



BEPS and international tax newsletter  
**Edition 33 – October 2023**

## Introduction

This newsletter provides regular updates and insights on the OECD's BEPS initiative and ongoing international tax reforms.

Our thirty-third edition deals with the new measures published in October 2023 by the OECD, the European Union, the ATAF, the IASB, and in 13 countries: Austria, Brazil, Bulgaria, Cyprus, Egypt, France, Japan, Mauritius, Moldova, Norway, Portugal, Romania, and the United Kingdom.

If you have any questions, please don't hesitate to get in touch with a member of our team.



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## OECD

On 11 October 2023, the OECD Secretary-General delivered a tax report to the G20 Finance Ministers and Central Bank Governors ahead of their 11-13 October meeting under the 2023 Indian G20 Presidency. The report summarizes the latest developments around the BEPS 2.0 project, BEPS project implementation, tax transparency, tax crime, tax and inequality, as well as global mobility. Regarding the BEPS 2.0 project, the report acknowledges the release of the Multilateral Convention (MLC) for implementing Amount A of Pillar One, as well as the ongoing progress on Amount B of Pillar One. Concerning Pillar Two, the report mentions the release of the Pillar Two implementation handbook and the STTR Multilateral Instrument. Additionally, the report notes that the Inclusive Framework has approved the seventh annual Progress Report of the OECD/G20 Inclusive Framework on BEPS, which outlines the key progress made over the past year. The Progress Report describes the progress made to deliver on the mandate of the OECD/G20 Inclusive Framework, covering the period from September 2022 to September 2023. According to the report, notable progress has been achieved under Actions 5, 6, 13, and 14, which comprise the four BEPS minimum standards. Among other things, the Progress Report mentions that 319 preferential tax regimes have been reviewed under Action 5 and almost 50,000 tax rulings have been exchanged among members of the Inclusive Framework. As of 1 September 2023, the Multilateral Instrument (MLI) has been signed by 100 jurisdictions and effectively modified approximately 1,200 treaties concluded among the 83 jurisdictions, which have ratified, accepted, or approved it. As for Action 13, more than 110 jurisdictions have already introduced CbCR legislation. Finally, the work on the 2020 Action 14 review of the Assessment Methodology and the Mutual Agreement Procedure (MAP) Statistics Reporting Framework is now progressing. In the context of tax transparency, the report references a series of documents that were released throughout the year. On the subject of Tax Crime, the OECD and the Indian G20 Presidency have launched a new pilot program for the OECD Academy for Tax and Financial Crime

Investigation, aimed at training individuals from the South Asian region who will be investigating tax crime. On Tax and Inequality, the report refers to the first "Latin American and Caribbean Summit for an Inclusive, Sustainable and Equitable Global Tax Order" where the participants agreed to work together on key tax priorities for the region, including the progressivity of the international tax system and on the design of instruments relating to income and wealth. The report also mentions the working paper "The taxation of labor vs. capital income: A focus on high earners", highlighting the impact of how labor and capital income are treated on the efficiency and equity of tax systems. Additionally, the report acknowledges the international tax challenges associated with the increased mobility of individuals. As a result, the Inclusive Framework and Working Party 1 may consider further work in this area.

On 11 October 2023, the Inclusive Framework's Task Force on the Digital Economy (TFDE) released the text of the MLC to implement Amount A of Pillar One. The objective of the MLC is to create a coordinated agreement to reallocate taxing rights to market jurisdictions with respect to a portion of the profits of multinational enterprises in excess of 10% of revenues — often referred to as "excess profits" or "residual profits". According to TFDE, the text of the MLC, which is not yet open to signature, represents the consensus reached by members to date. Jurisdictions have divergent opinions on a number of specific matters. These variations are acknowledged in footnotes. While the consensus views relate to the text of the MLC, such a consensus does necessarily reflect the intention of jurisdictions to sign the MLC once it is open for signature. Like the MLC, the TFDE also released an explanatory statement to clarify how each provision is intended to apply. In addition, the MLC is accompanied by an Understanding on the Application of Certainty for Amount A of Pillar One, which contains further details on how aspects of the Amount A tax certainty framework will operate in practice. An additional overview document provides a brief summary of the MLC, its layout, and some other selected issues. An update to the economic impact assessment of Pillar One was also released, together with an overview of this economic impact assessment. This economic

impact assessment shows an increase in the additional revenue expected to be raised under Amount A compared to the OECD's previous estimates. While the previous analysis estimated revenue gains of USD 5 billion to USD 12 billion in the baseline scenario, the revised estimates involve gains of USD 17.4 billion to USD 31.7 billion in 2021 or in the range of USD 9.8 billion to USD 22.6 billion on average from 2017 to 2021. In addition, the update to the economic impact assessment notes that Amount A delivers a reallocation of taxing rights from low-tax investment hubs to market jurisdictions. It is estimated that approximately 70% of all taxing rights reallocated under Amount A come from investment hubs.

On 11 October 2023, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) released the "Minimum Tax Implementation Handbook." This handbook provides an overview of the key provisions of the global minimum tax and considerations to be taken into account by tax policy and administration officials and other stakeholders in assessing their implementation options. It is limited to the Global Anti-Base Erosion (GloBE) rules and does not address the Subject to Tax Rule (STTR). Divided into two chapters, (i) overview of the global minimum tax and (ii) implementation considerations, the handbook was released in response to the request from the Indian G20 Presidency and was developed for their Finance Ministers and Central Bank Governors meeting in October 2023. The handbook supplements a variety of other resources and programs that have been developed to assist jurisdictions with the implementation of the GloBE rules and could undergo occasional updates.

On 3 October 2023, the OECD announced that the Inclusive Framework on BEPS had concluded negotiations on a MLC to Facilitate the implementation of the Pillar Two Subject to Tax Rule (STTR MLI). The STTR applies to intragroup payments from source jurisdictions (i.e., the jurisdiction in which the income arises) that are subject to tax rates below 9% in the payee's jurisdiction of residence. The STTR allocates to the source country a limited and conditional taxing right to ensure a minimum level of taxation. Unlike the BEPS MLI, the STTR MLI will implement the STTR in all treaties covered and will amend those treaties by including annexes containing the STTR and

accompanying provisions. The operational provisions of the STTR MLI are included in five annexes. The STTR MLI will enter into force on the first day of the month following the expiration of a three-month period from the date of deposit of the second instrument of ratification, acceptance, or approval.

The Forum on Tax Administration (FTA) was created in July 2002 by the OECD's Committee on Fiscal Affairs, with the aim of promoting dialogue between tax administrations and identifying good tax administration practices. At the time of the plenary meeting, the FTA comprised 53 members, with the heads and representatives of 43 of the members attending the meeting. Representatives of business and the profession attended part of the event.

The Statement of outcomes: 2023 FTA Plenary Meeting released at the conclusion of the plenary meeting outlined the agreed-upon actions and commitments made by the FTA in three key areas, with the FTA members agreeing to:

- Collaborate on projects to utilize new technology to enable the vision of the FTA's 2020 publication Tax Administration 3.0: The Digital Transformation of Tax Administration to be met, through reducing tax gaps and compliance burdens;
- Work together on the consistent and effective implementation of Pillar Two and the strengthening of cooperation between tax administrations to provide certainty over administration of global minimum tax rules; and,
- Enhance the effectiveness and reach of its global capacity building efforts through closer partnership with other international and regional organizations.

### Digital transformation of tax administration

The FTA recognized that digital transformation of tax administration can provide significant economic benefits and reduce the compliance burden on taxpayers. According to the statement, this has the potential to generate more than EUR 130 billion in additional revenue for each one-percent increase. The FTA agreed to work together with business and academic stakeholders on a set of projects to:

- Enable seamless digital cross-border tax processes both between tax administrations

and with third parties, based on the interoperability of digital identity; and,

- Develop thought leadership on common issues to help inform digital transformation in the areas of digital identity, digital strategy, and artificial intelligence.

Work will begin on the projects following approval after the FTA meeting in Singapore, with progress to be discussed at the 2024 plenary meeting.

### Implementation of the Two-Pillar Solution and Tax Certainty

The FTA members discussed the challenges and opportunities of implementing a global minimum tax. It had previously agreed that a standardized return would enable the collection and exchange of Pillar Two information. The FTA intends to publish a manual on multilateral mutual agreement procedures and advance pricing arrangements in the next year. The next FTA Tax Certainty Day will be held virtually on 14 November.

### Tax capacity building

The FTA recognized the importance of making sure all tax administrations can benefit from its work, and highlighted its range of capacity-building programs, including:

- The launch of the Knowledge Sharing Network (KSN) to provide a forum for exchange of knowledge between FTA members and support for the implementation of Pillar Two; almost 400 officials from 98 jurisdictions already participate in the KSN;
- Piloting a new Tax Inspectors Without Borders program to aid in digitalization of tax administrations;
- Promoting the Digital Transformation Maturity Model, now completed by 58 tax administrations, and the Inventory of Tax Technology Initiatives;
- The ongoing development of tools to support capacity building such as the Knowledge Sharing Platform for Tax Administrations; and,
- A new sub-group of the FTA's Capacity Building Network, focusing on long-term bilateral capacity programs.

The plenary group also discussed emerging risks facing tax administrations, and matters

connected with maintaining and building trust, tax debt management, assistance in tax collection, tax fraud, tax crimes, and progress on tax transparency awareness.

### Future FTA plans

The FTA agreed the projects on Tax Administration 3.0 are expected to begin in December 2023. The 2024 FTA Plenary Meeting will be held in Greece.

OECD releases outcomes of sixth peer review on BEPS Action 13 on country-by-country reporting.

### European Union

On 17 October 2023, the EU Finance Ministers met in Luxembourg for an ECOFIN meeting, during which the Ministers adopted the conclusions on the revisions of the EU List. As noted, the Council adopted a revised Annex I of the EU List by adding Antigua and Barbuda, Belize, and the Seychelles. According to the Council press release on the revised EU List, the reason the three jurisdictions are included on the list is that they were found to be lacking with regard to the exchange of tax information on request (criterion 1.2). The Council also decided to remove three jurisdictions (British Virgin Islands, Costa Rica, and Marshall Islands) from Annex I:

- British Virgin Islands was removed from the list as it has amended its framework on exchange of information on request (criterion 1.2) and will be reassessed in accordance with the OECD standard.
- Costa Rica was delisted because it has amended the "harmful" aspects of its foreign source income exemption regime (criterion 2.1).
- Marshall Islands was delisted as it has made significant progress in enforcement of economic substance requirements (criterion 2.2).

The revised Annex I of the EU List now includes 16 jurisdictions: American Samoa, Anguilla, Antigua and Barbuda, the Bahamas, Belize, Fiji, Guam, Palau, Panama, Russia, Samoa, Seychelles, Trinidad and Tobago, the Turks and Caicos Islands, the US Virgin Islands, and Vanuatu. The Council also amended the list of jurisdictions included on Annex II of the EU List, which covers jurisdictions that have made sufficient commitments to reform their tax policies but remain subject to close monitoring

while they are executing on these commitments. Following the delivery of the commitments given, the Council removed Jordan, Qatar, Montserrat, and Thailand:

- Jordan and Qatar fulfilled their commitments by amending a harmful tax regime.
- Montserrat and Thailand fulfilled all their pending commitments related to country-by-country reporting (CbCR) of taxes paid.

As a result, the revised Annex II now comprises 14 jurisdictions: Albania, Armenia, Aruba, Botswana, British Virgin Islands, Costa Rica, Curaçao, Dominica, Eswatini, Hong Kong, Israel, Malaysia, Turkey, and Vietnam.

The Council will continue to periodically review and update the EU List, taking into consideration the evolving deadlines for jurisdictions to deliver on their commitments and the evolution of the listing criteria that the EU uses to establish the EU List. Until 2019, the EU List was regularly updated without a fixed schedule to reflect the reforms undertaken by third countries. However, from 2020, Member States have agreed that the EU List will be updated no more than twice a year to ensure (i) a more stable listing process, (ii) business certainty, and (iii) that Member States can effectively apply defensive measures against listed jurisdictions. Accordingly, the next revision to the EU List is expected in February 2024.

During the 17 October ECOFIN meeting, the Finance Ministers also formally adopted the Directive on Administrative Cooperation implementing the OECD rules on reporting for crypto assets (DAC8). DAC8 introduces reporting requirements for crypto assets related to transactions of clients residing in the EU. DAC8 also extends the scope of exchange of advance cross-border rulings concerning natural persons and introduces the possibility of exchanging information received under the DAC framework for non-tax-related purposes. Member States have until 31 December 2025 to transpose the main rules into national law, and the new provisions will generally apply as of 1 January 2026 (exceptions apply).

## ATAF

On 4 October 2023, the African Tax Administration Forum (ATAF) released a revised approach for domestic minimum top-up tax (DMTT) legislation. The revised approach provides three different alternative models, and a country can select the one that aligns best with

its legislative framework. Approach 1 involves incorporating essential provisions for implementing a DMTT in primary legislation, enacted through the parliamentary process. Detailed supplementary regulations, including calculation provisions and definitions related to DMTT, are delegated to the relevant Minister. This approach streamlines the primary legislation, making the parliamentary process more efficient, as most details are addressed through regulations. Approach 2 adopts a "reference model", incorporating the GloBE rules by reference with necessary modifications to suit the DMTT context. This ensures maximum consistency with GloBE rules and keeps local country rules concise. Approach 3 entails a detailed DMTT version based on the GloBE rules, with all rules contained within primary legislation enacted through the parliamentary process. This approach provides extensive parliamentary oversight. These suggested approaches include material from the Pillar Two Administrative Guidance released in February and July of 2023. As discussions continue in the Inclusive Framework, additional provisions may be added to the suggested approaches.

## IASB

The International Accounting Standards Board (IASB) amended the International Financial Reporting Standards (IFRS) for small to medium-sized entities (SMEs) Accounting Standard for Pillar Two. The SMEs Standard was amended because Section 29 (Income Tax) is based in IAS 12 (Income Tax), which was recently amended in light of Pillar Two. By aligning Section 29 and IAS 12, the IASB intends to avoid diverse interpretations of Section 29. Accordingly, the amendments to the SMEs Standard include a temporary exemption for accounting and information disclosures on deferred taxes under Pillar Two rules. The IASB also decided not to introduce new disclosure requirements for SMEs during periods when Pillar Two legislation has been enacted or substantively enacted but is not yet in effect.

## Austria

On 3 October 2023, Austria's Ministry of Finance published draft legislation, for public consultation, on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This includes an Income Inclusion Rule (IIR) and a Qualified Domestic

Minimum Top-up Tax (QDMTT) applicable from 31 December 2023, as well as an Undertaxed Profits Rule (UTPR) applicable from 31 December 2024. Furthermore, the draft legislation incorporates transitional country-by-country reporting (CbCR) safe harbor in line with the OECD guidance and includes elements from the OECD Administrative Guidance published in February and July 2023. The draft legislation also addresses Administration and GloBE Information Returns matters. The consultation period will be open until 20 October 2023.

## Brazil

The Normative Instruction (NI) confirms the application of TP rules to transactions with related parties abroad, tax havens and privileged tax regimes. In line with the provisions of Law 14,596, the NI ratifies that the Organisation for Economic Co-operation and Development (OECD) guidelines, "OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration 2022", will serve as a secondary source for applying local TP rules and can be used by taxpayers as a reference for applying the arm's length principle, particularly for matters not yet regulated by the NI. The OECD guidelines will serve as secondary sources as long as they are approved by the Special Department of Federal Revenue of Brazil (RFB) and are not contrary to Law 14,596 or any normative act issued by the RFB.

### Main topics included in the NI

The NI addresses important issues including by doing the following:

- Establishes simplification measures (safe harbors) for low value-added services of at least 5% (Brazilian entity exporting services) and up to 5% (Brazilian entity importing services);
- Clarifies that Brazilian taxpayers must prepare Master File and Local File, in addition to the Country-by-Country Report that Brazil already adopted under the NI 1,681/2016;
- The documents must be prepared and filed through the RFB's portal "E-CAC" within three months after the deadline of the Tax Returns. For FY2024 and FY2023, the deadline for the Master File and Local File will be the last business day of the following year:

- Greater than BRL 500 million – requires detailed documentation;
  - Between BRL 15 million and BRL 500 million – requires standard documentation; and,
  - Less than BRL 15 million – is exempted from preparing the Local File and the Master File.
- Establishes that fines for not complying with documentation requirements can be up to BRL 5 million; and,
  - Provides that early adoption of the provisions of the new TP system for FY2023 can be defined by the Brazilian taxpayer from 1 September to 31 December 2023 and the election must be made through the E-CAC portal.

### Next steps

The publication of the NI RFB 2,161/23 addressing the implementation of the new Brazilian TP system represents another important milestone toward the adoption of the arm's length principle. In addition, the RFB will likely publish additional Normative Instructions addressing other topics not included within this NI, such as commodities, intangibles, financial operations, cost-contribution agreements, business restructurings, etc. It is important to note that Brazil is the first country with a large economy to completely change its transfer pricing rules to comply with the arm's length principle. The resulting changes add even more complexity to the implementation of the new TP system. As such, it is crucial that the multinational groups deeply evaluate the potential effects of this new business environment in Brazil prior to defining the strategy they intend to adopt going forward.

## Bulgaria

Bulgaria's Ministry of Finance published draft legislation, for public consultation, on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This draft legislation includes an IIR and a QDMTT applicable from 31 December 2023. The draft legislation also includes a UTPR applicable from 31 December 2024. Furthermore, the draft legislation incorporates a transitional CbCR safe harbor in line with the OECD guidance. The

consultation period will be open until 26 October 2023.

## Cyprus

Cyprus tax authorities issue clarification note regarding Bilateral Agreement with the United States.

## Egypt

The Egyptian Tax Authority issued Transfer Pricing Explanatory Instructions No. 78 of 2023 (Instructions). The Instructions clarify the transfer pricing provisions in the Unified Tax Procedures Law No. 206 of 2020 (UTPL) and aim to address several common transfer pricing queries. Among other things, the instructions specify that if the taxpayer revises or amends the corporate income tax return (CITR) within 30 days of filing the original, the Local File submission timeline will start from the revised/amended CITR submission date. As for the Master File, the instructions clarify that if the ultimate parent entity (UPE) of the group is registered in an Egyptian free trade zone, all other group entities must create the Master File, excluding the ones registered within the Egyptian free trade zone.

## France

As part of the discussions around the adoption of the 2024 finance law, an amendment tabled on 17 October 2023 proposes to modify the timetable for the entry into force of the French e-invoicing reform as follows:

- The obligation to issue invoices in electronic format (e-invoicing) and the obligation to transmit invoicing and certain payment data (e-reporting) would apply:
  - From 1 September 2026 for large companies and mid-cap enterprises (instead of 1 July 2024 and 1 January 2024, respectively, according to the original timetable); and,
  - From 1 September 2027 for small and medium-sized enterprises (SMEs) (instead of 1 January 2026).
- The obligation to receive invoices in electronic format through the State Platform (PPF for Portail Public de Facturation) would apply to all companies, regardless of their size, from 1 September 2026 (instead of 1 July 2024).

Each of these dates could be postponed by up to three months if the tax authorities deem it necessary for the proper implementation of the reform. In addition, from 2025, the French tax authorities should offer the possibility of testing the PPF, allowing the exchange of electronic invoices (e-invoicing) or the filing of e-reporting files. It should be noted that, despite requests from some economic operators, the new timetable does not provide for a separate entry into force for the e-invoicing obligation (business-to-business (B2B) domestic sales) or the e-reporting obligations (international operations, business-to-consumer (B2C) sales). Finally, according to the amendment, this new timetable is subject to the extension of the derogation granted to France by the European Commission, which is due to expire on 31 December 2026. The Commission will examine this request in light of the proposed value added tax (VAT) in the Digital Age Directive (VIDA) of 8 December 2022, which aims to implement e-invoicing and e-reporting obligations at European Union level. However, we will have to wait for the final adoption of the 2024 finance law at the end of December to confirm this new timetable and for the implementing decrees, expected at the beginning of 2024, to find out whether the dates of entry into force of the new mandatory invoice quotes, and the obligation to certify private platforms (PDP for Plateformes de Dématérialisation Partenaires), are also postponed.

The French Government presented the draft Finance Bill for 2024, which includes the draft legislation on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This draft legislation includes an IIR and a QDMTT applicable to fiscal years starting on or after 31 December 2023. The draft legislation also includes a UTPR applicable to fiscal years starting on or after 31 December 2024. Furthermore, the draft legislation incorporates a transitional CbCR safe harbor in line with the OECD guidance. The French Parliament will discuss and potentially amend the draft Bill over the coming weeks and vote on the final version by the end of December 2023.

## Japan

The Japanese National Tax Agency (NTA) published interpretative guidance in relation to the Pillar Two regulations introduced into



domestic law. The interpretative guidance includes explanations on the de minimis exclusion and the transitional CbCR safe harbor.

### **Mauritius**

Mauritian Finance Minister issues new regulations on e-invoicing.

### **Moldova**

On 5 October 2023, the Ministry of Finance launched a public consultation on the draft of application norms (instructions) on new transfer pricing legislation that will enter into force on 1 January 2024. The application of transfer pricing rules will be mandatory for companies carrying out transactions with related parties whose aggregate annual value of transactions is equal to or greater than MDL 20 million. For companies below this threshold, the transfer pricing rules will be applied upon request of the State Tax Service, as part of a tax audit. The draft also proposes the transfer pricing methods to be used including all methods recognized in the OECD Transfer Pricing Guidelines.

The Government of Moldova submitted to the Parliament a draft law implementing public CbCR rules. The draft law follows partially the EU public CbCR Directive and requires entities with presence in Moldova (that meet certain criteria) to disclose publicly the income taxes paid and other tax-related information. If adopted, the rules will enter into force on 1 January 2025.

### **Norway**

On 6 October 2023, the Norwegian Government published its proposal for the 2024 Fiscal Budget and a proposal to introduce resource-rent tax on onshore wind power. The Budget will now be discussed by the Norwegian Parliament and subject to any potential changes, it is expected to be approved in December 2023. It is proposed that the resource-rent tax for onshore wind power will be introduced from the 2024 fiscal year, but with transitional arrangements for existing wind farms. An extension of foreign individuals' and entities' Norwegian tax liabilities when taking part in certain activities on the Norwegian continental shelf and within the 200-nautical-mile zones are proposed. It is suggested that the new rules should be effective as of 1 January 2024. In addition, the Budget Proposal includes a provision that would add a tax exemption in the event of a cross-border merger of mutual funds that are Undertakings for Collective Investment

in Transferable Securities (UCITS) funds. In addition, certain adjustments to the interest rate limitation rules are proposed to avoid "undesirable" tax planning. It was expected that the Budget would contain proposals for the implementation of the OECD Inclusive Framework's rules on global minimum taxation for large groups (Pillar Two). A proposal to introduce these rules into Norwegian law was submitted for consultation in June this year, with a shortened two-month consultation period. It seems that perhaps the original schedule was too ambitious; the Government announced that it aims to put forward a proposal later this fall. Although the assumed timetable for introducing the rules on global minimum taxation is somewhat delayed, it is still planned that the rules will take effect in Norway from and including 2024.

### **Portugal**

Portugal enacts legislation introducing public country-by-country reporting for multinational enterprises.

### **Romania**

On 4 October 2023, Romania's Ministry of Public Finance published draft legislation, for public consultation, on the implementation of Pillar Two into domestic law. The draft legislation is generally aligned with the EU Directive on minimum taxation. This includes an IIR and a QDMTT applicable from 31 December 2023, as well as a UTPR applicable from 31 December 2024. Furthermore, the draft legislation incorporates the transitional CbCR safe harbor in line with the OECD guidance. The consultation period will be open until 14 October 2023.

### **The United Kingdom**

The UK government published, for public consultation, additional draft legislation, with further amendments on the UK Pillar Two rules. The draft legislation reflects stakeholder observations regarding the legislation obtained through the consultation process. It includes updates to the draft legislation published in July 2023 following the Administrative Guidance issued by the OECD. His Majesty's Revenue and Customs (HMRC) released draft legislation that includes a proposed approach to adopt the UTPR transitional and QDMTT permanent safe harbors, together with a number of updates to the already-enacted IIR and QDMTT legislation

included in Finance (No. 2) Act 2023. The consultation period will be open until 25 October 2023.

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