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G.T. Nurbekova^{1*}, M. Greggi²

¹ Karaganda University of the name of academician E.A. Buketov, Karaganda, Kazakhstan;

² University of Ferrara, Italy

(E-mail: g_nurbekova@mail.ru, marco.greggi@unife.it)

Collaboration, compliance and tax intermediaries: the case of banks.

The purpose of the study is to assess the role of second-tier banks in the system of financial and tax intermediation, to identify the relationship between legal regulation and the actual state of cooperation between tax authorities and commercial banks, compliance with laws and regulations in the field of compliance, as well as compliance with appropriate standards of conduct, both for banks and tax authorities bodies. Features of the interaction between banks and tax authorities are the implementation of mandatory instructions and the provision of the necessary information by banks for state revenue authorities. Cooperation and interaction of the tax authorities with banks is established in the Tax Code of the Republic of Kazakhstan. The current tax and banking legislation does not adequately define the status of banks in tax administration. The Tax Code of the Republic of Kazakhstan in general terms defines the rules for cooperation and interaction between second-tier banks and tax authorities, but banking legislation in this regard bypasses this issue. In scientific terms, approaches to disclosing the essence of financial intermediation of banks are ambiguous. Cooperation in the field of taxation, objectively established in the course of the historical development of the tax system, finds its legal consolidation and design, which is studied in this scientific work. In this regard, the article defines the legal status of banks in legal relations with the tax authorities, the role of banks as financial intermediaries in tax relations. This study also carried out a general analysis of potential and actual participants in tax legal relations, the list of which does not include banks. The research methodology was composed of analytical, systematic, formal-legal methods. The theoretical basis was the works of scientists on financial, tax and banking law. The conclusions made in the course of this study can be used in further research in these areas of law, as well as for the purposes of improving tax intermediation in the current legislation of the Republic of Kazakhstan.

Keywords: tax authorities, banks, cooperation, financial intermediaries, participants, tax intermediaries, tax relations, banking intermediation.

Introduction

The relevance of the topic under study is due to the significant role of banks as financial intermediaries in the field of taxation. The timeliness and completeness of revenue receipts to the state budget and the economic development of the state depend on how effectively, from a legislative point of view, it will be possible to form the interaction of tax authorities and banks.

Banks provide financial services and products such as loans, deposits, money transfers etc. In this regard, there are many issues related to the operation of banks, including cooperation, subordination (compliance) and tax intermediation. Cooperation is an important aspect of the banks' operation. Banks must cooperate with customers, government agencies, regulators and other banks. Bank customers expect banks to provide them with high quality services and products and protect their interests. Banks are monitored by governments and regulators to ensure they comply with laws and regulations.

* Corresponding author's e-mail: g_nurbekova@mail.ru

One of the main aspects of the bank's activity is its activity as participants in tax legal relations in the form of tax intermediaries, which reflects their heterogeneous nature and features in relations with state revenue authorities, including the possibility for the banks to operate withholding taxes on the revenue originated from financial investments or deposits.

We have to define the differences between financial and tax intermediation [8]. In the modern world, financial intermediaries play a significant role in the financial market. The main function of financial intermediaries is to ensure the effective redistribution of free cash.

It should be noted that in practice there are problematic issues related to the tax imperfections and banking legislation, as well as international integration constantly put forward new requirements and set new tasks that require clarification of previously conducted studies, including on the provision of information and various data by banks for bodies of state revenues, the performance by them of special functions for the transfer of taxes and taxpayers' fees. This is the main cooperation between banks and the tax service, and the issues of interaction between tax authorities and banks becoming increasingly important.

The purpose of this study is to identify the features of the relationship between tax authorities and banks, as well as to study the role of the bank as a financial intermediary between the state and taxpayers.

To achieve this goal, the study is aimed at solving the following tasks:

- To reveal the concept and content of the mediation of banks, the features of mediation of banks with tax authorities;
- Identification of banks' participation forms in relation with tax authorities;
- Analysis of the banks' activities as tax intermediaries;
- Compliance with the norms of the law, both by tax authorities and by banks in the exercise of special powers to provide information, to transfer and control the tax payments of their clients, i.e. taxpayers;
- To study the role of banks in the field of tax cooperation abroad.

Historically, banks originated in society as intermediaries. Over time, their range of special intermediary functions expanded and became fixed at the legislative level, and in the modern world, the role of the bank as a financial intermediary between the state and taxpayers is significant and is the basis of the financial system of any state.

The study revealed that banks play a dominant role in the system of financial intermediation. As we know, it is common for banks to interact actively with other financial intermediaries. Commercial banks cooperate most closely with insurance companies; securities market participants (brokers, dealers, etc.), leasing companies, stock and currency exchanges [1]. In the financial legislation of Kazakhstan, there is no such definition as tax intermediaries. Accordingly, the question arises whether banks can be attributed to intermediaries, as understood in the theory of tax law.

Research methods

In carrying out this scientific research, various theoretical and empirical methods were used, including the methods of comparative legal analysis, synthesis, induction and deduction, hermeneutics and the historical method.

Results and discussion

In the scientific literature, there are various opinions on the relationship between the elements of the banking and tax systems, on the activities and types of financial intermediaries, despite the existing studies of problems in this area, we note that domestic science pays insufficient attention to the issues of financial intermediation of commercial banks in the field of taxation.

Legislatively, the interaction of tax authorities and banks is fixed in a number of articles of the Tax Code. The main ones are: Article 24 "Obligations of second-tier banks and organizations carrying out certain types of banking operations"; Article 118 "Suspension of debit transactions on bank accounts of a taxpayer (tax agent)"; Article 122 "Collection of debts to the budget at the expense of money in bank accounts"; Article 155 "Rights and obligations of officials of a tax authority during the tax audit"; Article 53 "Bank guarantee" [2].

Their cooperation is based on the performance by banks of certain functions in accordance with the law. The main duty of banks in the field of taxation is to fulfill the instructions of taxpayers and tax authorities to transfer taxes and fees to the budget and a number of other duties related to tax administration.

According to Article 22 of the Tax Code of the Republic of Kazakhstan, the interaction of tax authorities with authorized state bodies, local executive bodies and other persons is established. Second-tier banks

do not belong to these types of entities and state bodies. For the banking sector, this category includes the National Bank of the Republic of Kazakhstan and the Agency for Regulation, Control and Supervision of the Financial Market and Financial Organizations. Together they develop and adopt joint control measures, in accordance with the legislation of the Republic of Kazakhstan, ensure the mutual exchange of information.

Also, banks are required to provide information on taxpayers to the tax authorities. Some of this information is provided on the basis of the law, and some at the request of the tax authorities. Thus, banks perform specific functions in the field of taxation.

In the Russian Federation, banks have certain rights and obligations in collecting taxes and act as tax intermediaries. According to Article 86 of the Tax Code of the Russian Federation, banks are required to withhold taxes from payments to customers in cases where this is provided for by law. Banks are also required to provide information about their customers and their income to the tax authorities. Banks can also act as tax agents, collecting taxes directly from their customers and remitting them to the tax authorities. For example, according to article 232 of the Tax Code of the Russian Federation, banks are required to withhold personal income tax related to the use of their investments and deposits. [3]. However, Russia also has the Federal Law "On Banks and Banking Activities", which sets the rules for banking activities in general. This law also establishes rules for the interaction of banks with the tax authorities and the security of customer data when providing information to the tax authorities.

Thus, banks in Russia have an important role in the tax field and act as tax intermediaries, collecting taxes from their clients and providing information to the tax authorities. However, their rights and obligations are regulated not only by tax legislation, but also by banking legislation.

In Estonia, banks also act as tax intermediaries and have certain tax collection responsibilities.

According to the Estonian Tax and Fees Act, banks are required to withhold tax on interest accrued on bank deposits and transfer it to the Estonian budget system. In addition, banks must report to the tax authorities' information on the accrued income of their clients on deposits and accounts [4].

Banks can also act as tax agents in withholding taxes on payments to their customers. They are required to notify their clients of tax changes and changes in tax legislation.

However, Estonia also regulates banks through the Law on Credit Institutions, which lays down rules for banking in general. This law establishes rules for the interaction of banks with the tax authorities and the security of customer data when providing information to the tax authorities.

Thus, banks in Estonia play an important role in the tax field and act as tax intermediaries, collecting taxes from their customers and providing information to the tax authorities. However, their rights and obligations are regulated not only by tax legislation, but also by legislation on credit institutions.

The Bank acts as an intermediary, this is its main mission in financial and legal relations. In the financial system, the following types of financial intermediaries are usually distinguished, such as banks, insurance companies, investment funds, pension funds and brokers.

In the financial and legal literature, financial intermediaries can be divided into three types or groups, as suggested by the authors Ulybina L.K. and etc.

The first group of financial intermediaries is financial institutions of the deposit-credit type. This group of financial intermediaries includes commercial banks, savings and loan associations, postal savings institutions, non-bank credit organizations, microfinance organizations. This group of financial intermediaries manages the liquidity of clients, carries out money transfers, and also facilitates the attraction of deposits. In addition, they provide a variety of loan products [5].

Indeed, banks are one of the main financial intermediaries in the economy of the state. Their main functions belong to the category of financial services, as for tax intermediary functions, the bank acts as an intermediary in payment transactions and performs other duties.

Banks have standard functions due to the fact that they are legal entities and, in accordance with the Tax Code, payers of taxes and fees. In some cases, organizations have obligations to calculate, withhold and transfer tax, while it is possible to perform both all actions and individual ones, for example, only calculate tax. In this case, the bank, like any other organization, performs the functions of a tax agent.

Based on this, we can consider banks as financial intermediaries in tax relations. In general, as we see the relationship between banks and tax authorities, scientists do not consider it as financial intermediation, this type of legal relationship is practically not covered.

According to the above classification, the second group includes contract savings institutions; these are insurance companies and pension funds. They raise funds in the form of contributions under contracts concluded between them and clients.

And the third group is investment financial intermediaries that assist clients in placing free funds in highly profitable financial instruments. These include financial companies, mutual funds, hedge funds, general bank management funds (GBMFs), mortgage banks, and loan brokers [5].

Thus, this classification reflects only the types of financial intermediaries and relationships between banks and other financial institutions. The concept of financial intermediation is much broader than tax intermediation.

With regard to mediation in the field of taxation, these relations are based on the method of power and subordination and have an exclusively imperative character in relations with the tax authorities. The peculiarities of tax intermediation of banks include the absence of contractual (dispositive) relations between tax authorities and banks, and in these relations there is no voluntary expression of will on the part of banks. In addition, banks store and transmit, in cases prescribed by law, information on the availability and movement of funds to the tax authorities. From which it follows that the specific functions of the bank in tax relations include intermediary and information, it is in banks that taxpayers open accounts, accumulate free cash, banks carry out all settlement operations.

Realizing their special status, banks include the powers of different directions. This is due to the fact that in relations with the tax authorities, the bank acts in several aspects at once:

- directly as an independent taxpayer;
- as an intermediary between the state (tax authorities) and taxpayers, through which other taxpayers (legal entities and individuals) carry out financial transactions. In this connection, banks can provide tax authorities with specific services, including the necessary information to verify the correctness of the calculation and timely payment of taxes to the budget;
- as a tax agent (regarding the procedure for calculating and withholding taxes from funds paid by taxpayers and transferring them to the state budget).

It should be noted that in the tax legislation of the Republic of Kazakhstan, only a certain circle of subjects are defined as subjects of tax relations: taxpayers, tax agents, the state represented by tax authorities.

It should be noted that as specific independent participants in tax relations, banks and non-bank credit organizations are not directly identified either in tax or banking legislation.

However, the Tax Code of the Republic of Kazakhstan in separate articles (for example, Article 24 of the Tax Code of the Republic of Kazakhstan) establishes the status and obligations of commercial banks and organizations engaged in certain types of banking operations, which actually determines their significant role in the domestic tax system.

At the same time, the issue of tax intermediation of banks is not sufficiently regulated by the norms of the Tax Code, despite the significant role of banks as tax intermediaries in replenishing the state budget. As already noted, the obligations of banks are established, while the code itself lacks the concept of tax intermediaries.

In the theory of tax law, it is usually customary to consider banks as third parties through which taxpayers transfer the subject of a tax payment, i.e. money to the state budget.

Yu.A. Krokhnina in this regard notes that in fact tax relations affect a larger number of subjects, since the establishment, introduction and collection of taxes to the state revenue, the implementation of tax control and prosecution for a tax offense also requires the involvement of other individuals and legal entities, authorities and local governments, which are not directly designated as participants in tax relations, but are endowed with relevant rights and obligations by tax legislation and in certain cases bear tax liability [6].

First of all, this statement is true in relation to banks, which, despite performing a significant function in tax legal relations, are not named by the Tax Code as their participants.

At the same time, the role of banks is very significant in terms of replenishing the budget. The completeness of the budget depends on the timeliness and completeness of the volume of execution of payment orders for tax payments.

In addition, banks are required to comply with the established procedure for opening accounts, provide information on open accounts and financial transactions of their clients, promptly execute orders for the transfer of taxes and fees, and the suspension of operations on a client's account.

The Tax Code establishes the concept of a tax agent, so in accordance with Article 1, Paragraph 53 a tax agent is an individual entrepreneur, a person engaged in private practice, a legal entity, including its structural divisions, as well as a non-resident legal entity, on which, in accordance with The Tax Code imposes an obligation to calculate, withhold and transfer taxes withheld at the source of payment and (or) a single payment [2]. Banks, as defined above, can be classified as agents.

It seems possible to operate with different concepts in relation to banks, such as a participant, an intermediary and a consultant. All these meanings can be applied to banks, but naturally there are differences in their content and yet they are close in meaning.

At the same time, the tax legislation of the Republic of Kazakhstan does not define the status of a bank in any of these terms. Moreover, banks cannot be considered as tax consultants at all, and here we see a significant difference between the definition proposed by the OECD and the tax law in Kazakhstan.

We offer you to get acquainted with the point of view of the practicing lawyer Krymsky D.I. in the light of the OECD Report review. Aggressive tax planning is unthinkable without the active participation of tax intermediaries in the broadest sense of the word. They can be like actual tax consultants themselves [7].

Tax consultants can be (consulting, legal, audit companies, private consultants, tax and legal departments of organizations), as well as banks and other financial institutions (investment and management companies, insurers). In some cases, tax intermediaries play a positive role, helping taxpayers to understand the intricacies of tax legislation. However, it is obvious that the negative side is not ruled out, which consists in the development of unacceptable tax minimization arrangements, in the terminology of the Seoul Declaration [8].

This point of view is closer to us; in addition, we can also add that in Kazakhstan tax consultants include consultants from two public associations, such as the Chamber of Tax Consultants and the Association of Taxpayers. In addition, the article paid special attention to the role of banks and financial organizations in tax planning. The author analyzes and summarizes various factors influencing decision-making by tax authorities, taxpayers and tax consultants.

According to the OECD Review "Research on the Role of Tax Intermediaries", tax intermediaries provide a wide range of assistance to taxpayers: they assess the tax risks of the taxpayer's activities and transactions concluded by him, provide full support for the taxpayer's activities in terms of compliance with the requirements of tax legislation (including preparing tax returns), as well as represent the interests of the taxpayer in tax authorities and courts when considering tax disputes [8].

From this point of view, banks in the pure sense do not reflect all the functions assigned to tax consultants, since they perform only a certain part of the above-mentioned powers. However, as Krymsky D.I. The following types of tax intermediaries are further presented in this OECD study.

As a rule, tax intermediaries include lawyers, accountants and auditors, while in the United States tax advice is carried out mainly by lawyers, in most other states the leading role in tax advice belongs to representatives of the economic profession, primarily accountants and auditors.

The OECD Survey "Research on the role of tax intermediaries" identifies two groups of tax intermediaries: 1) tax advisers, which include organizations providing legal, accounting and other services on taxation; 2) banks and other financial institutions that develop and put into practice financial instruments, the existence of which is mainly due to tax reasons. At the same time, it should be recognized that the classification of banks as tax intermediaries in the framework of this study is most likely due to the fact that its purpose was to determine the role of tax intermediaries in aggressive tax planning [8].

And further, it is indicated that in other studies on the status of tax intermediaries, banks are either not mentioned at all, or they are not distinguished as a separate type of tax intermediaries.

Thus, the position of banks as tax intermediaries is not fully settled and the problem remains open.

The increase in state budget revenues largely depends on effective tax administration. In the theory and practice of taxation, there is still no single approach to the definition and content of tax administration, its comprehensive study, in particular, in relation to commercial banks. At the same time, the improvement of the methods of tax administration will also contribute to an increase in the efficiency of the work of credit institutions.

The tax authorities should control this process, but the Tax Code still does not regulate such checks. The tax authorities check banks as a taxpayer, and not as a tax intermediary, due to the fact that this is enshrined in law.

Conclusions

In the modern system of taxation, banks are an important link. At the same time, despite a wide range of special functions in the tax sphere, banks are not named in the Tax Code among the participants in relations, intermediaries, or consultants regulated by the legislation on taxes and fees. The list of subjects enshrined in the Tax Code is not complete and does not include all potential and actual participants in tax legal relations.

Thus, we can summarize that the peculiarities of the position of banks are, on the one hand, taxpayers and tax agents; on the other hand, banks are financial intermediaries that carry out settlements between entities.

Consequently, commercial banks are both fairly large taxpayers and conductors between the tax authorities and taxpayers.

It is worth noting that banks have practically no rights in relations with the tax service. Even Article 24 of the Tax Code of the Republic of Kazakhstan sounds like the obligations of second-tier banks and organizations carrying out certain types of banking operations. Accordingly, we cannot call these legal relations equivalent. This is understandable, since the tax authorities represent the interests of the state, while banks belong to a commercial structure and are private individuals. The tax legislation should establish not only the obligations, but also the rights of banks and organizations that carry out certain types of banking operations. As noted above, the relationship between banks and the tax service is in the nature of purely power relations. Banks must unquestioningly comply with the orders of the tax authorities, which is real and happens in practice.

Therefore, the cooperation relations of these subjects outweigh only one direction and will always be limited by by-laws.

On the issue of cooperation, only Article 38 of the Law of the Republic of Kazakhstan “On Banks and Banking Activities in the Republic of Kazakhstan” states that banks and organizations engaged in certain types of banking operations, in order to provide state revenue authorities with information on current accounts opened for value added tax accounting, interact their information systems with the information system of state revenue bodies in the manner determined by the authorized body in the field of informatization [9]. In fact, only this article traces cooperation and interaction, and not just subordination to the tax authorities. All other relationships are classified as obligations; the law provides for banks only the mandatory nature of execution.

It is also necessary to disclose some points on the procedure for providing information by banks; we have already indicated that the tax legislation of Kazakhstan obliges banks to notify the tax department on banking operations of the taxpayer in a mandatory structure.

In order to obtain information about the audited enterprise, the tax authorities must submit a written request to the bank to request the necessary documentation. Requests for the provision of certificates of the availability of accounts in a credit institution and the balance of funds in the accounts, as well as the provision of statements on transactions on the accounts of the tax authorities must be sent to banks in strictly defined forms. Information interaction of tax and other authorities is provided by receiving and transmitting information in electronic form.

Thus, part of the information is provided in accordance with the norms of the Tax Code, and part upon request and in the form, in agreement with the National Bank of the Republic of Kazakhstan. And if the state revenue authorities require information that is not displayed in a written request, the bank or financial organization has the right to refuse to provide data about the taxpayer. The tax authorities are required to make a request on the established basis, in which the requirements provided by the tax authorities to the banks must be substantiated. To obtain the necessary information, the tax authority submits a reasoned request to the bank. All information required by the tax authorities must be included in the request. Otherwise, the bank is not obliged to disclose it. This also applies to cases where the written request does not contain all the necessary details, or it is not presented in the prescribed form — in this case, the bank is also not required to provide information about the depositor.

In practice, this limits the duties of tax authorities in cooperation with banks and other credit organizations.

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Г.Т. Нурбекова, М. Греджи

Ынтымақтастық, бағыныштылық және салықтық делдалдық: банктер мысалында

Зерттеудің мақсаты — қаржылық және салықтық делдалдық жүйесіндегі екінші деңгейдегі банктердің рөлін бағалау, құқықтық реттеу мен салық органдары мен коммерциялық банктер арасындағы ынтымақтастықтың нақты жай-күйінің арақатынасын және комплаенс саласындағы заңдар мен ережелерге сәйкестікті, сондай-ақ банктер үшін де, салық органдары үшін де тиісті стандарттардың сақталу тәртібін анықтау. Банктер мен салық органдарының өзара іс-қимылының ерекшеліктері банктердің мемлекеттік кірістер органдарына міндетті нұсқауларды орындауы және қажетті ақпаратты беруі. Салық органдарының банктермен ынтымақтастығы мен өзара іс-қимылы Қазақстан Республикасының Салық кодексінде белгіленген. Қолданыстағы салық және банк заңнамасы салық процесін басқаруда банктердің мәртебесін тиісті деңгейде анықтамайды. Сонымен, Қазақстан Республикасының Салық кодексі жалпы алғанда екінші деңгейлі банктер мен салық органдары арасындағы ынтымақтастық пен өзара іс-қимыл ережелерін анықтады, бірақ банк заңнамасы бұл мәселеге қатысты мәселені айналып өтеді. Ғылыми тілмен айтқанда, банктердің қаржылық делдалдық мәнін ашу тәсілдері екіұшты. Салық жүйесінің тарихи дамуы барысында объективті түрде қалыптасқан салық саласындағы ынтымақтастықтың осы зерттелген ғылыми жұмыста құқықтық нығаюы мен рәсімделуі туралы айтылған. Осыған байланысты мақалада банктердің салық қызметі органдарымен құқықтық қатынастардағы құқықтық жағдайы, банктердің салық қатынастарындағы қаржы делдалдары ретіндегі рөлі айқындалған. Осы зерттеуде сондай-ақ банктер тізіміне енгізілмеген салықтық құқықтық қатынастардың әлеуетті және нақты қатысушыларына жалпы талдау жүргізілді. Зерттеу әдістемесі аналитикалық, жүйелік, формальды-құқықтық әдістерден құралған. Теориялық негіз ғалымдардың қаржы, салық және банк құқығы бойынша еңбектері болды. Зерттеу барысында жасалған тұжырымдар құқықтың осы салаларындағы одан әрі зерттеулерінде, сондай-ақ Қазақстан Республикасының қолданыстағы заңнамасында салықтық делдалдықты жетілдіру мақсатында пайдаланылуы мүмкін.

Кілт сөздер: салық органдары, банктер, кооперация, қаржы делдалдары, қатысушылар, салық делдалдары, салықтық қатынастар, банктік делдалдық.

Г.Т. Нурбекова, М. Греджи

Сотрудничество, подчинение и налоговое посредничество: на примере банков

Цель исследования — оценить роль банков второго уровня в системе финансового и налогового посредничества, выявить соотношение правового регулирования и фактического состояния сотрудничества между налоговыми органами и коммерческими банками, соответствие законам и правилам в сфере комплаенса, как соблюдение надлежащих стандартов поведения, как банками, так и налоговыми органами. Особенности взаимодействия банков и налоговых органов заключаются в исполнении обязательных предписаний и предоставлении необходимой информации банками для органов государственных доходов. Порядок сотрудничества и взаимодействия налоговых органов с банками установлен в Налоговом кодексе Республики Казахстан. Действующее налоговое и банковское законодательство не в достаточной мере определяет статус банков в налоговом администрировании. Так, Налоговый кодекс РК в общих чертах определил регламент сотрудничества и взаимодействия банков второго

уровня и налоговых органов, но банковское законодательство в этом плане обходит этот вопрос. В научном плане подходы к раскрытию сущности финансового посредничества банков неоднозначны. Сотрудничество в сфере налогообложения, объективно сложившееся в ходе исторического развития налоговой системы, находит свое правовое закрепление и оформление, которое и исследовано в данной научной работе. В этой связи авторами определены правовое положение банков в правоотношениях с органами налоговой службы, роль банков в качестве финансовых посредников в налоговых отношениях. Проведен общий анализ потенциальных и реальных участников налоговых правоотношений, в перечень которых не включены банки. Методологию исследования составили аналитический, системный, формально-юридический методы. Теоретическую основу представляют труды ученых по финансовому, налоговому и банковскому праву. Выводы, сделанные в ходе проведения настоящего исследования, могут быть использованы при проведении дальнейшего изучения в этих областях права, а также для целей совершенствования налогового посредничества в действующем законодательстве Республики Казахстан.

Ключевые слова: налоговые органы, банки, сотрудничество, финансовые посредники, участники, налоговые посредники, налоговые отношения, банковское посредничество.

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