



LT Digest

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Legislative initiatives

Sakhalin Region introduces investment profit tax deduction

The deduction will be granted to companies or their branches located in the region and engaged in certain types of business, namely:

- food production
- production of malt, soft drinks, mineral and other bottled drinking waters
- coal mining; production of ornamental and building stone, limestone, gypsum, chalk, and shale
- manufacture of concrete, plaster, and plastic products for construction purposes
- production of ready-mixed concrete
- manufacture of structural steel
- sawing and planing of wood
- residential and non-residential construction.

The deduction will amount to 50 percent of fixed asset investment.

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It will be granted in respect of the fixed assets that belong to Depreciation Groups 3 to 7, with the exception of items purchased using governmental subsidies or financed with funds borrowed from the organisations that Sakhalin Region has a stake in.

For the purposes of calculating the investment deduction cap, the rate of profit tax payable to the regional budget will amount to 8.5 percent.

The law does not provide for carrying forward the unused deduction.

The deduction will be granted from 1 January 2019 through 31 December 2027.

[Official Internet Portal for Legal Information](#)

Government to extend tax free pilot

The pilot will be extended until 31 December 2019. The list of participating retailers will add more operators in prime locations in Moscow Region, Yekaterinburg, Moscow, and Saint Petersburg.

[Official website of the Russian Government](#)

President approves creation of federal environmental operator

A country-wide environmental operator will be established by the Ministry of Natural Resources in the form of a public company.

The company will oversee compliance with the laws regulating the handling of solid municipal waste, ensure prevention of its harmful environmental and human health impact, and organise its recycling.

[Official website of the Russian State Duma](#)

Agreement on exchanging information on customs value of goods in CIS countries enacted

The Agreement of 3 November 2017 entered into force on 12 January 2019 and will regulate the provision of information from the databases of export declarations by the competent authorities, as well as the use of such information.

[Official Internet Portal for Legal Information](#)

Government approves business climate transformation blueprint

The blueprint covers over 150 initiatives, aiming to improve the Russian investment climate in 12 areas, and a number of tax administration activities:

- to introduce tax incentives for the appropriate use of the land allotted for residential construction and clarify the calculation of land tax using the adjustment factors
- to extend the tax-free shopping system to all Russian regions
- to include the assessment of the efficiency of tax benefits and other preferences into the priority areas of the Russian budgetary, tax, and customs policy
- to formalise the timelines for approving/updating the lists of equipment/products that qualify for tax benefits

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- to expand the applicability of zero VAT to exported IT- and associated services.

[Official website of the Russian Government](#)

Bill to allow retail sales of alcohol and tobacco in specialised retail stores only

According to the bill, such stores will not sell any other products.

If adopted, the law will enter into force on 1 January 2020.

[Official website of the Russian State Duma](#)

Foreign specialists and top managers of companies importing Russian products may be granted long-term fast-track visas

A bill to that effect has been posted on the Federal Draft Legislation Portal.

Long-term expedited visas will be issued to foreigners employed by the following companies:

- large importers of Russian products
- foreign companies participating in the Russian Export Centre's projects.

Instead of preparing invitations, a federal executive authority will directly request for visas for such employees.

[Federal draft legislation portal](#)

Ministry of Telecom and Media proposes storing user data using Russian equipment only

A draft resolution to that effect was posted on the Federal Draft Legislation Portal.

According to the draft, data storage devices that are part of the communications infrastructure made available to the law enforcement authorities must have a certificate of their Russian origin as per the data storage requirements set by Russian Government Resolution No. [719](#) of 17 July 2015.

If approved, the changes will take effect in 180 days following their official publication and will apply to the

equipment purchased after the enactment of the resolution.

[Federal draft legislation portal](#)

Federal Tax Services approves recommended form of reports on multinational companies' controlling persons data

A draft order on approving the form, completion and filing guidelines is currently pending with the regulator.

Until then, multinational companies may use the recommended (attached to the letter) or any other form (including proprietary).

[Garant:Prime](#)

Government clarifies excise refund mechanism in oil sector

In particular, the Government approved:

- a list of secondary processing units subject to refining capacities modernisation agreements
- the form of a refining capacities modernisation agreement
- the rules for the execution (termination) of refining capacities modernisation agreements and control of contractual performance.

The Government resolution entered into force on 1 January 2019.

To remind, Federal Law No. [301-FZ](#) of 3 August 2018 introduced a mechanism of an 'excise refund' (negative excise) for crude oil processed by Russian refineries.

[Official website of the Russian Government](#)

Voronezh Region to accommodate special economic zone 'Centre'

The special economic zone will be based in Novousmanovskiy Municipal District of Voronezh and is expected to foster the region's development, incentivise Russian and foreign industrial investors, and create jobs.

[Official website of the Russian Government](#)

Clarifications from government bodies

Ministry of Finance clarifies financial statements requirements for multinational companies

Federal Law No. [485-FZ](#) of 25 December 2018 introduced changes to the Federal Law 'On Multinational Companies' concerning the preparation of financial statements.

In particular, the regulator noted that:

- for mandatory disclosure purposes, financial statements must be made in accordance with the Russian standards
- for other purposes (e.g. to calculate dividends or net asset value, or for other non-mandatory filings), the companies may choose to prepare financial statements:
 - in accordance with the Russian standards
 - under IFRS
 - under other GAAP

- a multinational company may choose to prepare and disclose its IFRS financial statements in Russian or in English
- a multinational company may denominate its IFRS financial statements in RUB or in a foreign currency
- similar rules apply to financial statements prepared under other GAAP.

The changes apply starting from 2018 financial statements.

[Official Ministry of Finance website](#)

Ministry of Finance clarifies calculation of property tax on inseparable leasehold improvements

The clarification was necessitated by the movable property tax relief introduced as of 1 January 2019.

The following conclusions were made:

- inseparable leasehold improvements are not immovable assets themselves, but their essential parts; therefore, the relevant property tax must be paid by the tenant, including where the leased property is taxed based on its cadastral value
- inseparable leasehold improvements of movable property are tax-exempt.

In light of these clarifications, it is important for taxpayers to correctly account for works performed on the leased property, recording them as repairs, separable and inseparable improvements independently.

Media review

Government releases Digital Economy agenda assignments

In particular, the following assignments were given:

- to establish a single register of Russian-made electronic components with a subregister for telecom equipment
- to ensure priority of the Russian-made telecom equipment in public procurement tenders and adjust the relevant legal framework accordingly
- to analyse the movement of imported telecom equipment for compliance with the foreign trade classification codes and market prices and audit the compliance with the customs laws
- to conduct a benchmark analysis of costs and economic conditions of foreign telecom equipment production
- to prepare proposals on increasing the import duty rate (up to 20 percent) for the telecom equipment that, in accordance with the Ministry of Industry and Trade's register of telecom equipment, has Russian substitutes
- to propose incentives fostering the use of Russian telecom equipment, including the low-interest consumer loans and preferential tax and social contribution rates for producers.

[Official website of the Russian Government](#)

Government reminds oil companies of their pricing commitments

Prime Minister Dmitry Medvedev tasked his Deputy Dmitry Kozak to deal with the CEOs of oil companies failing to deliver on their promises and remind them of their commitments.

The Government keeps an eye on the dynamics of fuel prices and will take response measures, including the antimonopoly ones, in case of non-compliance.

[Kommersant](#)

Oil wells will not be treated as movable property

The Ministry of Economic Development proposes formalising that all wells, regardless of when and how accounted for, be classified as immovable property subject to corporate property tax in accordance with the Russian Tax Code.

Having a clear and well-reasoned defence on the matter will help avoiding tax disputes.

[Consultant Plus](#)

Ministry of Finance clarifies payment of VAT by foreign sellers with Russian bank accounts

In the regulator's opinion, the sale of goods within Russia by a foreign company that is tax-registered in Russia by force of having an account with a Russian bank is VATable.

[Garant:Prime](#)

Oil wells that cannot be moved without destroying or altering them will remain immovable property as the company will have no formal grounds to record them otherwise.

[Rossiyskaya Gazeta](#)

North-Western Federal District to test petrol traceability from refinery to petrol stations

The pilot traceability project will run in H1 2019.

The architecture and implementation of the system are currently being discussed.

The system will trace both the qualitative and quantitative petrol properties, sourced from the databases of vertically integrated companies and members of the Oil Club of Saint Petersburg.

Based on the pilot project's results, Rosstandart will be developing the petrol traceability mechanism for Russia.

Participation in the pilot will be voluntary for refineries, tank farms, and petrol stations.

[Rossiyskaya Gazeta](#)

Residential property transactions may go digital

The Ministry of Economic Development teamed up with the Skolkovo Foundation and Digital Economy, a non-profit organisation, and prepared a bill, clarifying the format of the e-contract for the purchase or donation of residential property and introducing an enhanced electronic signature requirement.

All existing statutory provisions requiring further state registration of title transfers are preserved.

The plan also provides for running a pilot to test the electronic contracts for long-term residential leases.

[Izvestiya](#)

Visual navigator of Digital Economy programme developed

Digital Economy, a non-profit organisation, released the online tool '[Digital Economy Navigator](#)'; it displays the programme's key initiatives as a roadmap, with 'routes' to Information Infrastructure, Information Security, Digital Technologies, Digital Economy's Talent, Statutory Regulations, Digital Government, and their intersections.

The initiatives reflect the logic behind the national programme, while the 'stops' on the 'routes' correspond to the key activities to be implemented by 2024.

The navigator also contains the key performance indicators to be achieved during the upcoming five years and a glossary of digital transformation terms and abbreviations.

[Official website of Digital Economy non-profit organisation](#)

Amendments to package of law on digital financial assets developed

The cryptocurrency bill prepared for the State Duma's second reading offers a new definition of digital financial assets that expands their applicability.

According to the document, apart from monetary rights and rights attached to securities issued via blockchain, digital assets now include equity interest and other rights.

The documents is currently pending approval by the Presidential Administration and is expected to be adopted by the State Duma in February 2019.

On 17 January 2019, the Codification Council [turned down](#) the bill on digital assets that proposed amendments to the Russian Civil Code.

To remind, Bills No. [419059-7](#) on digital financial assets (for more details, please refer to LT Digest of [23 – 29 April 2018](#)), No. [424632-7](#) on digital rights (for more details, please refer to LT of [26 March – 1 April 2018](#)), No. [419090-7](#) on crowdfunding (for more details, please refer to LT of [23 – 29 April 2018](#)) passed the Russia State Duma's first reading on 22 May 2018.

The amendments have not been officially published yet.

[RBCdaily](#)

Belarus opens first regulated cryptocurrency exchange

The country's first regulated cryptocurrency exchange offering both cryptocurrency and fiat money investments was launched in the Belarussian Hi-Tech Park on 15 January 2019.

The Currency.com platform is licensed in accordance with Alexander Lukhashenko's Decree 'On Digital Economy Development', signed in the end of 2017, which legalised the cryptocurrency exchanges, mining and blockchain projects (for more details, please refer to LT in Focus of [27 December 2017](#)).

The platform is expected to issue over 10,000 tokens backed by shares (Amazon, Apple, Volkswagen and Coca-Cola), indices (Dow Jones 30, S&P 500 or Nasdaq 100), precious metals and commodities (gold, silver, platinum, palladium, Brent oil, etc.).

[BBC Russian news](#)

Ministry of Energy signs refund excise agreements with nine refineries

The modernisation agreements entitle the plants to the excise refund as part of the tax maneuver.

The total investment under the nine agreements will amount to RUB 300 billion.

By 2026, the companies will have to put in operation 13 secondary processing units, increasing the production of Euro-5 gasoline by more than 3 mln tonnes p.a.

Each plant will have its own action plan (featuring the launch of isomerisation, hydrocracking, delayed coking, and other processing units).

[Kommersant](#)

Federal Tax Service reminds all foreign suppliers of e-services to register for VAT purposes

VAT registration can be done via an online [VAT account](#).

The companies will be able to check whether the registration is needed by completing an [online test](#).

A registration request is filled in online and must be supported by a scanned copy of the company's incorporation certificate (or any other document verifying the company's status).

Translation into Russian or attachment of apostilles will not be required.

The companies that are already registered for tax purposes in Russia will not need to re-register.

[Official Russian Federal Tax Service website](#)

Ministry of Economic Development introduces bill on experimental regulation of digital innovations

The bill proposes a new regulatory framework – a sandbox regime – aiming to foster innovations.

The regulatory sandbox can be tested by companies, individual entrepreneurs, executive and municipal authorities.

A company may initiate the creation of a new sandbox or join the existing one.

The testing ground will be operated by a public company that will keep the register of sandboxes and their members.

The tests will be running for a fixed period of up to three years.

In case of success, the competent authority will be able to initiate regulatory changes to market the new technology.

The participating players will not be affected by the tax burden rise, however, will not be entitled to any special tax privileges.

They will also be subject to the anti-money laundering and counter-terrorism financing and other applicable requirements.

[RBCdaily](#)

President of Russia approves assignments to streamline regulation of housing construction co-investment

In particular, the following assignments were given:

- to improve control over developers by the Homebuyers' Protection Fund and the regional controlling authorities
- to oblige the regional competent authorities to maintain a register of abandoned construction projects

- to develop clear criteria for taking up abandoned residential construction projects for completion and finance sourcing
- to enable pledging the land, allotted for the construction of multifamily buildings or other real estate, financed with co-investments, with the banks servicing escrow accounts.

Furthermore, the following amendments will be reconsidered:

- authorising the regions to seek developers' bankruptcy in court
- implementing fast-track developer bankruptcy trials and assigning unfinished construction projects to other developers
- establishing, with the participation of DOM.RF, a specialised bank authorised to finance construction of multifamily buildings and other real estate.

[Official website of the Russian State Duma](#)

Customs Service and Russian Post join efforts to pilot online payment of customs duties

On 28 December 2018, the Russian Ministry of Finance released Order No. [279n](#) of 21 December 2018, which authorises postal operators to declare, collect, and transfer customs duties to the Russian Customs Service on behalf of individuals.

In light of the above, on 9 January 2019, the Russian Post and the Customs Service launched a pilot to test the payment of customs duties using a custom-made electronic solution, which enables charging the duties simultaneously to making a purchase.

The pilot now covers online purchases over EUR 500.

The project will help the stakeholders prepare for the duty-free threshold lowering.

The online payment of duties will soon be available for the buyers of top marketplaces, which account for more than 90 percent of all cross-border e-purchases delivered by post.

[Official Russian Federal Customs Service website](#)

Court practice

Federal Tax Service releases digest of court decisions in tax cases for Q4 2018

The digest includes the following adjudications:

- Constitutional Court Ruling No. [47-P](#) of 21 December 2018, in which the court acknowledged that Article 381 (25) of the Russian Tax Code did not set any restrictions for compliant taxpayers that received originally tax-exempt movable property from liquidation (restructuring) and/or civil law transactions (for more details, please refer to [LT of 27 December 2018](#))
- Supreme Court Ruling of 16 October 2018 in Case No. [A68-10573/2016](#) (Novomoskovskiy Azot), in which the court confirmed that corporate property tax did not have to be charged on equipment produced by and purchased from a related party (for more details, please refer to the Tax Benefits and Other Government Incentives of [30 October 2018](#))
- Supreme Court Ruling of 3 December 2018 in Case No. [A27- 27287/2016](#) (Shakhta Polosukhinskaya OAO), in which the court acknowledged that the lower rates of the dividend tax envisaged for foreign companies by the tax treaty did not apply if the dividends were transferred via a controlled Cypriot company to a company located in another jurisdiction
- Supreme Court Ruling of 12 December 2018 in Case No. [A40-178867/2017](#) (Expocenter AO), in which the court acknowledged that a controlling company had to submit notice of controlled foreign corporations irrespectively of CFC's financial result (profit or loss)
- Supreme Court Ruling of 21 December 2018 in Case No. [A57-9401/2017](#) (OOO Volzhskiy Terminal), where the court noted that the demolition of fixed assets and the disposal of demolition scrap were not a reason for claiming VAT recovery
- Supreme Court Ruling of 20 December 2018 in Case No. [A12-36108/2017](#) (IP D.V. Zaychuk), in which the court acknowledged that a tenant's classification as entrepreneur based on a tax audit findings should

not have led to higher VAT charges (in addition to the rent)

- Supreme Court Ruling of 22 November 2018 in Case No. [A32-32855/2017](#) (Stroyneftegaz-SMU-7 OOO), in which the court indicated that if the proceeds paid out to a shareholder do not exceed the original capital contribution, such shareholder will not benefit from them, but will have its previous position reinstated, which, by virtue of Article 41 of the Russian Tax Code, cannot be classified as income generation (for more details, please refer to [LT of 28 November 2018](#))
- Supreme Court Ruling of 30 November 2018 in Case No. [A60-35042/2017](#) (Torgoviy Centre OOO), where the court confirmed that commercial properties are not eligible for the energy efficiency tax benefit (for more details, please refer to the Tax Benefits and Other Government Incentives issue of [3 December 2018](#)).

[Official Russian Federal Tax Service website](#)

Constitutional Court clarifies provision restricting foreign shareholding in Russian media

The Russian Constitutional Court considered a claim for the constitutionality review of Article 19.1 of Law No. [2124-1](#) of 27 December 1991 'On Mass Media', which bans foreigners from owning Russian media or holding over 20 percent in Russian media's shareholders.

The owner of a 49-percent interest in Radio-Shans OOO, holding a dual citizenship, petitioned a commercial court to appeal the resolution of the OOO's extraordinary meeting of members that transferred the broadcasting licence (the company's only asset), free of charge, to the other member of the OOO, Russkoe Radio — Evraziya AO.

The courts concluded that the individual, holding citizenships of Russia and the Netherlands, could not be a member of a Russian radio broadcasting company or challenge its decisions at court.

The claimant believed that the membership, management, and control restrictions applied only to the extent exceeding a 20-percent interest in the media.

However, the ambiguity of provisions of the media law enable the deprivation of dual citizenship holders of asset ownership and the restriction of their judicial remedies.

The Constitutional Court found provisions of Article 19.1 of the Law 'On Mass Media' unconstitutional, citing their failure to establish a clear scope of members subject to the 20-percent media shareholding restrictions.

A question whether a Russian individual with dual citizenship is entitled to exercise his/her corporate rights within his/her 20-percent interest remains open.

The law does not unambiguously determine what

stakeholders (founders/members of a broadcasting company or the company itself) are subject to the statutory regulation.

With such legal uncertainty, unforeseen risks arise for both the property rights of the co-owner and the legal capacity of the company itself, which is inconsistent with the idea of maintaining trust in the law and stability of civil-law relations.

The court expressly noted that appealing the company's transactions or management decisions was not about influencing the company's broadcasting policy; therefore, regulatory compliance cannot be cited to justify the restriction of the member's rights to adequate remedy. The Constitutional Court adjudged that the case was subject to retrial after the Law 'On Mass Media' has been amended accordingly.

[Official website of the Constitutional Court](#)

International taxation news

OECD releases corporate tax statistics report and database

A new OECD report and database, [Corporate Tax Statistics](#), provides internationally comparable statistics and analysis from around 100 countries worldwide on four main categories of data: corporate tax revenues, statutory corporate income tax rates, corporate effective tax rates, and tax incentives related to innovation.

[official OECD website](#)

EU Commission confirms no Brexit deal renegotiation

The European Union will not try to renegotiate the Brexit withdrawal agreement, the European Commission spokesman Margaritis Schinas said.

The UK has not requested an extension, but if it does, 27 EU countries will need to reach unanimity on the matter.

The Brexit deal, earlier approved by Brussels, was turned down by the House of Commons on 15 January 2019 by 432 votes to 202.

[Kommersant](#)

Dutch 2019 tax package enacted

On 18 December 2018, the Dutch Senate approved the 2019 tax package, which includes the following amendments to the Dutch corporate income tax legislation:

- the implementation of the EU Anti-Tax Avoidance Directive (ATAD 1), in particular, the earnings stripping rule and controlled foreign company (CFC) rules
- a gradual reduction of the corporate income tax rate
- changes to the rules on tax losses and depreciation of buildings etc.

The tax package became effective on 1 January 2019.

For details, please refer to Tax@Hand of [11 January 2019](#) and World Tax Advisor of [21 September 2018](#).

Luxembourg's 2019 tax package approved

On 18 December 2018, the Parliament of Luxembourg approved a package of tax amendments, implementing the EU Anti-Tax Avoidance Directive (ATAD 1), in particular, the interest expense deductibility restrictions and the controlled foreign company (CFC) rules.

The ATAD 1 provisions will be applicable in Luxembourg for the fiscal years starting on or after 1 January 2019, except for the exit tax provisions that will apply as from 2020.

For details, please refer to World Tax Advisor of [11 January 2019](#).

Deloitte publications

Russia modernises data privacy legislation

On 10 October 2018, Russia signed Amending Protocol ETS No. 223 to the Council of Europe Convention for Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108). The accession to the Convention will require ratification of the Protocol by the Russian parliament and will entail changes in the Russian data privacy laws and enforcement practices.

For details, please refer to Legislative Tracking in Focus of [28 November 2018](#).

And yet it moves! Or does it?

Starting from 1 January 2019 movable property would be exempt from taxation.

It creates a shortfall in the regional fiscal revenues, which have been estimated by Minister of Finance Anton Siluanov at up to RUB 181 billion.

This, in turn, may lead to more litigations over the tax authorities' attempts to classify movable property as immovable to collect more tax.

For details, please refer to Legislative Tracking in Focus of [23 November 2018](#).

First prosecution for FATCA non-compliance, 12 September 2018

On 11 September 2018 in federal court in Brooklyn, Adrian Baron, the former Chief Business Officer and former Chief Executive Officer of Loyal Bank Ltd pleaded guilty to conspiring to defraud the United States by failing to comply with the Foreign Account Tax Compliance Act (FATCA). The Loyal Bank is an off-shore bank that has offices in Budapest, Hungary and Saint Vincent and the Grenadines.

According to court documents, in June 2017, an undercover agent met with Baron and explained that he was a U.S. citizen involved in stock manipulation schemes and was interested in opening multiple corporate bank accounts at Loyal Bank.

For details, please refer to Legislative Tracking in Focus of [12 September 2018](#).

Amendments to the Russian Tax Code

Federal Law No. 302-FZ «On amendments to Part I and II of the Russian Tax Code» (The Law) introduced a number of changes aiming to reduce the administrative burden for VAT payers. In particular, the Law optimizes the list of documents to be filed with the tax authorities to justify the application of a zero VAT rate.

For details, please refer to Legislative Tracking in Focus of [23 August 2018](#).

Increase of Russian VAT rate

Federal Law No. [303-FZ](#) 'On Amendments to Certain Tax Laws of the Russian Federation' of 3 August 2018 (hereinafter, "Federal Law No. 303-FZ") has introduced amendments to the Tax Code of the Russian Federation (hereinafter, the "Russian Tax Code"), including an increase of the general VAT rate from 18 to 20 percent.

The raise is expected to generate additional budget revenue of RUB 620 billion p.a., starting from 2019.

Along with the added revenue from the oil and gas 'tax maneuver', the measure is viewed as a source of financing for the national development agenda outlined by the President of the Russian Federation in May 2018.

For details, please refer to Legislative Tracking in Focus of [17 August 2018](#).

The Convention on the legal status of the Caspian Sea

Meeting at the summit in Aktau on 12 August 2018, the leaders of Russia, Kazakhstan, Azerbaijan, Iran, and Turkmenistan signed a milestone document, which brings the relations among the countries to a new level - the [Convention](#) on the legal status of the Caspian Sea. It has taken the five neighbors more than 20 years to come to an agreement.

For details, please refer to Legislative Tracking in Focus of [17 August 2018](#).

New approach to tax treatment of transactions between related parties

On 15 June 2018, the Nineteenth Commercial Court of Appeals considered a [dispute](#) between PepsiCO and the Russian Federal Tax Service (FTS) over the tax treatment of intragroup transactions.

Courts of two instances supported the tax authorities in classifying the arrangement between the plant and the trading/holding company as free of charge provision of services.

According to the tax authorities, the plant's advertising and marketing expenses had contributed to an increase in the earnings of the trading/holding company and not the plant itself.

For details, please refer to Legislative Tracking in Focus of [31 July 2018](#).

We hope that you will find this edition interesting and informative. Should you have any questions on this subject, please do not hesitate to contact us.

Best regards,
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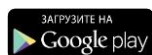


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