


***CR 2010/76 - Income tax: treatment of payments received under the Murrumbidgee Catchment Management Authority Murrumbidgee EcoTender II project***

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## Class Ruling

### Income tax: treatment of payments received under the Murrumbidgee Catchment Management Authority Murrumbidgee EcoTender II project

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Contents	Para
<b>LEGALLY BINDING SECTION:</b>	
<b>What this Ruling is about</b>	<b>1</b>
<b>Date of effect</b>	<b>9</b>
<b>Scheme</b>	<b>10</b>
<b>Ruling</b>	<b>38</b>
<b>NOT LEGALLY BINDING SECTION:</b>	
<b>Appendix 1:</b>	
<b>Explanation</b>	<b>42</b>
<b>Appendix 2:</b>	
<b>Detailed contents list</b>	<b>61</b>

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

## What this Ruling is about

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1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

### Relevant provision(s)

2. The relevant provisions considered in this Ruling are:

- section 6-5 of the *Income Tax Assessment Act 1997* (ITAA 1997);
- section 15-10 of the ITAA 1997;
- section 104-25 of the ITAA 1997;
- paragraph 118-20(1)(a) of the ITAA 1997; and
- paragraph 118-20(2)(a) of the ITAA 1997.

All legislative references in this Ruling are to the ITAA 1997 unless otherwise indicated.

## Class of entities

3. The class of entities to which this Ruling applies is landholders who receive a conservation management payment under the Murrumbidgee Catchment Management Authority (Murrumbidgee CMA) Murrumbidgee EcoTender II project.

4. However, the class of entities excludes those entities who:

- are lessees of the property included in the Property Vegetation Plan; or
- choose to register a Property Vegetation Plan on the property title in perpetuity.

## Qualifications

5. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.

6. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 10 to 37 of this Ruling.

7. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:

- this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled; and
- this Ruling may be withdrawn or modified.

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## Date of effect

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9. This Ruling applies from 1 July 2009 to 30 June 2025. The Ruling continues to apply after 30 June 2025 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, this Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of this Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

## Scheme

10. The following description of the scheme is based on information provided by the applicant. The following documents, or relevant parts of them form part of, and are to be read with, the description:

- application for Class Ruling from Murrumbidgee CMA and supporting information dated 25 February 2010;
- Murrumbidgee EcoTender II Information Package & Expression of Interest/Request for Site Visit Form;
- Murrumbidgee EcoTender II Landholder Bid Form;
- sample Incentive Property Vegetation Plan (in accordance with the *Native Vegetation Act 2003*); and
- Murrumbidgee CMA Murrumbidgee EcoTender II forms and record sheets:
  - Landholder Bid Form;
  - Site Assessment Field Data Record Sheet; and
  - Aboriginal cultural heritage landscape values and sites Significance Checklist/Site Assessment Field Data Record Sheet; and
- Murrumbidgee CMA Murrumbidgee EcoTender II Standard Operating Procedures:
  - Expression of Interest & Request for Site Visit Process;
  - Preparation for a site assessment;
  - Site Assessment;
  - Site Assessment Safety;
  - Site Assessment Checklist;
  - Developing Property Vegetation Plans; and
  - Record Keeping & Data Management.

## Eligibility

11. The Murrumbidgee CMA has identified particular native vegetation communities as priorities for improved management and conservation and has defined the Murrumbidgee EcoTender II project area which includes these vegetation communities.

12. Land owners in the Murrumbidgee EcoTender II project area who have one or more identified priority native vegetation communities on their property are eligible to participate in the EcoTender II project.

13. For the purposes of this Ruling all eligible applicants will be referred to as 'landholders'.

14. Lessees are also eligible to participate in the Murrumbidgee EcoTender II project provided the conditions of the lease do not prevent any of the proposed conservation activities or land management actions and the lessee has authority under the lease to enter into a contract with the Murrumbidgee CMA. However, Murrumbidgee CMA has advised that no lessees have entered into contracts under this project. Lessees are excluded from the class of entities to whom this ruling applies.

## **Murrumbidgee EcoTender II project**

15. The Murrumbidgee CMA is offering landholders in the Murrumbidgee EcoTender II project area funding for up to 15 years for the opportunity to conserve and enhance threatened and endangered native vegetation communities as an alternative to primary production. Eligible conservation activities include the exclusion or strategic management of stock, maintenance of groundcover and the eradication of weeds and pest animals.

## **Participation in the Murrumbidgee EcoTender II project**

16. The Murrumbidgee EcoTender II project involves a competitive tender process which requires landholders wanting to participate in the project to submit a bid. Landholders determine and submit their bid price based on the management actions that they will agree to undertake over the life of the conservation contract. Landholders wishing to participate in the project must submit their bid by 26 February 2010.

17. Individual bids are evaluated and scored having regard to:

- the environmental significance of the property;
- the land management actions that the landholder plans to undertake; and
- the proposed duration of the conservation contract.

18. A computer based evaluation tool (the Ecosystem Benefit Value) is used to compile a score for each of these elements for each property for which a bid is submitted.

## **Environmental Significance**

19. For each property, the environmental significance score measures key ecological characteristics of the priority vegetation communities at the regional scale, landscape scale and site scale.

20. The score for each site is based on a comparison of the vegetation found on that site with the ecological benchmarks based on the ecological community as defined under the *Australian Environment Protection and Biodiversity Conservation Act 1999*, the *NSW Threatened Species Conservation Act 1995* and the *NSW Fisheries Management Act 1994*. The closer the site's environmental significance is to the benchmark the higher the score.

### **Land management actions**

21. A Murrumbidgee CMA case officer will discuss with each landholder the types of actions needed to achieve the best ecological outcomes on a site. Certain land management actions are essential, while others are optional.

### **Duration of the conservation contract**

22. The conservation contract, in the form of a Property Vegetation Plan (PVP), will be for a term of either 10 or 15 years for each property. PVPs are registered as a covenant on the title of the property, either for 10 years, 15 years or in perpetuity.

23. The Ecosystem Benefit Value assigns a score based on the length of the covenant. A longer covenant will result in a higher score being allocated.

### **Assessment process**

24. The Ecosystem Benefit Value scores for the environmental significance, land management actions and duration of proposed contract are combined to calculate an Ecosystem Benefit Score.

25. An Ecosystem Benefit Index is calculated by dividing the Ecosystem Benefit Score for a site by the landholder's bid price. The Ecosystem Benefit Index provides an indication of the cost per unit conservation benefit of a bid and whether a submitted bid price represents good value for money. Every participating site will have its own Ecosystem Benefit Index.

26. An order of priority of bids is then determined. All bids are ranked from highest to lowest value for money.

27. In determining the successful bids the Murrumbidgee CMA considers the ranking and also takes into account matters that are not reflected in the Ecosystem Benefit Index such as whether the bid price is reasonable in comparison to land values in the region or the types of priority native vegetation being protected.

## **Delivery Mechanism**

28. Landholders whose bids are successful will be offered a contract with the Murrumbidgee CMA in the form of a PVP. The relevant parties must sign the contract which states that the Murrumbidgee CMA will provide funding and the landholder will undertake the management actions specified in the PVP. The PVP is registered as a covenant on the title of the property.

29. The PVP specifies:

- the funding amount (conservation management payment);
- the management actions that the landholder must undertake for the duration of the contract;
- that landholders will obtain all necessary approvals and permits before commencing any work in accordance with the contract;
- that registration of the contract on the title of the land will be effected within 12 months of the signing of the contract;
- the special conditions, which include that the landholder must own the freehold title of the land or have an exclusive leasehold interest in the land and that the term of the lease is not less than the term of the contract; and
- the general conditions of the agreement which include:
  - the landholder's obligations regarding payment of charges and insurance, change of circumstances, performance monitoring, reporting requirements and inspection of records;
  - Murrumbidgee CMA obligations regarding payments; and
  - provisions for resolution of disputes and inconsistencies between documents comprising the agreement.

## **Funding payment**

30. Landholders whose bids are successful and who enter into a contract with the Murrumbidgee CMA will receive a single up front lump sum conservation management payment to fund the conservation management actions they will undertake over the whole of the agreed period.

**Monitoring and evaluation**

31. A key part of the Murrumbidgee EcoTender II project is monitoring and evaluation to assess whether the project is improving the quality and amount of priority vegetation communities.

32. The Murrumbidgee CMA will periodically undertake detailed ecological surveys across a sample of properties. Every two to three years a site assessment will also be undertaken to determine the ongoing environmental significance of the site.

33. Landholders may also be asked to participate in social surveys to provide feedback about their involvement in the project. These surveys will provide information on how participating landholders are engaging in environmental stewardship.

**Sale of land during the contract**

34. The contract does not prevent a landholder from selling their land during the term of the contract. However, the landholder is required to advise the Murrumbidgee CMA of any proposed change in land ownership that may occur within the contract period.

35. As the covenant will remain on the title to the property, the purchaser will be required to complete the conservation management actions.

36. The landholder is not required to repay the Murrumbidgee CMA that component of the conservation management payment that is referable to the management actions that have not been completed.

**Early termination of the contract because of non-performance**

37. If there is an early termination of the contract the landholder must repay the Murrumbidgee CMA within 28 days of the date of termination an amount equal to the component of the conservation management payment that relates to management actions not commenced or completed at the date of termination.

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**Ruling****Section 6-5 – income according to ordinary concepts**

38. A conservation management payment received by a landholder under a PVP, entered into as part of the Murrumbidgee EcoTender II project with the Murrumbidgee CMA, is income according to ordinary concepts and is assessable under section 6-5.



## **Section 15-10 – bounty or subsidy**

39. A conservation management payment received by a landholder under a PVP, entered into as part of the Murrumbidgee EcoTender II project with the Murrumbidgee CMA, is not assessable under section 15-10 as a bounty or subsidy.

## **Capital gains tax**

40. CGT event C2 (section 104-25) happens when the entitlement to receive the conservation management payment under a PVP ends upon its satisfaction. A landholder will make a capital gain if the capital proceeds from the ending of the right to receive a conservation management payment are more than the cost base of the right.

41. However, any capital gain made will be reduced under paragraph 118-20(1)(a) as the conservation management payment is included in the landholder's assessable income. The gain is reduced to zero if it does not exceed the amount of the conservation management payment included (paragraph 118-20(2)(a)).

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**Commissioner of Taxation**

15 December 2010

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## Appendix 1 – Explanation

**❶** *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

### Section 6-5 – income according to ordinary concepts

42. Subsection 6-5(1) provides that an amount is included in assessable income if it is income according to ordinary concepts. However, as there is no definition of income according to ordinary concepts in the ITAA 1997 it is necessary to apply principles developed by the courts to the facts of each case.

43. Whether or not a particular receipt is income according to ordinary concepts depends on its character in the hands of the recipient.<sup>1</sup> In *GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation*<sup>2</sup> (*Pipecoaters*), the Full High Court stated.

To determine whether a receipt is of an income or of a capital nature, various factors may be relevant. Sometimes the character of receipts will be revealed most clearly by their periodicity, regularity or recurrence; sometimes, by the character of a right or thing disposed of in exchange for the receipt; sometimes, by the scope of the transaction, venture or business in or by reason of which money is received and by the recipient's purpose in engaging in the transaction, venture or business.

44. The question of whether an amount is income according to ordinary concepts has been considered in a number of High Court decisions. The following guidance is afforded by those decisions:

- the whole of the circumstances must be considered;<sup>3</sup>
- a generally decisive consideration is whether the receipt is the product in a real sense of any employment of, or services rendered by the recipient, or of any business, or any revenue production activity carried on by the recipient;<sup>4</sup>
- other considerations that are relevant but not decisive include:

<sup>1</sup> *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367, *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248, *Federal Coke Co Pty Ltd v. FC of T* (1977) 7 ATR 519; 77 ATC 4255.

<sup>2</sup> (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1.

<sup>3</sup> *The Squatting Investment Company Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 627.

<sup>4</sup> *The Squatting Investment Company Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570 at 633; *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 56-57; *Scott v. Federal Commissioner of Taxation* (1966) 117 CLR 514 at 527-528.

- the motive of the donor (payer) in paying the amount;<sup>5</sup>
- the regularity and periodicity of the payment,<sup>6</sup> however a payment in a lump sum does not require a conclusion that the payment is capital;<sup>7</sup> and
- the recipient's expectation that an amount will be received.<sup>8</sup>

45. The Murrumbidgee EcoTender II project is intended to provide landholders with a funding opportunity to engage in conservation as an alternative to primary production. The conservation management payment is the means by which this opportunity is made available to the landholder.

46. The contract, in the form of a PVP, between the landholder and the Murrumbidgee CMA specifies the rights and obligations of both the landholder and the Murrumbidgee CMA and includes a schedule of management actions that the landholder agrees to undertake in order to receive the conservation management payment. Under the agreement the landholder agrees to undertake these management actions over a specified period. The conservation management payment is the product, in a real sense, of the service rendered by the landholder in undertaking the management actions for a period of 10 or 15 years.

47. The fact that the conservation management payment is made in a lump sum does not alter this conclusion as the timing of the payment is determined solely by a government requirement that the funding be paid as a single upfront lump sum payment.

48. Although the management actions are to be undertaken for a period of up to 15 years under the agreement because the payment is made in a single lump sum the question arises as to when the conservation management payment received under this agreement is assessable. Taxation Ruling TR 98/1 *Income tax: determination of income; receipts versus earnings*, states that when accounting for income in respect of a year of income, a taxpayer must adopt the method that, in the circumstances of the case, is the most appropriate.<sup>9</sup>

<sup>5</sup> *Hayes v. Federal Commissioner of Taxation* (1956) 96 CLR 47 at 55.

<sup>6</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540 at 568.

<sup>7</sup> *MIM Holdings Ltd v. FC of T* 97 ATC 4420 at 4430, applying *Pipecoaters*.

<sup>8</sup> *Federal Commissioner of Taxation v. Dixon* (1952) 86 CLR 540; (1952) 10 ATD 82 ; (1952) 5 AITR 44, *The Squatting Investment Company Ltd v. Federal Commissioner of Taxation* (1953) 86 CLR 570. This principle was also applied in *FC of T v. Blake* (1984) 15 ATR 1006; 84 ATC 4661.

<sup>9</sup> Under the 'receipts' method, income is derived when it is received, either actually or constructively, under subsection 6-5(4). Under the 'earnings' method, income is derived when it is earned.

49. Where an advance payment is made an amount received may not be derived as income when it is received, but when it is earned. The High Court in *Arthur Murray (NSW) Pty Ltd v. Federal Commissioner of Taxation* (1965) 114 CLR 314; (1965) 14 ATD 98; (1965) 9 AITR 673 (*Arthur Murray*) referred to the significance of an amount not being income unless it had been earned. In that case the High Court decided that prepaid fees in relation to dancing lessons not yet delivered should not be treated as income derived at the time the fees were paid. The principles arising out of *Arthur Murray* may be summarised as follows:

- subject to any special statutory provision, the inquiry to be made in each case is whether the receipt would, according to established accounting and commercial principles, be regarded as income derived; and
- as a matter of business good sense, the recipient should treat each amount of fees received but not yet earned as subject to the contingency that the whole or some part of it may have in effect to be paid back.

50. In *Case U7* 87 ATC 127; *Tribunal Case 20* (1987) 18 ATR 3120 (*Case U7*) the taxpayer had received an advance of grant monies that it would become entitled to on making certain expenditure on agreed research and development activities. The taxpayer's entitlement to the grant was in direct proportion to the proper expenditure on that work and the AAT considered that the taxpayer, in the year in question, had not done all that was required of it to earn the full amount prepaid to it.

51. The decisions in both *Arthur Murray* and *Case U7* support the position taken in Taxation Ruling TR 2006/3 *Income tax: government payments to industry to assist entities (including individuals)* to continue, commence or cease business, which states that 'an assessable government payment to industry that is an advance payment is derived by the recipient to the extent that the recipient has done everything necessary to be entitled to retain the amount received'.

52. The circumstances underlying the conservation management payment for management actions are that:

- the lump sum payment is intended to provide payment for ongoing management actions that the landholder is to provide on a regular basis for up to 15 years;
- the landholder is required to repay all conservation management payments received under the agreement for management actions that are not completed due to early termination of the contract; and
- the amount is paid in a single lump sum in advance specifically because the Murrumbidgee CMA is required by government to pay out the funding as a single upfront lump sum.

53. It is considered that the lump sum payment to the landholder for agreeing to undertake management actions over the term of the contract is to be accounted for as it is earned over the period of the contract. This means that the landholder's income tax return for each year covered by the agreement will include an amount for ongoing conservation management based on the activities actually undertaken in each year. An equal apportionment of the conservation management payment over the life of the agreement will not necessarily properly reflect this for all landholders.

54. If the landholder disposes of the land before the expiration of the contract it is considered that the balance of the conservation management payment not already accounted for as income is derived by the landholder at the time of disposal as there is nothing more for the landholder to do to earn the income.

## **Section 15-10 – bounty or subsidy**

55. Section 15-10 provides that an amount is included in assessable income if it is:

- a bounty or subsidy;
- received in relation to carrying on a business; and
- not assessable as ordinary income under section 6-5.

56. The conservation management payment is assessable as ordinary income under section 6-5 so it is specifically precluded from being assessable under section 15-10.

## **Capital gains tax**

57. When a landholder has:

- submitted a bid for funding for their property under the Murrumbidgee EcoTender II project;
- had their bid accepted; and
- executed a contract, in the form of a PVP, with the Murrumbidgee CMA,

an entitlement to receive the payment arises. This entitlement is a CGT asset under section 108-5.

58. CGT event C2 in section 104-25 happens when the entitlement to receive the conservation management payment is satisfied, that is, when the payment is made to the applicant. A landholder will make a capital gain if the capital proceeds from the ending of the right to receive a conservation management payment are more than the cost base of the right.

59. However, any capital gain made will be reduced under paragraph 118-20(1)(a).

60. Paragraph 118-20(1)(a) provides that any capital gain from a CGT event is reduced if a provision of the ITAA 1997 outside of Part 3-1 includes an amount (for any income year) in assessable income because of the event. In this case the whole amount of the conservation management payment will be included in assessable income as and when it is earned (see paragraphs 38, 53 and 54 of this Ruling). Consequently, any capital gain resulting from CGT event C2 happening when a right to receive the conservation management payment is satisfied will be reduced to zero in accordance with paragraph 118-20(2)(a).

## **Appendix 2 – Detailed contents list**

61. The following is a detailed contents list for this Ruling:

	<b>Paragraph</b>
<b>What this Ruling is about</b>	<b>1</b>
Relevant provision(s)	2
Class of entities	3
Qualifications	5
<b>Date of effect</b>	<b>9</b>
<b>Scheme</b>	<b>10</b>
Eligibility	11
Murrumbidgee EcoTender II project	15
Participation in the Murrumbidgee EcoTender II project	16
Environmental significance	19
Land management actions	21
Duration of the conservation contract	22
Assessment process	24
Delivery Mechanism	28
Funding payment	30
Monitoring and evaluation	31
Sale of land during the contract	34
Early termination of the contract because of non-performance	37
<b>Ruling</b>	<b>38</b>
Section 6-5 – income according to ordinary concepts	38
Section 15-10 – bounty or subsidy	39
Capital gains tax	40
<b>Appendix 1 – Explanation</b>	<b>42</b>
Section 6-5 – income according to ordinary concepts	42
Section 15-10 – bounty or subsidy	55
Capital gains tax	57
<b>Appendix 2 – Detailed contents list</b>	<b>61</b>

## References

### *Previous draft:*

Not previously issued as a draft

### *Related Rulings/Determinations:*

TR 98/1; TR 2006/3; TR 2006/10

### *Subject references:*

- assessable income
- CGT events C1-C3 – end of a CGT asset
- derived
- income
- subsidy

### *Legislative references:*

- ITAA 1997
- ITAA 1997 6-5
- ITAA 1997 6-5(1)
- ITAA 1997 6-5(4)
- ITAA 1997 15-10
- ITAA 1997 Pt 3-1
- ITAA 1997 104-25
- ITAA 1997 108-5
- ITAA 1997 118-20
- ITAA 1997 118-20(1)(a)
- ITAA 1997 118-20(2)(a)
- Australian Environment Protection and Biodiversity Conservation Act 1999
- Copyright Act 1968
- Native Vegetation Act 2003
- NSW Fisheries Management Act 1994
- NSW Threatened Species Conservation Act 1995
- TAA 1953

### *Case references:*

- Arthur Murray (NSW) Pty Ltd v. Federal Commissioner of Taxation (1965) 114 CLR 314; (1965) 14 ATD 498; (1965) 9 AITR 673
- Case U7/Tribunal Case 20 87 ATC 127; (1987) 18 ATR 3120
- FC of T v. Blake 84 ATC 4661; (1984) 15 ATR 1006
- Federal Coke Co Pty Ltd v. FC of T (1977) 34 FLR 375; 77 ATC 4255; (1977) 7 ATR 519
- Federal Commissioner of Taxation v. Dixon (1952) 86 CLR 540; (1952) 10 ATD 82 ; (1952) 5 AITR 443
- GP International Pipecoaters Pty Ltd v. Federal Commissioner of Taxation (1990) 170 CLR 124; 90 ATC 4413; (1990) 21 ATR 1
- Hayes v. Federal Commissioner of Taxation (1956) 96 CLR 47; (1956) 11 ATD 68; (1956) 6 AITR 248
- MIM Holdings Ltd v. FC of T 97 ATC 4420; (1997) 36 ATR 108
- Scott v. Federal Commissioner of Taxation (1966) 117 CLR 514; (1966) 14 ATD 286; (1966) 10 AITR 367
- The Squatting Investment Company Ltd v. Federal Commissioner of Taxation (1953) 86 CLR 570; (1953) 10 ATD 126; (1953) 5 AITR 496

### ATO references

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