



## 马来西亚中国服务组税务刊物

### 预扣税

预扣税对于马来西亚内陆税收局是种有效的税收机制，主要针对非纳税居民在马来西亚境内所获取的某特定性质收入征收预扣税。预扣税税率已载于 1967 年马来西亚所得税法令中，其税率可能会因马来西亚与中国之间的税收协定而降低。

按照我们过去协助中国投资方的经验，我们察觉到有些企业并非完全熟悉马来西亚预扣税所需遵守的规定。中国企业在马来西亚支付给非纳税居民最为常见的款项类型为外资分包商的建筑服务费用、外国出租人的设备租赁费、外国银行的借贷利息和担保费、总部的技术和管理费等，这些款项都须被征收预扣税。在此，我们提供您马来西亚预扣税的规则概述，目的在于协助所有的中国企业全面遵守马来西亚预扣税的规定。

## 马来西亚预扣税的规则概述

1	<b>什么是预扣税？</b>	预扣税是由马来西亚内陆税收局（简称：“内陆税收局”）所提出的税收机制，并规定在马来西亚境内的付款人应在支付非纳税居民某特定性质款项时预扣税款。			
2	<b>应由谁预扣？</b>	支付非纳税居民某特定性质款项的人有义务预扣该款项的税款。此人包括个人、公司、群体、有限责任合伙和单一法团。			
3	<b>应在什么时候缴付预扣税？</b>	预扣税应当被扣除并在支付款项当日起一个月内缴付至内陆税收局。			
4	<b>应由谁缴付预扣税？</b>	付款人有责任将所扣除的预扣税缴付至内陆税收局。			
5	<b>应税（预扣税）款项及其适用税率</b>	基于 1967 年马来西亚所得税法令（简称：“所得税法令”），不同类型的款项将会被征收不同的预扣税税率。某特定性质款项的预扣税税率可能会随着中马双边税收抵免协定而降低。			
	<b>款项类型</b>	<b>相关的法令条文</b>	<b>预扣税税率</b>	<b>中马协定税率</b>	<b>主要表格</b>
	1) 利息（例如：借贷利息）	第 15, 109 条文	15%	10%	CP37
	2) 特许权使用费（例如：软件许可证费用、专利权费用和专利产品的出售）	第 15, 109 条文	10%	-	CP37
	3) 股息 / 分支机构利润汇款	马来西亚将不针对股息征收预扣税。			
	4) 其他收入（例如：佣金、代理费用和担保费）	第 4(f), 15B, 109F 条文	10%	-	CP37F
	5) 特殊类别的收入： (i) 有关在马来西亚境内使用财产或权利，或任何厂房、机械或其他设备的装备或操作方面所提供的服务； (ii) 就有关技术性管理，或在管理任何科学、工业或商业企业、事业、方案或计划方面，并在马来西亚境内所提供的技术性咨询、协助或服务 (iii) 在任何协议或安排下，对使用任何动产而付出的租金或其他款项	第 4A, 15A, 109B 条文	10%	-	CP37D
	6) 合同款项（例如：建筑服务款项）	第 107A 条文	10% + 3%	-	CP37A
	备注 1： 序号 5(i)/(ii) 的部分有可能会与序号 6 交叠。如非纳税居民在马来西亚境内设有常设机构的情况下，应当按第 107A 条文采用 13% 的预扣税税率。否则，应当按第 109B 条文采用 10% 的预扣税税率。				

**备注 2:**

上述所有的预扣税均为最终税款，除了第 107A 条文里的预扣税，为预付税款。第 107A 条文里 13%的预扣税包含了两个部分，10%和 3%。

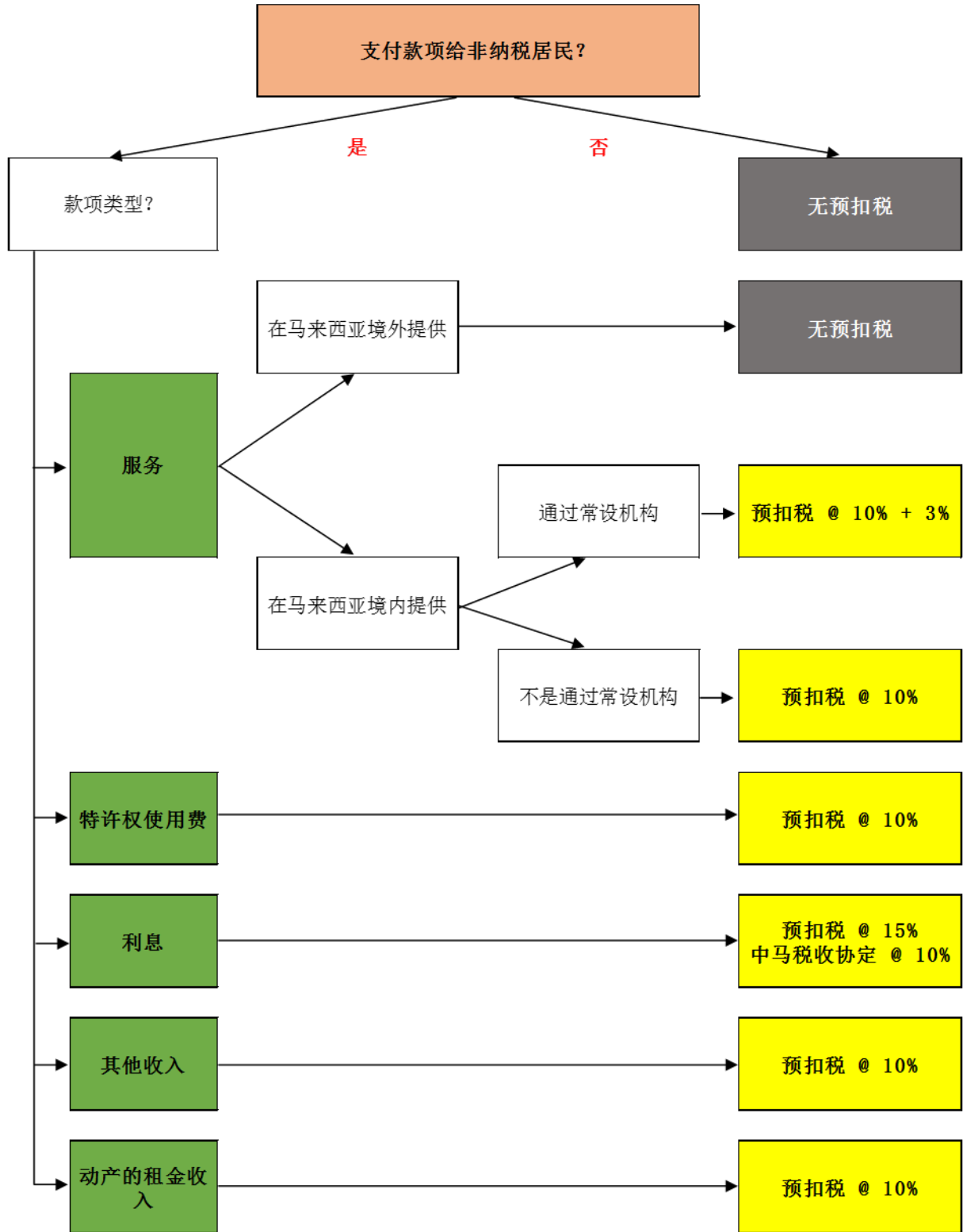
10%的预扣税可用于抵扣企业所得税税款。如最终应纳税额是高于所支付 10%的预扣税额，那么不足的部分应当缴付。反之，如最终应纳税额是低于所支付的预扣税额，那么多缴的部分将会被退还。

3%的预扣税将在外籍员工缴清他们的个人所得税税款后退还。

**刑罚**

<b>1</b>	<b>逾期缴付预扣税</b>	未缴税款数额 10%的罚款。
<b>2</b>	<b>费用的可扣减性</b>	如未在企业所得税的申报期限前缴付预扣税至内陆税收局，此需缴预扣税的费用是不可扣减的。
<b>3</b>	<b>不正确申报</b>	如所提交的申报是不正确的（例如：在未缴付预扣税至内陆税收局的情况下扣减），将被处以介于 10%至 100%的罚款。

# 预扣税合规简易指引





## Deloitte Malaysia Chinese Services Group Publication

### Withholding Tax

Malaysian withholding tax (“WHT”) is an effective tax collection mechanism for the Malaysian tax authority to levy tax on non-residents who receive certain income from a payer based in Malaysia generally. The WHT rate is provided for in the Malaysian Income Tax Act 1967 and may be reduced by the preferential tax rate stated in the Malaysia-China tax treaty.

From our experience dealing with the Chinese investors, we observed that some businesses may not be completely well verse in the Malaysian WHT obligations. Common type of payments made by Chinese businesses in Malaysia to non-residents which may attract WHT include construction fee made to foreign subcontractors, rental of equipment paid to foreign lessor, loan interest and guarantee fee paid to foreign bank, technical and management fee paid to head office, etc. In this connection, we are pleased to provide you with an overview of Malaysian WHT rules for your better understanding, aiming at assisting the Chinese businesses to be in full compliance with the Malaysian WHT requirements.

## Overview of Withholding Tax (“WHT”) Rules in Malaysia

1	<b>What is WHT?</b>	WHT is a tax collection mechanism introduced by the Malaysian tax authority (“IRB”) requiring a payer in Malaysia to withhold tax on certain payments made to non-resident.				
2	<b>Who should withhold?</b>	The person who makes payments that are subject to WHT is liable to withhold tax on the payments made. Person includes individual, a company, a body of persons, a limited liability partnership and a corporation sole.				
3	<b>When to remit the WHT?</b>	WHT is to be deducted and remitted to the IRB within one (1) month from the date the payment is made to non-resident.				
4	<b>Who should remit the WHT?</b>	It is the payer’s responsibility to remit the WHT deducted to the IRB.				
5	<b>Payments subject to WHT and the applicable rate</b>	Different type of payments may attract different WHT rates based on the Income Tax Act 1967 (“the Act”). The Malaysia-China tax treaty may provide lower rate for certain payments.				
		<b>Type of Payments</b>	<b>Relevant Section of Act</b>	<b>WHT Rate</b>	<b>Lower Treaty Rate?</b>	<b>Form To Be used</b>
		1) Interest (e.g. loan interest)	Section 15, 109	15%	10%	CP37
		2) Royalty (e.g. software license fees, franchise fees and sale of proprietary products)	Section 15, 109	10%	-	CP37
		3) Dividends / branch profit remittance	Malaysia does not levy WHT on dividends.			
		4) Other income (e.g. commission, agency fees and guarantee fees)	Section 4(f), 15B, 109F	10%	-	CP37F
		5) Special classes of income: (i) Services in connection with the use of property or rights, or the installation of operation of any plant, machinery or other apparatus performed in Malaysia	Section 4A, 15A, 109B	10%	-	CP37D
		(ii) Technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme performed in Malaysia				
(iii) Rent or other payments made under any agreement or arrangement for the use of any movable property						
6) Contract payments (e.g. payment for construction services)	Section 107A	10% + 3%	-	CP37A		

#### Note 1

Item 5(i)/(ii) may overlap with item 6. Under such circumstances, in practice, if the non-resident has a permanent establishment in Malaysia, item 6 will prevail whereby 13% WHT under Section 107A would be applicable. Otherwise, 10% WHT under Section 109B would apply.

#### Note 2

All of the above WHT are final tax except for WHT under Section 107A which is an advance tax. 13% WHT under Section 107A consists of 10% and 3% elements.

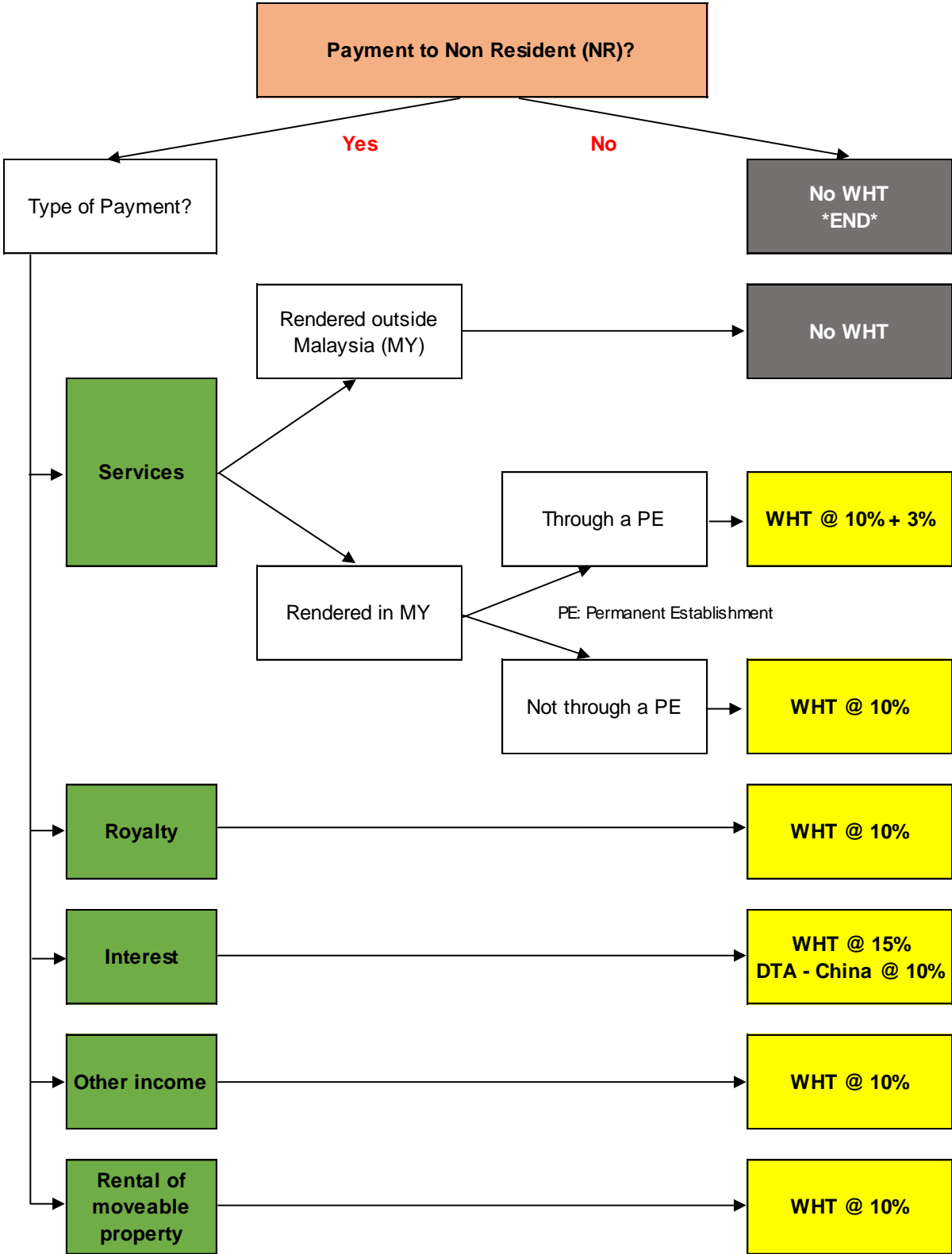
10% WHT is used to set off against the corporate income tax. If the final tax liability is higher than 10% WHT paid, the shortfall would have to be paid. If the final tax liability is lower than the WHT paid, the excess would be refunded.

3% WHT for personnel is refundable when the expatriate employees have fully settled their personal taxes.

### Penalty for Offences

1	<b>Late Payment of WHT</b>	10% on the amount of unpaid tax.
2	<b>Deductibility of Expenses</b>	The payment subject to WHT is not allowable unless the WHT is remitted to IRB before the due date for submission of the return.
3	<b>Incorrect Return</b>	If the incorrect tax return is submitted (i.e. claiming without remitting WHT to IRB), penalty ranging from 10% to 100% may be charged.

# EASY GUIDE FOR WITHHOLDING TAX (WHT) COMPLIANCE





# 联系我们

分支机构/名字	职务	邮箱	电话
<b>吉隆坡 Kuala Lumpur</b>			
余永平 Yee Wing Peng	董事经理	<a href="mailto:wpjee@deloitte.com">wpjee@deloitte.com</a>	(603) 7610 8800
谭丽君 Tham Lih Jiun	执行董事	<a href="mailto:litham@deloitte.com">litham@deloitte.com</a>	(603) 7610 8875
卓鸿培 Toh Hong Peir	执行董事	<a href="mailto:htoh@deloitte.com">htoh@deloitte.com</a>	(603) 7610 8808
郭川永 Kok Soon Weng	副总监	<a href="mailto:kekok@deloitte.com">kekok@deloitte.com</a>	(603) 7610 8157
夏国辉 Ha Kok Fei	副总监	<a href="mailto:kha@deloitte.com">kha@deloitte.com</a>	(603) 7610 8190
颜杏蕊 Gan Sin Reei	高级经理	<a href="mailto:sregan@deloitte.com">sregan@deloitte.com</a>	(603) 7610 8166
郑顺民 Tey Soon Meng	主管	<a href="mailto:sotey@deloitte.com">sotey@deloitte.com</a>	(603) 7610 8197
郭明以 Kuo Min Yee	高级助理	<a href="mailto:nkuo@deloitte.com">nkuo@deloitte.com</a>	(603) 7610 8065
李岸营 Li Anying	高级助理	<a href="mailto:annanyli@deloitte.com">annanyli@deloitte.com</a>	(603) 7610 7843
戴蔚 Vivian Dai	助理	<a href="mailto:vdai@deloitte.com">vdai@deloitte.com</a>	(603) 7610 8646
<b>古晋 Kuching</b>			
蔡淑萍 Chai Suk Phin	高级经理	<a href="mailto:spchai@deloitte.com">spchai@deloitte.com</a>	(608) 246 3311
黄俊程 Kane Bong	经理	<a href="mailto:kbong@deloitte.com">kbong@deloitte.com</a>	(608) 246 3311
<b>新山 Johor Bahru</b>			
陈莱玲 Susie Tan	高级经理	<a href="mailto:susietan@deloitte.com">susietan@deloitte.com</a>	(607) 222 5988
吴玉凤 Caslin Ng	高级经理	<a href="mailto:caslinng@deloitte.com">caslinng@deloitte.com</a>	(607) 222 5988
<b>马六甲 Melaka</b>			
黄海珉 Terence Ng	副总监	<a href="mailto:terenceng@deloitte.com">terenceng@deloitte.com</a>	(606) 281 1077
<b>怡保 Ipoh</b>			
梅皓然 Terrence Mooi	高级经理	<a href="mailto:tmooi@deloitte.com">tmooi@deloitte.com</a>	(605) 254 0288
刘慧婷 Loh Wai Teng	高级经理	<a href="mailto:wloh@deloitte.com">wloh@deloitte.com</a>	(605) 254 0288
<b>槟城 Penang</b>			
黄兰卿 Ng Lan Kheng	执行董事	<a href="mailto:lkng@deloitte.com">lkng@deloitte.com</a>	(604) 218 9888
钟艾玲 Cheng Ai Ling	副经理	<a href="mailto:alcheng@deloitte.com">alcheng@deloitte.com</a>	(604) 218 9888

分支机构/名字	职务	邮箱	电话
---------	----	----	----

**亚庇 Kota Kinabalu**

张济妃 **Cheong Yit Hui**      经理      [yicheong@deloitte.com](mailto:yicheong@deloitte.com)      (608) 823 9601

**吉隆坡 Kuala Lumpur**



余永平



谭丽君



卓鸿培



郭川永



夏国辉



颜杏蕊



郑顺民



郭明以



李岸营



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**古晋 Kuching**



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梅皓然



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黄兰卿



钟艾玲

亚庇 Kota Kinabalu



张济妃

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#### Deloitte

Level 16, Menara LGB  
1, Jalan Wan Kadir  
Taman Tun Dr. Ismail  
60000 Kuala Lumpur, Malaysia

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