Film Financing and Television programming

A Taxation Guide

Now in its eighth edition, KPMG LLP's ("KPMG") Film Financing and Television Programming: A Taxation Guide (the "Guide") is a fundamental resource for film and television producers, attorneys, tax executives, and finance executives involved with the commercial side of film and television production. The guide is recognized as a valued reference tool for motion picture and television industry professionals.

Doing business across borders can pose major challenges and may lead to potentially significant tax implications, and a detailed understanding of the full range of potential tax implications can be as essential as the actual financing of a project. The Guide helps producers and other industry executives assess the many issues surrounding cross-border business conditions, financing structures, and issues associated with them, including film and television development costs and rules around foreign investment. Recognizing the role that tax credits, subsidies, and other government incentives play in the financing of film and television productions, the Guide includes a robust discussion of relevant tax incentive programs in each country.

The primary focus of the Guide is on the tax and business needs of the film and television industry with information drawn from the knowledge of KPMG International's global network of member firm media and entertainment Tax professionals.

Each chapter focuses on a single country and provides a description of commonly used financing structures in film and television, as well as their potential commercial and tax implications for the parties involved. Key sections in each chapter include:

Introduction
A thumbnail description of the country's film and television industry contacts, regulatory bodies, and financing developments and trends.

Key Tax Facts
At-a-glance tables of corporate, personal, and value-added (VAT) tax rates; normal nontreaty withholding tax rates; and tax year-end information for companies and individuals.

Financing Structures
Descriptions of commonly used financing structures in film and television production and distribution in the country and the potential commercial tax implications for the parties involved. The section covers rules surrounding co-productions, partnerships, equity tracking shares, sales and leaseback, subsidiaries, and other tax-efficient structures.

Tax and Financial Incentives
Details regarding the tax and financial incentives available from central and local governments as they apply to investors, producers, distributors, and actors, as well as other types of incentives offered.

Corporate Tax
Explanations of the corporate tax in the country, including definitions, rates, and how they are applied.

Personal Tax
Personal tax rules from the perspective of investors, producers, distributors, artists, and employees.

Digital Media
For the first time, we have included a discussion of digital media tax considerations recognizing its growing role in the distribution of film and television content.

KPMG and Member Firm Contacts
References to KPMG and other KPMG International member firms' contacts at the end of each chapter are provided as a resource for additional detailed information.

Please note: While every effort has been made to provide up-to-date information, tax laws around the world are constantly changing. Accordingly, the material contained in this publication should be viewed as a general guide only and should not be relied upon without consulting your KPMG or KPMG International member firm Tax advisor.

Production opportunities are not limited to the countries contained in this Guide. KPMG and the other KPMG International member firms are in the business identifying early-stage emerging trends to assist clients in navigating new business opportunities. We encourage you to consult a KPMG or KPMG International member firm Tax professional to continue the conversation about potential approaches to critical tax and business issues facing the media and entertainment industry.

Thank you and we look forward to helping you with any questions you may have.

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The following information is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230 as the content of this document is issued for general informational purposes only.

The information contained herein is of a general nature and based on authorities that are subject to change. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

Finland

Introduction

The Finnish legal system, including tax law, follows along the lines of legislation in the other Nordic countries. The overall level of taxation in Finland is clearly above the average for the OECD countries, but the common business environment is rather stable and competitive, and it should be noted that the corporate income tax rate decreased for the tax year 2014. This enables a base for creative and innovative entrepreneurship in Finland.

Several famous Finnish movie directors, actors, and producers inspire new persons and companies to operate in Finland. However, film production itself has very little impact on the Finnish economy. Average production budgets are small, being approximately

EUR 1–2 million per production. The Finnish Film Foundation has a significant role in film financing even if amounts of public financing are still less than in the other Nordic countries.

Key Tax Facts

Corporate income tax rate	20%
Highest personal income tax rate (2011)	59.17%
VAT rate	0%, 10%, 14%, 24%
Annual VAT registration limit	Generally none
Normal non-treaty withholding tax rates:	
Dividends	0%, 15%, 20%, 30%
Interest	0%, 20%, 30%*
Royalties	0%, 20%, 30%
Tax year-end: Companies	Accounting year-end
Tax year-end: Individuals	December 31

* Interest deduction limitation rules apply to interest paid between affiliated companies in certain situations. The limitations will be aligned with Anti-Tax Avoidance Directive (ATAD) to also cover interest payments to third parties from the beginning of 2019 in certain situations.

Film Financing

Financing Structures

Co-Production

Film production and financing are made possible by a joint venture (JV) model in Finland. The most common legal form of a JV is a limited liability company that is owned by partners of the JV with a special agreement on management of the company. Investors in JVs can be Finnish or foreign resident entities or physical persons. Tax rules applicable to the JVs are the same as the rules applicable to limited liability companies.

Tax liability of a nonresident investor in a JV depends on the nature of activities, the investor's physical presence in Finland, and whether the activities create a permanent establishment for tax purposes or not.

Partnership

The following entities are regarded as partnerships for tax purposes: 1) general and limited partnerships established under the Finnish commercial law; and 2) other similar entities that are not based on commercial law, i.e., partnerships other than general or limited partnerships, but are formed by two or more persons (including limited companies, partnerships, or any other entities) for conducting a business jointly on behalf of these persons (business partnerships) or cultivating or holding real property (real property partnerships). However, joint ventures formed by two or more taxpayers engaged in business activity for performing a specified work or production are not treated as partnerships without a separate agreement on a legally established partnership.

Partnerships are not regarded as separate taxable entities. The net income of a partnership is determined under the rules applicable to corporate bodies, but is attributed to the partners according to each partner's share in the partnership's total income, and is taxed either as earned income or investment income. Resident partners of a nonresident partnership are taxed as if they were resident partners in a domestic partnership. Any losses of the partnership are deducted at the partner level.

As in cases of JV, a tax liability of a nonresident investor in the partnership depends on existence of a permanent establishment in Finland.

Equity Tracking Shares

The Finnish Companies' Act enables agreement on special rights to certain series of shares. Therefore, dividend payments based on the profitability of a film production company's business are, in practice, possible in Finland, even if "equity tracking shares" are not commonly used in Finland.

When using different series of shares with special profit rights, attention should be paid to articles of association, a shareholders' agreement, and the corporate governance of a company. In practice, all the conditions for equity tracking shares have to be defined by the parties considering the imperative rules of the Companies' Act. In addition, the tax consequences should be examined carefully case-by-case for each shareholder.

Yield Adjusted Debt

A company may issue "debt securities" to investors provided that the debt relates to the company's business operations and conditions of the debt are fair, considering the management's general duty of care, as well as solvency of the company.

The yield of debt may be linked to revenue from, e.g., specific films, however, with limitations of the duty of care and an arm's length rate of interest if a payer and receiver are related parties.

In case that compensation (interest) exceeds the market level of interest, the supplemental might (although this is rather unlikely) eventually be regarded as a distribution of dividends given the fact that it depends on the results of the company. The interest may not be deductible for the company in this case and is subject to corporate or individual income tax for the investor. This interest may also be subject to withholding tax if reclassified as a dividend under the dividend article of the applicable double tax treaty.

Tax and Financial Incentives

Investors

There are no tax incentives in this field in Finland other than a temporary incentive for Finnish tax resident investors in specified investments applicable in taxation of 2013–2015, representing, however, only into a deferral on taxable income.

Producers

No direct tax incentives exist, but the production of Finnish film is supported by *Suomen elokuvasäätiö* (Finnish Film Foundation).

FFI was established in 1969, and it started its operations in 1970. FFI's main objectives are supporting the national film production, film culture, distribution channels, and promoting the exportation of the national movies, as well as organizing film festivals in Finland.

FFI is mainly financed by profits from the state-controlled lottery and money games. Generally, allowances granted by FFI to films and productions are less than in the other Nordic countries.

Production subsidies granted by FFI are tax-exempt for a Finnish production company under a special rule of the Business Tax Act.

Distributors

No tax incentives exist.

Depending on the recipient, royalties paid from Finland are subject to withholding tax of 20%/30%; however, tax treaties may also provide for a lower or zero-rate taxation for royalties. Royalties for cinematograph films are, however, taxed within ordinary tax assessment.

Finland has also implemented the EC Interest and Royalties Directive (2003/49/EC), and thus, interest and royalties are exempt from withholding tax (zero rate) when the beneficial owner of interest or royalty is a company resident in another European Union (EU) member state or a permanent establishment situated in another member state of a company resident in a member state. The exemption is, however, applied only if the paying company, or the company whose permanent establishment is treated as the payer of interest or royalties, is an associated company of the company which is the beneficial owner, or whose permanent establishment is treated as the beneficial owner, of the interest or royalties.

Actors and Artists

The Income Tax Act defines income from major national and international artistic awards, which are annually named on application in advance, as exempt for tax purposes. In addition, scholarships or other support received for studies, scientific research, and artistic or sporting activities are tax-exempt with certain limitations.

No other tax incentives exist for actors and artists. Income spreading is not available to actors and artists either.

Other Financing Considerations

Tax Costs of Share or Bond Issues

No tax or capital duty is imposed in Finland on any issue of new ordinary or preference shares or loans.

Exchange Controls and Regulatory Rules

There is no exchange control in Finland, but a work permit may be required by persons from non-Nordic or non-EU countries.

Corporate Taxation

Recognition of Income

Film Production Company – Production Fee Income

Companies resident in Finland are liable to tax on their worldwide income. If a person who is not a resident in Finland, or a foreign corporate body or a partnership has a permanent establishment in Finland for conducting business, that person is liable to income tax for all income attributable to that permanent establishment, whether derived from Finland or from abroad. An exception to this rule is (under certain conditions) income received by a nonresident limited partner in a Finnish limited partnership for venture capital investments. There is no exact definition for corporate residency in the tax laws. The general rule is that if a company is registered in Finland, it will be considered a tax resident of Finland.

The concept of income is broad and covers several income types, such as proceeds from selling merchandise, rental income, fees and compensation for work, labor and personal services, and the profits from investing financial assets. Production fee income is typically treated as general business income for a film production company.

As a rule, chargeable profits are allocated for purposes of taxation to the tax year in which goods are delivered or services rendered. Minor receipts may be allocated to the tax year during which the taxpayer receives the payment.

Film Production Company – Sale of Distribution Rights

Capital gains are taxed as a normal business income, but the participation exemption rules provide significant tax planning opportunities for a film production company. Capital gains derived by companies (corporations) from the transfer of shares are not taxable income and acquisition costs of shares are not tax deductible, if:

- A transferor of shares is a company, a cooperative, a savings bank, or a mutual insurance company not engaged in investment activity (venture capital business)
- The shares belong to the transferor’s fixed assets

- The transferor has owned at least 10% of shares in the capital of the company to be transferred uninterruptedly for at least one year during a period that has ended at most one year before the transfer and the transferred shares are among the shares which have been owned in this way; and
- The company to be transferred is not a residential housing company, a real estate company, or a limited company—the activities of which mainly consist of real estate holding or managing; but instead is:
  a) Domestic (Finnish resident) company
  b) Company referred to in Article 2 of the EU Parent–Subsidiary Directive (90/435/EEC); for the details; or
  c) Company resident in a country with which Finland has, in that tax year, in force a tax treaty, which is applied to dividends distributed by that company.

Film Distribution Company

Film distribution companies are taxed as any corporate entity that carries out business activities in Finland.

Amortization of Expenditure

Production Expenditure

The expenses incurred in acquiring or maintaining a business are generally tax deductible. Expenses are recorded in the accounting system on an accrual basis. Expenses that generate income over a period of at least three years are divided equally to the corresponding tax years.

Other Expenditure

Entertainment costs are deductible to only 50% of the actual amount.

Cost of goods sold is deductible as the goods are sold. An additional deduction can be made if the actual costs exceed the fair market value of the inventory.

Expenses incurred in acquiring fixed assets are deductible through depreciation. The acquisition cost of the taxpayer's entire stock of machinery and equipment is written off annually as a single item using the declining balance method. Under this method, the depreciation base consists of the net book value of all such assets at the beginning of the year plus the acquisition value of assets put into use during the tax year less any sales proceeds, insurance compensation, and the like received for assets sold, damaged, or lost during the tax year. The maximum annual depreciation is 25% of this base, although the taxpayer may claim a smaller allowance if he or she wishes. If the taxpayer can show that the current value of these assets is less than the depreciation base reduced by the full 25%, he is entitled to an additional depreciation that will reduce the depreciation base to the current value.

The declining balance method applies to the depreciation of buildings and other constructions as well. Depreciation for each building is computed separately with a maximum rate varying from 4% up to 25%, depending on the type of building or construction. Different depreciation methods apply to the depreciation of other types of assets that are expected to generate income over a longer period of time.

Losses

Losses may be carried forward and set off in the tax years following the year of loss. Carryforward will no longer be permitted if more than 50% of the shares of the company are sold—in other words, if the company no longer belongs to its original owners. However, Tax Authority may grant a special permission upon an application if a taxpayer can argue that the change in the ownership is based on acceptable business reason and the permission is necessary for continuance of business operations.

Financial Support between Companies of the Same Corporate Group

Companies belonging to the same consolidated group of companies sometimes offer financial support to one another. The company offering financial support cannot deduct the costs incurred, if the financial support is given in the form of relief from loan repayment or in the form of one group company paying the expenses of another, etc.

However, under the definition of group contributions—konserniavustus; koncernbidrag—according to the special law governing payments between affiliated companies, group-level consolidation between two Finnish resident companies is possible via group contributions.

Foreign Tax Relief

Producers

There are no special tax relief rules for producers.

Distributors

There are no special tax incentives for distributors

Indirect Taxation

Value Added Tax (VAT)

VAT is a general tax on consumption levied on the commercial selling of goods and services in Finland. Liability to pay VAT concerns anyone who carries on such business in Finland.

VAT is due on any supply of goods or services made in Finland, where it is a taxable supply made by a taxable person in the course or furtherance of a business carried on by the said person. Supply includes all forms of supply.

Supply does not include anything done otherwise than for a consideration. However, certain actions carried out for no consideration are deemed to be supplies, for example, the private use of business assets.

If a business makes taxable supplies in Finland over the VAT registration threshold (EUR 10,000), it will be required to register and account for Finnish VAT. If it trades below the registration threshold, then it can still choose to register for VAT as a voluntary trader.

The registration rules that apply to Finnish entities also apply to non-Finnish entities that make taxable supplies in Finland. However, there is no minimum VAT registration threshold for businesses not established in Finland. The foreign company effecting intra-Community acquisitions or intra-Community supplies in Finland is, as a minimum requirement, subject to so-called notification duty.

Registered businesses are required to report VAT on tax returns on a monthly basis. However, if the annual turnover is more than EUR 30,000 but does not exceed EUR

100,000, the taxable person is entitled to opt for quarterly filing; if the annual turnover is not more than EUR 30,000, the taxable person is entitled to opt for annual filing.

Tax is computed on the total charge for goods or services, excluding the amount of tax. The standard rate of VAT is 24%. In addition, two reduced rates are in use: 14%, which is applied on food and animal feed, and 10%, which is applied, e.g., on the entrance fee for cinema performances. The 10% rate also applies to sales and grants of show rights and other rights protected under the Finnish copyright regulations. However, the standard rate of 24% applies to commercials, computer software, information films, and photographs. The standard rate also applies to sales of DVDs and other recordings. It should be noted that even if the sale of copyright of the film itself is tax-free, the sale of film screening right is normally subject to the standard VAT rate.

Subsidies and Aids

The taxable amount includes subsidies and aids directly linked to the price of the goods or services. However, this main rule concerning the subsidies and aid is not applicable to the general subsidy and aid aimed to improve the operational preconditions or to secure the continuity of functioning. Hence, according to an established interpretation of the support for example from Finnish Film Foundation (*Suomen elokuvasäätiö*) to the producers or the distributors has not been taxable and is then not accounted when calculating the tax base.

Intangible Services Brought in from Abroad

If a company purchases services that fall into the scope of general rule from outside Finland, it will be required to apply the reverse charge. Under the reverse charge, the buyer is required to account for a notional amount of VAT as output tax on its periodic tax return, and it recovers this VAT as input tax on the same return based on normal recovery rules. If the purchase subject to reverse charge was made for taxable business, the reverse charge has no cost effect and is a VAT compliance matter only. However, for companies not in full VAT recovery position, there is likely to be a VAT cost depending on the level of recovery allowed.

Intra-Community Sales and Acquisitions

Tax is not payable on intra-Community sales of goods in Finland. Intra-Community sales mean the sale of movable property if the seller, the purchaser, or someone else on their behalf transports the property to the purchaser from Finland to another member state of the European Union. Respectively, the intra-Community acquisition has taken place in Finland and is VATable in here if the goods to be transported to the purchaser are here when the transport ends. An intra-Community acquisition has also taken place in Finland if the purchaser has used a VAT number issued in Finland and the transportation has begun in another member state of EU.

Imports of Goods and Customs Duties

Importation of goods means importation from outside the European Union to a member state. The basis for value added taxation for importation of goods in Finland is that the importation of goods takes place in Finland. This means that the goods are in Finland when they first enter into the community's VAT zone. As usual, in the Finnish VAT Act, there are a number of exceptions concerning the importation of goods, but the main rule is as stated above. If the importer of record is a taxable person registered for VAT in Finland, the import VAT is reported and paid on VAT returns contrary to nonregistered entities and private persons who must pay import VAT to the Finnish Customs. As under the main rule, the VAT of importation is normally deductible in Finland, but it should be noted that the customs duty is not.

The following rates of customs duty are generally payable when importation takes place in Finland.

Type of goods	Customs duty rate
35 mm positive release prints	6.5%, max 5,00€/100m
Negative (including intermediate positive)	0%
Plates and film	0%
Other	N/A
Video masters	4.5%
Prints consisting only of soundtracks	0%
Importation of publicity material, trade advertising	0%

Personal Taxation

Nonresident Artists

If a nonresident artist gives a performance in Finland, this is a personal activity of the individual concerned. Under Finnish tax rules, any compensation paid for it will be taxable in Finland. No importance is attached to payment arrangements, i.e., to whose bank account the compensation is actually paid. The compensation is assessed in Finland at the 15% rate regardless of whether it is considered wages, salary, or other income. The tax rate will be 15% even if the payment is routed to a foreign concert agency or other foreign corporate entity. No deductions are usually allowed.

However, as of 2010, performing artists residing in an EU/ETA-state can be entitled to deduct their direct costs on request. This alternative will mean that the tax will depend on the progressive scale. If the calculation—progressive tax minus deductions—results in less tax than the flat 15% tax at source, this is a feasible procedure. On request, the tax office can perform the necessary calculations and issue a tax card containing the information.

Even though the employer/payer is not entitled to deduct the costs on behalf of the performing artist, accommodation, freight, and transportation costs can usually be fully reimbursed against receipts and documentation to the performing artist. Furthermore, the employer/payer is entitled to pay tax-exempt domestic per diem allowances to the performing artist.

It should additionally be noted that a personal activity of the individual means performing music or participating in a competition. Thus, this tax rule does not refer to arts-related professionals, such as drama director of a theatre, choreographer, or theatrical set decorator.

Only performing artists coming from the United States are entitled to exemption from Finnish taxation because of a tax agreement. If the fee received in Finland, including reimbursed costs, does not exceed U.S. $20,000 during a tax year, fees paid on the personal activity are exempt from Finnish taxation.

Resident Artists (self-employed)

Such artists are taxed on their worldwide income in the same way as income from business profits. The rates are progressive, and the highest marginal rate in 2018 is approximately 59.8%. In addition, they have to pay pension insurance and accident insurance contributions amounting to approximately 24.1% of the pensionable income and social security contribution 1.9%. The contributions are deductible for tax purposes.

Employees (other than artists)

The earned income of persons staying in Finland for more than six months continuously is taxed according to the same rates as that of the permanent residents in Finland.

The six-month period is not associated with the calendar year. For instance, a person staying in Finland from August 15 to February 15 is considered a resident during his or her stay.

The stay in Finland is considered continuous when absence during the stay is of a temporary nature.

Taxes of a resident include:

- Progressive state income tax on earned income (See table below)
- Flat tax rate on capital (investment) income
- Starting 2012: 30%; on income exceeding EUR 30,000: 34%
- Municipal tax on earned income
- Church tax.

Income tax table 2018 (state income tax on earned income)

Taxable income EUR	Tax at the lower limit EUR	Tax rates for amounts exceeding the lower limit
17,200 to 25,700	8.00	6.00%
25,700 to 42,400	518.00	17.25%
42,400 to 74,200	3398.75	21.25%
74,200–	10156.25	31.25%

Municipal tax rates range from 16.5% to 22.5%, depending on the municipality where you live, i.e., your domicile. Similarly, church tax varies from 1% to 2%, depending on the domicile. The health insurance premium for 2018 is 1.53%.

Employers collect tax from wages according to the tax card provided by the local tax office. If no card is presented, 60% tax is withheld. If it is uncertain whether the above-mentioned six-month limit will be exceeded, tax at source is collected during the first months. A tax card will be issued when it has been verified that the time limit will be exceeded. Wage earners whose employer does not operate in Finland must contact the local tax office for instructions for prepayment tax. Persons deemed as residents must file an income tax return in Finland. The wage earner's income tax return form is available also in English.

In the case of a temporary employment in Finland, exemptions apply with respect to compensation for certain lodging and travel costs. Furthermore, where the stay in Finland does not exceed 183 days in any 12-month period or calendar year (depending on relevant tax treaty), the remuneration is exempt, provided it is not paid by a Finnish resident employer or, in the case of a foreign employer, the remuneration is not borne by such employer's permanent establishment in Finland.

For tax purposes, persons present in Finland for a maximum of six months are considered nonresidents. They pay tax in Finland only on income received from Finland. Finnish employers collect a 35% tax at source on their wages. Before collecting the 35% tax, the employer can deduct from the salary a nonresident's deduction (= EUR 17 per day or EUR 510 per month). This provides that the deduction is mentioned in the tax-at-source card issued by the local tax office. In case the work is not performed in Finland mainly for a Finnish employer or a foreign employer with a PE in Finland, the salary income is not taxable.

Nonresidents do not have to file an income tax return in Finland. However, nonresidents usually do have to report the income earned in Finland when they file their income tax return in their home country. Separate provisions apply to performing artists (see nonresidents artists).

If the employee does not have a certificate of posted employee, social security contributions are due. The rates are as follows:

Employer's Finnish social security contributions in 2018

Pension insurance contributions	18.05% (on average)
Unemployment insurance contributions	
Total salaries max. EUR 1,990,500	0.75%
Total salaries exc. EUR 1,990,500	2.95%
Employer's social security contribution (only if PE)	1.90%
Accident insurance	0.8% (on average)
Group life insurance	0.07% (on average)

Employee's social security contributions in 2018

Pension insurance	6.35%
Unemployment insurance	1.9%
Sickness insurance contribution	1.53% (collected if work lasts for at least four months)

Digital Media

Digital media and other electronic services are taxable in Finland based on the general rules, and they are subject to the standard VAT rate of 24%. Contrary to some EU countries, no special benefits are introduced for electronic services and digital media services in Finland. However, there are no other indirect taxes applicable especially on digital media services in Finland.

Based on common EU VAT rules, supplies of electronic services will be taxable in the country where the customer is located, i.e., where the service is consumed, irrespective of whether the customer is a private individual or a business. However, whereas the buyer is liable for VAT in cross-border B2B trade in the EU, the service provider in B2C trade is liable for VAT in Finland if the place of supply is here, i.e., on electronic services to Finnish consumers. This will usually cause an obligation for the foreign service provider to register for VAT in Finland and report its sales here. However, the EU has introduced a special scheme regarding the registration and reporting of VAT on e-services. The scheme implies that a service provider selling electronic services to consumers in the EU can fulfill its tax obligations through the tax administration of one EU country, if the service provider is not already VAT registered in the customer's country of residence for some other reason.

Additionally, it should be noted that e-books, e-newspapers, and e-magazines are taxed differently compared to traditional books and magazines in paper form; the reduced VAT rate of 10% is only applicable to physical books and to subscriptions of newspapers and magazines. Downloaded and online e-books, e-newspapers, and e-magazines are subject to the standard VAT rate of 24%. Further, the European Court of Justice has issued a judgment in case C-219/13 regarding Finland. According to the ECJ, books published in paper form can be subject to a reduced rate of VAT and, at the same time, books published in other physical formats, e.g., CDs, CD-ROMs, or USB keys, can be subject to the standard rate of value added tax if the principle of fiscal neutrality is complied with.

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