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## PROSPECTS FOR THE APPLICATION OF A SPECIAL TAX REGIME FOR TRANSACTIONS WITH VIRTUAL ASSETS

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**Abstract.** The article studies the prospects of applying a special tax regime for transactions with virtual assets in Ukraine. Applying existing tax conditions to the virtual asset market will lead to the opposite effect – the complete shadowing of the industry. That is why there is now an urgent need for delayed adoption of the relevant bill, which should ensure the launch of a completely legal and transparent market for virtual assets. Based on the results of the research, a general conclusion was made that applies to both individuals and legal entities – a single tax rate on transactions with virtual assets, in the amount of 5% – even if on the general taxation system, even if on the simplified taxation system – which levels out separately a special tax regime for operations with virtual assets declared and regulated by Law No. 7150.

**Key words:** taxation, virtual assets, cryptocurrency, bitcoin, electronic money, non-cash money, money surrogate.

**Introduction.** Government officials of many countries, including Ukraine, the USA, the EU, and several other leading countries in the world, show a deep interest in the regulation of cryptocurrencies. Lawmakers around the world are trying to figure out what laws and guidelines should be in place to make cryptocurrency safer for investors and less attractive to cybercriminals. "Regulation is probably one of the most talked about topics in the crypto industry globally," said Jeffrey Wang, head of the US division of Amber Group, a Canadian crypto finance firm. "We would be very happy with a clear regulation." US Federal Reserve Chairman Jerome Powell recently said he has "no intention" of banning cryptocurrencies in the US such as Ethereum, while Securities and Exchange Commission Chairman Gary Gensler has consistently commented on its role in commodity futures trading in the industry. So Gary Gensler recently said that investors "are likely to suffer" if tighter regulation is not introduced. Gary Gensler and Jer Powell's comments are consistent with the new sentiment from the Biden administration and other US lawmakers that cryptocurrency regulation needs to be improved. Clear regulation would mark the removal of a "significant hurdle for cryptocurrency," says Jeffrey Wang, as US firms and investors operate without clear guidance for now. ("The Future of Cryptocurrency," 2021)

In general, the sale or other exchange of virtual currencies, or the use of virtual currencies to pay for goods or services, or the holding of virtual currencies as an investment generally has tax consequences that may result in tax liability. This statement, regarding federal tax consequences, applies only to transactions in convertible virtual currency or transactions that use convertible virtual currency – this is the opinion of the official website of the US Federal Internal Revenue Service (*Virtual Currencies. Internal Revenue Service, n.d.*)

The application of the existing tax conditions to the virtual assets market will lead to the complete opposite effect – the complete shadowing of the industry and the labor emigration of the professional, highly intelligent community outside of Ukraine to more attractive jurisdictions – those countries that systematically pursue policies that stimulate labor immigration. That is why there is an urgent need

for the immediate adoption of the corresponding bill, which should ensure the launch of a completely legal and transparent market of virtual assets, and (due to this) significantly strengthen the competitiveness of Ukraine on the world market of services related to their turnover. (*Pojasnujuvaljna zapyska do Proektu #7150 Zakonu Ukrainy «Pro vnesennja zmin do Podatkovogho kodeksu Ukrainy shhodo opodatkovannja oborotu virtualjnykh aktyviv v Ukraini»*, 2022)

**Literature review and output conditions.** Ukraine will be able to be ahead of other countries in the field of virtual assets – the Deputy Minister of Digital Transformation for IT Development is convinced of this (*Mincyfra spiljno z kryptospiljnotoju prezentuvaly strateghiju rozvytku rynku virtualjnykh aktyviv*, 2021).

On February 17, 2022, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Virtual Assets" No. 2074-IX (hereinafter – Law 2074) (Pro virtualjni aktyvy, 2022). Which was signed by the President of Ukraine on March 15, 2022, after taking into account the changes, according to his previously submitted proposals (*Propozycji Prezydenta Ukrainy do Zakonu “Pro virtualjni aktyvy,” 2020*). According to Clause 1 of Chapter VI "Final and Transitional Provisions" of Law 2074, the law itself will enter into force: a). from the date of entry into force of the law of Ukraine on amendments to the Tax Code of Ukraine, regarding the peculiarities of taxation of operations with virtual assets; b). implementation of the State Register of service providers related to the turnover of virtual assets, which is additionally specified in Clause 2 of Chapter VI of the Final and Transitional Provisions, as a limitation in the possibility of applying sanctions provided for in Article 23 of Law 2074. To fulfill the prescriptions of clause 1 of Section VI of the Law 2074 and for its implementation (*Porivnjajlna tablycja do Proektu #7150 Zakonu Ukrainy “Pro vnesennja zmin do Podatkovogho kodeksu Ukrainy, shhodo opodatkovannja operacij z virtualjnomy aktyvamy,” 2022*), On March 13, 2022, the Verkhovna Rada of Ukraine registered draft law No. 7150 "On Amendments to the Tax Code of Ukraine on the Taxation of Transactions with Virtual Assets" (hereinafter referred to as Draft Law 7150) (*Proekt #7150 Zakonu Pro vnesennja zmin do Podatkovogho kodeksu Ukrainy shhodo opodatkovannja operacij z virtualjnomy aktyvamy, 2022*).

**Purpose of the article.** To conduct a study of the prospects laid down in Draft Law 7150 regarding amendments to the Tax Code of Ukraine in connection with the adoption of the Law of Ukraine "On Virtual Assets", regarding the application of a special tax regime for operations with virtual assets in Ukraine.

**Methodology statement.** When conducting the research, the following were used: general scientific research methods – deduction and induction, synthesis and analysis, scientific abstraction, systematic approach; especially – legal methods of knowledge – formally legal; legal forecasting, retrospective, and comparative legal method; methodological substantiation of the essence, nature, and structure of the terminology, which is the object of research.

**Results of the study.** Draft Law 7150 is called to form a legal tax platform in the legal field of Ukraine for cryptocurrencies, for which Law 2074 adopted the general name – virtual assets. In general, this should lead to a noticeable increase in the gross domestic product of Ukraine shortly. This can be ensured by the fact that Draft Law 7150 provides for the provision of tax incentives for the taxation of operations related to virtual assets, which will probably allow the new digital economy to flourish as a legal industry that pays taxes to the budget of Ukraine.

**1. Definition and legal regulation of virtual assets.** State regulation of the market of virtual assets – implementation by the state in the person of the National Commission for Securities and the Stock Market (hereinafter – the NCSSM) (Regulations on the National Commission for Securities and the Stock Market, 2011) and the National Bank of Ukraine (hereinafter – the NBU) (About the National Bank of Ukraine, 1999) comprehensive measures to organize, control, supervise the market of virtual assets, regulate the rules of operation of service providers related to the turnover of virtual assets, as well as measures to prevent and counter abuse and violations in the market of virtual assets (Paragraph 1 of Article 16 Law 2074).

State regulation in the sphere of circulation of secured virtual assets secured by currency values (SVA(CV)), within its competencies, is carried out by the National Bank of Ukraine.

State regulation in the sphere of virtual assets turnover, except for SVA(CV), in particular regarding secured virtual assets secured by security or a derivative financial instrument (SVA(FI)), within its competencies, is carried out by the National Securities and Stock Commission market.

Law 2074 forms its division of virtual assets, which is not similar to the generally accepted one in the community related to the crypto industry:

- *virtual asset* – an intangible good that is the object of civil rights, has a value and is expressed by a set of data in electronic form. The existence and liquidity of a virtual asset are ensured by the system of ensuring the turnover of virtual assets. A virtual asset can testify to property rights, in particular, rights of claim to other objects of civil rights (Paragraph 1 of paragraph 1 article 1 of Law 2074); Virtual assets are intangible assets, and the specifics of their turnover are determined by the Civil Code of Ukraine and this Law. Virtual assets can be unsecured or secured. (Paragraph 1 of Article 4 of the Law of 2074);

- *a secured virtual asset* – a virtual asset that certifies property rights, in particular, the right of claim to other objects of civil rights (clause 3 clause 1 article 1 of Law 2074); Secured virtual assets certify property rights, in particular, rights of claim to other objects of civil rights (Paragraph 3 of Article 4 of the Law of 2074);

- *unsecured virtual asset* – a virtual asset that does not certify any property or non-property rights (Paragraph 6 of Paragraph 1, article 1 of Law 2074); Unsecured virtual assets do not prove property rights. (Paragraph 2 of Article 4 of the Law of 2074);

In turn, a secured virtual asset, as a financial virtual asset, forms two separate directions of its internal distribution, into secured by currency values and secured by securities or a derivative financial instrument (Paragraph 6 of Article 4 of the Law of 2074):

- a secured virtual asset secured by currency values issued by a resident of Ukraine (hereinafter – SVA(CV));

- a secured virtual asset issued by a resident of Ukraine, secured by security or a derivative financial instrument (hereinafter – SVA(FI)).

**2. Providers of services for the turnover of virtual assets.** Business entities of all forms of ownership have the right to operate as a provider of services related to the turnover of virtual assets, subject to compliance with the requirements specified by Law 2074 (Paragraph 1 of Article 18 of Law 2074).

The activity of service providers related to the turnover of virtual assets is allowed only on the condition of obtaining a permit for the provision of services related to the turnover of virtual assets of the appropriate type, defined by Law 2074 (Paragraph 2 of Article 18 of Law 2074).

Business entities are allowed to conduct more than one type of activity as a provider of services related to the turnover of virtual assets, subject to obtaining a permit for the provision of each relevant type of service related to the turnover of virtual assets (Paragraph 3 of Article 18 of Law 2074).

Providers of services related to the turnover of virtual assets are exclusively business entities – legal entities that conduct one or more of the following types of activities in the interests of third parties: 1). storage or administration of virtual assets or virtual asset keys; 2). exchange of virtual assets; 3). transfer of virtual assets; provision of intermediary services related to virtual assets (Paragraph 8 of Paragraph 1 Article 1 of the Law 2074);

The service provider can be a foreign legal entity that is a participant in the virtual assets market, under the law of a foreign state, conducts activities as a service provider in the manner and under the conditions determined by the National Commission for Securities and the Stock Market, taking into account the requirements and restrictions determined by this Law (Paragraph 6 Article 9 of Law 2074).

In some cases, it is not necessary to obtain a permit to carry out activities related to the turnover of virtual assets, and in some cases, it is necessary to additionally have an appropriate license:

- *Issuance of a permit for the provision of services related to the turnover of SVA (FI) – in the cases and procedures established by the NCSSM, professional participants of the capital markets have the right to conduct the relevant type of activity of the provider of services related to the turnover of virtual assets, without obtaining permits provided for by Law 2074 (Paragraph 17 of Article 19 of Law 2074);*

- *issuance of a permit for the provision of services related to the turnover of virtual assets of SVA(CV) – a). a provider of services related to the turnover of virtual assets, which is a bank, has the right to provide services related to the turnover of SVA(CV) based on a banking license and permission to provide services related to the turnover of virtual assets; b). a provider of services related to the turnover of virtual assets, which is a non-banking financial institution, has the right to provide services related to the turnover of SVA(CV) based on a license of the NBU to carry out currency operations and a permit to provide services related to turnover of virtual assets (Paragraph 16 of Article 19 of Law 2074).*

The supervision of the activities of service providers related to the turnover of foreign financial institutions, which are banks, and branches of foreign banks, is carried out by the procedure defined by the Law of Ukraine "On Banks and Banking Activities" (Pro banky i bankivsjku dijajlnistj, 2000). Supervision of the activities of service providers related to the turnover of SVA(CV), which are non-banking financial institutions, is carried out by the procedure established by the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" (Pro finansovi poslughy ta derzhavne rehuljuvannja rynkiv finansovykh poslugh, 2001) (Paragraph 2 of Article 17 of Law 2074).

Only a financial institution can be a provider of services related to the turnover of SVA(CV) (Paragraph 7 of Article 9 of Section III of the Law of 2074).

Virtual asset exchange services are activities related to the exchange of virtual assets for other virtual assets and currency values, carried out for third parties and/or on behalf of and in the interests of third parties.

Providers of virtual asset exchange services have the right to provide virtual asset exchange services exclusively for other virtual assets or the national currency (hryvnia), and in cases determined by the National Bank of Ukraine – for other currency values (Paragraph 2 of Article 11 of Law 2074).

Thus, the realization of virtual assets in the legal field of Ukraine is possible only through an intermediary, namely a provider of services for the circulation of virtual assets: a). in the direct sale procedure, – which has permission to provide intermediary services related to virtual assets; b). during the exchange procedure – which has permission to provide operations for the exchange of virtual assets for other virtual assets and currency values.

### ***3. Terminology proposed by Law No. 7150 to the Tax Code of Ukraine in connection with the adoption of the Law of Ukraine "On Virtual Assets".***

Following Project 7150 of amendments to the Tax Code of Ukraine (hereinafter – TC), new concepts will be introduced in Article 14 of Section I "General Provisions", in particular: virtual asset (Article 14 Clause 14.1.33 TC), secured virtual asset (Article 14 Clause 14.1.61 TC), unsecured virtual asset (Article 14 Clause 14.1.62 TC), provider of services related to the turnover of virtual assets (Article 14 Clause 14.1.192 TC), services related with the turnover of virtual assets (Article 14 Clause 14.1.184 TC), a provider of services related to the turnover of virtual assets (Article 14 Clause 14.1.192 TC) – which are used in the meaning given in the Law of Ukraine "On Virtual assets".

In addition, there are also new definitions that relate exclusively to the specifics of the regulation of tax relations in Ukraine and are inherent in the Tax Code of Ukraine:

*profit from transactions with virtual assets for the purposes of Chapter IV of this Code – income in the form of a positive difference between the income received by the taxpayer from operations with virtual assets and the costs of their acquisition (Article 14 Clause 14.1.196-1 TC);*

*use of a secured virtual asset* – termination of the right of ownership of the secured virtual asset by transfer to the owner of the secured virtual asset of the property right that was secured by it (Article 14 Clause 14.1.25 TC);

*goods* – tangible and intangible assets, including land plots, land shares (units), as well as securities and derivatives used in any operations, except for their issue (issue) and *repayment, and virtual assets used in any operations, except operations on their release (emission) and use* (Article 14 Clause 14.1.244 TC).

**4. Draft Law 7150 provides a mechanism in the Tax Code of Ukraine for the application of a special tax regime for the taxation of transactions with virtual assets.**

Article 291 of Chapter 1 "Simplified System of Taxation, Accounting and Reporting", Chapter XIV "Special Tax Regimes" establishes the general provisions of the legal basis for the application of the simplified system of taxation, accounting, and reporting, as well as the payment of a single tax.

Draft Law 7150 provides for the possibility of applying a simplified taxation system to service providers involved in the turnover of virtual assets, i.e. to be taxpayers of a single tax of the first-third groups. Thus, Article 291 of Chapter 1 "Simplified System of Taxation, Accounting and Reporting", Chapter XIV "Special Tax Regimes" stipulates that the following entities (legal entities) cannot be single taxpayers of the first – third groups (Clause 291.5. TC): and natural persons – entrepreneurs) who carry out: 6) activities in the field of financial intermediation, except for activities in the field of insurance, which are carried out by insurance agents defined by the Law of Ukraine "On Insurance", surveyors, accident commissioners, and adjusters defined by Section III of this Code, and services related to the turnover of virtual assets (Clause 291.5.1 TC); insurance (reinsurance) brokers, banks, credit unions, pawnshops, leasing companies, trust companies, insurance companies, institutions of accumulative pension provision, investment funds, and companies, other financial institutions defined by law, except for business entities that provide only services, related to the turnover of virtual assets; registrars of securities (Clause 291.5.4 TC).

The simplified system of taxation, accounting, and reporting is a special mechanism for the payment of taxes and fees, which establishes the replacement of the payment of individual taxes and fees, established by Clause 297.1 of Article 297 of the Tax Code, with the payment of a single tax in the manner and under the conditions specified by this chapter, with the simultaneous maintenance of a simplified accounting and reporting (Clause 291.2 TC).

A legal entity or a natural person – an entrepreneur can independently choose a simplified taxation system if such a person meets the requirements established by this chapter and is registered as a single taxpayer in the manner determined by this chapter (Clause 291.3 TC).

Business entities that apply a simplified system of taxation, accounting, and reporting are divided into the following groups of single taxpayers (Clause 291.4 TC):

1) the first group – natural persons – entrepreneurs who do not use the labor of hired persons, carry out exclusively retail sales of goods from trading places in the markets, and/or carry out economic activities for the provision of household services to the population and whose income during the calendar year does not exceed 167 amounts of the minimum wages established by law on January 1 of the tax (reporting) year;

2) the second group – natural persons – entrepreneurs who carry out economic activities for the provision of services, including household ones, to single taxpayers and/or the population, production and/or sale of goods, activities in the field of the restaurant business, provided that during the calendar year they meet set of such criteria:

do not use the labor of hired persons or the number of persons who are in labor relations with them at the same time does not exceed 10 persons;

the amount of income does not exceed 834 amounts of the minimum wage established by law on January 1 of the tax (reporting) year.

The effect of this subsection does not apply to natural persons – entrepreneurs who provide intermediary services for the purchase, sale, lease, and evaluation of real estate, services for providing access to the Internet, and also carry out production activities, supply, sale (sale) of jewelry and household products made of precious metals, precious stones, precious stones of organic formation and semi-precious stones. Such natural persons – entrepreneurs belong exclusively to the third group of single taxpayers if they meet the requirements established for such a group;

3) the third group – natural persons – entrepreneurs who do not use the labor of hired persons or the number of persons who are in labor relations with them is not limited, and legal entities – business entities of any organizational and legal form, which during the calendar year have a volume of income does not exceed 1,167 times the minimum wage established by law on January 1 of the tax (reporting) year.

For the purposes of Article 291 of Chapter 1 "Simplified System of Taxation, Accounting and Reporting", the following types of services are understood as household services to the population provided by the first and second groups of single tax payers (Clause 291.7 TC): 1) production of shoes by individual order; 2) shoe repair services; 3) production of sewing products by individual order; 4) manufacture of leather products by individual order; 5) manufacture of fur products by individual order; 6) production of underwear by individual order; 7) production of textile products and textile haberdashery by individual order; 8) production of headdresses by individual order; 9) additional services for the manufacture of products by individual order; 10) clothing and household textile repair services; 11) production and knitting of knitted products by individual order; 12) services for the repair of knitted products; 13) production of carpets and carpet products by individual order; 14) services for repair and restoration of carpets and carpet products; 15) production of leather haberdashery and travel products by individual order; 16) services for the repair of leather haberdashery and road products; 17) manufacture of furniture by individual order; 18) furniture repair, restoration and renewal services; 19) manufacture of carpentry and carpentry products by individual order; 20) maintenance and repair of cars, motorcycles, scooters and mopeds by individual order; 21) repair services of radio and television and other audio and video equipment; 22) repair services for electrical household appliances and other household appliances; 23) watch repair services; 24) bicycle repair services; 25) services for maintenance and repair of musical instruments; 26) manufacture of metal products by individual order; 27) repair services for other items of personal use, household goods and metal products; 28) manufacture of jewelry by individual order; 29) jewelry repair services; 30) rental of personal items and household goods; 31) photographic services; 32) film processing services; 33) services for washing, processing linen and other textile products; 34) cleaning and dyeing services for textile, knitted and fur products; 35) skinning of fur skins by individual order; 36) services of hairdressers; 37) funeral services; 38) services related to agriculture and forestry; 39) domestic service; 40) services related to cleaning and cleaning of premises by individual order.

**5. Tax rates for legal entities and individual entrepreneurs who are on the simplified taxation system.** The rates of the single tax for payers of the first group are set as a percentage (fixed rates) to the amount of the subsistence minimum for able-bodied persons, established by law on January 1 of the tax (reporting) year (further on in this chapter – the subsistence minimum), for the second group – as a percentage (fixed rates ) to the amount of the minimum wage established by law on January 1 of the tax (reporting) year (further on in this chapter – the minimum wage), the third group – as a percentage of income (interest rates) (Clause 293.1 TC).

The percentage rate of the single tax for taxpayers of the third group is set in the amount (Clause 293.3 TC): 1) 3 percent of income – in case of payment of value-added tax under the Tax Code; 2) 5 percent of income – in case of inclusion of value added tax in the composition of the single tax.

**5.1. Tax rates on income of individuals from transactions with virtual assets.** Chapter IV "Income Tax of Individuals" establishes the rate of tax on profits from operations with virtual assets (Clause

164.2.19 TC) in the amount of 5% (Clause 167.5.2 TC) on the general taxation system. The calculation of profit from operations with the virtual assets of an individual is carried out per the procedure specified in clause 170.2-1.1 of the TC.

**5.2. The rate of tax on the income of natural persons-entrepreneurs, on the general taxation system, from transactions with virtual assets.** Taxation of income received by a natural person-entrepreneur from the conduct of the economic activity, except for persons who have chosen a simplified taxation system, is defined in Art. 177 TCs. Amounts of income in the form of profits from operations with virtual assets are not included in the income of a natural person – an entrepreneur. Taxation of such incomes of an individual entrepreneur is carried out following the procedure specified in Clause 170.2-1 of Article 170 of the Tax Code (Clause 177.3.3 TC). In turn, Clause 170.2-1 of the TC regulates the taxation of profit from operations with virtual assets and is included in Chapter IV "Income Tax of Individuals". And in the context of Chapter IV "Income Tax of Individuals", the tax rate on profits from transactions with virtual assets (Clause 164.2.19 TC) is 5% (Clause 167.5.2 TC).

**5.3. Tax rate on the income of legal entities, on the general taxation system, from transactions with virtual assets.** Chapter III of the Tax Code of Ukraine regulates the mechanism of corporate income tax taxation. The object of taxation is defined (provided by Draft Law 7150) as profit from sales or other alienation of virtual assets, determined following Clause 141.9 of Article 141 of the Tax Code (Clause 134.1.8 of the TC). A tax rate of 5 percent is applied to the object of taxation defined by subsection 134.1.8 of Clause 134.1 of Article 134 of the Tax Code (Clause 136.8 of the Tax Code). The profit of a provider of services related to the turnover of virtual assets is taxed at a tax rate of 5 percent, provided that such a provider of services related to the turnover of virtual assets does not receive other income, except for income from the provision of services, associated with the turnover of virtual assets, and income arising from the accrual of exchange rate differences.

**Conclusion.** Based on the results of the research, several conclusions can be drawn regarding the prospects for making changes to the Tax Code of Ukraine provided for by Draft Law 7150:

1. Natural persons when conducting operations with virtual assets apply a 5% income tax rate (Clause 164.2.19; Clause 167.5.2; Clause 170.2-1 TC).

2. Natural persons-entrepreneurs who are on the general taxation system, when carrying out operations with virtual assets, apply a 5% income tax rate (Clause 167.5.2; Clause 170.2-1; Clause 177.3.3 TC);

3. Legal entities and individual entrepreneurs who are in the 3rd group of the simplified taxation system apply a 5% income tax rate when conducting transactions with virtual assets (Clause 291.5.1; 293.3).

4. Legal entities on the general taxation system when carrying out operations with virtual assets apply a 5% income tax rate (Clause 136.8 TC).

It is possible to draw a general conclusion, which applies to both individuals and legal entities – a single rate of tax on profit from transactions with virtual assets, in the amount of 5% – even on the general taxation system, even on the simplified taxation system – which does not command separately a special tax regime for operations with virtual assets declared and regulated by Law No. 7150.

Separately, it can be stated that it is not possible to carry out operations with virtual assets by natural persons-entrepreneurs, and their simultaneous stay in group 1 or 2 of the simplified taxation system – as it is recited in Clause 291.5.4 of the Code of Draft Law 7150. This is not possible due to the that:

1. Types and nature of the activities of the first and second groups of the simplified taxation system (Clause 291.4 TC), namely "retail sale of goods from trading places on the markets" (Clause 1 of Clause 291.7 TC) and/or "provision of household services population" (Clause 1 of Clause 291.7 TC), "activities in the field of restaurant business" (Clause 2 of Clause 291.7 TC), – do not correspond to the nature of operations with virtual assets;

2. The list of household services (Clause 291.7 TC) does not include operations with virtual assets.

And such a possibility is adjacent to the fact that the activity of turnover of virtual assets is not included in the list of activities (the last paragraph of Clause 2 of Clause 291.4 TC), which does not allow to be on the simplified taxation system of groups 1-2.

In general, it can be stated that Draft Law 7150 is subject to further improvement before its consideration by the Verkhovna Rada of Ukraine.

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