



Newsletter

**Sharp View**

**January 2023**

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# JANUARY 2023

January is a cooler month across India and an ideal time for tourism. It is an appropriate month to explore the wildlife in India, by visiting sanctuaries, national parks and reserves.

India is home to a huge animal population, the big five being the *Bengal tiger, leopard, one-horned rhino, elephant and the Asiatic lion*. India exemplifies biodiversity in various species of flora and fauna, i.e. wildlife. Ranging from the Himalayas to the southern forests and from its West coast to the marshes of the East, India has a wide geographical spread nurturing natural habitats, ecosystems and dense forests consisting sizeable mammal population.

The government of India has taken conscious efforts in building tiger and elephant reserves. It aims to protect the tigers and elephants in their natural habitats, address the issues of man-animal conflicts and administer the welfare of these animals in captivity.

Presently there exist *567 wildlife sanctuaries, 106 national parks, 105 conservation reserves and 220 community reserves in India* falling under the protected area.

**"SPOTTED DEER"**



# CONSULTING



## The evolution of ESG from CSR

Environmental, social and governance (ESG) standards have assumed significant importance in the last few years. ESG parameters are relied upon by socially conscious investors to evaluate businesses and take investment decisions. Ms Priya Tolani (Vadodara office) presents the concept of ESG and CSR and takes you through the evolution of ESG.

**"ASIATIC LION"**

The genesis of both, Corporate Social Responsibility ('CSR') and Environmental, Social and Governance ('ESG') standards, is the same i.e., adoption of practices and policies by corporations that are intended to have a positive influence on the world. Companies have historically looked at options to operate in ways that enhances society and the environment, instead of contributing negatively to them. However, over the course of the past few years, the emphasis has shifted from a solely external-focused analysis to a more dynamic approach that focuses on both internal and external organisational factors.

### CSR vs ESG

CSR is a precursor to ESG. Without CSR, there would be no ESG. Both terms relate to the social responsibilities of businesses. While CSR holds businesses accountable for their social commitments in a qualitative manner, ESG helps measure or quantify such social efforts.

CSR is a form of self-regulation that ensures a company's actions have a positive effect on the public sphere, customers, employees, communities, and the environment.

ESG is a broader concept that goes beyond philanthropy, to a specific set of numbers that can be used by investors and consumers in understanding a company's charitable, social and governance practices.

Both CSR and ESG can be used by a business simultaneously. CSR may provide an internal framework for the company to communicate with employees, while ESG provides measurable goals. Hence CSR can be excellent for driving awareness of initiatives, but ESG can provide concrete numbers behind them.

Let's discuss the topic in detail:

### Corporate Social Responsibility

Corporate Social Responsibility (CSR) is a commitment to improve community well-being through discretionary business practices and corporate resources. It is concerned with how companies manage business processes to generate an overall positive impact on society.

It is a well-accepted fact that businesses exist and function as an integral part of society. The privilege of earning profits brings social obligations and environmental responsibility at a micro and macro level. Thus, CSR is a company's obligation to pay-back or contribute to social objectives to compensate the society for reaping the business benefits. CSR obligations are well-regulated in India and companies need to get their accounts audited from a CSR angle too.

ESG is a term used to measure success of a business through its environmental, social and governance activities. ESG indicates how well is the company has achieved its goal measured in terms of the aforesaid parameters. In India, there are different acts governing various labour and governance laws, however there is no consolidation of these (except the recent consolidation of labour code) to evaluate a business independently from an ESG angle.

However, companies need ESG as it allows corporations to be accountable towards stakeholders' requirements. Companies that understand and embrace the concept of CSR are positioning themselves for

improved efficiency, profitability, the long-term potential to grow and expand into new markets, and soon-to-be-regulated by mandatory ESG disclosures.

### Environmental, Social and Governance Standards

ESG is a business practice and a set of standards that socially conscious investors refer to evaluate the company and potential investments in the company. ESG strategies define specific goals with quantifiable results. These strategies are formulated to demonstrate a company's actual activities and successes.

Businesses that place a high value on sustainability and investors looking for opportunities to invest in socially responsible companies place high value on ESG issues. Compliance and risk managers and potential investors need to evaluate the potential company's performance on the following parameters:

- Financial management
- Service to the society
- Environment issues

and how collectively, all these factors determine the target company's overall performance.

### Why has ESG suddenly become so important?

Adopting ESG measures has gained more importance than before for businesses of all sizes to thrive in the present and be prepared for the future. Consumers globally are becoming increasingly concerned about climate change and are demanding action.

The climate crisis and the unanticipated risks of a pandemic, both have a significant impact on the global economy. As a result, many investors and policymakers have realised the importance of investing in ESG-focused businesses. Also, society not only solely relies on the government, but also on productive businesses that satisfy its requirements, like the creation of jobs, equitable growth, safeguarding of the interests of consumers, and safeguarding natural resources.

**ESG in the Indian scenario:** India has taken steps at the national and regional levels to balance environmental sustainability with economic growth. This has resulted in the creation of sunrise opportunities in sectors such as solar power, wind power, green energy and clean mobility systems. Looking at the current robust developments in 'sustainability' it would not be surprising if India adopts a consolidated law on ESG disclosures shortly.

### Conclusion

The evolution of ESG from CSR is a logical process. The concept of ESG is not fundamentally complex. Measuring ESG performance is to disclose the achievements of a company in terms of social, environment and governance parameters to socially conscious investors.

In India, ESG will assume a centre-stage shortly. ESG will need to be fully integrated into an organization's decision-making at every stage, from conception to design, construction, occupation to disposal. Asset managers, customers, and employees alike are driving a growing demand for open, purpose-driven business practices that align with their own priorities.

# GRC

## Certain tax compliances from an internal audit perspective

An Internal audit function evaluates a company's internal controls including its corporate governance and accounting processes. Audit of tax compliances draws the auditor's significant attention. It is crucial to report on such compliances in addition to the same being reported under the tax laws. Ms Sneha Shah (Vadodara office) discusses a few important compliances involving return filing, PAN and Aadhar formalities.

**"INDIAN ELEPHANT"**

A large African elephant with prominent tusks stands in a savanna landscape. The elephant is the central focus, facing forward. The background shows a vast, open plain with some distant hills under a blue sky with scattered clouds. The ground is covered in dry, yellowish-brown grass.

Statutory non-compliances lead directly to an outflow of excess cash in the form of interest and penalties. Audit checks need to be kept updated with the introduction and updation of provisions in various laws. TDS/TCS compliances under the income-tax Act, 1961 ('the Act') change frequently and hence require an internal auditor to revisit the provisions to ensure that the auditee has complied with the latest requirements.

From 1 July 2021, the following provisions became effective

- Section 206AB for deduction of tax at source (TDS) and
- Section 206CCA for tax collection of tax at source (TCS)

at higher rates in respect of certain non-filers of the return of income (ROI). Thus, non-filing of ROI results in a higher rate of TDS and TCS, i.e., higher of the following:

- 5%
- twice the prevailing rate in each case.

Further, certain changes were brought in by the Finance Act, 2022 and also the income-tax department introduced an online functionality in 2021 for TDS deductors and TCS collectors to ease them identify the non-filers of the return of income, i.e., the specified persons.

### TDS and TCS compliances under section 206AB and 206CAA: The present position

- Presently, the TDS deductor and TCS collector need to deduct TDS/collect TCS at higher rates if
  - The deductee/collectee is a specified person, i.e., he has not filed the ROI for the assessment year ('AY') relevant to the preceding previous year ('PY') within the due date applicable to him.
  - The total TDS and TCS of such person during the preceding previous year is INR 50,000 or more.
- Section 206AB does not apply to TDS under sections 192, 192A, 194B, 194BB, 194LBC, 194N, 194IA, 104IB, 194M, 194S.
- Section 206AB and section 206CCA do not apply to non-residents not having a permanent establishment ('PE') in India.

### Section 234H read with Rule 114AAA

- As per section 234H it is mandatory to link the PAN with Aadhar before 31 March 2022, failing which the PAN becomes inoperative.
- As per rule 114AAA a person whose PAN has become inoperative, it shall be deemed that he has not furnished, intimated, or quoted the permanent account number and he shall be liable for the following consequences with effect from 1 April 2023.
  - The person shall not be able to file return using the inoperative PAN
  - Pending returns will not be processed and pending refunds cannot be issued
  - Pending proceedings as in the case of defective returns cannot be completed once the PAN becomes inoperative
  - TDS will be required to be deducted at a higher rate as discussed earlier (section 206AB)

### Online facility to check the applicability of higher TDS/TCS

TDS deductors and the TCS collectors are responsible to make an appropriate TDS/TCS while making payments and collecting the proceeds. To ease procedures, the income-tax department has made available an online facility, called: 'Compliance check for section 206AB, 206CCA and 234H.'

- The functionality helps the deductors/collectors to verify if a person is a specified person, i.e., a defaulter.
- The functionality is made available through the reporting portal of the income-tax department (<https://report.insight.gov.in>).
- The tax deductor or the collector can feed a single PAN (through PAN search) or multiple PANs (bulk search upto 10,000) of the deductee or collectee and can get a response from the functionality if such deductee or collectee is a specified person (ROI not filed or PAN and Aadhaar not linked).
- For PAN search, the response will be visible on the screen and can be downloaded in PDF format. For bulk search, the response would be in the form of a downloadable file which can be preserved for future reference.

### How does the functionality operate for FY 2022-23 and thereafter?

- A list of specified persons is prepared at the start of the FY 2022-23, taking the previous year ('PY') 2020-21 as the relevant previous year. This list contains names of the taxpayers who did not file the ROI for AY 2021-22 and have an aggregate of TDS and TCS of INR 50,000 or more in the PY 2020-21.
- During the FY 2022-23, no new names are added to this list. This taxpayer-friendly measure reduces the burden on the tax deductor and collector of checking PANs of non-specified persons more than once during the financial year.
- If any specified person files a valid return of income for the AY 2021-22 during FY 2022-23, his name would be removed from the list of specified persons. This would be done on the date of filing the valid ROI during the FY 2022-23.
- If the aggregate of TDS and TCS, in the case of a specified person in the PY 2021-22 is less than INR 50,000, his name would be removed from the list of specified persons on the first due date mentioned under section 139 (1) of the Act.
- A new list of specified persons (for AY 2022-23) will be prepared on 1 April 2023 and the specified persons who file the ROI for AY 2022-23 will be dropped from the list once they file their ROI.
- Belated and revised TDS and TCS returns of the relevant financial year filed during the FY 2022-23 would also be considered for removing persons from the list of specified persons regularly.

### Compliance check: an annual requirement?

- The list of specified persons is prepared and displayed at the beginning of the FY by the income-tax department. The persons who are out of the list are non-defaulters and hence there is no need to re-check their status at the time of making every payment or collecting an amount from them.
- However, the TDS deductors/TCS collectors need to re-check the status of specified persons each time they pay/receive money from the specified persons. This is because, the names of specified persons are removed from the list, once they regularise their default by filing their ROI during the financial year.

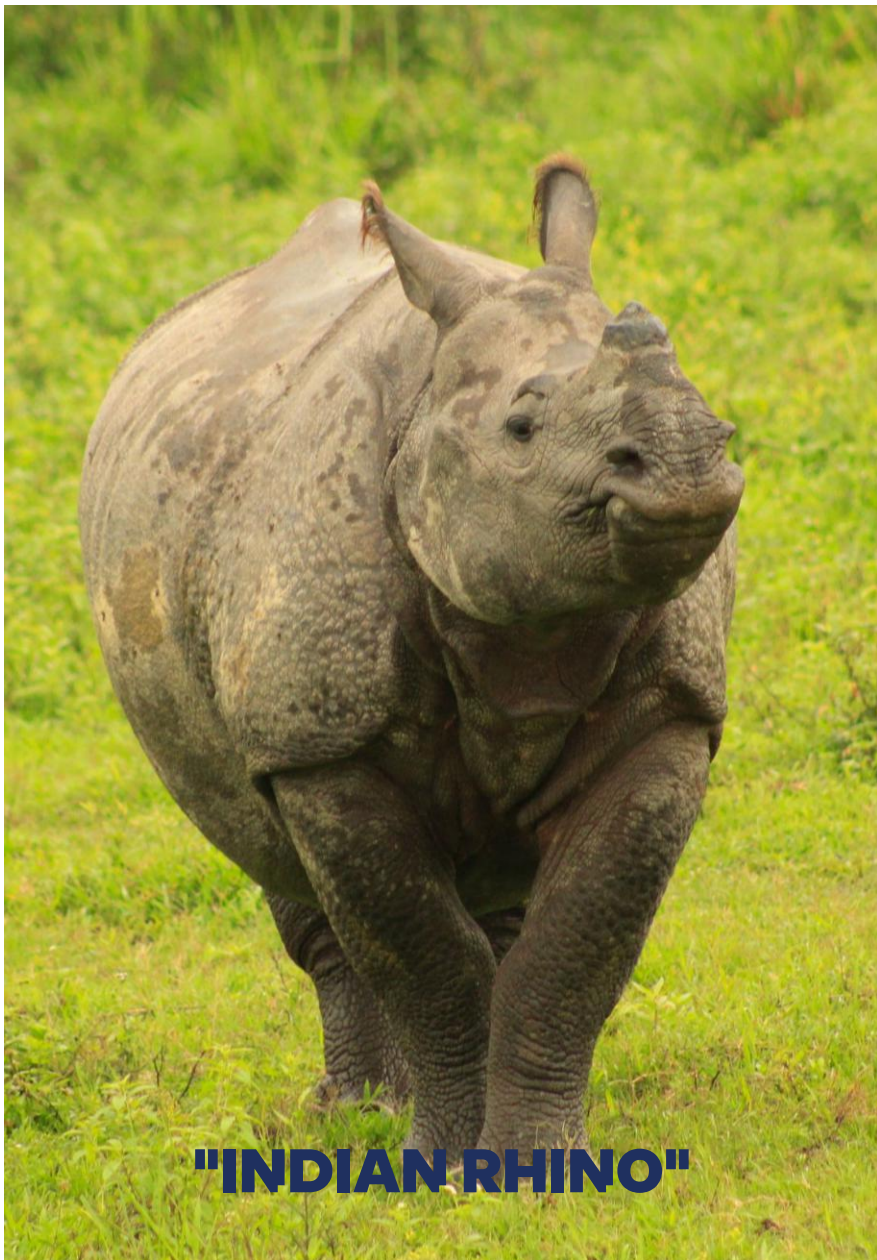


**Conclusion**

Section 206AB and 206CCA ensure that all the persons whose significant tax has been deducted or collected in the earlier PY furnish their return of income, failing which higher TDS/TCS rates apply. Once the valid returns are filed, even after the specified due date, the names of specified persons are dropped from the defaulter's list. This brings an instant relief to the assessee.

To ensure compliances, the auditor should check whether the auditee has registered itself on the reporting portal and whether there exists a process for verifying the necessary compliances discussed above.

Short TDS deduction attracts interest at 1% for every month or part thereof in addition to the penalty and issue of notice to the assessee for TDS/TCS on a case-to-case basis.



**"INDIAN RHINO"**



**"NICOBAR PIGEON"**

# TAXATION

## Recommendations of the 48th GST Council Meeting

The GST Council meeting held on 17 December 2022 recommended various measures for the facilitation of trade and streamlining of GST compliances. It also proposed changes in the GST rates. Mr Shouvik Roy (Mumbai office) summarises the GST Council recommendations.



**"BLACKBUCKS"**

## Taxation | Recommendations of the 48th GST Council Meeting

The 48<sup>th</sup> GST Council ('Council') meeting was held on 17 December 2022. It recommended various measures which are briefed up in the ensuing paragraphs.

- A. Changes in GST rates on supply of goods/services
- B. Measures for facilitation of trade
- C. Measures for streamlining compliances in GST

### A. Changes in GST rates on supply of goods/services

The following changes in rates have been recommended.

Sr. No	Chapter Heading	Description of Goods	Old Rate	New Rate
1.	2302	Husk of pulses including chilka and concentrates including chuni/churi, khanda	5%	Nil
2.	2207	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%

- **Goods to be included under reverse charge:** It is recommended to include supply of 'Mentha arvensis' under the reverse charge mechanism.
- **Clarifications on rates**
  - Rab, also known as rab-salwat is classified under CTH 1702 to be taxable at the rate of 18%.
  - Fryums manufactured using the process of extrusion is covered under CTH 19059030 to be taxable at the rate of 18%.
  - Compensation cess @ 22% shall be applicable to the motor vehicle fulfilling the following conditions namely
    - If popularly known as SUV
    - Engine capacity exceeds 1,500 cc
    - Length exceeds 4,000 mm
    - Ground clearance of 170 mm or above
- Goods falling in lower rate category of 5% under Schedule I of notification no. 1/2017-CTR imported for petroleum operations will attract lower rate of 5% and the rate of 12% shall be applicable only if the general rate is more than 12%.
- **Rented residential dwelling**

Residential dwelling rented to a registered person will be exempt from payment of GST if such dwelling is used in the personal capacity by the registered person on his own account and not on account of business. This clarification seems to provide exemption for the service of renting of residential dwelling provided to registered persons such as proprietorship firm to be used by such persons for personal use as residence and

not for the purpose of business. [Earlier, there was an amendment to notification no. 12/2017 vide notification 4/2022 dated 13 July 2022, making all registered persons (availing residential accommodation on rent) liable to pay GST on RCM basis].

### B. Measures for facilitation of trade and industry

Following are the recommendations in this regard.

#### • Decriminalisation of certain offences

- To increase the minimum threshold limit for launching prosecution from INR 1 crore to INR 2 crores for all offences except the offence of issuance of invoice without supply of goods or services or both.
- To reduce the compounding amount from the present range of 50% to 150% of tax amount to the range of 25% to 100%.
- To decriminalise the offences specified under clause (g), (j) and (k) of Section 132(1) of Central Goods and Services Tax Act, 2017, ('CGST Act') namely
  - obstruction or preventing any officer in discharge of his duties;
  - deliberate tempering of material evidence; and
  - failure to supply the information.

#### • Refund of tax to unregistered persons upon cancellation of services:

The Council has taken cognizance of the reality that currently there is no procedure or rule to claim refund of tax borne by the unregistered customer in case of construction services and long-term insurance services when such supply of service is cancelled, and the time period of issuance of credit note by the supplier is over.

Hence, the Council has recommended to amend CGST Rules along with issuance of circular to prescribe the procedure for filing application of refund by the unregistered customers in such cases. This will be perceived as a welcome beneficial change for the real estate and insurance sector where cancellation of agreement is common and frequent in nature. It will provide a huge relief to the customers where the developers and insurance companies are not in a position to issue credit note and/or refund the tax amount to the customer.

#### • Supplies by unregistered persons and composition dealers in e-commerce

- The Council had granted in-principal approval, in its 47th meeting, allowing unregistered suppliers and composition taxpayers to make intra-state supply of goods through e-commerce operators (ECOs), subject to certain conditions.
- The Council has approved amendment in the GST Laws (CGST Act, CGST Rules along with issuance of relevant notification) for implementing the same.

- The scheme will be made effective from 1 October 2023 to enable the ECOs to get prepared for the same.
- **Amendment of paras 7, 8(a) and 8(b) of Schedule III to the CGST Act, 2017**
  - Schedule III enumerates transactions which are treated neither as supply of goods, nor as supply of services and thus do not attract GST. Vide CGST (Amendment) Act, 2018, with effect from 1 February 2019, the following transactions were included in Schedule III:
    - Supplies of goods from a place outside the taxable territory to another place outside the taxable territory [Para 7]
    - Supply of warehoused goods before their home clearance [Para 8(A)]
    - High sea sales [Para 8(B)]
  - Taking due cognizance of the doubts and ambiguities prevailing regarding taxability of such supplies (as enumerated above) during the intervening period from 1 July 2017 to 31 January 2019, the Council has recommended to make the said amendments effective retrospectively from 1 July 2017.
  - The Council has also clarified that no refund of tax already been paid in respect of such transactions/ activities during the period 1 July 2017 to 31 January 2019 would be available.
  - These recommended amendments are likely to be perceived by trade and industry as a welcome move providing huge relief to the taxpayers specifically in those cases where department has initiated inquiry proceedings for recovery of tax on such transaction during the impugned period.
- **Amendment in Rule 37(1) of the CGST Rules**
  - It is recommended to amend Rule 37(1) of the CGST Rules retrospectively with effect from 1 July 2022 to provide for reversal of input tax credit ('ITC') in terms of second proviso to section 16 of the CGST Act. Accordingly, if the buyer does not pay the seller/supplier within 180 days from date of invoice), only proportionate ITC pertaining to the unpaid amount to the supplier will be reversed vis-a-vis the full invoice value of supply including tax component (and not reversal of the full ITC amount.)
- **Insertion of new Rule 37A in CGST Rules, 2017**
  - The Council has recommended to insert Rule 37A in CGST Rules to prescribe the mechanism for reversal of ITC by a registered person in the event of non-payment of tax by the supplier by a specified date and mechanism for re-availment of such credit if the supplier pays tax subsequently.
  - This would ease the process for complying with the condition for re-availment of ITC restricted under section 16(2)(c) of CGST Act, 2017 (which , along with section 41 , does not permit claim of ITC by the buyer where the seller failed to pay the GST collected by it from the buyers to the government.

- Certain recommendations for providing clarity by amending the Rules, issuing circulars, etc.
  - Amendment in Rule 108(3) and Rule 109 of CGST Rules, 2017: To amend Rule 108(3) and Rule 109 of the CGST Rules to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority to facilitate timely processing of appeals and ease the compliance burden for the appellants.
  - Facility for withdrawal of an application of appeal: To insert new Rule 109C and FORM GST APL-01/03 in the CGST Rules to provide the facility for withdrawal of an application of appeal up to certain specified stage. This would help in reducing litigations at the level of appellate authorities.
  - Claim bonus offered by insurance companies: To issue a circular clarifying that no claim bonus offered by the insurance companies to the insured is an admissible deduction for valuation of insurance services.
  - Treatment of statutory dues under GST in respect of IBC proceedings: To issue a circular for clarifying the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been concluded under the Insolvency and Bankruptcy Code, 2016. To amend Rule 161 of CGST Rules and FORM GST DRC-25 for facilitating the same.
  - Facility for cancellation of registration under Rule 12(3) of CGST Rules: To amend Rule 12(3) to provide facility to the registered persons who are required to collect tax at source under section 52 or deduct tax at source under section 51 of CGST Act for cancellation of their registration on their request.
  - Place of supply of services of transportation of goods: To issue a circular for clarifying the issues pertaining to the place of supply of services of transportation of goods in terms of the proviso to Section 12(8) of the IGST Act, 2017 and availability of input tax credit to the recipient of such supply. Also recommended that proviso to Section 12(8) of the IGST Act, ( which provides that place of supply of in case of transportation of goods outside India will be the destination of such goods ) may be omitted. The implication is that, upon omission of the proviso, the place of supply of the services of transportation of goods, when both the parties are in India, shall be in India.
- Issuance of circulars to remove ambiguity and legal disputes

The Council has recommended that explanatory circulars be issued on the following issues, to remove confusion and ambiguities :

- Procedure for verification of ITC in cases involving difference in ITC availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.
- Manner of re-determination of demand in terms of section 75(2) of CGST Act.
- Applicability of e-invoicing with respect to an entity.

### C. Measures for streamlining compliances

- Mandatory Aadhaar authentication and physical verification of registration applicants
- Verification of Permanent Account Number at the time of GST registration including OTP based verification
- Time restriction of 3 years for filing of returns and statements
- **Amendment in Form GSTR-1** to provide for reporting of details of supplies made by the supplier through E-Commerce Operators (ECOs) which are covered under section 52 and section 9(5) of CGST Act. Further, amendment in Form GSTR-1 is proposed to facilitate reporting by the ECOs in respect of supplies made under section 9(5) of CGST Act.
- **Intimation of differential liability between Form GSTR-1 and GSTR-3B through the common portal:** The facility will enable the taxpayer to either pay the differential liability or explain the difference.
- **To restrict furnishing of FORM GSTR-1 for a subsequent tax period** if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid. It will help in facilitating taxpayers to pay/explain the reason for the difference in such liabilities reported by them without intervention of the tax officers.



**"LESSER FLAMINGO"**

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