

Form No. 3CEB - Clause by Clause Analysis

Presenter:
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Overview of Legislative Framework

Relevant Provisions under Section 92

Any income / expense arising from an international transaction with associated enterprises / in relation to Specified Domestic Transaction shall be computed having regard to the Arm's Length Price

International Transaction

Section 92B

Specified Domestic Transaction

Section 92BA

Associated Enterprises

Section 92A

Arm's Length Price

Section 92C + Rule 10B/ 10C

Documentation and Certificate

Section 92D and Section 92E

Agenda



Accountant's Certificate in Form No. 3CEB

E-filing of Form No. 3CEB

Other Practical Aspects

Accountant's Certificate in Form No. 3CEB

Section 92E

Every person

who has entered into an international transaction or Specified Domestic Transaction (SDT) during a previous year

Shall obtain a report from an Accountant and furnish such report

On or before the specified date in the prescribed form

Duly signed and verified in the prescribed manner by such Accountant

And setting forth such particulars as may be prescribed

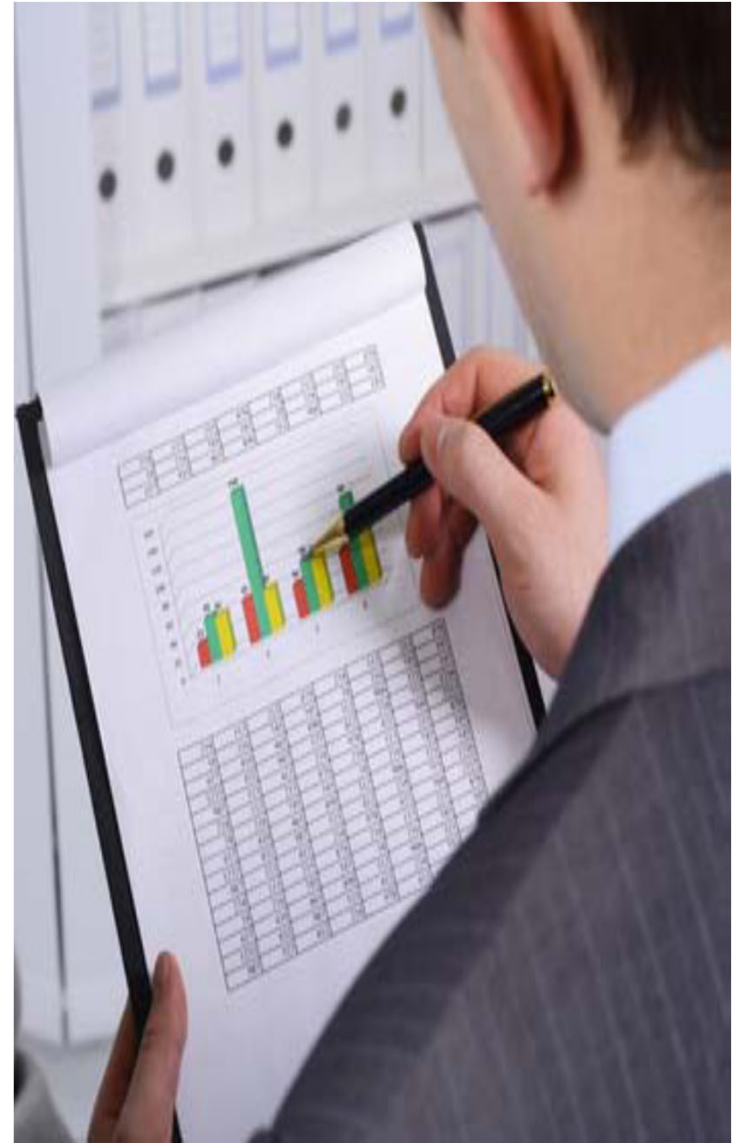
Rule 10E

The report from an accountant required to be furnished under section 92E by every person who has entered into an international transaction or a specified domestic transaction during a previous year shall be in Form No. 3CEB and be verified in the manner indicated therein.

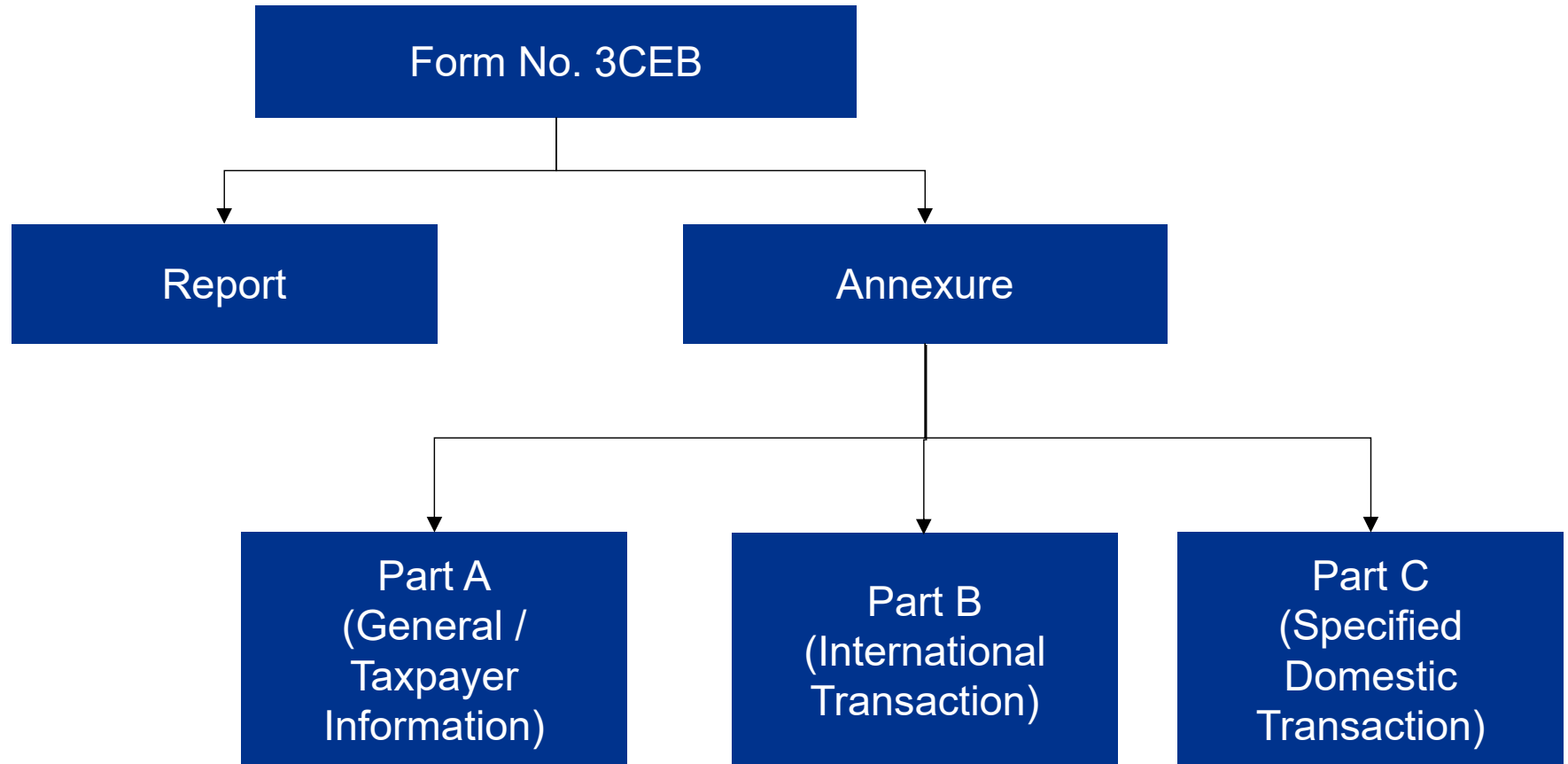
To be filed electronically one month before the due date
for filing return of income (i.e., 31 October)

Form No. 3CEB – Key Points

- No exemption from filing Form No. 3CEB – Even if International Transactions of INR 1
- Applicable for Specified Domestic Transactions if SDT > INR 20 crores
- Applies to both Residents and Non- Residents (Foreign Companies, Branches, PEs)
- Can be issued by Statutory Auditors or any other Chartered Accountant in practice satisfying independence requirements
- Audit acceptance – NOC to be obtained in case of new client
- The Institute of Chartered Account of India has issued a Guidance Note (GN) on report on international transactions under Section 92E of the Act (latest version issued in October 2022)
- Attestation functions undertaken by the members have to bear a Unique Document Identification Number (UDIN) issued by the ICAI



Form No. 3CEB - Contents



Form No. 3CEB - Report

FORM NO. 3CEB

[See rule 10E]

Report from an accountant to be furnished under section 92E relating to international transaction(s) and specified domestic transaction(s)

1. *I/We have examined the accounts and records of..... (name and address of the assessee with [*Permanent Account Number or Aadhaar Number*]) relating to the international transaction(s) and the specified domestic transaction(s) entered into by the assessee during the previous year ending on 31st March,
2. In*my/our opinion proper information and documents as are prescribed have been kept by the assessee in respect of the international transaction(s) and the specified domestic transactions entered into so far as appears from *my/our examination of the records of the assessee.
3. The particulars required to be furnished under section 92E are given in the Annexure to this Form. In*my/our opinion and to the best of my/our information and according to the explanations given to *me/us, the particulars given in the Annexure are true and correct.

Place:.....

Date:.....

**Signed.....

Name:.....

Address:.....

.....
Membership No.:.....

- Opinion on whether proper documentation maintained
- *Documentation requirement prescribed in Section 92D read with Rule 10D*
- Opinion on whether particulars in the report are **'True and correct'**

Form No. 3CEB - Annexure : Part A

ANNEXURE TO FORM NO. 3CEB

Particulars relating to international transactions and specified domestic transactions required to be furnished under section 92E of the Income-tax Act, 1961

PART A

1. Name of the assessee
2. Address
3. [*Permanent Account Number or Aadhaar Number*]
4. Nature of business or activities of the assessee*
5. Status
6. Previous year ended
7. Assessment year
8. Aggregate value of international transactions as per books of account
9. Aggregate value of specified domestic transactions as per books of account

*Code for nature of business to be filled in as per instructions for filling Form ITR 6

Form No. 3CEB - Annexure : Part B

PART B (International Transactions)

10.	<i>List of associated enterprises with whom the assessee has entered into international transactions, with the following details:</i> <i>(a) Name of the associated enterprise.</i> <i>(b) Nature of the relationship with the associated enterprise as referred to in section 92A(2).</i> <i>(c) Brief description of the business carried on by the associated enterprise</i>	
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Practical Considerations / Issues:

1. What if AE only for a part of the year?
2. Deemed International Transaction under Section 92B(2)?

Form No. 3CEB - Annexure : Part B

Clause – Disclosure	Details requested in Form 3CEB	Practical Considerations / Issues:
<p>Clause 11A :Tangible property: Purchase/Sale of raw material consumables, any other supplies for material consumables, any other supplies for assembling or processing / manufacturing of goods or articles</p>	<p>Name of AE</p> <p>Address</p> <p>Type of Unique Identification number (PAN/Tax Identification Number/Other)</p> <p>Description of transaction</p> <p>Quantity</p>	<ul style="list-style-type: none"> • Purchase of Capital goods or Fixed Assets – Clause 11C • Lack of availability of quantitative details • Sale of Raw Material not utilized for manufacturing – Clause 11A or 11B? • Fixed asset has been purchased by the Assessee and has not been capitalized during the year – Capital Work in Progress?
<p>Clause 11B –:Tangible property: purchase/sale of traded/finished goods</p>	<p>Type (paid /Received)</p> <p>Amount as per books</p> <p>Amount as per ALP</p>	
<p>Clause 11C : Tangible property : Purchase/Sale of any other tangible property</p>	<p>Method selected</p> <p>Observation (Space for adding notes)</p>	

Form No. 3CEB - Annexure : Part B

Clause – Disclosure	Details requested in Form 3CEB	Practical Considerations / Issues:
Clause 12: purchase, sale, transfer, lease or use of intangible property	Same details as Clause 11, except quantity details	<ul style="list-style-type: none"> Marketing Intangibles?
Clause 13: Transactions in respect of services - Availed or provided	Same details as above	<ul style="list-style-type: none"> Withholding tax of AE borne by Assessee, then net or gross of WHT?
14 : Lending or borrowing of money : includes advance payments, deferred payments, receivable, non-convertible preference shares/debenture, or any other debt	Name of AE. Address, Type of UIN Nature of transaction Currency of transaction Lending/borrowing, Interest rate Type (paid /Received) Amount as per books Amount as per ALP Method selected Observation	<ul style="list-style-type: none"> Principal Amount or Interest Amount? Interest free loan? Outstanding receivable / payable balances?

Form No. 3CEB - Annexure : Part B

Clause – Disclosure	Details requested in Form 3CEB	Practical Considerations / Issues:
Clause 15 : transactions in the nature of guarantee	Similar details as clause 14, except lending/borrowing and interest type	<ul style="list-style-type: none"> • Free of cost Guarantee? • Letter of Comfort?
Clause 16 : Transactions in respect of marketable securities: issue and buyback of equity shares, CCD, etc.		<ul style="list-style-type: none"> • Issue/ allotment of equity shares
Clause 17: Mutual agreement or arrangement :	Name of AE, Address, UIN Description of transaction Type (paid /Received) Amount as per books Amount as per ALP Method selected Observation (Space for adding notes)	<ul style="list-style-type: none"> • Allocation or apportionment of any costs or expense in connection with any benefit, service or facility, provided or to be provided

Form No. 3CEB - Annexure : Part B

Clause – Disclosure	Details requested in Form 3CEB	Practical Considerations / Issues:
Clause 18: Transactions arising out of / being part of business restructuring or reorganizations	<ul style="list-style-type: none"> • Name of AE, Address, UIN • Nature of transaction • Terms of business restructuring • Type (paid /Received) • Method selected • Observation (Space for adding notes) 	<ul style="list-style-type: none"> • Operational change (change in FAR or characterization of the entity) or Organizational change (merger, demerger) • Disclosure irrespective of the fact that it has bearing on the profit, income, losses or assets • Value / Consideration – Not disclosed
Clause 19 : Any other transaction having bearing on profits, income, losses, or assets	Similar details as clause 17	<ul style="list-style-type: none"> • Dividend paid / Received ?
Clause 20 : Deemed international transaction		Sale / Purchase of goods / services or any other Transaction with Unrelated party fulfilling conditions of deemed international transactions

Form No. 3CEB - Annexure : Part C

Clause 21 : Details of Associated enterprises with whom Assessee has entered into specified domestic transactions

Clause 22 & Clause 23 : Inter unit transfer and Section 80IA(10) transactions (discussed in next slides)

Clause 24 : Details in respect of transactions with persons referred to Section 115BAB(6)

Clause 25 : Details in respect of transactions with persons referred to Section 115BAE

Clause 26 : Details of any other SDT not covered in above clauses. – This residual clause is to cover transactions which may be prescribed per Section 92BA (As there are no transactions which have been prescribed till date)

Form No. 3CEB Clause 22: Inter unit transfer

22(A) Transfer of goods or services from one undertaking / unit / eligible business to another business

Particulars in respect of transactions in the nature of transfer or acquisition of any goods or services:	
A. Has any undertaking or unit or enterprise or eligible business of the assessee [as referred to in section 80A(6), 80IA(8) or section 10AA)] transferred any goods or services to any other business carried on by the assessee?	Yes/No <input type="checkbox"/>
If yes, provide the following details in respect of each unit or enterprise or eligible business:	
(a) Name and details of business to which goods or services have been transferred	<input type="text"/>
(b) Description of goods or services transferred	<input type="text"/>
(c) Amount received/receivable for transferring of such goods or services –	<input type="text"/>
(i) as per the books of account;	<input type="text"/>
(ii) as computed by the assessee having regard to the arm's length price.	<input type="text"/>
(d) Method used for determining the arm's length price [See section 92C(1)].	<input type="text"/>

22(B) Acquisition of goods or services by one undertaking / unit / eligible business from another business

B. Has any undertaking or unit or enterprise or eligible business of the assessee [as referred to in section 80A(6), 80IA(8) or section 10AA] acquired any goods or services from another business of the assessee?	Yes/No <input type="checkbox"/>
If yes, provide the following details in respect of each unit or enterprise or eligible business:	
(a) Name and details of business from which goods or services have been acquired	<input type="text"/>
(b) Description of goods or services acquired	<input type="text"/>
(c) Amount paid/payable for acquiring of such goods or services–	<input type="text"/>
(i) as per the books of account;	<input type="text"/>
(ii) as computed by the assessee having regard to the arm's length price	<input type="text"/>
(d) Method used for determining the arm's length price [See section 92C(1)].	<input type="text"/>

Covers : **Sale** of goods or provision of services from **Assessee's eligible business to other business**

Covers : **Purchase** of goods or provision of services by **Assessee's eligible business from other business**

Form No. 3CEB Clause 23: Section 80IA(10) / 10AA

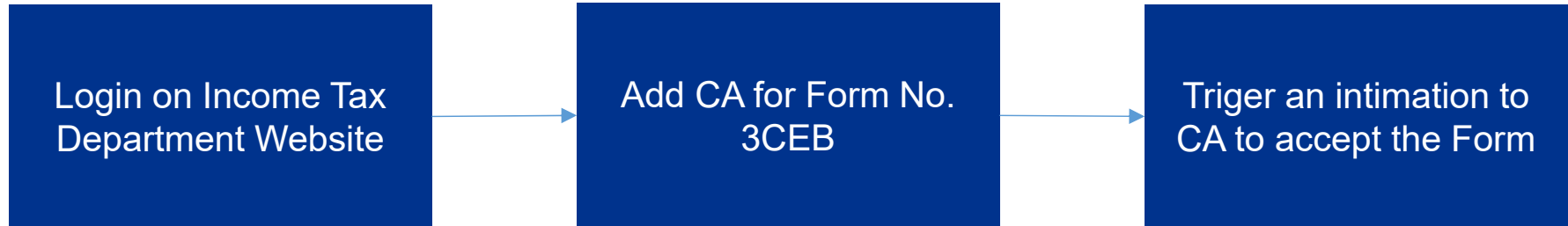
Particulars in respect of specified domestic transaction in the nature of any business transacted:	Yes/No <input type="checkbox"/>
Has the assessee entered into any specified domestic transaction(s) with any associated enterprise which has resulted in more than ordinary profits to an eligible business to which section 80IA(10) or section 10AA applies?	
If "yes", provide the following details:	
(a) Name of the person with whom the specified domestic transaction has been entered into	<input type="text"/>
(b) Description of the transaction including quantitative details, if any.	<input type="text"/>
(c) Total amount received/receivable or paid/ payable in the transaction -	<input type="text"/>
(i) as per books of account;	<input type="text"/>
(ii) as computed by the assessee having regard to the arm's length price.	<input type="text"/>
(d) Method used for determining the arm's length price [See section 92C(1)].	<input type="text"/>

- Income & Expense both sides are covered under this clause.
- Reporting under this clause is required where the eligible unit has generated "more than ordinary profits"
- Disclosure of Transactions?
- Value of these transactions to be considered for aggregated value in Part A?

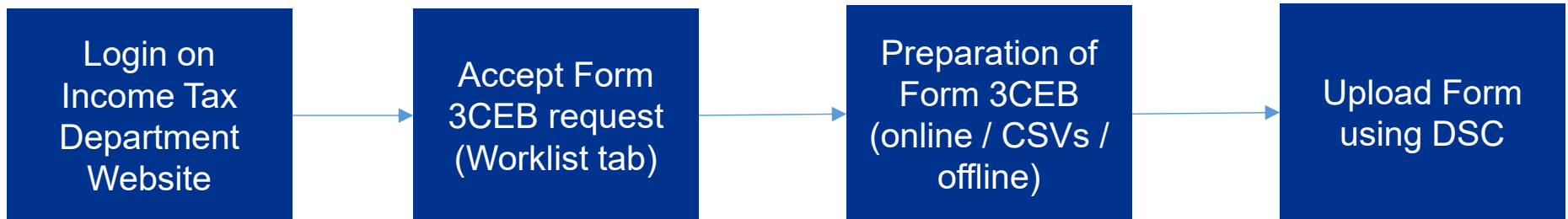
Similar Details and Consideration for Clause 24 and Clause 25

E-filing of Form No. 3CEB - Steps

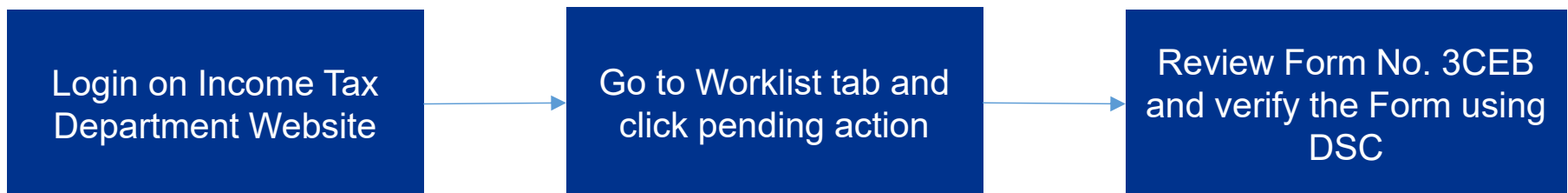
Step 1 – Task to be completed by Assessee



Step 2 – Task by Chartered Accountant



Step 3 – Tasks to be completed by Assessee



Other Practical Aspects

Revision of Form No. 3CEB

- No specific provision in the Income-tax Act
- Is it Practically Possible?
 - Possible to upload revised Form No. 3CEB in e-filing
- Whilst revising Form 3CEB, one will need to provide the reason for revising the form.

Applicability to Foreign Companies

- No exemption for TP compliances
- Equal applicability to permanent establishment of overseas enterprise



Stringent Penalties Prescribed

Penalty provisions in relation to local transfer pricing compliances and documentation:

Nature of default	Penalty prescribed
Failure to furnish Accountant's Report (i.e. a form prescribed for reporting of international transactions) (Section 271BA)	INR 100,000
<ul style="list-style-type: none">• Failure to report an international transaction• Failure to maintain prescribed information / documents• Maintenance or furnishing of incorrect information / documents (Section 271AA)	2% of value of international transactions as determined by the tax authorities
Failure to furnish information / documents during transfer pricing scrutiny assessment (Section 271G)	2% of value of international transaction as determined by the tax authorities

Questions and Answers



Questions



Answers



Thank You

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