

IN THE NAME OF ALLAH ALMIGHTY, THE MOST MERCIFUL,  
MOST BENEFICENT



# NEWSLETTER DECEMBER 2019



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## **DISCLAIMER**

Khilji & Co (Chartered Accountants) is pleased to present Firm's Newsletter. The only purpose of this document is to provide updated information to our clients about recent circulars/ notifications issued by various authorities during this month and also to provide our clients with information on latest useful decisions of appellate courts. The information provided in this document should only be used in conjunction with professional opinion from tax/ legal advisor and checked for updated position of law. This document as a whole or its any part should not be reproduced in any form without prior written approval from Khilji & Co. This newsletter is distributed free of cost to our clients only. We humbly request our readers to please provide us the most valuable comments to make this more informative and useful. It has always been a pleasure to be of service to our clients.

### **EDITORIAL GROUP:**

- 1. Mr. Muhammad Waheed Iqbal, FCA**
- 2. Mr. Abdul Hafeez**
- 3. Syed Asim Habib**

**Chief Editor**  
**Principal Editor**  
**Section Editor**

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## Case Law(s) – Lahore High Court, 2019 PTD 1994, Date of order October 18, 2016

Sindh High Court, 2013 PTD 1420, Date of order May 07, 2013

### Brief Facts:

Both of the case laws mentioned above address the same question of law that whether the facility of carry forward of minimum tax under Section 113(2)(c) of the Income Tax Ordinance, 2001 (the Ordinance) is available or not where the taxpayer has suffered losses in earlier years but had to pay minimum tax under section 113(1) of the Ordinance.

The above-mentioned judgements of the Lahore High Court and Sindh High Court are contradictory. Brief summaries of both decisions are given hereunder:

### 2019 PTD 1994 – Lahore High Court

(i) Income tax reference under section 133(1) of the Ordinance was filed before Lahore High Court seeking opinion of this Court on two questions of law stated to have arisen out of the order passed by Appellate Tribunal Inland Revenue, Lahore (ATIR, Lahore) reported as 120 TAX 11.

(ii) The Honorable Lahore High Court through its judgement agreed with the judgement of ATIR Lahore and held that:

**Quote:** *"The findings of the Appellate Tribunal Inland Revenue are rooted in law and, therefore, the questions framed by the appellant do not raise a legal issue requiring us to render our opinion thereon."* **Unquote**

(iii) The Honorable ATIR Lahore in its decision held that the Government has extended benefit in terms of section 113(2)(c) of the Ordinance therefore the benefit of this provision is also available to the taxpayers bearing losses.

**Quote:** *"We are of the view that the credit u/s 113(2)(c) is beneficial in nature and incorporated to reduce burden of taxation of cases earning lesser income or suffering losses therefore the same have to be interpreted liberally. Tax payable u/s 113 is not actual tax liability rather the same is imposed through deeming provisions by making a company pay taxes even it suffers losses. However, while the government extended a benefit in terms of section 113(2)(c) which is in the nature of payback of tax recovered over and above the actual tax liability then how the loss cases can be excluded from such benefit. Therefore, it is absurd to say that credit is available only to the taxpayers earning profit while the recovery has been made from the taxpayers who were even bearing losses."* **Unquote**

(iv) The ATIR held that where no tax is payable, it may be referred to as zero tax payable for sake of section 113(2)(c) of the Ordinance.

**Quote:** *"We further observe that the term "no tax payable" refers to a zero tax payable. The zero is a lowest mathematical amount payable and also the zero is an intermediary point between negative and positive mathematical numbers. Therefore zero cannot be excluded from the term "payable". Therefore, we agree with the argument of the AR that the term "payable" as used in clause (C) cannot be read ignoring the NIL or Zero value. The zero is thus the starting point of*

*positive integers and therefore zero or nil cannot be excluded from purview of "payable". Thus in the case of declaration of loss "tax payable or paid" shall be nil or zero or more than zero therefore, cannot be considered in any manner so as to throw out the present taxpayer from the ambit of section 113(2)(c) of the Ordinance." Unquote*

- (v) The ATIR held that the section 113(2)(c) of the Ordinance is applicable where losses are incurred by the taxpayer or where no tax is payable.

**Quote:** *"In view of the above, we are inclined to hold that section 113(2)(c) of the Income Tax Ordinance, 2001, is also applicable in loss cases or zero tax payable cases and benefit of the said section cannot be rejected by the Department. Consequently, we vacate the impugned order passed by the authorities below and accept the appeal of the taxpayer."* **Unquote**

### 2013 PTD 1420 – SINDH HIGH COURT

- (i) The Honorable Sindh High Court in a contradictory judgment held that the section 113(1) of the Ordinance is a charging section and applies in either of the two distinct situations. The first is where no tax is payable or paid. The second is where tax is payable or paid, but the mount is less than that stipulated. These are separate and distinct situations and should not be mixed up or confused with one another.

**Quote:** *"The provision conferring the benefit (i.e., subsection (2)(c)) applies to only one of these situations, namely where tax is payable. Ipso facto, it does not apply to the other situation, where tax is not payable. This is clear on the face of it. There is no ambiguity or confusion. In our view, the interpretation sought to be placed on subsection (2)(c) by the Tribunal is plainly erroneous."* **Unquote**

- (ii) The Sindh High Court held that where two reasonable views of an exemption are available, the one against the taxpayer is to be adopted.

**Quote:** *"The submission by learned counsel for the respondent that the interpretation placed by the Taxation Officer could lead to unfair results cannot, with respect, be accepted. We are in the realm of fiscal statutes. The principles are clear and well established. What could perhaps, and at most, be said (although we do not subscribe to this view) is that the Tribunal's interpretation is one reasonable view that can be taken of subsection (2)(c). But, the other view (which in our opinion follows ineluctably) is on this basis at the very least also a reasonable view. The principles are clear. When two reasonable views of an exemption provision (or one that can be analogized to an exemption) are possible, the one against the taxpayer is to be adopted."* **Unquote**

- (iii) The honorable Sindh High Court concluded that the benefit of section 113(2)(c) of the Ordinance is not available in case of losses suffered by the taxpayer

**Quote:** *"In view of the foregoing we conclude that the interpretation placed by the Tribunal on section 113(2)(c) was erroneous and cannot be sustained. The Taxation Officer had correctly interpreted and applied the law. Accordingly, the question referred to us is answered in favour of the Department and against the respondent taxpayer. The impugned order is set aside and this Reference Application is allowed. The Registrar is directed to send a copy of this decision under seal of the Court to the Tribunal."* **Unquote**

## TAX LAWS (SECOND AMENDMENT) ORDINANCE, 2019.

Tax Laws (Second Amendments) Ordinance, 2019 was promulgated by the President of Pakistan on 26<sup>th</sup> December 2019 and comes into force at once.

Our detailed commentary on the **Amendments of Income Tax Ordinance, 2001 and Sales Tax Act, 1990** brought through above Ordinance has already been forwarded to our valued clients and can be accessed via link below while amendments in Customs Act, 1969 are being presented here.

<https://khilji.net.pk/wp-content/uploads/2020/01/KCO50-Commentary-Jan-2020.pdf>

### AMENDMENTS IN CUSTOMS ACT, 1969 (IV OF 1969)

#### The Directorate General of Law and Prosecution – Section 3CCA

Through insertion of section 3CCA, The Directorate General of Law and Prosecution has been established.

#### Recovery or seizure subsequent to false declaration - Section 139(2)

In case of recovery or seizure subsequent to false declaration or failure to declare as prescribed, the offence shall be treated at par with smuggled goods.

In section 156, penalties for smugglers of currency, gold, silver, platinum or precious stones have been prescribed. The penalties levied consist of confiscation of goods, additional penalty or imprisonment or both in the prescribed manner:

Where smuggle or prohibited goods comprise of currency, such currency shall be liable to confiscation and additionally following penalties are applicable:

Offence	Penalty	Imprisonment
Up to US\$ 10,000 or equivalent above the permissible limit	Upto value of excess currency	Nil
From US\$10,001 to US\$ 20,000 or equivalent above limit	Up to two times of excess currency	Nil
From US\$20,001 to US\$ 50,000 or equivalent above limit	Up to three times of excess currency	Maximum two years
From US\$50,001 to US\$ 100,000 or equivalent above limit	Up to four times of excess currency	Maximum seven years
From US\$100,001 to US\$ 200,000 or equivalent above limit	Up to five times of excess currency	Maximum ten years and not less than three years
Above US\$200,001 or equivalent	Up to ten times of excess currency	Maximum fourteen years and not less than five years

Offence	Penalty	Imprisonment
Up to 15 tola gold or equivalent	Up to value of value of goods	Nil
From 16 tola gold to 30 tola gold or equivalent	Up to two times of value of goods	Nil
From 31 tola gold to 50 tola gold or equivalent	Up to three times of value of goods	Maximum one year
From 51 tola gold to 100 tola gold or equivalent	Up to three times of value of goods	Maximum three year
From 101 tola gold to 200 tola gold or equivalent	Up to four times of value of goods	Maximum five year
From 201 tola gold to 500 tola gold or equivalent	Up to five times of value of goods	Maximum ten year but not less than three years
Above 500 tola or equivalent	Up to ten times of value of goods	Maximum fourteen year but not less than five years

### **Waiver of penalty:**

Penalty under Sr. No. 47A of section 156 shall not be applicable in cases where goods are imported or received as gift by individuals without NTN or STRN through courier or air cargo, diplomatic cargo and imports made by the Federal Government or Provincial Government or Local Government.

### **Penalties where the owner of baggage fails to declare or makes false statement:**

Previously if the owner of any baggage fails to make correct declaration of its contents or refuses to answer any questions put to him by the appropriate officer with respect to his baggage or any of its contents including articles carried with him or fails to produce the baggage or any such article for examination, such person was liable to a penalty not exceeding three times the value of the goods. Now penalties for two categories i.e. currency and precious goods (gold, silver, platinum and precious stones in any form) have been separately prescribed with increasing penalty as the value of goods increases.

### **Use of necessary force – Section 164**

The Custom Officers have been empowered to use all necessary force including fire arms in order to stop and search conveyances as mentioned in section 164.

### **Disposal of Seized goods – Section 169**

Where the confiscated goods are of perishable nature, the court on an application after recording the evidence may order to sell or otherwise dispose of such goods.

Where the confiscated goods are dangerous drug, intoxicant, intoxicating liquor or any other narcotic or psychotropic substance, the court may on its own motion or an application, after obtaining required number of samples, may order for destruction of such goods. The samples taken shall be deemed to be whole of the property in an inquiry or proceedings in relation to such offence before any authority or court

## **Cognizance of offences by Special Judges – Section 185A**

Time limit has been prescribed for the disposal of cases initiated under section 185A. The Judges have been required to dispose of the cases within six months of the receipt of the report and if the time is extended, the reasons should be recorded in writing.

## **Appellate Tribunal – Section 194**

Significant provisions have been substituted in section 194, the details are here-under;

- 1) There shall be established an Appellate Tribunal to be called the Customs Appellate Tribunal to exercise the powers and perform the functions conferred on the Customs Appellate Tribunal by this Act. Inland Revenue tribunal by this Act,
- 2) The Customs Appellate Tribunal shall consist of a chairman and such other judicial and technical members who shall be appointed in such numbers and in such manner as the Prime Minister may prescribe by rules, which may be made and shall take effect notwithstanding anything contained in section 219 or any other law or rules for the time being in force.
- 3) Criteria for the appointment of Judicial Members has been substituted as follows:

<b>Existing</b>	<b>Revised</b>
Has exercised the powers of a District Judge and is qualified to be a Judge of High Court; or	Has been a Judge of a High Court Is or has been a District Judge; or
Is or has been advocate of a High Court and is qualified to be appointed as a Judge of a High Court	Is an advocate of a High Court with a standing of not less than ten years; or Possesses such other qualification as may be prescribed under sub-section (2) of section 194

## **Time limit for decision on reference filed – Section 196**

For decision of reference filed under section 196, time limit has been prescribed and the it has been required that the reference shall be decided within six months of filing the applications and if the time is extended, the reason should be recorded in writing.

## NOTIFICATIONS / CIRCULARS

### SECP NOTIFICATIONS

#### **S.R.O. 1480 (I)/2019 DATED 27<sup>TH</sup> NOVEMBER, 2019, APPLICATION OF IFRS – 14**

SECP vide S.R.O. 1480 (I)/2019 dated 27<sup>th</sup> November, 2019 notified the date of application of IFRS-14.

International Financial Reporting Standard (IFRS) 14 – “Regulatory Deferral Accounts” and any further revisions issued by the International Accounting Standards Board shall be followed for the preparation of financial statements for the annual reporting periods beginning on or after 1st July 2019 by all classes of companies that are required by the Act to follow IFRS as notified by the Commission.

IFRS 14 specifies the financial reporting requirements for *regulatory deferral account balances* that arise when an entity provides goods and services to customers at a price or rate that is subject to rate regulation.

#### **S.R.O. 1479 (I)/2019 DATED 26TH NOVEMBER, 2019, WITHDRAWAL OF SRO 1048**

SECP vide S.R.O. 1479 (I)/2019 dated 26th November, 2019 withdraw the Companies (Submission of Information regarding Income Tax Return) General Order, 2019 issued vide S.R.O. 1048 (I)/2019 dated September 11, 2019.

S.R.O. 1048 (I)/2019 Dated 11th September, 2019 was issued under title “Companies (Submission of Information regarding Income Tax Return) General Order, 2019”, whereby companies were required to file compliance certificate with respect to its’ status of compliance, with the requirements of filing of income tax return under the Income Tax Ordinance, 2001. This requirement has now been withdrawn.

### LINK OF DOCUMENTS

1. **SRO 1480:** <https://khilji.net.pk/wp-content/uploads/2019/12/Notification-IFRS-14.pdf>
2. **SRO 1479:** <https://khilji.net.pk/wp-content/uploads/2019/12/Notification-for-withdrawal-of-the-Companies-Submission-of-Information-regarding-Income-Tax-Return-General-Order-2019.pdf>

### FBR INFORMATION

Federal Board of Revenue has condoned the time limit in sub-rule (2) of rule 150ZEA of Sales Tax Rules 2006, upto December 15, 2019, for online integration tier-1 retainers’ outlets with FBR’s computerized system for real time reporting of sales.

<https://khilji.net.pk/wp-content/uploads/2019/12/2019124171235158372019-12-04Realtimeintegration.pdf>

## FBR INFORMATION

Federal Board of Revenue issued Informative Circular, wherein it has condoned the time limit for filing of Annex-H for the tax period of **July 2019 up to January 15, 2020.**

### Annexure - H:

In Sales tax return Annexure H is a summary of stock (i.e. details of opening, closing stock, stock sold/consumed etc.). This annexure is mandatory for refund claimants and they may submit this statement within 120 days from due date of return filing of particular tax period.

<http://download1.fbr.gov.pk/Docs/20191212191271925ExtensionindateforAnnex-H.pdf>

## FBR CIRCULAR

Federal Board of Revenue has issued Circular No 17 of 2019 (ref: C.No.2(1)Contd/I.Tax/2018 on December 16, 2019. This Circular states that

1. **FOR INDIVIDUALS and AOPs** Date of Filing of Total Income / Statements for Final Taxation for Tax Year 2019 has been **extended upto December 31, 2019.**
2. **FOR COMPANIES** Date of Filing of Total Income / Statements for Final Taxation for Tax Year 2019 (**Conditional upon 95% payment of admitted tax liability on or before September 30, 2019.**) has been **extended upto December 31, 2019.**

Please click below to read the entire Circular

[http://download1.fbr.gov.pk/Docs/2019121620120395812019-12-16\(1\).pdf](http://download1.fbr.gov.pk/Docs/2019121620120395812019-12-16(1).pdf)

## SECP NOTIFICATION

SECP vide S.R.O # 1566(I)/2019 dated December 18th 2019 has specified that Rs.500 million (five hundred million rupees) shall be the Minimum Amount of Paid-up Capital for Incorporation of a Corporate Restructuring Company.

## LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/12/Notification-under-Section-17-of-CRC-Act-Minimum-Amount-of-Paid-up-Cap...pdf>





## **SECP CIRCULAR**

Circular No. 16 of 2019 dated December 05, 2019 is issued by Company Law Division, Corporatization & Compliance Department of Securities and Exchange Commission of Pakistan (SECP) seeking attention of the organizations licensed under Section 42 of the Companies, Act 2017. i.e. **PRIOR PERMISSION TO RECEIVE FOREIGN FUNDING/DONATIONS**

SECP emphasized by notifying that certain companies which are licensed under Section 42 are not complying with Regulation # 7 of the Regulations titled “Associations with Charitable and Not for Profit Objects Regulations, 2018, which state that:

“the company shall not appeal, solicit, receive, or accept donations from foreign sources except with the prior permission, clearance or approval from the relevant authorities as may be required under any law or specified by the Government”.

Therefore, SECP, in order to ensure compliance of Regulation 7, directed all Companies licensed under section 42 of the Act, which intend to receive foreign funding/donations, to apply to the Commission along-with eight (08) sets of following documents for seeking prior permission from Ministry of Interior: -

-  Latest Memorandum & Articles of the Association of the company;
-  Certified copy of latest Form B of the company;
-  Resumes and affidavits of the chief executive and directors of the company as per the format specified in the Regulations; and
-  CNICs/passports of all the directors & chief executive of the Company.

## **LINK OF DOCUMENT**

<https://khilji.net.pk/wp-content/uploads/2019/12/CIRCULAR-NO.16.pdf>

## **SECP REGULATIONS**

SECP issued Regulatory Sandbox Guidelines 2019, afterwards referred as “Guidelines”, is a tailored regulatory environment for promoting innovation and are applicable to new products, services or business models which have not been addressed under existing laws and regulations or existing regulations do not fully address the solutions. Therefore, in order to facilitate the new / innovative business ideas for the test run determining viability on full-scale launch and to ascertain the compatibility with existing laws said Guidelines are formulated and being implemented in Pakistan.

Timeline to operate under Guidelines will be Six (6) Months and upon completion of Six (6) Months, innovators are required to submit completion report, for analysis of the SECP for determination of the future course of action with respect to the followings: -

1. Facilitating the participant in scaling up its solution in a compliant manner to a larger market in case of success or amicable wind up of its proceedings in case of failure, as the case may be.
2. Decision with regards to formulation of regulatory framework for promotion of the innovative solution, or amendment to the existing regulatory framework for facilitating innovation.
3. Prohibit completely or defer the deployment of the solution to a wider scale if the Commission is not satisfied with the results of the testing or if the product or service has significantly diverged from its original objectives and has perceived negative consequences to the consumer or the market.

The Specific potential business categories, which may fall under the scope of these guidelines are as follows: -

- i. Innovative product development and/or distribution
- ii. Alternate financial intermediation platform (For example, person to person lending etc.)
- iii. Crowd funding, (equity, debt, donation, rewards)
- iv. Digital Assets
- v. Innovative insurance underwriting
- vi. Insurance policy servicing
- vii. Alternate risk transfer mechanisms
- viii. Financial/robotic advisory
- ix. Claims adjudication and payments
- x. Artificial Intelligence
- xi. Any other category as the Commission may deem fit.

The Process to apply for adopting Sandbox and Parameters to operate in are as follows: -

SECP will launch “Sandbox” adopting cohort approach i.e. an experimentation cycle will be evaluated and finalized before the commencement of next experimentation cycle. However, it will be prerogative of the SECP to start or not to start the next cohort or experimentation cycle. The cohort i.e. end-to-end-process will comprise of following stages: -

➤ Call for applications

Following persons could be the potential innovators and are eligible to apply:

- a. All companies registered with the Commission including, but not limited to, the licensed entities (means entities which have obtained registration or license from the SECP under any of the administered law of SECP), financial technology (FinTech) companies, technology providers, and any other companies;
- b. Presently unregistered startups with the intent to get registered in case of successful testing in order to scale out to a larger market;
- c. Internationally recognized/well-known companies or any other persons as deemed appropriate by the Commission.

➤ Applications from potential innovators

An applicant / innovator desiring to promote or implement innovation in financial services shall make an application in the prescribed form with information and documents and Applicant shall also submit a projected plan with clear strategy for exiting the Regulatory Sandbox.

➤ Preliminary screening of applications

SECP shall, within 30 days from the date of application, conduct preliminary screening of the applications using following parameters: -

- a. Genuineness of innovation
- b. Financial Inclusion
- c. Consumer Benefit
- d. Readiness for testing
- e. Exit plan

- **Review and Selection**  
After the initial screening, the Commission shall meticulously review and evaluate the applications within forty-five (45) working days and may ask for additional information from the applicant. The Commission shall issue a Letter of Approval (LoA) Sandbox to the successful applicants to participate in the Regulatory Sandbox. ***Once approval is granted, the Participant will be allowed to operate in accordance with these Guidelines for the period of up to six months.***
- **Testing/ Experimentation**  
The approved participant will be allowed to operate in the sandbox environment for the period of six months, under the monitoring of the Commission.  
The participant will provide reports to the Commission with contents, format and frequency as agreed mutually between the participant and the Commission prior to the commencement of testing stage.
- **Completion Report**  
At the end of the testing period, the participant shall submit a completion report to Commission.

### Suspension or Revocation of Approval

At any stage, where SECP has possible reasons to believe that the innovator has failed to adhere to the details agreed during the review and selection stage: -

- SECP can temporarily suspend the approval until the matter in question has been fully clarified.
- SECP can completely withdraw the approval with a public notice in case a serious discrepancy has been observed related to consumer detriment or any other serious matter.

### LINK OF DOCUMENT

<https://khilji.net.pk/wp-content/uploads/2019/12/SEC-Regulatory-Sandbox-Guidelines-2019.pdf>

### FBR CIRCULAR

Federal Board of Revenue has issued Circular No 18 of 2019 (ref: C.No.2(1)Contd/I.Tax/2018 on December 31, 2019. This Circular states that

1. **FOR INDIVIDUALS and AOPs** Date of Filing of Total Income / Statements for Final Taxation for Tax Year 2019 has been **extended upto January 31, 2020.**
2. **FOR COMPANIES** Date of Filing of Total Income / Statements for Final Taxation for Tax Year 2019 (**Conditional upon 95% payment of admitted tax liability on or before September 30, 2019.**) has been **extended upto January 31, 2020.**
3. The date of Filing of Return of Total Income / Statements of final taxation for Companies for tax Year 2019 which was due on **December 31, 2019** has been **extended upto January 31, 2020.**

Please click below to read the entire Circular

<https://khilji.net.pk/wp-content/uploads/2019/12/201912312212582396831.01.20.pdf>

## EVENT OF THE MONTH

Mr. Muhammad Waheed Iqbal, FCA, Partner Khilji and Co. delivered a lecture on “Auditing and Code of Ethics” at COMSATS University Islamabad on December 3, 2019 to students of Bachelor of Accounting and Finance.



# TAXATION SIMPLIFIED PRACTICAL TAX LAW CERTIFICATE

The Millennium University College TMUC Islamabad is proud to launch Tax Law Certificate having Knowledge Partner Khilji & Co Chartered Accountants. Reserve your slot as soon as possible Limited seats available. The Course will be conducted by Mr. Sharif Uddin Khilji, FCA. This Practical Certificate will prove to be a ladder to success for all participants.



## PRACTICAL TAX LAW CERTIFICATE

### Course Content

- Understanding of income tax, sales tax, Federal excise duty and provincial sales tax laws
- Understanding to prepare
  - Personal annual tax returns of individualsii
  - Wealth statement and wealth reconciliation statement of individualsiii
  - Tax returns of Association of Persons (AOPs)
  - Corporate annual tax returnsc
- Understanding of compliance of withholding tax provisions
- Basic understanding of Non-resident taxation and double taxation treaties
- Basic understanding of assessment proceedings
- Basic understanding of appeal procedures

### Eight Week Course

(Two days a week, three hours a day)

Course Fee  
**PKR 20,000**

### Registration Deadline

10th January, 2020

### Venue

TMUC H-11/4, Islamabad

### Trainer

Sharif ud din Khilji



### For Registration

Syed Asim Habib | 0321 5173347 | [asim.habib@khilji.net.pk](mailto:asim.habib@khilji.net.pk)  
Zunaira Riaz | 0345 7605609 | [zunaira.riaz@tmuc.edu.pk](mailto:zunaira.riaz@tmuc.edu.pk)

## **SOCIAL MEDIA PRESENCE**

We at Khilji & Co, Chartered Accountants are fully aware of the fact that in this modern day and age connectivity is the key. Hence, we keep on striving for this through various social media forums. Please visit our pages and do provide your valuable comments.

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