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## **EDITORIAL**

## **EXPECTATIONS FROM BUDGET**



CA Vinod Jain\*

- The Union Budget 2015 is to be presented by the Finance Minister on February 28, 2015. The entire country has major expectations from the government. The country needs simpler and smaller direct tax laws and should give:
- Tax Policy Roadmap -To provide a stable and reliable tax regime
- Non adversarial and conducive tax environment
- Incentivise Growth

The following major issues also need to be addressed not only for large taxpayers but also more importantly for the common man:

- Harassment to tax payer Negative approach of tax laws and department
- Corruption in tax administration
- High pitch assessment With no responsibility on the officers. Even High Court/Tribunal Judgements are ignored
- Complex legal provisions
- Uncertainty Anxiety among business class

The governance needs to be people centric and should ensure maximum governance with minimum government. A time bound delivery and leveraging technology for e-governance can bring suitable solutions. The government may consider following specific suggestions:

• **E-governance:** The entire interface between assessee and Income Tax Department including scrutiny,

- assessment, rectification, refunds and others can be completely managed electronically which should be monitored online by the top officials of the tax department to ensure time bound reply and the solution. The Finance Minister needs to take personal interest for effective, efficient & successful delivery.
- Mistrust: The tax law should itself provide for the trust of the tax department on the taxpayer. The various transactions undertaken by the assessee are to be prima facie accepted as genuine and acceptable to the department. Only the cases of tax evasion need to be dealt firmly with stiff penalties.
- **GAAR:** The provisions introduced in the Income Tax Act in respect of GAAR should be removed.
- **Investment Incentive:** The investment allowance need to be provided to SME also and can be increased to boost 'Make in India'.
- Voluntary Disclosure: The assessees can be permitted
  to disclose income on an ongoing basis hereafter,
  without any need to explain the source. The declaration
  of assessee that the source is not from corruption or
  crime can be taken.
- Tax Slabs: Assessees having income less than ₹10,00,000 need to be taxed at 5% and 10% in two slabs rather than 10% and 20% as at present. The maximum marginal rate can be reduced to 25%.
- MAT: Benefit of carry forward losses including depreciation to be fully given in all stages before imposing MAT. Artificial disallowances in this regard need to be done away with. MAT on SEZ needs to be scrapped

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# 25 Years

#### THE CHARTERED ACCOUNTANT WORLD

#### LATEST IN FINANCE / INDIRECT TAXATION

## **LATEST IN FINANCE**

#### 1.0 Syndicate Bank's scheme for women

Syndicate Bank has launched a special advance scheme for empowering women entrepreneurs. Women entrepreneurs can get loans of upto Rs. 5 crore at low interest rates under the Synd Mahila Sakthi scheme. There are no processing charges, and the bank has so far sanctioned 17,500 loans to women entrepreneurs.

#### 2.0 RBI changes rules on Base Rate

- Banks can review their base rate calculation method every three years instead of the earlierspecified five.
- Banks can review base rate every quarter
- Banks must take the interest rate of that tenure of deposits which has the highest share in total deposit base.
- Banks must have board approved policy on spreads charged to customers over the base rate.
- Any differentiation in spreads must be in consistence with credit pricing policy of the bank
- Spread charged to existing borrower must not increase except when the credit risk profile weakens or loan tenure changes
- The change in tenor premium should not be borrower specific or loan class specific. It will be uniform for all types of loans for a given residual tenor.

# 3.0 Supreme Court upholds amendment to Sarfaesi Act

The Supreme Court upheld the amendment to Sarfaesi Act, 2002. The amendment gives power to every financial institution to decide the period after which a bad loan can be declared a Non-Performing asset.

# 4.0 RBI announces norms for Trade Receivables Discounting System

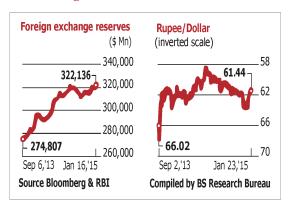
To make it easier and faster for Micro, Small And Medium Enterprises (MSMEs) to get their dues, the Reserve Bank of India put out final guidelines for setting up of a Trade Receivables Discounting System (TReDS).

TReDS will be like an exchange where an MSME that has some receivables pending from a large corporate will be able to trade the bill. So, if an MSME has to realise Rs.100 from a corporate, it can exchange the bill with one of the participating entities on the exchange for, say, Rs.95. The buyer of the bill will then recover the Rs. 100 from the corporate concerned, pocketing the profit of Rs.5.

#### 5.0 Banks promised zero interference

The Finance Ministry has communicated that banks have been assured that there will be no Government interference in their decision-making process. The assurance has gone from the 'highest level' — the Prime Minister Narendra Modi — that banks should not be pressured to sanction loans.

### 6.0 Foreign Exchange Reserves now at all-time high



## **INDIRECT TAXATION**

#### 1.0 Taxman to spare Senior Management

The Central Government told tax officials that none of the senior management of large companies-chief executives, heads of finance, general managers and so forth-should be summoned for evidence or to enforce recoveries. In a circular issued, the Central Board of Excise and Customs (CBEC) has said that the top management needs to be summoned only when there are indications of their involvement in a decision- making process which might have led to revenue loss for the government. The instruction notes that summons are routinely issued by field formations under Section 14 of the Central Excise Act, 1944, to senior officials of companies, to call for evidence, documents or to enforce recoveries. It has said these should be a last resort

#### ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY

# **25 Years**

#### **EDITORIAL / BANKING**



Contd.....

#### **Expectations from Budget**

- **Domestic Transfer Pricing** provisions have no relevance and are complicating the law without meeting any objectives.
- The provisions of **Section 56** relating to taxability of real estate transactions on the basis of circle rates, taxability of share premium and deemed income on transfer of shares other than at book value are irrational and are unjustified. These provisions are seriously hampering businesses.
- Advanced Ruling cannot be restricted only to large domestic tax payers involving more than ₹ 100 crore. This should be extended to all assessee, being the constitutional right to equality.
- HUF: Hindu Undivided Family needs to be incentivized with higher exemption limits to promote joint family and old Indian culture. Special deduction for education per member below 25 years, health per member above 60 years, health and accident cover for all members and special allowance towards payment to senior citizens should be provided for as a deduction.
- **Deemed Income:** The taxation needs to be levied only on real income. The artificial rules including Taxable Income Computation Standards cannot be allowed to be different from Indian GAAP and international accounting standards based on historical cost Principles.

- **Refunds:** Large refunds are still not being given without persuasion and personal follow up. The system needs to take care and should ensure timely refunds, with time bound verifications of returns.
- Appeals: The appeals by department should be based on professional judgment. The legal judgment of even non jurisdictional ITAT and High courts, need to be binding on the department except in case, conflicting judgments are there.
- **Scrutiny:** The scrutiny assessment should be undertaken only in exceptional cases and limited to specific issues.
- Survey Searches & Raids: Needs to be only against the enemies of the country to unearth the money laundering and not for tax compliances.

There are many other important areas where complex provisions need to be withdrawn and simpler basis for taxation needs to be adopted.

It is important to see that no new taxes are proposed in the budget since we already have tax implication in every business transaction. Suggestions should be to manage and to cut expenditures. It should be ensured that the revenue, generated by the government by existing means, is deployed on productive revenues and creates assets for giving long term benefits with increased production & employment. All kinds of so called incentives/subsidies given away as populist measures need to be pruned. Let the direction aim at labour by the workforce instead of sitting & getting government grants.

## **BANKING**

## 1.0 RBI issued norms for Bank Leverage Ratio under Basel III

The Reserve Bank of India said that its revised guidelines on the leverage ratio framework for banks will come into effect from April 1, 2015.

# 2.0 Overseas Direct Investments (ODI) by proprietorship concern / unregistered partnership firm in India – Review

It has been decided that the following revised terms and conditions are required to be complied with for considering the proposal of ODI, by a proprietorship concern / unregistered partnership firm in India, by the Reserve Bank under the approval route:

- The proprietorship concern / unregistered partnership firm in India is classified as 'Status Holder'.
- The proprietorship concern / unregistered partnership firm in India has a proven track record, i.e., the export outstanding does not exceed 10% of the

- average export realisation of the preceding three years and a consistently high export performance.
- The proprietorship concern/unregistered partnership firm in India is KYC (Know Your Customer) compliant, engaged in the proposed business and has turnover as indicated.
- The proprietorship concern / unregistered partnership firm in India has not come under the adverse notice of any Government agency and does not appear in the Exporters' Caution list.
- The amount of proposed investment outside India does not exceed 10 per cent of the average of last three years' export realisation or 200 per cent of the net owned funds of the proprietorship concern / unregistered partnership firm in India, whichever is lower

## 3.0 RBI asks bank auditors to have a stringent monitoring process

The Reserve Bank of India (RBI) has asked banks to adopt a more stringent auditing process to ensure that review of financial results and identification of

# **25 Years**

#### THE CHARTERED ACCOUNTANT WORLD

### CAPITAL MARKET / CORPORATE & ECONOMIC LAWS

fraud is done more promptly. There is a greater need to take a closer look into the asset quality, instances of restructuring of advances, provisioning held, etc. with regard to asset classifications and provisions held.

Audit Committee Boards (ACBs) should take upon themselves to monitor the trend of frauds, assimilate key learnings and ensure that mitigation measures are put in place by the management.

## **CAPITAL MARKET**

## 1.0 SEBI to consult CAs, Merchant Bankers on takeover valuations

To ensure fair treatment of minority investors during takeovers of listed companies, regulator Securities & Exchange Board of India (SEBI) has decided to seek help of Chartered Accountants and Merchant Bankers for an independent valuation of the price offered to small shareholders by new promoters.

For the purpose, SEBI would empanel eligible Chartered Accountant firms to take up work relating to valuation of shares under its Takeover Regulations, that involves the entities buying a substantial stake in a listed company to make an open offer for minority shareholders as well.

These CAs would also be consulted on valuation of assets in relation to schemes of arrangement undertaken by the listed companies, SEBI said in a public notice while inviting applications from eligible CAs.

Besides, SEBI might also get valuation of the shares done by an independent merchant banker, other than the one appointed by the concerned company. These valuations would be undertaken by SEBI while processing the draft schemes of arrangement filed with it by the companies.

#### 2.0 SEBI's proposed curbs on 'Willful Defaulters'

The Securities and Exchange Board of India (SEBI) put out a discussion paper that proposes restrictions on borrowers who had deliberately not repaid loans despite having adequate resources or who had engaged in fraudulent transactions, such as siphoning of funds.

In SEBI's proposal, an issuer, its controlling/key shareholder, group company or director on the list of willful defaulters would be prohibited from a public issue of equity shares, debt securities, and preference shares. It would also be prohibited from controlling any other listed entity. Currently, willful defaulters are only prohibited from issuing convertible debt instruments. They will, however,

be allowed to make a rights issue or a private placement to qualified institutional investors. The list itself would be maintained by a Central Repository Authority.

#### 3.0 SEBI: Wider definition of 'Insider'

Securities & Exchange Board of India (SEBI) has expanded the definition of insider by including persons connected on the basis of being in any contractual, fiduciary or employment relationship. Immediate relatives and any person who has access to unpublished price sensitive information will be considered insiders.

Directors and employees of a company as well as persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers will also come under the purview of SEBI's new rules. Third-party connected persons must disclose holdings and trading in a company's shares. Derivatives trading by directors and Key Managerial Personnel (KMPs) in securities of the company is prohibited.

## 4.0 SEBI does away with mandatory participation norm for Delisting

To ease the process of delisting, mandatory participation of 25 per cent of shareholders holding shares in demat mode would not be applicable if the acquirer and the merchant banker are able to demonstrate that they have contacted all the public shareholders about the offer. This condition was added by SEBI in its board meeting.

## 5.0 SEBI proposes easier norms for Domestic Mutual Funds to raise International Funds

To make it easier for domestic mutual funds to manage offshore pooled assets, SEBI proposed to drop '20-25 rule', which requires a minimum of 20 investors and a cap of 25 per cent investment by an individual investor in a particular scheme, for certain foreign entities.

Besides, Securities & Exchange Board of India (SEBI) has suggested to do away with the rule that requires appointment of separate fund manager for managing an offshore fund.

## CORPORATE & ECONOMIC LAWS

## 1.0 Companies can collaborate with each other for CSR

In a move that could benefit the corporate sector at large, the government has allowed companies to enter into collaboration with each other to engage in Corporate Social Responsibility (CSR).

#### ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY



#### CORPORATE & ECONOMIC LAWS / NBFC / FEMA

#### 2.0 Section 334 of the Companies Act, 2013/ Section 536 of the Companies Act, 1956 -Winding up

High Court of Delhi held that where agreements to sell in respect of plots of company-in-liquidation were executed prior to filing of winding up petition, order of Company Judge dismissing application of appellant under section 536 praying for acceptance of sale of those plots to them was to be quashed.

C. Shanti Anandam v JVG Finance [2015] 53 taxmann.com 22 (Delhi)

#### 3.0 Sections 176 and 177 of the Contract Act, 1872

Supreme Court of India held that where financial institution initiated arbitration proceeding and an award had been passed on consent which was a simple money decree, deed of hypothecation would continue in spite of arbitration award and status of appellant would not change as a secured creditor to an unsecured creditor and it was not permissible for said institution to put forth a stand that it would not be bound by scheme of arrangement approved by Company Judge.

Infrastructure Leasing & Financial Services Ltd. v. B.B.L. Ltd. [2015] 53 taxmann.com 234 (SC)

#### 4.0 Resignation of Foreign Director

In case a company has already filed Form DIR-12 with the Registrar under rule15, a foreign director of such company resigning from his office may authorise in writing a practicing chartered accountant or cost accountant in pratice or company secretary in pratice or any other resident director of the company to sign Form DIR-ll and file the same on his behalf intimating the reasons for the resignation.

#### **NBFCs**

#### 1.0 RBI allowed NBFCs to fund Cost Overruns

In cases where Non-Banking Finance Companies (NBFCs) have specifically sanctioned a 'Standby Facility' at the time of initial financial closure (of infrastructure and non-infrastructure projects) but the same does not envisage financing of cost overruns, the RBI has allowed them to fund cost overruns.

NBFCs can fund cost overruns without treating the loans as a 'restructured asset' subject to prescribed conditions.

#### 2.0 Non-Performing Assets Norms for NBFCs

- Reserve Bank of India has allowed NBFCs to classify loans to projects, that are stuck for two years, as standard
- For infrastructure projects stuck due to arbitration in courts, a further relaxation of two years has been given. Now, an NBFC can classify a restructured loan as standard if the project to which the loan is given has been delayed for 4 years.
- For infrastructure projects stuck due to reasons beyond the promoter's control and for non-infrastructure projects, this leeway is only three years.

#### **FEMA**

# 1.0 Tata Sons gets RBI nod to buy DoCoMo's stake in Telecom Joint Venture

Reserve Bank of India (RBI) has allowed TATA Sons to pay DoCoMo for its 26.5% stake in Tata Teleservices at ₹ 8.045 per share as against a fair value of ₹23.34 per share. The RBI has written to the Department of Economic Affairs (DEA) seeking its views and is understood to have defended the higher price in view of the need to attract Foreign Direct Investment (FDI) and in the interest of Indo-Japanese collaborations.

# 2.0 Review of the policy on Foreign Direct Investment in Pharmaceutical Sector

FDI upto 100% under the automatic route is permitted for manufacturing of medical devices. The conditions for pharmaceutical sector will not be applicable to Greenfield as well as Brownfield projects of this industry.

#### 3.0 RBI eases Forex Hedging Contract Norms

Reserve Bank of India today relaxed the norms for Forex hedging for exporters and importers by allowing them to book forward foreign exchange contracts in excess of 50 per cent of the eligible limit.

However, approval is subject to some conditions including a declaration that all guidelines have been adhered to while utilising the facility. Besides, a certificate of import or export turnover of the customer during the past three years have to be attached.

# **25 Years**

#### THE CHARTERED ACCOUNTANT WORLD

#### **DIRECT TAXATION**

## **DIRECT TAXATION**

## 1.0 IT Department's MAT notices to Portfolio Investors

Several foreign portfolio investors have been alarmed by moves to levy Minimum Alternate Tax (MAT) on their capital gains from the market. Revenue officials in the Mumbai tax department issued show-cause notices to more than 35 Foreign Portfolio Investors (FPIs) last month.

## 2.0 CBDT's new norms on income distribution to unit holders

The Central Board of Direct Taxes (CBDT) has specified the format in which business trusts should furnish information on the income distributed by such vehicles to unit holders.

The revenue department now requires every business trust to furnish a statement to the Principal Commissioner or Commissioner of Income Tax within whose jurisdiction the principal office of the business trust is situated. This statement has to be submitted by November 30 of the financial year following the 'previous year' during which the business trust distributes income.

#### 3.0 ITPO gets Income Tax Exemption

The Delhi High Court allowed the petition of India Trade Promotion Organisation challenging the withdrawal of certain income tax exemptions granted to it till 2012. It had challenged the constitutional validity of section 2(15) of the said Income Tax Act, but the court upheld it and only read it down. The organization claimed exemption under the charitable clause provision, as they conducted activities relating to the promotion of Indian Trade and such activities fell within the ambit of the expression "advancement of any other object of general public utility". But according to the new proviso to Section 2(15), these objects were not regarded as charitable purposes. The revenue authorities contended that the organization had huge surplus in banks and it had derived income from trade fairs. The High Court rejected this line of argument and said that the expression "Charitable Purpose" could not be construed literally. "If a literal interpretation is given, the proviso would be at a risk of running foul of the principle of equality enshrined in Article 14 of the Constitution".

# 4.0 Income Tax Computation and Income Standard proposed

The **finance ministry** has proposed standards for disclosing and computing of income, for the purpose of levying tax on companies. The draft, among other matters, provides for recognising segment-wise income for works spread over a period of time.

According to the draft 'Tax Accounting Standards', posted by the Central Board of Direct Taxes (CBDT) on the ministry's website for comment, revenue for works spread over a period of time must be advance if a segment of the work is completed in a year, even if revenues have not been realised. This will make tax liabilities on these works coming to the exchequer much in advance.

## 5.0 'Advance Ruling' facility extended to domestic tax-payers, too

Domestic tax-payers can now apply for an 'Advance Ruling' to understand tax liability on their transactions. The Central Board of Direct Taxes (CBDT) has enabled the facility, which till now was open only to Non-Resident Indians.

According to the norms, a resident can use the "Advance Ruling" facility in relation to tax liability arising out of one or more transactions valued at 100 crore or more (in aggregate). Interestingly, there is no minimum threshold limit for transaction value if a non-resident were to use the advance ruling provision.

# 6.0 Black money: CBDT issues directive to finish probe by March 31

Investigations against black money holders in Swiss bank accounts, known as the HSBC list, have been put on a fast-track as the Central Board of Direct Taxes (CBDT) has asked tax sleuths to quickly gather all foreign-based evidences in these cases and render final action by March-end.

## 7.0 Spare foreign companies from MAT levy, ASSOCHAM

In the recent rulings of Authority for Advance Rulings (AAR), it was held that provisions of Minimum Alternate Tax (MAT) would be applicable even to foreign companies that do not have any branch or a permanent establishment in India, as regards to income sourced here.

#### ALL INDIA CHARTERED ACCOUNTANTS' SOCIETY



#### DIRECT TAXATION / INSURANCE / INTERNATIONAL TAXATION

#### 8.0 Vodafone, Shell get tax relief

The Modi government decided not to appeal against the judgment of the Bombay High Court in the Transfer Pricing cases relating to global firms Vodafone and Shell. The decision by the Union Cabinet that any tax relief given by courts or tribunals in favour of the taxpayer for sale of allegedly under-priced shares to their foreign parents would not be challenged by the government.

#### 9.0 Income Tax Department to hold public meets

The Income Tax Department will hold public meetings every Wednesday to resolve taxpayers' grievances and tax issues as part of the "Good Governance" initiative mooted by Prime Minister Narendra Modi.

# 10.0 Section 28(va), read with sections 55 and 28(ii) - Non-compete fees

The Supreme Court of India held that Prior to insertion of clause (va) of section 28, compensation amount received towards loss of source of income and non-competition fee could only be treated as capital receipt and was not liable to tax.

Commissioner of Income-tax v. Sapthagiri Distilleries Ltd. [2015] 53 taxmann.com 218

11.0 The ITAT Delhi held that Interest payable to sundry creditors, who supplied material for construction of property, is an allowable deduction under section 24(b).

Jyoti Metal & Allied Industries (P.) Ltd. v. Income-tax Officer [2015] 53 taxmann.com 168

12.0 The High Court of Bombay held that in case of distribution or marketing activities when goods are purchased from associated entities and sales are affected to unrelated parties without any further processing, then, RPM (resale price method) is most appropriate method to determine ALP of said transaction.

Commissioner of Income-tax v. L'Oreal India (P.) Ltd [2015] 53 taxmann.com 432

#### INSURANCE

## 1.0 RBI permits banks to act as brokers for Insurers

The Reserve Bank of India (RBI) allowed banks to act brokers for insurers, set up their own subsidiaries and also undertake referral services for multiple companies. Banks may undertake insurance agency or broking business departmentally and/or via subsidiary.

### **INTERNATIONAL TAXATION**

#### 1.0 Advance Pricing - Gaining Momentum

- US government has agreed to bilateral Advance Pricing Agreements(APAs)
- Over 150 US companies have applied to Indian Tax Authorities to sign such agreements
- These agreements will have greater force with US joining the initiative
- This will provide long-range certainty to tax liability
- It can open doors to big ticket US investment, particularly in defense.
- 2.0 The ITAT in case of "Goldstar Jewellery Ltd. v. Joint Commissioner of Income-tax" held that longer credit period to Associated Enterprises(AE) is 'International Transaction' in terms of Explanation to section 92(1) but is 'closely linked' to international transaction of sale or service to AE in terms of Rule 10A(d). This is not a transaction of loan or advance to the AE but it is only an excess period allowed for realization of sales proceeds from the AE. Therefore, the arm's length interest rate would be the average cost of the total fund available to the assessee and not the rate at which a loan is available.

[2015] 53 taxmann.com 353

FINANCIAL INDICATORS				
	Current Rate*	Month Ago	3 Month	6 Month
3 Month LIBOR (%)	0.2584	0.2541	0.2326	0.2351
3 Month MIBOR (%)	8.59	8.63	8.73	8.97
SENSEX	28355.62	27585.27	27874.73	25329.14
NIFTY	8565.55	8323	8344.25	7568.55
CRR (%)	4	4	4	4
REPO (%)	7.75	8	8	8
REVERSE REPO (%)	6.75	7	7	7
Gold (per 10 gm)	27295	26905	25923	28576
Silver (per kg)	37440	36664	35007	43800
Crude (USD/bbl)	56.46	50.305	82.13	105.02
₹ vs USD	62.1888	62.1605	61.4513	61.14
₹ vs Euro	70.3728	73.7348	76.6789	81.94
₹ vs 100 Yen	51.98	52.62	53.86	60.93
₹ vs RMB	9.9615	10.0097	10.0474	9.9147
₹ vs Pound	94.4136	94.2788	97.7567	102.57
MCX Aluminium (per kg)	114.15	110.55	125.4	124.2
MCX Copper (per kg)	353.5	378.9	412	430
*As on February 10, 2015	(Sources: M	IoneyControl,	NSE, BSE, R	BI, MCX)

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## BANK AUDIT-Government and RBI need to appreciate the risk

All India Chartered Accountant Society very strongly opposes delegation of powers to appoint Central Statutory Auditors and Branch Auditors of public sector banks by the Board of Directors of the Bank.

The banking sector has recently witnessed major allegation of corruption and substantial rise in Non-Performing Assets i.e. a larger number of loans are becoming bad or doubtful of recovery.

The decision of the RBI to not to audit branches with advances less than ₹ 20 crores on a regular basis is also very serious. This may promote manipulation and frauds in the intervening 5 Years.

The concurrent audits' scope, coverage and reporting

requirements are more focused on daily audit of all areas rather than based on risk.

The government and RBI are responsible to ensure high quality corporate governance and controls in the banking sector. The financial frauds and losses caused to the banks may remain unreported if audit firms closely known to the top management are appointed as auditors. The public money is at risk and regulators need to be transparent and take responsibility of failure.

The independence of auditors both in terms of appointment as well as remuneration is mandatory to ensure proper financial reporting and eradicate the possibility of error, fraud and manipulation.

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