

Definitions for the purposes of identification of U.S. residency (relation to the U.S.) or FATCA status

(The list below is not exhaustive and provides general explanation of the basic terms. XHK Limited is not authorized to provide any tax, legal or other advice. Therefore, in case of any doubts about the residency/relation/status, the respondent is strongly recommended to seek a professional tax advice and/or contact the U.S. Internal Revenue Service (www.irs.gov))

Active Non-Financial Entity

means an Entity, that is not a U.S. person and that is not a Financial Institution and that meets any of the following criteria:

- a. less than 50 % of the Entity's gross income for the preceding calendar year or other appropriate reporting period is passive income and less than 50 % of the assets held by the Entity during the preceding calendar year or other appropriate reporting period are assets

关于美国居民身份 (与美国的关系) 或 FATCA(海外帐户税 收合规法案)身份界定 的相关定义

(下表主要提供了基本条款的一般性及非全面解释。XHK Limited不会提供有关任何税务、法律方面的建议。因此,如果对居民身份/关系/法律身份有任何疑问,强烈建议其寻求专业税务咨询和/或联系美国国税局(www.irs.gov))。

积极非金融实体

指一个实体既不是一个美国人,也不是一家金融机构,且符合以下准则的任何一项的:

- a. 在上一日历年或其他适用当申报期,该实体的总收入中50%以下属于被动收入;及在该历年或其他适当申报期内,该实体持有的资产中,50%以下属于产生被动收入的资产,或属于为产生被动收入而持有的资产;

that produce or are held for the production of Passive income;

- b. the stock of the Entity is regularly traded on an established securities market or the Entity is a related entity of an entity the stock of which is regularly traded on an established securities market;
 - c. the Entity is organized in a U.S. Territory and all of the owners of the payee are bona fide residents of that U.S. Territory;
 - d. the Entity is a government (other than the U.S. government), a political subdivision of such government (which, for the avoidance of doubt, includes a state, province, county, or municipality), or a public body performing a function of such government or a political subdivision thereof, a government of a U.S. Territory, an international organization, a non-U.S. central bank of issue, or an entity wholly owned by one or more of the foregoing;
 - e. substantially all of the activities of the Entity consist of holding (in whole or in part) the outstanding stock of, or providing financing and services to, one or more subsidiaries that engage in trades or businesses other than the business of a Financial Institution, except that an Entity shall not qualify for this status if the Entity functions (or holds itself out) as an investment fund, such as a private equity fund, venture capital fund, leveraged buyout fund, or any investment vehicle whose purpose is to acquire or fund companies and then hold interests in those companies as capital assets for investment purposes;
 - f. the Entity is not yet operating a business and has no prior operating history, but is investing capital into assets with the intent to operate a
- b. 该实体的股票通常地在具规模证券市场上交易, 或者该实体是一个实体股票通常地在具规模的证券市场上交易的相关实体;
 - c. 该实体组织在美国领土内, 其所有收款所有者都是美国合法居民;
 - d. 该实体组织是属于一个政府(美国政府除外), 该政府的一个政治分支(为避免产生疑问, 包括州、省、县或市), 或执行该政府职能的公共机构或其政治分支, 美国地方政府、国际组织、非美国中央发行银行, 或由前述机构全权拥有的实体;
 - e. 该实体的主要商业活动为: 持有(全部或部分)从事金融机构业务以外交易或业务的, 一个或多个子公司已发行的股票, 或向这个或多个子公司提供融资和服务, 但不包括以下情况: 该实体以投资基金形式运作(或表显示本身是投资基金), 例如私募基金、风险投资基金、杠杆收购基金或为任何一种投资工具形式, 以投资为目的, 通过收购或提供资金, 以取得公司股权作为其资本资产;
 - f. 该实体尚未经营业务, 也无营运经验, 但为了经营金融机构业务以外的业务的意图, 而将资金投资于非金融机构的资产。但不适用于予

business other than that of a Financial Institution, provided that the Entity shall not qualify for this exception after the date that is 24 months after the date of the initial organization of the Entity;

- g. the Entity was not a Financial Institution in the past five years, and is in the process of liquidating its assets or is reorganizing with the intent to continue or recommence operations in a business other than that of a Financial Institution;
- h. the Entity primarily engages in financing and hedging transactions with, or for, related entities that are not Financial Institutions, and does not provide financing or hedging services to any entity that is not a related entity, provided that the group of any such related entities is primarily engaged in a business other than that of a Financial Institution;
- i. the Entity is an "excepted NFFE" (excepted nonfinancial foreign entity) as described in §1.14711(b)(41) of Title 26 of the U.S. Code of Federal Regulations; or
- j. the Entity meets all of the following requirements:
 - l. it is established and operated in its jurisdiction of residence exclusively for religious, charitable, scientific, artistic, cultural, athletic, or educational purposes; or it is established and operated in its jurisdiction of residence and it is a professional organization, business league, chamber of commerce, labor organization, agricultural or horticultural organization, civic league or an organization operated exclusively for the promotion of social welfare;

包括成立已逾24个月的非金融机构;

- g. 该实体在过去五年中并非一所个金融机构, 而且正对其资产进行清算, 或为继续或重新展开经营非金融机构业务的目的, 正在进行重组;
- h. 该实体主要从事与非金融机构相关实体的融资和对冲交易, 或为非金融机构相关实体的融资和对冲避险交易, 而且该关联实体也非金融机构, 以及不提供融资或避险服务予非关系企业;
- i. 该实体是“美国联邦法规”第26项§1.14711(b)(41)中所述的“除NFFE外”(豁免除非金融外国实体外); 或
- j. 该实体符合以下所有要求:
 - l. 在其所在地内成立和经营, 只适用于宗教、慈善、科学、艺术、文化、体育或教育目的; 或在其所在地的成立和运营, 且是专业组织、商业协会、总商会、劳工组织、农业或园艺组织、公民联盟或专门为促进社会福利而运营的组织;

- II. it is exempt from income tax in its jurisdiction of residence;
- III. it has no shareholders or members who have a proprietary or beneficial interest in its income or assets;
- IV. the applicable laws of the Entity's jurisdiction of residence or the Entity's formation documents do not permit any income or assets of the Entity to be distributed to, or applied for the benefit of, a private person or non-charitable entity other than pursuant to the conduct of the Entity's charitable activities, or as payment of reasonable compensation for services rendered, or as payment representing the fair market value of property which the Entity has purchased; and
- V. the applicable laws of the Entity's jurisdiction of residence or the Entity's formation documents require that, upon the Entity's liquidation or dissolution, all of its assets be distributed to a governmental entity or other non-profit organization, or escheat to the government of the Entity's jurisdiction of residence or any political subdivision thereof.

- II. 在其所在地内免缴所得税;
- III. 该实体没有对其收入或资产, 拥有所有权或受益权的股东或成员;
- IV. 依据该实体司法管辖区的适用法律, 或该实体的成立文件, 禁止该实体的任何收入或资产, 分配给私人或非慈善实体, 或为私人或非慈善实体的利益而使用该收入或资产, 除非该项分配或使用目的为该机构所进行的慈善活动; 或作为支付已提供的服务的合理补偿; 或作为该实体以公平市值购买任何财产之款项; 以及
- V. 依据该实体司法管辖区的适用法律, 或该实体的成立文件, 一旦该实体清算或解散, 其所有资产应分配给一个政府实体或其他非营利组织, 或者交还于该实体所在司法管辖区政府或其中的任何政治分支。

For the purpose of this definition an entity is a "related entity" of another entity if either an entity controls the other entity, or the two entities are under common control. For this purpose, control includes direct or indirect ownership of more than 50 % of the vote or value in an entity.

就本定义而言, 如果一个实体控制另一个实体, 或者两个实体受共同控制, 则该实体是另一个实体的"相关实体"。为此, 控制权包括直接或间接拥有一个实体50%以上投票权或50%以上价值所有权。

"Passive income" means the part of gross income that consists of:

- dividends, including substitute dividends;
- interest;

"被动收入"是指总收入的一部分, 其中包括:

- 股息, 包括替代股息;
- 利息;

- income equivalent to interest, including substitute interest;
 - rents and royalties, other than rents and royalties derived in the active conduct of a trade or business conducted, at least in part, by employees of the corporation or partnership;
 - annuities;
 - the excess of gains over losses from the sale or exchange of property described in §1.6038D-6(b)(3)(i)(F) of Title 26 of the U.S. Code of Federal Regulations and that gives rise to the types of passive income listed above;
 - the excess of gains over losses from transactions (including futures, forwards, and similar transactions) in any commodity, but not including:
 - any commodity hedging transaction described in section 954(c)(5)(A) of the U.S. Internal Revenue Code, or
 - active business gains or losses from the sale of commodities, but only if substantially all the corporation's or partnership's commodities are property described in paragraph (1), (2), or (8) of section 1221(a) of the U.S. Internal Revenue Code;
 - VI. the excess of foreign currency gains over foreign currency losses (as defined in section 988(b) of the U.S. Internal Revenue Code) attributable to any section 988 of the U.S. Internal Revenue Code transaction; and
 - net income from notional principal contracts.
- 相等于利息的收入, 包括替代利息;
 - 租金和特许使用费, 不包括主动交易或经营业务中产生, 由企业或合伙企业的雇员, 至少应承担部分的租金和特许使用费;
 - 年金;
 - 美国联邦法规第26项§1.6038D-6(b)(3)(i)(F)中描述的超出销售或交换财产损失的收益, 并产生如上所列的被动收入类型;
 - 任何收益超过损失的商品交易(包括期货、远期和类似交易), 但不包括:
 - 美国国内税收法第954节 (c)(5)(A)中描述的任何商品对冲避险交易, 或
 - 商品中的业务收益或损失, 但仅限于大部分是属于有公司或合伙企业的商品, 为美国国内税收法第1221(a)节第(1), (2)或(8)段所述的财产;
 - VI. 超过外汇损失的外汇收益(如美国国内税收法第988(b)节所定义)归属于美国国内税收法第988节所述的任何交易; 和
 - 名义本金合同的净收入。

More details please see publication of the U.S. Internal Revenue Services at <https://www.irs.gov/instructions/i8938#idm139674973261808>.

更多详情请参阅美国国内税务局刊物 <https://www.irs.gov/instructions/i8938#idm139674973261808>.

FATCA

means Foreign Account Tax Compliance Act of the U.S., which was introduced on 18 March 2010 by the U.S. government to oppose, with the collaboration of foreign financial intermediaries, tax evasion by U.S. residents operating abroad.

FATCA Status

means classification of the Client pursuant to the FATCA in order to determine whether Client's accounts to be reported to the U.S. authorities pursuant to the Applicable Regulations.

Financial Institution

means an Entity, that is not a U.S. person and that is:

- a Custodial Institution - any entity that holds, as a substantial portion of its business, financial assets for the account of others.
- An entity holds financial assets for the account of others as a substantial portion of its business if the entity's gross income attributable to the holding of financial assets and related financial services equals or exceeds 20% of the entity's gross income during the shorter of:
 - I. the 3 year period that ends on December 31 (or the final day of a non-calendar year accounting period) prior to the year in which the determination is being made; or

海外帳戶稅收合規法案

美国政府于2010年3月18日通过的美国海外账户税收合规法案, 利用與外国金融机构合作, 以制止海外的美国居民逃避美国税项。

海外帳戶稅收合規法案身份

指根据海外帳戶稅收合規法案对客户进行分类, 以适用的法规, 确定客户的账户是否需向美国当局报告。

金融机构

指实体, 不是指美国个人, 即是:

- 托管机构, 任何为他人持有金融资产, 作為其业务的重要部分的实体。
- 如果一个实体但基于持有金融资产和相关金融服务的总收入, 等于或超过该实体在以下期间(两者中以较短者为准)的总收入的20%, 则该实体是将持有他人账户的金融资产, 作為其业务的重要部分:
 - I. 在断定某实体是否为金融托管机构的前一年度, 由12月31日(或非日历年会计的最后一天)起計算的前3年; 或

- II. the period during which the entity has been in existence; or
- a Depository Institution - any entity that accepts deposits in the ordinary course of a banking or similar business; or
 - an Investment Entity - any entity that conducts as a business (or is managed by an entity that conducts as a business) one or more of the following activities or operations for or on behalf of a customer:
 1. trading in money market instruments (cheques, bills, certificates of deposit, derivatives, etc.); foreign exchange; exchange, interest rate and index instruments; transferable securities; or commodity futures trading;
 2. individual and collective portfolio management; or
 3. otherwise investing, administering, or managing funds or money on behalf of other persons; or
 - Specified Insurance Company — any entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a Cash Value Insurance Contract (that has a Cash Value greater than \$50,000, but other than an indemnity reinsurance contract between two insurance companies) or an Annuity Contract (a contract under which the issuer agrees to make payments for a period of time determined in whole or in part by reference to the life expectancy of one or more individuals).
- II. 该实体已经存在的时期; 或
- 存款机构, 是在银行或类似业务的正常过程中接受存款的任何实体; 或
 - 投资实体, 是任何实体(或由实体管理)为客户或代表客户作出以下一项或多项活动, 作为业务:
 1. 以货币市场工具(支票、票据、存款证、衍生工具等)交易; 外汇; 汇率, 利率和指数工具; 可转让证券; 或商品期货交易;
 2. 个人和集体投资组合管理; 或
 3. 代表他人投资、处理或管理金融资产或金钱; 或
 - 特定保险公司, 是作为保险公司(或一家保险公司的控股公司)的任何实体, 其发行或有义务支付现金价值的保险合同(现金价值高于5万美元, 但不包括两家保险公司之间的赔偿再保险合同)或年金合约(在该合约下发行人同意, 通过参考一人或多人的预期寿命, 以确定在一段时间内, 全部或部分付款)。

GIIN

means Global Intermediary Identification Number issued by the U.S. Internal Revenue Service - the identification number that is assigned to a non-U.S. entity, that has registered with the U.S. Internal Revenue Service for the purposes of participating in the FATCA (e.g. a participating or registered deemed-compliant Financial Institution, direct reporting Non-Financial Entity, sponsoring entity of a direct reporting Non-Financial Entity).

Non-Participating Financial Institution

means an Entity, that is not a U.S. person, but is a Financial Institution that has not undertaken an obligation to comply with the requirements of the FATCA or the U.S. Internal Revenue Service designated the entity as non-compliant, and, in general, is not a participating Financial Institution, a deemed-compliant Financial Institution, or an exempt beneficial owner.

“Participating Financial Institution” means an Financial Institution described in §1.1471-1(b)(91) of Title 26 of the U.S. Code of Federal Regulations.

“Deemed-compliant Financial Institution” means an Financial Institution that is treated, pursuant to section 1471(b)(2) of the U.S. Internal Revenue Code and §1.1471-5(f) of Title 26 of the U.S. Code of Federal Regulations, as meeting the requirements of section 1471(b) if the U.S. Internal Revenue Code.

GIIN

指美国国税局分配给非美国实体的全球中介人识别号, 该识别号已在美国国税局登记, 以便该实体参与海外帐户税收合规法案(例如参与或注册的视为合规的金融机构, 直接报告的非金融实体, 直接报告非金融实体的保荐机构)。

非参与的的金融机构

指非美国个人的实体, 但没有承担海外帐户税收合规法案的相关义务的金融机构, 或美国国税局指定该实体为不遵守的金融机构, 总体来说, 是非参与的金融机构、及不视为合规的金融机构或豁免受益所有人。

“参与的金融机构”, 是指美国联邦法规第26项§1.1471-1(b)(91)中描述的金融机构。

“视为合规的金融机构”是指根据美国国内税收法案第1471(b)(2)节和美国联邦法规第26项§1.1471-5(f)·视作符合美国国内税收法案第1471(b)节的要求的金融机构。

“Exempt beneficial owner” means a person described in §1.1471-1(b)(42) of the U.S. Code of Federal Regulations and includes any person that is treated as an exempt beneficial owner under an applicable Model 1 or Model 2 Intergovernmental Agreement between the U.S. and the country of the person.

Passive Non-Financial Entity

means any Entity, that is not a U.S. person and that is not a Financial Institution and that is other than:

- I. an Active Non-Financial Entity, or
- II. a withholding non-U.S. partnership (a partnership, described in §1.1441-5(c)(2) of Title 26 of the Code of Federal Regulations, that has entered into a respective withholding agreement with the U.S. Internal Revenue Service) or withholding non-U.S. trust (a trust, described in §1.1441-5(e)(5)(v) of Title 26 of the Code of Federal Regulations, that has entered into a respective withholding agreement with the U.S. Internal Revenue).

Person

means:

- an individual,
- a trust,
- an estate,
- a partnership (e.g. syndicate, group, pool, joint venture, other unincorporated organization),
- an association,

“豁免受益所有人”是指美国联邦法规的§1.1471-1(b)(42)中描述的个人, 包括根据美国与该个人所属国家的政府间的协议, 适用的模式1或模式2中, 任何被视为豁免受益所有人。

被动非金融机构

指任何实体, 不是美国人, 也不是金融机构, 也不是:

- I. 主动非金融机构, 或
- II. 预扣税款的非美国合伙企业(在联邦法规第26项1.1441-5(c)(2)中描述的, 已与美国国税局签订相应的预扣协议的合伙企业)或预扣税款的非美国信托机构(在联邦法规第26项1.1441-5(e)(5)(v)中描述的, 已与美国国内税务局签订相应的预扣协议的信托机构)。

个体

指:

- 个人
- 信托机构
- 遗产
- 合伙企业(例如财团、集团、合伙经营、合资企业、其他非法人组织),
- 团体

- a company,
- a corporation (e.g. associations, joint-stock companies).

- 公司
- 法人团体(例如集团公司股份公司)

U.S. person

means a U.S. Person, other than any of the below entities:

- a corporation, the stock of which is regularly traded on one or more established securities markets as described in section 1472-1(c)(1)(i) of the U.S. Internal Revenue Code;
- a corporation that is a member of the same expanded affiliated group as a corporation described in section 1471(e)(2) of the U.S. Internal Revenue Code;
- an organization exempt from tax under section 501(a) of the U.S. Internal Revenue Code or an individual retirement plan as defined in section 7701(a)(37) of the U.S. Internal Revenue Code;
- a bank as defined in section 581 of the U.S. Internal Revenue Code;
- a real estate investment trust as defined in section 856 of the U.S. Internal Revenue Code;
- a regulated investment company as defined in section 851 of the U.S. Internal Revenue Code or any entity registered at all times during the tax year under the Investment Company Act of 1940;
- a common trust fund as defined in section 584(a) of the U.S. Internal Revenue Code;
- a trust that is exempt from tax under section 664(c) of the U.S. Internal Revenue Code or that is described in section 4947(a)(1) of the U.S. Internal Revenue Code;
- a dealer in securities, commodities, or derivative

美国人

指除以下的任何实体以外的美国人:

- 集团公司如美国国内税收法案第1472-1(c)(1)(i)节所述, 其股票经常地定期在一个或多个具规模的证券市场上交易;
- 集团公司如美国国内税收法案第1471(e)(2)节中所述是同一集团附属的成员公司;
- 根据美国国内税收法案第501(a)节所指的免税组织, 或如美国国内税收法案第7701(a)(37)节所定义的个人退休计划;
- 美国国内税收法案第581节中定义的银行;
- 美国国内税收法案第856节中定义的房地产投资信托;
- 根据美国国内税收法案第851节定义的受监管投资公司, 或根据1940年投资公司法在纳税年度内始终注册的任何实体;
- 美国国内税收法案第584(a)节中定义的共同普通信托基金;
- 根据美国国内税收法案第664(c)节免税信托或美国国内税收法案第4947(a)(1)节所述的信托;
- 根据美国律或美国任何州级法律注册的证

financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any U.S. State;

- a broker as defined in section 6045(c) of the U.S. Internal Revenue Code;
- a tax-exempt trust under a plan that is described in section 403(b) of the U.S. Internal Revenue Code or section 457(b) of the U.S. Internal Revenue Code;
- the U.S. or any of its wholly owned agencies or instrumentalities thereof;
- a U.S. State, a U.S. Territory or Possession, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality thereof.

券、商品或衍生金融工具(包括名义本金合同、期货、远期和期权)的交易商;

- 美国国内税收法案第6045(c)节中定义的经纪人;
- 根据美国国内税收法案第403(b)节或美国国内税收法案第457(b)节所提供的计划而成立的免税信托;
- 美国或其任何全资拥有的机构或媒介;
- 美国當当中的州、美国领土或属地, 任何上述区域内的政治分支机构, 或其全资拥有的机构或媒介。

Specified U.S. person U.S.

means the United States of America, including the States thereof, and, when used in a geographical sense, means the land territory of the United States of America, including inland waters, and the air space, the territorial sea thereof and any maritime area beyond the territorial sea within which the United States of America may exercise sovereign rights or jurisdiction in accordance with international law.

The term, however, does not include the U.S. Territories.

Any reference to a "State" of the United States includes the District of Columbia.

指定美国

指美利坚合众国, 包括其中各州, 以及从地理上使用, 指美利坚合众国的陆地领土, 包括内陆水域、以及空域、其领海和凡是美利坚合众国可根据国际法, 行使主权或管辖权的领海外任何海域。

但该词汇不包括美国领土。

任何对美国“州”的参照都包括哥伦比亚特区。

Specified U.S. person

means:

- a U.S. citizen/national or a U.S. resident,
- a partnership or a corporation organized in the U.S. or under the laws of the U.S. or any State thereof,
- a trust if (i) a court within the U.S. would have authority under applicable law to render orders or judgments concerning substantially all issues regarding administration of the trust, and (ii) one or more U.S. persons have the authority to control all substantial decisions of the trust,
- an estate of a decedent that is a U.S. citizen or U.S. resident;
- the U.S. Government (including an agency or instrumentality thereof);
- a U.S. State (including an agency or instrumentality thereof);
- the District of Columbia (including an agency or instrumentality thereof).

Please note that under the U.S. tax laws an individual may be treated as a U.S. citizen/national, if he/she is:

- a holder of a US passport/ID;
- an individual born in:
 - the United States,
 - the Commonwealth of Puerto Rico,
 - Guam,
 - the US Virgin Islands, and
 - the Commonwealth of the Northern Mariana Islands after November 3, 1986;
- an individual, one or both parents of whom is/are US citizen(-s)/national(s);
- a former foreign national who has become a U.S. citizen through naturalization.

特定美国人士

指:

- 美国的任何一个州(包括其代理机构或媒介);
- 在美国或根据美国法律或美国任何州级法律组织的合伙企业或集团公司,
- 一家信托如果(i)美国境内法院根据适用法律有权对涉及信托管理的几乎所有问题作出命令或判决, 以及(ii)一个或多个美国人有权控制该信托的所有重大决定,
- 已故美国公民或美国居民的遗产;
- 美国政府(包括其代理机构或媒介);
- 美国州(包括其代理机构或媒介);
- 哥伦比亚特区(包括其代理机构或媒介)。

请注意, 根据美国税法, 如果个人是属于下列情况, 他/她可被视为美国公民/国民:

- 持有美国护照/身份证的人;
- 出生于下列地区的个人:
 - 美国
 - 波多黎各自治邦
 - 关岛
 - 美属维尔京群岛, 和
 - 1986年11月3日之后的北马里亚纳群岛联邦;
- 父母一方或双方是美国公民/国民的个人;
- 通过归化成为美国公民的前外国国民。

Additionally, an individual may be treated as a U.S. resident, if he/she:

- is physically present in the U.S. substantial period of time (i.e. meets the **substantial presence test**);
- holds valid lawful permanent resident status (Green Card holder).

The term “U.S. person” should be interpreted in accordance with the U.S. tax laws (including the **U.S. Internal Revenue Code and relevant regulations**).

此外, 如果个人是下列情况, 他/她也可能被视为美国居民:

- 实际居住于美国相当长的一段时间内(即符合**实际居住测试**);
- 持有有效的合法永久居民身份(绿卡持有人)。

词汇“美国人”应根据美国税法(包括**美国国内税收法案和相关法规**)解释。

U.S. Territory or Possession

means:

- American Samoa,
- the Commonwealth of the Northern Mariana Islands,
- Guam,
- the Commonwealth of Puerto Rico,
- the U.S. Virgin Islands.

The English language is the official communication language at XHK. In case of any disputes, discrepancies, ambiguity or differences in translations of documents/information in any other languages, the version in English prevails. Documents/Information provided in any other languages is for information purposes only and cannot be treated as an official text of the particular document.

美国领土或属地

指:

- 美属萨摩亚,
- 北马里亚纳群岛联邦,
- 关岛
- 波多黎各自治邦
- 美属维尔京群岛。

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