Global Employment Solutions

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In this issue:

Indonesia: Recent Changes in Immigration Regulations

Overview

In view of the impact of globalization on the economy of Indonesia, the government is of the view that changes are needed to enhance the intensity of international relationships. Hence, simplification of Immigration procedures for foreign investors to invest in Indonesia and support of high-technology system needs to be undertaken.

Summarized below are some changes that were implemented progressively during 2014 throughout all immigration offices across the archipelagos.

Changes

NO.	TYPE OF PERMIT	OLD REGULATION	NEW REGULATION
1	Process for Extension of Temporary Stay Permit ("KITAS")	Recommendation from: • Local Immigration Office, • Regional Immigration Office, and • Directorate General of Immigration are required for the extension of KITAS.	Recommendation from: • Local Immigration Office and • Regional Immigration Office are required for the fourth and fifth extension. First up to third extension only require approval from Local Immigration Office.

NO.	TYPE OF PERMIT	OLD REGULATION	NEW REGULATION
2	Deadline for Submission of Request for a New KITAS	Foreign citizen (Warga Negara Asing or "WNA") who enters Indonesia using Limited-Stay Visa (Visa Tinggal Terbatas or "VTT") has 7 (seven) days to report to Immigration Office to obtain a new KITAS.	WNA who enters Indonesia using VTT has 30 (thirty) days to report to Immigration Office to obtain a new KITAS; if within 30 days he/she wishes to leave Indonesia, the sponsoring party/guarantor must report to the immigration office where the WNA is domiciled.
3	Deadline for submission of Request for Extension of long-term KITAS (KITAS with validity period of 7 months and above)	30 (thirty) days before KITAS expires.	Up to 3 (three) months, but no later than 1 (one) working day, before the KITAS expires.
4	Time limit to stay in Indonesia after cancellation of stay permit	14 (fourteen) days from the issuance date of Exit Permit Only (EPO) – a stamp in the passport).	7 (seven) days from the issuance date of EPO.
5	Multiple Exit Reentry Permit	Not regulated.	Short-term-stay visa (less than 12 months) holders can also apply/obtain Multiple Exit Reentry Permit.
6	Changes in fees for nontax state revenue: • Fee for Visa On Arrival with 30 days' validity period. • Fine per day for foreigner who overstays in Indonesia, not more than 60 days from the immigration permit.	 USD25/person IDR 200.000/person/day	 USD35/person IDR300.000/person/day

Deloitte's view

As a public service provider, the Directorate General of Immigration ('DGI') understands that simplification of procedures in the DGI is required to support the growth of the Indonesian economy. Therefore, the DGI is seeking to enhance efficiency, quality and capacity within the

DGI, and the above changes are in line with this objective. Through the implementation of the new regulations/changes, it is expected that the lengthy bureaucratic procedures will be reduced and the time required to obtain a stay permit will be more time efficient.

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Korea:
2015 Tax Law Revisions

Overview

Several tax law revisions effective for the 2015 tax year were approved by Korea's National Assembly on December 2, 2014. The following is a summary of major tax law revisions relevant to global employer services.

Flat tax rate individual income tax incentive for foreigners

Under the Korean Tax Incentives Limitation Law (TILL), when calculating individual income tax liability on earned income, foreigners may elect to use a flat tax rate as an alternative to the regular progressive individual income tax rates. If elected, foreigners may apply a flat tax rate to their gross earned income, with no deductions, income exclusions, or tax credits allowed. This is in lieu of the regular progressive individual income tax rates, which range from 6% to 38% (6.6% to 41.8%, including local income tax surcharge).

Effective January 1, 2014:

1. Election of the flat tax rate individual income tax incentive for foreigners is only allowed in the five-year period beginning from the foreign employee's Korean employment start date (only applicable to Korean employment start date of January 1, 2014, or later).
2. A foreign employee who has a special relationship with his or her employer does not qualify for the flat tax rate individual income tax incentive.
3. A special relationship means employee or a family member (i.e., spouse, second cousin, or close relative) with direct or indirect control over management of the company.

Effective January 1, 2015:

- Sunset for the flat tax rate individual income tax incentive for foreigners is extended to December 31, 2016.

- There is no expiration date for application of the foreigner flat tax rate individual income tax incentive for qualified headquarters companies. Qualified headquarters company means a global company headquartered in Korea and performing support work for the core businesses, i.e., business strategy, personnel management, research and development (R&D), etc.

Definition of tax resident

Currently, a Korean tax resident is defined as an individual who has resided in Korea for 12 months or more (technically, 365 days in any two consecutive tax years). Additionally, if an individual's facts and circumstances indicate that it is reasonably certain that the individual will stay in Korea for 12 months or more, such individual will be considered as tax resident from the start of the stay in Korea. For example, if the Korea assignment duration as indicated in the assignment letter is 12 months or more, such inbound assignee would be considered as Korean tax resident from the start of the Korea assignment.

Effective January 1, 2015, the period of time used to determine tax residency status is reduced from 12 months to 183 days.

Deloitte's view

We do not expect any substantial impact of this law revision since under Article 3 of the Individual Income Tax Law (IITL), Scope of Taxation, if a foreign tax resident has resided in Korea for less than five years in the previous 10-year period, foreign-sourced income is only taxable in Korea if such foreign sourced income is either remitted to Korea or paid in Korea (short-term resident alien). So, an inbound foreigner qualifying as a short-term resident alien will in most cases only be taxed on Korean-sourced income, which is the same as a Korean tax nonresident.

Additionally, a Korean tax nonresident may only deduct an individual exemption for the taxpayer and no other deductions are allowed, while a Korean tax resident (including short-term resident alien) is allowed full deductions.

Special foreign technician/engineer tax exemption

Currently, under the TILL, certain foreign technicians/engineers may qualify for a special tax exemption, where 50% of wages received from a domestic entity by a qualified foreign technician/engineer providing services in Korea to the domestic entity may be eligible for tax exemption for two years from the date on which the foreign technician/engineer commences rendering services in Korea.

In order to be eligible for the exemption, the foreign technician/engineer must have had at least five years' work experience, or three years' experience with a bachelor's or higher degree, and be contracted to work in a field designated by law, such as construction, mining, technology-intensive industries, or certain engineering services.

The foreign technician/engineer tax exemption sunset clause is extended to December 31, 2018.

However, effective January 1, 2015, the qualification scope for the foreign technician/engineer tax exemption is tightened and only foreign technicians/engineers working in the R&D centers of foreign-invested companies would qualify for tax exemption.

Foreign technician/engineers commencing services in Korea before January 1, 2015, are still applicable for the exclusion under the current qualification scope.

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People's Republic of China:
SAT Issues Guidance on Tax Treatment of Share Transfers by Individuals

Overview

China's State Administration of Taxation (SAT) issued guidance (Circular 67) on 7 December 2014 that addresses the individual income tax (IIT) treatment and reporting requirements that apply where individual shareholders transfer their shares in Chinese companies. Individuals will be required to pay a 20% IIT (under the tax category of "income from the transfer of property") on such transfers and submit relevant documentation to the local tax authorities. Circular 67 will apply as from 1 January 2015 and will supersede two existing pieces of guidance (i.e., Guoshuihan [2009] No. 285 and SAT Bulletin [2010] No. 27).

Circular 67 also clarifies various concepts relevant to share transfers by individuals, including the assessment of taxable income derived from a transfer, the determination of the original value of the shares, and the tax reporting and withholding obligations relating to share transfers.

Key implications

Definition of share transfer: According to Circular 67, the following are considered to be share transfers:

- A sale of shares;
- A share buyback by a company;
- A sale of shares by the shareholders of an enterprise in the event of an initial public offering;
- A court- or government-ordered transfer of shares;
- A transfer of shares effected in order to make a capital contribution or carry out a nonmonetary transaction;

- A transfer of shares to repay a debt;
- Any other activities that result in a transfer of shares.

Circular 67 does not apply to the IIT treatment of transfers of shares listed on the Shanghai and Shenzhen stock exchanges (provided that such shares are obtained through public offering or trading), transfers of restricted stock or certain other situations involving the transfer of shares where special regulations apply.

Assessment of taxable income derived from a share transfer: The taxable amount of the gain derived from the transfer of shares by an individual will be calculated by deducting from gross income the original cost of the shares and reasonable expenses incurred on the transfer. The gain will be taxed as "income from the transfer of property," at a rate of 20%. If the transaction is not settled in renminbi, the relevant foreign currency must be converted into renminbi at the median price on the settlement date for IIT purposes.

Gross income derived from a share transfer: Circular 67 indicates that gross income from a transfer of shares comprise the various forms of economic benefits (i.e., cash, tangible assets, securities, etc.) received by the transferor as consideration for the transfer. Circular 67 also confirms that "various payments related to a share transfer" (such as penalties and compensation) must be included in income. Article 9 of the circular further provides that any income obtained after the transfer on the fulfilment of agreed conditions also will be treated as income for IIT purposes; this provision seems to target earn-out payments that commonly are used in acquisitions to allow a seller to obtain additional income after a deal is closed.

Circular 67 confirms that gross income from a share transfer must be recognized at fair market value. The tax authorities are empowered to reassess the gross income if the taxpayer fails to provide relevant documents or if the gross income is "significantly low" without a "justifiable reason."

- **Definition of "significantly low":** Gross income may be considered significantly low in the following cases:
    - The reported gross income is lower than the value of the net assets represented by the shares transferred; in particular, fair market value must be used if the enterprise whose shares are being transferred owns land use rights, real estate, intellectual property, exploration or mining rights and shares;
    - The reported gross income is lower than the original investment cost or lower than the aggregate of the purchase amount and the taxes/expenses paid on the acquisition of the shares;
    - The reported gross income is lower than the price that would have been obtained had the shares been transferred by another or the same shareholder in the same enterprise under the same or similar conditions;
    - The reported gross income is lower than the price that would have been obtained had the shares of another enterprise in the same industry been transferred under the same or similar conditions;
    - The shares are transferred for no consideration for no justifiable reason; and
    - In other circumstances specified by the competent tax authorities.

- **Definition of "justifiable reasons":** According to Circular 67, the following circumstances could constitute justifiable reasons where the gross income is considered significantly low:
  - Valid documents are in place to substantiate the fact that the low proceeds on the transfer were attributable to national policy adjustments having a significant impact on business operations;
  - The transferee is the spouse, parent, child, grandparent, grandchild or sibling of the transferor, or any person of whom the transferor is a legal dependent and legal documents are available to substantiate such relationship;
  - The transfer involves an internal share transfer by employees where a transfer to external parties is not allowed by law or the company's bylaws and documents are in place to support the reasonableness and authenticity of the transfer price; and
  - Other reasonable circumstances that can be supported by documentation.
- **Reassessment methods:** If the gross income is considered significantly low without a justifiable reason, Circular 67 specifies that the tax authorities may reassess the income using the following methods (and in the following order):
  - **Net asset method:** The income is assessed by reference to the net asset value per share or the net asset value in proportion to the shares held by the transferor. Where the aggregate of land use rights, real estate, intellectual property, exploration or mining rights and shares exceeds 20% (previously 50%) of the total assets of the investee enterprise, the tax authorities may assess the income by reference to a valuation report issued by a qualified appraiser. The report may be used as a reference for any subsequent transfers within six months from the first share transfer provided that there was no significant change in the enterprise's net assets between the two transfers.
  - **Comparable method:** The income is assessed by reference to:
    - The price that would have been obtained had the shares been transferred by another or the same shareholder in the same enterprise under the same or similar conditions; and
    - The price that would have been obtained had the shares of another enterprise in the same industry been transferred under the same or similar conditions.
  - Other reasonable methods

Assessment of original share value: The original share value should be determined using the following methods:

- For shares acquired through a cash investment, the share value should be determined according to the actual cost paid, plus reasonable taxes/expenses incurred directly related to the acquisition of the shares.
- For shares acquired through nonmonetary means, where specific nonmonetary assets were contributed to capital, the share value should be determined based on the price assessed by the tax authorities, plus reasonable taxes/expenses incurred directly related to the acquisition of the shares.
- For shares acquired from the above-mentioned family members or legal dependents for no cost, the share value should be determined based on the original value of the shares

in the hands of the last transferor, plus reasonable taxes/expenses incurred on the acquisition of the shares.

- For shares converted from capital surplus, surplus reserves or retained earnings, where the individual shareholder has paid IIT on the relevant portion of the surplus, etc., converted, that portion should be taken into account in determining the share value;
- In other situations, the competent tax authorities should use a reasonable method to determine the share value with a view to avoiding double taxation of the same income under the IIT regime.

Where the gross income is assessed by the tax authorities, the gross income so assessed, plus relevant reasonable taxes/expenses incurred on the share transfer will be considered the deductible value for IIT purposes on a subsequent transfer of the shares.

Where an individual transferor acquired the shares transferred in multiple transactions, a weighted-average method should be adopted in determining the share value for IIT purposes.

Tax reporting and withholding obligation: Circular 67 confirms that the competent tax authorities are the authorities in the place where the investee enterprise is located. The circular also introduces various reporting requirements applicable to the transferor (i.e., the taxpayer), the transferee (i.e., the IIT withholding agent), and the investee enterprise.

Pre-transfer reporting:

- **Transferee:** The transferee must report the transaction to the competent tax authorities within five business days after the transfer agreement is signed.
- **Investee enterprise:** The investee enterprise must report board resolutions and minutes of shareholder meetings to the competent tax authorities within five business days after the relevant meeting is held.

Tax reporting:

- **Transferor/transferee:** The transferor/transferee must report income and file a tax return with the competent tax authorities within 15 days of the month subsequent to that in which any of the following events takes place, where it appears the reporting/filing obligation is triggered on the occurrence of the earliest event if more than one of the events relates to the same transfer:
    - The transferee paid, in whole or in part, the consideration for the shares;
    - The transfer agreement was signed and became effective;
    - The transferee actually fulfilled the shareholder's obligations or executed the shareholder's rights;
    - The registration or announcement procedure with the relevant government department was completed so that the transfer became effective;
    - The relevant transfer action was completed (e.g., a court or government-mandated transfer, the use of shares to make a capital contribution); or
    - Other events as determined by tax authorities indicating that there was a share transfer.

Post-transfer reporting:

- **Investee enterprise:** The investee enterprise must report the change in individual shareholders' ownership of the shares to the competent tax authorities within 15 days of the month following the month in which the change occurred.

Deloitte's view

- Circular 67 clarifies various key concepts relevant to share transfers by individual shareholders, including the assessment of taxable income derived from such a transfer, the determination of the original value of the shares, and the tax reporting and withholding obligations relating to such transfers.
- Circular 67 clearly sets out the withholding obligation of the transferee in a share transfer transaction, as well as the pre- and post-transfer reporting obligations of the investee company where the transfer is made by an individual shareholder. The circular highlights the enhanced tax monitoring of share transfers made by individual shareholders. Specifically, the tax authorities are required to establish internal controls for implementing the IIT treatment of share transfers and to set up electronic registration to record all individuals holding shares in enterprises within their jurisdiction and key information relating to those individual shareholders.
- In line with the IIT reform that has been in progress since 2011, Circular 67 is regarded as a key measure in improving the tax monitoring of the personal investment income aspect of high-income individuals. The individual shareholders and companies involved will need to take a close look at the policy update and ensure that they are in compliance with the reporting and withholding obligations involved. All supporting documentation relating to share transfers must be retained as it will need to be produced should the tax authorities subsequently decide to conduct a tax audit. In addition, prior to undertaking any share transfer, it is highly recommended that professional assistance be sought with a view to the proper fulfillment of tax compliance obligations.

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Peru:
Reform of the Peruvian tax system: Principal measures

Overview

Included here are some brief highlights on the most significant new features of Law 30296, in force since January 1, 2015.

Peruvian residents income tax

Reduction of the income tax rate applicable to Peruvian tax residents since January 1, 2015, the law establishes the modification of the tax rates applying to the work incomes of Peruvian residents.

Taxes on annual work incomes			
System until 31.12.2014		**System from 01.01.2015**	
Until 27 UIT*	15%	Until 5 UIT	8%
For the excess of 27 UIT to 54 UIT	21%	Over 5 UIT to 20 UIT	14%
Over 54 UIT	30%	Over 20 UIT to 35 UIT	17%
–	–	Over 35 UIT to 45 UIT	20%
–	–	Over 45 UIT	30%
** Unidad Impositiva Tributaria – UIT (Unit Tax Reference)*			

Since January 1, 2015, the new value of the UIT is PEN 3,850 (USD 1,280). In the year 2014, it was PEN 3,800 (USD 1,260). This tax reference changes every year.

(*) Nonresidents income tax

The income tax rate applying to nonresidents is the same 30%.

Deloitte's view

As a general view, these tax changes pursue a reduction of the tax burden for those individuals with fewer incomes.

With regard to international mobile population, there are important changes affecting the Peruvian Tax Regime applicable to tax resident individuals. Therefore, these amendments, can be a point of tax planning opportunities in Peru as differences in the tax burden can be very significant.

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Spain:
Reform of the Spanish tax system: Principal measures

Overview

Included here are some brief highlights on the most significant new features of Law 26/2014, of 27 November, amending Personal Income Tax Law 35/2006, of 28 November, the Consolidated Non-Resident Income Tax Law, approved by Legislative Royal Decree 5/2004, of 5 March, and other tax provisions ("Law 26/2014"). Changes are effective from 1st January 2015, except for specific provisions stated in the law.

Personal income tax

A new limit is introduced to exempt tax *severance payments* made under Spanish Labor Law amounting to EUR 180,000. This change is effective for dismissals that occur after 1st August 2014 with certain exceptions.

Reduction applicable to non-regular income (that generated over a period of two years or included as such on Spanish Income Tax Regulations) is reduced from 40% to 30% to calculate the amount subject to taxation in Spain. This 30% reduction will be applicable only when the individual has not applied such reduction to other non-regular income (excluding severance payments and stock options granted prior to 1st January 2015 under certain conditions) in the previous five years.

A new investment product is created called "*Planes de Ahorro a Largo Plazo*" (long-term savings plans) with a special regime on the tax treatment of income from movable capital obtained. These plans must meet special requirements that are regulated in the law.

An *exit tax* has been introduced for unrealized capital gains due to the ownership of shares or other equity interests, which is applicable to Spanish tax resident individuals who change their tax residence status. This exit tax will be only applicable to individuals who have been considered Spanish tax residents during at least 10 of the last 15 years and when any of the following circumstances exists:

1. Market value of the shares or equity interests exceeds EUR 4,000,000; or
2. Market value of the shares or equity interests exceeds EUR 1,000,000, and the ownership percentage exceeds 25%.

The portion of *deliveries to employees of shares or other equity interests* of the company itself or of other companies in its group that does not exceed an annual amount of EUR 12,000 for the total deliveries to each employee continues to be tax exempt, provided that the shares or other equity interests are offered under the same terms and conditions to all the employees of the company, group, or subgroup.

The treatment of *capital reductions with reimbursement of contributions and distribution of share premium* at unlisted companies is modified, and now the dividend payments made after such transactions that were taxed as income from movable capital will be deducted from the acquisition cost of the securities.

The *abatement coefficients* applicable to *capital gains* arising from the transfer of assets acquired before 31 December 1994 continue to apply where the aggregate sum of the asset transfer values is below EUR 400,000. The same is established for transfers of life insurance contracts that generate capital gains or losses prior to 1 January 1999.

From 1 January 2017 onward, amounts obtained from the transfer of *subscription rights* relating to listed securities will be considered to be capital gains.

There are now more cases in which a taxpayer may apply for a deferral of his tax debt relating to capital gains as a result of a change of residence; this is possible not only when the relocation is for work reasons but also when the relocation is to a country with which Spain has a tax treaty containing an exchange of tax information clause.

It will be possible to draw early, from 1 January 2025, on the amount of the vested rights under corporate and individual employee welfare systems (i.e., pension plans, employee mutual funds, insured provident plans, and corporate employee welfare plans) corresponding to contributions made up to 31 December 2015 that were made at least 10 years earlier.

For benefits under group life insurance policies instrumenting pension obligations subscribed before 20 January 2006, and for those under pension plans, employee mutual funds, and insured provident plans, on the portion corresponding to contributions made prior to 31 December 2006, the reduction provided for in the Law for benefits received in the form of capital will apply on the basis of the following time schedule:

- Eventualities occurring from 2015 onward: when the benefit is received in the year in which the eventuality occurs and in the following two years.
- Eventualities occurring between 2011 and 2014: when the benefit is received in the eight years following that in which the eventuality occurs.
- Eventualities occurring in 2010 and prior years: when the benefit is received prior to 31 December 2018.

Withholding tax rates applicable to employment income have dropped down. A progressive tax scale applies and maximum marginal tax rate has been reduced from 52% to 47% (45% applicable from 1st January 2016). Final tax rates can differ depending on the region the individual is tax resident in.

Withholding tax rate applicable to income from professional activities and to salary income derived from giving courses, conferences, symposiums, seminars, or similar, or those derived from the preparation of literary, artistic, or scientific works, where the exploitation rights are licensed out, will be 19% (18% from 1st January 2016).

Tax rates applicable to savings income, such as interest, dividends, and capital gains derived from the sale of assets, have been also reduced. Tax rate will be 20% for income up to EUR 6,000, 22% for income between EUR 6,000 and EUR 50,000, and 24% for income above EUR 50,000 (19%, 21%, and 23% from 1st January 2016).

Spanish Special Tax Regime applicable to inbound assignees – this special tax regime has suffered significant amendments, which will be applicable from 1st January 2015. In general terms, changes affect the requirements to be eligible for the special tax regime and also to income subject to Spanish taxation and to applicable tax rates.

Non-resident income tax

The most significant of the amendments introduced during the parliamentary approval phase arose from an amendment tabled by the Popular Parliamentary Group in the Senate with, according to the text itself, a twofold objective: i) to equate the treatment of capital gains obtained by Spanish residents and those obtained by residents of other European Union (EU) Member States (Art. 14.1.c) of the Non-Resident Income Tax Law) and ii) clarify that the dividend exemption antiabuse clause (Art. 14.1.h) of the Non-Resident Income Tax Law) will not apply to parent companies resident in European Economic Area Member States with which there is an effective exchange of tax information.

In order to achieve the first objective, the exemption provided for in the new Income Tax Law (Art. 21) is extended to entities resident in the EU, attempting to thus obviate the infringement of EU law. However, the treatment is not 100% equal since cases in which the assets of the Spanish entity consist mainly, directly or indirectly, of real estate located in Spain are excluded from the exemption.

Other amendments applicable to non-tax resident individuals are the following:

- Spanish tax exemption on the capital gain obtained due to the sale of the habitual residence when the sale price is reinvested in the acquisition of a new habitual residence is now applicable to Spanish non-tax resident individuals when these are resident in a European Union country or European Economic Area Member State with which there is an effective exchange of tax information.
- Taxpayers are now able to request draft tax returns from the tax authorities for taxable income from real property.
- The procedure has been specified for the regularization of tax debts arising from foreign-source pensions and the forgiveness of penalties, surcharges, and interest.
- Tax rates applicable to non-tax residents individuals decrease from 24.75% to 24% (20% for EU resident individuals or individuals resident in an European Economic Area Member State with which there is an effective exchange of tax information and 19% from 1st January 2016).

- Tax rate applicable to dividends, interests, and capital gains will be 20% for 2015 and 19% for 2016.

Inheritance and gift tax

As a result of the Court of Justice of the European Union Ruling of 3 September 2014, new criteria were introduced for determining the autonomous community law applicable to cases in which, according to the Court, there is discrimination between Spanish residents and residents in other EU or European Economic Area Member States.

Wealth tax

Spanish Wealth Tax Law has been amended to introduce certain rules that make it possible to treat Spanish residents and non-residents in Spain who are residents of the European Union or the European Economic Area in a similar fashion.

Deloitte's view

As a general view, these tax changes pursue a reduction of the tax burden for those individuals with fewer resources or higher family burden, as well as a stimulus to generate long-term savings and elimination of certain tax incentives.

With regard to international mobile population, there are important changes affecting the Spanish Special Tax Regime as well to tax rates applicable to non-tax resident individuals and those EU resident individuals or individuals resident in a European Economic Area Member State with which there is an effective exchange of tax information. Therefore, with these amendments, concluding on an individual's tax residence status can be a point of tax planning opportunities in Spain as differences in the tax burden can be very significant.

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