

INCOME TAX EXEMPTION & IMPACT OF TRADING INCOME

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About the Presenter

Ridhwaan Khan CA(SA)
HDip (Tax), HDip (VAT)

TPC - Director of Tax

- Qualified Chartered Accountant (17 years experience)
- Post Graduate certificate in Advanced Taxation (Honours)
- Post Graduate certificate in Advanced VAT (Honours)
- Member of SAICA
- VAT specialist & Technical advisor for SAICA - Eastern Region Tax Committee
- Member of the Institute of Internal Auditors South Africa
- Registered SARS Tax Practitioner (PR-0008992)
- Tax Trainer & Advisor to Auditor General South Africa (AGSA)
- VAT & PAYE project advisor for KZN Provincial Treasury
- Currently serves as Tax advisor to more than 50 tax exempt entities
- Extensive Tax and VAT consulting experience across Non-Profit, Corporate, Banking & Insurance, Education & Public Sectors
- +16 years' Income Tax, VAT & PAYE experience
- +3 years' audit experience
- +2 years' Computer & Internal Audit experience

Overview

Points to Cover

- NGO Statistics
- The Tax environment - Introduction
- Demystifying terminology
- Public Benefit Organisations
 - Administration
 - Income Tax



NGO Statistics

The Sector in SA



**R20BN + INCOME
GENERATED PER
ANNUM**



**R5BN +
CORPORATE
CSI**



**2M + PEOPLE
VOLUNTEER
TIME**



**R5.1BN + IN
SWEAT
EQUITY**

**"SA NGOs rise and fall; a few last and provide
consistent service delivery.**

**A major factor in the rise and fall can be attributed
to the lack of sustainable funding."**



General Myths



**NPO/PBOS ARE
FULLY TAX
EXEMPT**



**TRADE/BUSINESS
PROHIBITED FOR
PBOS**



**PBO STATUS
COMPROMISED
THROUGH
TRADE INCOME**



**NO COMPLIANCE
RULES FOR PBOS
(E.G. FILING TAX
RETURNS)**

Tax Environment



Introduction

- The need for Tax exempt entities
- Conditional exemption vs Automatic exemption
- Exempt entities vs Exempt income

- Government
- Common Interest Institutions
- Recreational clubs
- Public Benefit Organisations
- Body Corporates
- Shareblocks
- Homeowners associations

Demystifying Terminology



NON-PROFIT
ORGANISATION

- An entity with a public benefit, philanthropic or charitable motive
- Colloquially used to describe all entities with a public benefit, philanthropic or charitable motive
- Technically, it refers only to entities registered in terms of the Non Profit Organisations Act 71 of 1997 (NPO Act)

Demystifying Terminology

NON-PROFIT COMPANY

- A Non-Profit Company (NPC) is a Companies Act (Section 1 of Act 71 of 2008) definition & term
- In respect of income tax, this structure does not bestow any income tax benefits in itself

NON-PROFIT TRUST

- A Non-Profit Trust is a trust that has been set up with a public benefit, philanthropic or charitable motive in terms of The Trust Property Control Act.
- In respect of income tax, this structure does not bestow any income tax benefits in itself.

VOLUNTARY ASSOCIATION

- A Voluntary Association is a group of individuals who voluntarily enter into an agreement to form a body (or organisation) to work together for a purpose.
- E.g. trade associations, trade unions, professional associations, & environmental groups, even charitable or public benefit orientated associations
- In respect of income tax, this structure does not bestow any income tax benefits in itself.

Demystifying Terminology



**WELFARE
ORGANISATION/
ASSOCIATION
NOT FOR GAIN**

- Used to describe all entities with a public benefit, philanthropic or charitable motive (the welfare of the public at its core & therefore used synonymously with the term non-profit organisation etc)

**PUBLIC BENEFIT
ORGANISATION**

- Public Benefit Organisation (PBO) is a technical term defined in the ITA) - refers to a specific type of tax exempt entity)

Structure of the Income Tax Act

ADMINISTRATION:
S30 OF ITA

**ACTIVITIES
SCHEDULE:**
PART 1 OF THE NINTH
SCHEDULE OF ITA

EXEMPTION:
S10(1)(cN)

Section 30 - Overview

Section 30 (1)

(a) Legal form

(b) Object & Manner

(c) Benefit of the general public



Section 30

SECTION 30(1)

(a) Legal form

- Non-Profit Company
- Non-Profit Trust
- Association of persons
- SA branch of a foreign exempt entity



LEGAL FORMATS

ENTITY	LEGISLATION	FOUNDING DOCUMENT
Non-Profit Company	Companies Act	Memorandum of Incorporation
Non-Profit Trust	Trust Property Control Act	Trust Deed
Voluntary Association	Common Law	Constitution

These are the 3 common legal structures within which a PBO can be established

Section 30

SECTION 30(1)

(b) Object & Manner

- Object of the organisation
- Manner in which public benefit activities must be carried on
- No self-interest of any fiduciary or employee

Section 30(1) (b)
Object of the organisation:
Sole or principal object is
to carry on Public Benefit
Activities (PBAs)

Public Benefit Activities as
per Part 1 of the 9th
Schedule

The PBAs approved by the Minister for purposes of section 30 are listed in Part I and categorised as follows:

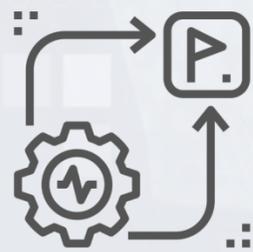
- Welfare and Humanitarian (paragraph 1)
- Health Care (paragraph 2)
- Land and Housing (paragraph 3)
- Education and Development (paragraph 4)
- Religion, Belief or Philosophy (paragraph 5)
- Cultural (paragraph 6)
- Conservation, Environment and Animal Welfare (paragraph 7)
- Research and Consumer Rights (paragraph 8)
- Sport (paragraph 9)
- Providing of Funds, Assets and Other Resources (paragraph 10)
- General (paragraph 11)

Section 30(1)(b) & (c)



OBJECT

Sole or principal object is to carry on public benefit activities (PBA's)



MANNER

PBA's to be carried on in a non-profit manner & with an altruistic or philanthropic intent

S 30(1)(b)&(c)



NO SELF-INTEREST

PBO's not intended to directly or indirectly promote the economic self-interest of any person



BENEFIT GENERAL PUBLIC

For the benefit of, or is widely accessible to, the general public at large, including any sector thereof

Section 30(3)

(b) Formal Requirements

- Founding document
- Fiduciary responsibility
- Prohibition on distributions
- Dissolution
- Non-revocable donations
- Amendments to the founding document

(c) Participation in tax avoidance schemes

(d) Remuneration

(e) Reporting to SARS

(f) Funds provided to any association of persons

(h) Payments to political parties

(3B) Retrospective approval as a public benefit organisation

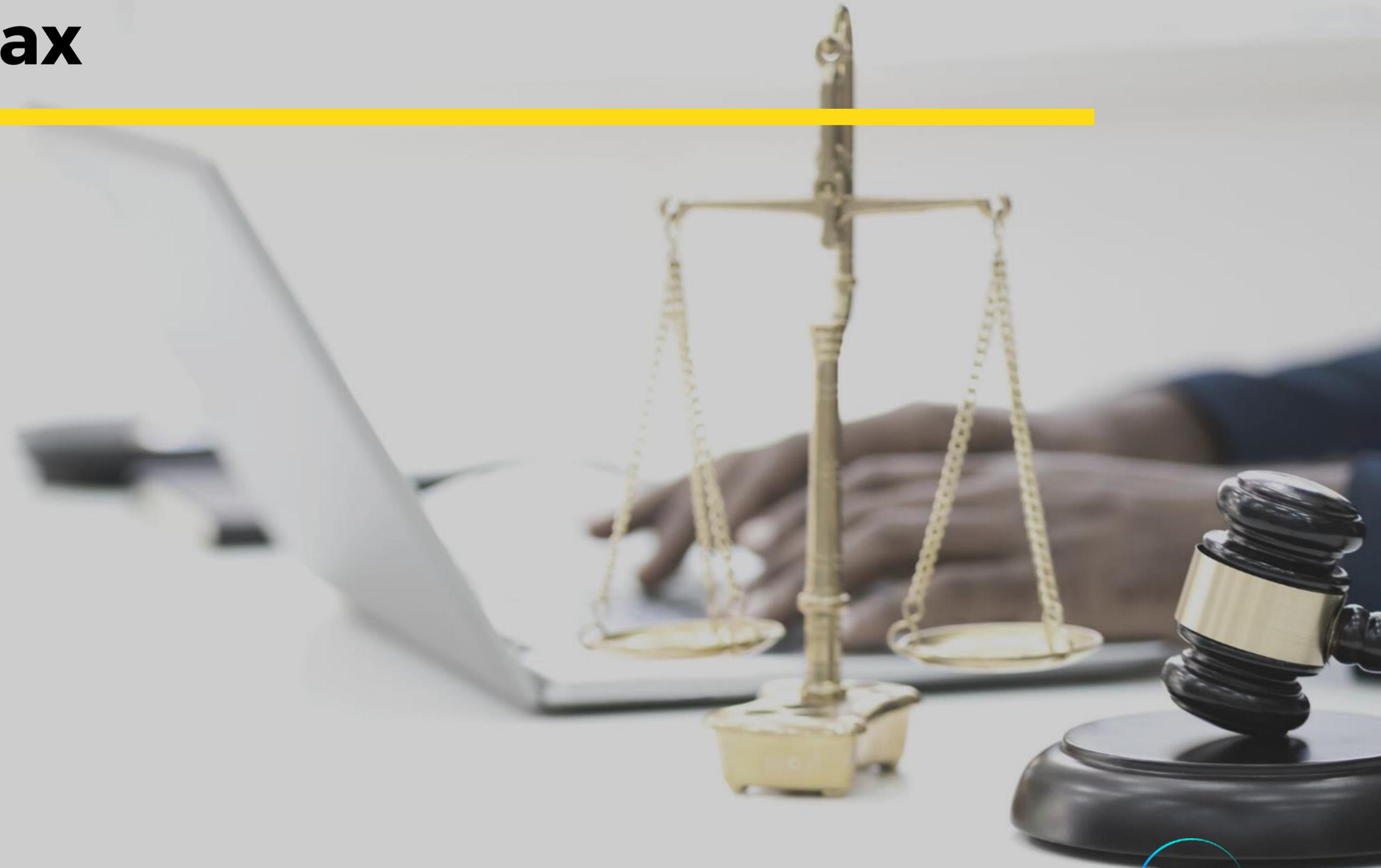
(3C) Registration as a non-profit organisation

Section 30(3A) - Group Registration

A group of organisations may be approved as a PBO provided the following requirements are met:

- Share a common purpose & carry on the same PBAs
- Direction & supervision of a co-ordinating body
- Founding documents must be common or similar
- Must be amended to comply with the prescribed requirements
- All the organisations within the group comply with the provisions of section 30
- Report any organisation within the group acting contrary to the provisions of section 30
- A certified report (indicating that the organisations complied with the provisions of section 30) must be included in the consolidated AFS

Income Tax



Tax Benefits - Overview

Tax	Type of Exemption/Benefit
Income Tax	<ul style="list-style-type: none">• Full exemption on Donations, Passive Income and certain Trading Income• Partial exemption on other Trading Income
Value-Added Tax	Vat registration is voluntary based on public benefit activities undertaken
Capital Gains Tax	Full exemption – based on usage of asset
Transfer Duty	Full exemption – based on usage of property
Donations Tax	Full exemption – for both Donor and Donee
Dividends Tax	Full exemption
Skills Development Levy	Full exemption – based on public benefit activity undertaken
Employment Tax (PAYE)	No exemptions
Unemployment Insurance	No exemptions
Security Transfer Tax	Full exemption - if the security is transferred to a PBO
Excise & Custom Duty	Full exemption - based on nature of good (e.g. donated goods)

Full v Partial Exemption

1. NON-BUSINESS/
NON-TRADE
INCOME

Full Exemption
Section 10(1)(cN)(i)

2. SPECIFIC
BUSINESS &
TRADING INCOME

Full Exemption
Section 10(1)(cN)(ii)(aa-cc)

3. BASIC
EXEMPTION

Partial Exemption
Section 10(1)(cN)(ii)(dd)

1. Non Business/Non Trading Income Exemption

Business undertaking

- Not defined in the ITA
- Normal interpretative concepts & Case Law will apply
- Includes anything which occupies time, attention & labour of a person for profit
- No hard & fast rules in determining what constitutes “business”
- Intention, motive, frequency & nature of the activity must also be considered

Trading Activity

- Defined in section 1 of the ITA as:

"every profession, trade, business, employment, calling, occupation or venture, letting of property & the use of or the grant of permission to use a patent, design, trade mark or copyright"

- Not an exhaustive list
- Including any activity involving risking something with the object of making a profit

Non-Business/Non-Trading Income Examples

- Donations (Corporates & Individuals)
- Government subsidies
- Grants
- Interest on or profit on investments (Passive)
- Bequests
- Dividends



2. Specific Business & Trading Income Exemption

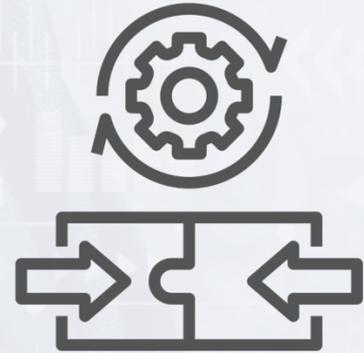
Three categories of business/trading income qualifying for exemption:

2.1 INTEGRALLY &
DIRECTLY RELATED

2.2 OCCASIONAL
TRADE

2.3 MINISTERIAL
APPROVAL

2.1 Integrally & Directly Related



Integral & Directly related to sole or principal object

- Not defined
- Normal interpretative concepts apply
- Essential or fundamental, Directly connected, linked and associated



Substantially the whole of which is directed towards the recovery of cost

- Not defined
- Normal interpretative concepts apply
- SARS view: not to maximise profits but with intention of recovering direct & indirect costs
- SARS accepts a 85% cost recovery



Does not result in unfair competition in relation to taxable entities

- Unfair advantage over a taxable entity conducting the same business activity
- No specific guidelines
- Each case will be considered on its own merits

2.2 Occasional Trade

- Conducted on an irregular, infrequent basis or as a special event
- Be undertaken substantially with assistance on a voluntary basis without compensation (other than the bona fide reimbursement of reasonable & necessary out-of-pocket expenditure)

Examples

- Annual jumble sales, fundraising events such as fêtes, cake sales etc
- Charity golf days involving donated or sponsored prizes
- A gala dinner held to raise funds, or
- Sale of Christmas cards by volunteers

2.3 Ministerial Approval

The Minister of Finance (on application) will consider (approved via Notice in the Gazette):

- the scope & benevolent nature of the undertaking or activity
- the direct connection & interrelationship of the undertaking or activity with the sole or principal object of the public benefit organisation
- the profitability of the undertaking or activity
- the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity



3. Basic Income Exemption

- All income from business undertakings or trading activities not exempted under 2.1 to 2.3 will be subject to the basic exemption
- Calculated as an amount equal to the greater of:
 - 5% of total receipts and accruals, or
 - R 200 000
- Deductibility of legitimate expenditure must be considered
- Assessed Loss may be carried forward (subject to normal IT rules).

Example

A PBO earns rental income which does not qualify for any exemptions under section 10(1)(cN)(ii)(aa-cc).

The PBO's total receipts and accruals for the year ended 30 June 2021 are as follows:

Donations	R5 000 000
Rental income	R450 000
Interest income	R500 000
Total receipts & accruals	R5 950 000

3. Basic Income Exemption

Solution:

The basic exemption is calculated as an amount equal to the greater of 5% of the total receipts and accruals or R200 000.

5% of the total receipts of R5 950 000 = R297 500

Of the total rental receipts of R450 000, an amount of **R297 500** will be exempt as the exemption is calculated on the greater of:

- R297 500 or
- R200 000





SUNITHA SINGH

GM: FINANCE & ADMIN

"TPC has enhanced our ability to increase our activities through tax savings"



JUDI GIBSON

EX GM

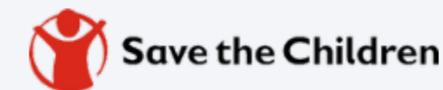
"The League will remain eternally grateful to TPC for their interest shown and the assistance so willingly provided, to assist us in the most meaningful way"



KINGSLEY KIPURY

EX COO

"TPC came highly recommended and they did not disappoint"



SOME OF THE NPOS WE SERVE

About TPC



**NPO
SPECIALISTS**



**TECHNICAL
EXPERTISE**



**PROVEN TRACK
RECORD**



**TRUSTED NPO
ADVISORS**



TAILORED NPO SOLUTIONS

Specialised tax services designed for your NPO

1

Legal tax opinions, advise & planning

2

Specialised NPO Income Tax & VAT consulting

3

Expatriate tax services & compliance

4

Historical analysis & recovery of unclaimed tax benefits

Q & A



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