal* of business assets where *input tax credit has been availed* on such assets.
- 2. Supply of goods or services or both between *related persons or between distinct persons** as specified in section 25, when made in the course or furtherance of business:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

- 3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- 4. Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

*Related persons defined by way of an explanation to Section 15 and distinct persons in terms of Section 25(4) and 25(5) of the Act.

Schedule I of CGST Act

- **Section 2(5) - “agent”** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;
- **Section 2(88) “principal”** means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

Circular No.57/31/2018-GST dated September 4, 2018

- *"Thus, the key ingredient for determining relationship under GST would be **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.** Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said paragraph. However, it may be noted that **in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.** Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said paragraph. In other words, **the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal**".*

Schedule I of CGST Act

- Discussion on Para 4 of Schedule I
 - Definition of “Import of service” in CGST Act necessitates outflow of foreign convertible currency
 - Explanation 1 to Section 8 of the IGST Act, 2017 deems any establishment outside India as an establishment of a distinct person.
- All services received by a person in India from its branches / establishments located outside India would be considered to be a supply, even when made without consideration.

Section 7 – Scope of Supply

- Section 7(1A) - Where certain activities or transactions, ***constitute a supply in accordance with the provisions of subsection (1)***, they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
- Section 7(2) - Notwithstanding anything contained in sub-section (1),—
 - (a) activities or transactions specified in **Schedule III**; or
 - b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

Schedule II of CGST Act

Activities Or Transactions to be treated as supply of goods or supply of services		
Sl No	Matters	Supply of
1	Transfer	
(a)	Any transfer of title in goods	Goods
(b)	Any transfer of right in goods or undivided share in goods without the transfer of title thereof (Leases)	Services
(c)	Any transfer of title in goods wherein the property in goods will pass at a future date upon payment of full consideration as agreed (Installment sale or Hire Purchase agreements)	Goods
2	Land and Building	
(a)	Any lease, tenancy, easement, licence to occupy land (JDA)	Services
(b)	Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly,	Services
3	Any treatment or process applied to another person's goods (Job work as referred to in Section 2(68) if Principal is registered)	Services

Schedule II of CGST Act

Activities Or Transactions to be treated as supply of goods or supply of services		
SI No	Matters	Supply of
4	Transfer of business assets	
(a)	Transfer / Disposal of goods so as to no longer to form part of business assets, whether or not for a consideration (Donation of assets)	Goods
(b)	Goods are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration	Services
(c)	Any person ceases to be a taxable person, any goods forming part of assets of any business carried on by him – shall be deemed to be supply in the course or furtherance of his business immediately before he ceases to be a taxable person, except – (a) Business is transferred as a going concern to another person; or (b) Business is carried on by a personal representative who is deemed to be a taxable person	Goods

Schedule II of CGST Act

Activities Or Transactions to be treated as supply of goods or supply of services	
SI No	Matters
5	Following to be treated as Supply of Services
(a)	Renting of immovable property
(b)	Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier. Construction includes additions, alterations, replacements or remodeling of any existing civil structure
(c)	Temporary transfer or permitting the use or enjoyment of any intellectual property right
(d)	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software (pre-developed or pre-designed software in any medium/storage or via encryption keys is supply of goods)
(e)	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act
(f)	Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration

Schedule II of CGST Act

Activities Or Transactions to be treated as supply of goods or supply of services	
SI No	Matters
6	Following Composite Supplies to be treated as Supply of Services
(a)	Works Contract as per Sec. 2(119) of CGST Act “ works contract ” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;
(b)	supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. Illustration: Restaurant Services or Catering Services
7	Supply of goods by any unincorporated AOP or BOP to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods

Schedule III of CGST Act

Section 7(2)(a) – Activities or Transactions not to be treated as supply of goods or supply of services

Section 7(2)(a)

1. Services by employee to employer in course of or in relation to his employment
2. Services by court or Tribunal established under any law for the time being in force
3. (a) functions performed by the M.Ps, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities
(b) duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity
(c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to Construction Activity of Schedule II, sale of building
6. Actionable claims, other than lottery, betting and gambling
7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;

Section 7 – Scope of Supply

- Using the powers conferred under Section 7(2)(b), the Government has notified the following which shall neither be treated as supply of goods nor a supply of services:
 - Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of the Constitution (*Inserted vide Notification No. 14/2017- Central Tax (Rate) dated 28.06.2017*)
 - The inter-State movement of goods like movement of various modes of conveyance, between 'distinct persons' as explained in this Chapter, including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance, would also not be regarded as supplies except in cases where such movement is for further supply of the same conveyance (*Clarified vide Circular No. 1/1/2017-IGST dated 07.07.2017*).
 - The above logic would apply to the issue pertaining to inter-State movement of jigs, tools and spares, and all goods on wheels like cranes, except in cases where movement of such goods is for further supply of the same goods, and consequently no IGST would be applicable on such movements (*Clarified vide Circular No. 21/21/2017-GST dated 22.11.2017*).

Section 9 – Levy & Collection

- Section 9(3) - The Government may, on the recommendations of the Council, **by notification**, specify categories of supply of goods or services or both, the tax on which shall be paid on ***reverse charge basis by the recipient*** of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. (Notified vide Notification No. 4/2017-Central Tax (Rate) in case of goods and Notification No. 13/ 2017-Central Tax (Rate) in case of services, as amended from time to time)
- Section 9(4) - The Government may, on the recommendations of the Council, **by notification**, specify a class of **registered persons** who shall, ***in respect of supply of specified categories of goods or services or both received from an unregistered supplier***, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

Section 9 – Levy & Collection

- **Section 2(98) “reverse charge”** means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of [section 9](#), or under sub-section (3) or subsection (4) of [section 5](#) of the Integrated Goods and Services Tax Act;
- No concept of “**Partial Reverse Charge**”
- Persons liable to pay tax under RCM have to mandatorily obtain registration and the threshold exemption is not applicable on them
- ITC available to the recipient of the tax paid under RCM, if eligible
- Payment under RCM by Cash ledger only, use of ITC not allowed
- Supplies notified vide **Notification No. 4/2017-Central Tax (Rate)** in case of **goods** and **Notification No. 13/ 2017-Central Tax (Rate) & Notification No. 10/2017-Integrated Tax (Rate)** in case of **services**, as amended from time to time [those which are covered under Section 9(3)].

Supplies under Reverse Charge

- Goods falling within the scope of Section 9(3): Cashew nuts, not shelled or peeled; Bidi wrapper leaves (tendu); Tobacco leaves; Silk Yarn; Supply of lottery (Govt. is supplier); Used vehicles, old & used goods, waste & scrap (Govt. is supplier)
- Certain important services falling within the ambit of Sec 9(3)
 - Services by a goods transport agency (GTA)
 - Services supplied by an individual advocate Including A senior advocate
 - Services supplied by An arbitral tribunal to a business entity
 - Services provided by way of sponsorship to anybody corporate or partnership firm
 - Services supplied by the CG, SG, UT or local authority to a business entity
 - Services supplied by a director of a company or a body corporate to the said company or the body corporate
 - Services supplied by an insurance agent to any person carrying on insurance business
 - Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs)
 - Security services (services provided by way of supply of security personnel) provided to a registered person
 - Services provided by way of renting of a motor vehicle provided to a body corporate

Section 9 – Levy and Collection

Section 9(5) - The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which ***shall be paid by the electronic commerce operator*** if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator ***as if he is the supplier liable for paying the tax*** in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Section 9(5) – Relevant Discussions

- **Section 2(45)** - “**electronic commerce operator**” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;
- Services falling within the ambit of Sec 9(5) (notified by Notification No. 17/2017-Central Tax (Rate) as amended from time to time)
 - services by way of transportation of passengers by a radio-taxi, motor cab, maxi cab and motor cycle, etc.
 - accommodation in hotels, inns, guest houses, clubs, campsites
 - services by way of housekeeping, such as plumbing, carpeting etc

Section 8 - Tax liability on composite and mixed supplies

- The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—
 - (a) a composite supply *comprising two or more supplies*, one of which is a principal supply, shall be treated as a supply of such principal supply; and
 - (b) a mixed supply *comprising two or more supplies* shall be treated as a supply of that particular supply which attracts the highest rate of tax

Section 8 - Tax liability on composite and mixed supplies

- **Section 2(30) - “composite supply”** means a supply made by a taxable person to a recipient *consisting of two or more taxable supplies* of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, **one of which is a principal supply**;

Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

- **Section 2(90) - “principal supply”** means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

Section 8 - Tax liability on composite and mixed supplies

- **Section 2(74) - “mixed supply”** means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply *does not constitute a composite supply*.
- **Illustration.—** A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

Section 8 - Tax liability on composite and mixed supplies

- Key tests for identification:
 - Naturally Bundled
 - One is predominant supply for recipient
 - Other supply(ies) are ancillary or they are received because of predominant supply
 - Each supply priced separately

Thank You!

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Certified in GST by ICAI (2017)

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