
Taxation of foreign directors and members of the management board in:

AUSTRIA

BULGARIA

CROATIA

CZECH REPUBLIC

HUNGARY

POLAND

SERBIA

SLOVAKIA

SLOVENIA

CONTACT DETAILS

AUSTRIA

Residents

A foreign director/member of the management board is resident in Austria if he/she has his/her domicile or habitual place of abode in Austria.

→ **Employed directors**

Directors of an Austrian company (e.g. AG or GmbH) are generally taxed as employees of the respective company if they perform their activities on the basis of an employment relationship. Basically, an employment relationship is constituted if the employee owes his entire manpower to the employer and if he works under the supervision of the employer. Employment income includes all remuneration, in cash or in kind, derived by the employee and paid by the employer or by a third party.

Generally, employment income is subject to the progressive income tax rate of up to 50 % (55 % above EUR 1 million). However, in Austria the annual salary is not paid out in 12, but in 14 equal installments. The 13th and 14th salary payments (holiday and Christmas pay) that in total do not exceed EUR 25,000 are taxed at a beneficial rate of 6 % instead of the progressive income tax rate.

Employers are obliged to withhold wage tax from gross salaries paid to their employees and to transfer wage tax to the competent tax office. Wage tax is considered to be a prepayment on the employee's final income tax and is credited against its assessed income tax liability. Furthermore, the employer is obliged to withhold social security contributions from the gross salaries paid to the employees. However, in Austria social security contributions are only levied up to the maximum contribution base, which is EUR 65,520 in 2016. The social security contribution rates for employees for the year 2016 are 17.12 % employee's part and 20.63 % employer's part.

→ **Independent (professional) directors**

If the executive director of an Austrian company has no employment relationship with the respective company but is working on the basis of a service contract, he derives income from independent professional services and the rules regarding sole entrepreneurs and business profits are applicable. The same applies to executive directors holding a participation of more than 25 % in the company. The income from professional services is also subject to the progressive tax rate of up to 50 %. However, the beneficial treatment of the 13th and 14th salary (see above) does not apply and the income is not subject to wage tax.

Non-residents

→ **Employed directors**

Non-resident directors of an Austrian company who perform their activities on the basis of an employment relationship (see above) are taxed only on income from employment activities performed or utilized in Austria.

→ **Independent (professional) directors**

Non-resident independent (professional) directors (see above) are taxed on income from independent

(professional) services performed or utilized in Austria. The income is subject to a withholding tax of 20 %, however the option for an assessment procedure is available.

Miscellaneous

– Special lump sum deductions for expatriates

As of 1 January 2016, expatriates are granted a special lump-sum deduction for expenses (without proof of the actual expenses) in the amount of 20 % of the gross income reduced by tax-free amounts and other amounts that are not subject to wage withholding tax as current wages. The deduction is capped at EUR 10,000 annually. Reimbursement of cost for business travel does not reduce the lump-sum amount that may be deducted. For this purpose, an expatriate is defined as an individual who did not have a residence in Austria during the last 10 years, who, as directed by a non-Austrian employer, is temporarily employed in Austria with an Austrian employer or in an Austrian permanent establishment for wage withholding tax purposes, and whose income is subject to taxation in Austria. The employment in Austria must not exceed 5 years and the employee must maintain a permanent residence outside of Austria.



BULGARIA

Residents

A foreign director/member of the management board is resident in Bulgaria for tax purposes if he meets at least one of the following conditions: domicile in Bulgaria; centre of vital interest in Bulgaria; presence in Bulgaria for a period or several periods exceeding in total 183 days during any period of 12 consecutive months ending in the respective calendar year; Bulgarian citizen who is serving abroad as an official; employee of Bulgaria in a foreign state

Executive directors are, in general, taxed as employees of the respective company. According to the Bulgarian Income Taxes on Natural Persons Act (ITNPA), legal relations under management and control contracts, including those with the members of managing and control bodies of undertakings, are employment relationships. For purposes of the ITNPA, an employee receiving income under an employment contract is deemed to derive employment income. Employment income includes all remuneration, in cash or in kind, derived by an employed person and paid by the employer or by a third party, except the income designated in the legislation as non-taxable.

The tax rate is 10 % on the income, including benefits in cash and in kind. Employers are obliged to withhold the tax from gross salaries paid to their employees and to transfer the wage tax to the competent tax office. The personal income tax must be assessed and withheld monthly by the employer from the gross salary of his employees for the purpose of determining the monthly basis of taxation. The annual tax return has to be submitted on or before the 30th of April of the year succeeding the year of acquisition of the income. Any person who submits an annual tax return by 31 March of the succeeding year by electronic means enjoys a 5 % rebate of the balance of the tax due under the annual tax return.

Furthermore, the employer is obliged to withhold social security contributions from the gross salaries paid to the employees. However, in Bulgaria social security contributions are only levied up to the maximum contribution base, which is BGN 2,600 in 2016. The social security contribution rates for the year 2016 are as follows: 15.4 % employee`s contribution, 28.1 % - 34.8 % employer`s contribution.

In general, non-executive resident directors of a Bulgarian legal entity are taxed in the same way as executive directors working on the basis of an employment relationship.

Non-residents

Non-resident executive directors are taxed only on income from employment activities performed or utilized in Bulgaria if they have an employment relationship with the respective company; the rules regarding the determination of the tax base, tax rate, and assessment are similar to the treatment of resident directors. Non-resident non-executive directors, members of boards of a company or working under management contracts are taxed with a 10 % final withholding tax on the income of their remuneration in Bulgaria. The tax is payable prior to the end of the month following the month for which the income is charged and received by the individual. In those cases in which the income is generated by a person who is a citizen of a state with which the Republic of Bulgaria has concluded a treaty for the avoidance of double taxation, the tax is payable within a term of three months as of the beginning of the month following the month of income accrual.



CROATIA

Residents

A foreign director/member of the management board is resident in Croatia if he/she has his/her domicile or habitual place of abode in Croatia.

→ Employed directors

Directors/members of the management board of Croatian companies are taxed as employees of the respective companies if they perform their activities on the basis of an employment contract. In this case, their employment income is subject to the Croatian Personal Income Tax, providing for progressive income taxation at rates of 12 %, 25 % and 40 %. In addition, municipalities are authorized to levy a surcharge on the income tax at rates between 0 % and 30 %, for taxpayers having a domicile or habitual abode in the area of the commune/municipality that has enacted the surtax.

Employers are obliged to pay social security contributions on gross wages of the employees at the following rates: 15 % for health insurance; 1.7 % for unemployment insurance; and 0.5 % for injury insurance.

Employers are liable to deduct wage tax and social security contributions from salaries paid to their employees. Employees, on the other hand, are obliged to pay pension contributions on their gross wages at a 20 % rate (or 15 % + 5 %). These contributions are calculated and withheld by the employer out of the employee's salary/remuneration.

→ Independent (professional) directors

If the executive director/ member of management board of an Croatian company has no employment contract with the respective company but he is working on the basis of a service contract, the income obtained from the activities performed on the basis of the service contract will be deemed to be other income and subject to Personal Income Tax.

The company is liable to deduct Personal Income Tax and social security contributions from income paid to the directors. Generally, other income is subject to 25 % Personal Income Tax rate, possible municipal

surtax, obligatory health insurance at 15 % rate and obligatory pension insurance at 20 % rate.

Non-residents

Non-resident executive directors are taxed only on income from employment activities performed or utilized in Croatia if they are employed by the respective company; otherwise, they are taxed on income from independent (professional) services performed or utilized in Croatia. A non-resident executive director is taxed on income from independent services if the services were performed or utilized in Croatia. The rules regarding the determination of the tax base, tax rate and assessment are very similar to the treatment of resident directors.

Miscellaneous

→ **Social security contributions status of directors/ members of management board**

The domestic social security legislation prescribes that a social security contributions liability can arise on the basis of a membership in the management board or an appointment as executive director of a corporation if a person is not obligatory insured on other basis. In case social security contributions liabilities arise in this respect, the concerned person would be personally liable and the Tax Authorities would issue a resolution for payment of obligatory contributions in this respect.



CZECH REPUBLIC

Residents

In accordance with the Czech tax legislation, a foreign director/member of a statutory body is considered as a Czech tax resident if the person has a permanent residence in the Czech Republic and/or b) the person spends 183 and more days in the Czech Republic in a calendar year.

→ **Employed Directors**

Directors of a Czech company (e.g. a.s. or s.r.o.) are, in general, taxed as employees of the respective company, as they conclude employment relationship with the companies based on the labour law. The tax base is calculated as the employee's total income increased by the obligatory social security and health insurance contributions payable by the employer under Czech law (so-called „super-gross wage“). The super-gross wage is subject to a flat tax of 15 %.

An additional tax („solidarity tax increase“) of 7 % applies on the income from dependent and independent activities of individuals with an annual salary over 48 times of the average monthly salary. For 2016 the limit is CZK 1,296,288 (approx. EUR 48,000). Only the amount above this limit is subject to this additional tax. A monthly salary of over CZK 108,024 (approx. EUR 4,000) is subject to prepayment on solidarity tax increase.

Furthermore, the employer is obliged to withhold the social security and health insurance contributions from the gross salaries paid to employees. However, in the Czech Republic social security contributions are only levied up to the maximum assessment base of CZK 1,296,288 (approx. EUR 48,000) in 2016. The rates are

as follows: employer's part of social security contributions – 25 %; employee's part of social security contributions – 6,5 %; employer's part of health insurance contributions – 9 %; employee's part of health insurance contributions – 4,5 %.

– **Members of the statutory body**

Members of the statutory body perform their function for the company based on the commercial law (contract for the performance of fiction or mandate contract). For the purposes of the income tax, members of the statutory body are treated the same way as employees. The same rules as described above are applied for the taxation of this income.

Non-residents

– **Employed Directors**

Non – resident directors of Czech companies are taxed only on income from their employment activities performed or utilized in the Czech Republic. If they are not subject to the Czech social security system, the taxpayer shall use so-called "fictive insurance contributions" for the assessment of the super gross wage.

– **Members of the statutory body**

In general, remunerations of non - resident board members are subject to a special withholding tax of 15 % or 35 % (35 % in case of countries outside of the EU with which the Czech Republic has not concluded an agreement about an exchange of information/double tax treaty). The solidarity tax increase (7 % from the difference above 48 times the average wage) does not apply in such a case.

The tax base for non-residents is in such a case the same as the tax base for the calculation of the monthly payroll tax withholdings for tax residents, i.e. including an increase by social security and health insurance contributions paid by the employer ("super gross wage"). If the non - resident is not subject to the Czech social security system, the taxpayer shall use fictive insurance contributions as well.

The non - resident members of the statutory body are entitled to file a personal income tax return at the end of the calendar year in order to claim tax reliefs and tax allowances. However, the solidarity tax increase applies to this income in such a case. The tax withheld is credited against the tax assessed in the tax return and a possible tax overpayment is refunded upon request.



HUNGARY

Residents

A foreign director/member of the management board is resident in Hungary if she/he has a permanent residence in Hungary or if he/she has the Hungarian citizenship. Any home is permanent if it is permanently available for the use of the individual. The individual will also become a Hungarian tax resident according to domestic law if he is a citizen in the European Economic Area and spends more than 183 days per calendar year in Hungary.

In Hungary directors, managing directors (hereinafter together as 'directors') of a Hungarian company (e.g. ZRt. / NyRt. or Kft.) can provide their activity on the basis of an employment relationship or an agency/service

contract.

→ **Employed directors**

Directors are generally taxed as employees of the respective company if they perform their activities on the basis of an employment relationship. Basically, an employment relationship is constituted if the employee owes his entire manpower to the employer and if he works under the supervision of the employer.

Employment income includes all wages, remunerations, honorariums and also bonuses or cash payments derived by the employee and paid by the employer or by a third party. The amount should be paid basically in HUF, but in case of directors EUR payment is also sufficient.

Employment income is deemed to be income from dependent activities. It constitutes part of the individual's consolidated tax base and is taxed at a flat personal income tax rate of 15 %.

In Hungary the annual salary is paid in 12 equal instalments. The personal income tax has to be withheld by the employer from the gross salary of his employees and paid to the tax authorities on a monthly basis until the 12th of the month following the calendar month. The deducted personal income tax is considered to be a prepayment on the employee's final income tax and is credited against its assessed final income tax liability.

Individuals subject to Hungarian personal income tax shall file an annual income tax return whereby the deadline is 20 May of the year following the calendar year concerned.

Furthermore, the employer is obliged to withhold employee-side social security contributions, where no maximum contribution cap is available in Hungary. Moreover, a so-called social tax is also payable by the employer based on the gross salaries. The social security contribution rates valid in 2016 are as follows: 18.50 % employee's part; 28.50 % employer's part.

→ **Independent (professional) directors**

If the director of a Hungarian company has no employment relationship with the respective company but is working on the basis of an agency contract, the income derived from his activity will be qualified also as income from dependent activity and is taxable as part of the consolidated tax base with the same rates as described for employed directors.

There is a minimum contribution liability for domestic and foreign individuals registered as owners of a company and simultaneously carrying out director's activity without direct remuneration under an agency agreement (thus, not in the frame of an employment). The rules do not cover individuals whose social security liability is based on another legal relationship (e.g. any other work-related legal relationship of the participating member) with the company.

Non-residents

As described above, employed directors and directors with agency contracts are handled the same way from a taxation point of view in Hungary. Non-resident directors are taxed only on income attributable to the work performed or utilized in Hungary (limited tax liability – source income taxation), irrespective of the type of the relationship (employment relationship or agency/service contract). This income is taxed in the same way as the income of resident director, i.e. as income from dependent activity.

For determining the social security obligations of a non-resident director, the European regulations and the bilateral agreements concluded by Hungary with countries outside of the EU should be investigated.

The minimum contribution liability is due for non-resident directors as well. Exemption from the minimum contribution might be reached by foreign managing director owners in the possession of an A1 form issued under the EU Regulation on the coordination of social security systems (EC Regulation No. 883/2004).

Miscellaneous

Company cars provided for directors in employment relationship for business and private purposes are tax free benefits. For employed director the employer can provide fringe benefits with advantageous employer-side taxation (in 2016 34.51 %).



POLAND

Residents

A foreign director/member of the management board is resident in Poland, if he/she has the centre of personal or economic interests in Poland ("centre of vital interests in Poland"), or spends more than 183 days in a given calendar year in Poland.

→ **Employed directors**

The directors/members of the management board of a Polish company (e.g. sp. z o.o. or S.A.) may be remunerated under an employment or a civil law contract (management contract). Remuneration of the individual appointed to the management board may be also paid on basis of the shareholders' resolution. In each case the income of directors/members of the management board is subject to progressive taxation. The tax rates are 18 % and 32 % (for a taxable base exceeding PLN 85,528). A company is obliged to withhold monthly tax advances from gross salaries paid and to transfer them to the competent tax office. The monthly tax advances are credited against the annual income tax liability. Furthermore, the company is obliged to withhold social security and health care contributions from the gross salaries paid to the directors/members of the management board. However, a part of the social security contributions (retirement and disability pension insurance) are only levied up to the maximum contribution base, which in 2016 amounts to PLN 121.650,00. The social security and health care contribution rates for the year 2016 are 22,71 % employee's part and 19,21 %-22,31 % employer's part. Performing duties solely under resolution on appointment to the management board without concluding additional employment contract or civil law contract is subject neither to social security nor health care contributions.

→ **Independent (professional) directors**

The director may render professional services to the company within an individual business activity. Generally, the income from business activities is subject to progressive taxation (18 % and 32 %). Under some conditions, the taxpayer may apply for taxation with a flat rate of 19%. The entrepreneurs are obliged to pay social security and health care contributions on the declared income, at least on the minimum basis announced officially (in 2016: the minimum monthly social security contributions amount to PLN 713,35 PLN, whereas healthcare contribution - PLN 288,95 PLN). New entrepreneurs may enjoy lower social security contributions for the two first years (under certain conditions). If the director provides management services, the rules regarding taxation of management contracts are applicable. The same applies in respect to social security contributions (see comments regarding employed directors).

Non-residents

– **Employed directors**

Non-resident directors of a Polish company who perform their activities on the basis of an employment contract (see above) are taxed only on income from employment activities performed in Poland. The tax and social security and health care rates are the same as for resident directors.

Non-resident directors remunerated under civil law contracts (management contract) or the shareholders' resolution, are subject to a withholding 20 % lump-sum tax, unless a respective double tax treaty states otherwise.

– **Independent (professional) directors**

A director may render professional services to the company within an individual business activity. The tax and social security and health care rates are the same as for Polish residents.

If the director provides management services, then the income is subject to a withholding 20 % lump-sum tax, unless a respective double tax treaty states otherwise.



SERBIA

Residents

Serbian Personal Income Tax Law (hereinafter referred to as PIT Law) stipulates that a resident of the Republic of Serbia shall be any individual whose residence or centre of business and vital interests is in the territory of the Republic of Serbia; or who resides in the territory of the Republic for 183 or more days, continuously or with interruptions, over a period of 12 months beginning or ending in the respective tax year.

– **Employed directors**

Serbian labor law stipulates that the legal representative of a legal entity may be engaged on the basis of an employment agreement or management contract. If the legal representatives i.e. directors are engaged on the basis of an employment agreement, they are taxed as employees. Salary is considered to be income realized on the basis of an employment, as defined by the law governing labor relations, any kind of vouchers, securities, cash certificates, goods as well as all benefits (in cash or in kind) provided to the employee. The salary is taxed at a flat 10 % tax rate.

Employers are obliged to calculate and pay withholding tax at a rate of 10 %, as well as social security contributions on gross salaries of the employees. The following rates apply for social security contributions: 17.9 % employer's contribution, 19.9 % employee's contribution.

– **Independent (professional) directors**

Legal representatives of the company can be engaged on the basis of a management contract not establishing an employment relationship. Compensation paid to the director on the basis of a management contract is treated as other income in accordance with the PIT Law and taxed at a flat 20 % tax rate. Additionally, pension and disability contributions have to be paid at a 26 % rate. If the director does not have health insurance on another basis, the obligation of paying contribution for health insurance also arises.

Further, if no compensation is agreed upon in the management contract, there is no obligation of paying taxes and contributions. In this case, all remunerations on the basis of remuneration costs paid to the director shall be treated as other income and taxed at the flat 20 % tax rate.

Non-residents

→ **Employed directors**

When a non – resident concludes employment agreement, domestic legislation will apply in a same way as for residents. The employer is obliged to obtain documentation necessary for a non – resident to perform activity on the territory of Serbia: temporary residence and work permit.

→ **Seconded directors**

A non – resident director can perform an activity in Serbia as seconded employee by his/hers foreign employer. The seconded director remains employed by the foreign employer, not concluding any kind of contract with the Serbian entity. Income realized on the territory of Serbia by the non – resident director is subject to tax at a flat 10 % rate.

→ **Independent (professional) directors**

All double taxation treaties applicable in bilateral economic relations between Serbia and other countries stipulate that the remuneration of directors or board members shall be taxed in the source country, i.e. Serbia, in accordance with domestic legislation. The PIT Law stipulates that the remuneration of directors and board members is treated as other income and taxed at 20 % tax rate.

→ **Annual income tax**

Serbian PIT Law additionally provides for the institute of the annual income tax for residents of the Republic of Serbia on the revenue earned in the territory of the Republic of Serbia or abroad (worldwide income). The taxpayer is every individual who has an income that is three times larger than the average annual salary per employee paid in Serbia in one calendar year. This constitutes an additional tax on the entire income realized in Serbia. The base for the annual personal income tax is the difference between the taxable revenue and the personal deductions amounting to 40 % of average annual salary in Serbia for taxpayers and 15 % for dependent family members. The annual income is taxed at a progressive tax rate (10 % for income up to six times the average annual salary and 15 % for income above the six fold average salary).



SLOVAKIA

Residents

A foreign director/member of the management board is resident in Slovakia if he/she has his/her domicile or habitual place of abode in Slovakia. An individual is deemed to have his domicile in Slovakia if he has formally registered his permanent stay in Slovakia. The habitual place of abode is generally deemed to be established in Slovakia if the individual stays in Slovakia for more than 183 days in a calendar year.

→ **Taxation**

Executive directors (e.g. board members) can perform their activities in relation to the company on the basis of an agreement on performance of the function or a mandate contract. For operating activities an employment contract is usually concluded. According to the Slovak Income Tax Act, the income of executive

directors is considered income from dependent activities (employment income), regardless of the type of the formal agreement concluded between the corresponding parties.

Employment income includes all remuneration, in cash or in kind, derived by the employee and paid by the employer or by a third party. Employment income up to EUR 35K is subject to the income tax rate of 19 %. Amounts exceeding this threshold are subject to a 25 % tax rate. Employers are obliged to withhold wage tax from gross salaries paid to their employees and to transfer wage tax to the competent tax office. Wage tax is considered to be a prepayment on the employee's final income tax and is credited against its assessed income tax liability. Furthermore, the employer is obliged to withhold social security contributions from the gross salaries paid to the employees levied up to the maximum contribution base, which depends on the type of insurance.

The aggregate social and health security contribution rates for employees for the year 2016 are 13.40 % employee's part and 35.20 % employer's part.

Non-residents

Individuals with neither a domicile nor a habitual place of abode in Slovakia (non-residents) are taxable on income derived from domestic source only.

– Employment contract

If non-resident executive and non-executive directors perform their activities based on an employment contract, they are taxed on income from employment activities performed within the territory of Slovakia.

– Mandate contract or other agreement

If a mandate contract or an agreement on the performance of the function is concluded, directors are taxed on employment income received from the Slovak resident employer, regardless whether the activity is performed within the territory of Slovakia or not.

Under a few of Slovakia's double tax treaties, including the one concluded with Austria, the advantageous tax rate of 19 % or 25 % may apply on the income of board members if certain conditions are met. An income of an Austrian resident board member of a Slovak company would be taxed as income from employment according to the Slovak ITA as well as according to the Art. 16 DDT. An exemption method should be applied in Austria.

Non-resident individuals with income from Slovak sources constituting at least 90 % of their total income in the tax year are allowed to claim certain allowances as if they were residents (e.g. dependent-spouse allowance, tax bonus for a child).

The income is subject to social security contributions, unless the non-resident is obliged to pay these contributions in the country he resides in, according to the EC Regulation 883/2004 and EC Regulation 1408/71. The non-resident board members from third countries are not obliged to pay social security contributions if protected by a bilateral treaty.

Miscellaneous

Dividends paid out from the profit of a company to a person with ownership interest in the registered capital of the company, members of the statutory board or supervisory bodies even if they are employees of the respective company, are not subject to personal income tax. Dividends paid out by a company to its employee without ownership interest in the registered capital of that company are furthermore exempt from tax. However, the government announced changes in this area and proposed to introduce a new 15 % withholding tax for dividends starting from 2018.



SLOVENIA

Residents

A foreign director/member of the management board is resident in Slovenia if he/she has his/her officially registered permanent address or habitual place of abode or the center of his/her personal and economic interests in Slovenia or has been present in Slovenia in a tax year for more than 183 days in the aggregate.

→ **Employed directors**

Directors of a Slovene company are taxed as employees of the respective company. Employment income includes all remuneration, in cash or in kind, derived by the employee and paid by the employer or by a third party.

Generally, employment income is subject to the progressive income tax rate of up to 50 % (50 % rate for annual tax base over EUR 70,907.20 in 2016). The annual tax base is the gross salary of the employee, decreased by paid social security expenses and tax reliefs.

In Slovenia the annual salary is paid out in 12 monthly payments, including the obligatory 13th salary payment as holiday pay (minimum in the amount of the minimum salary of EUR 790,73 in 2016). Holiday pay is exempt from social security contributions up to the amount of 70 % of the average salary in the month before (e.g. EUR 1.115,29 in June 2016). The 14th payment as Christmas pay is optional.

Employers are obliged to withhold social security contributions from the gross salaries paid to the employees. General social security contribution rates for employees for the year 2016 are 22.10 % employee's part and 16.10 % employer's part.

→ **Independent (professional) directors**

According to the Supreme Court case law, which is also followed by the tax authorities, only a natural person can hold the position of an executive director. Furthermore, any income received for managing or supervising a company is considered to be employment income and taxed as income from a work relationship, whether as a pure salary or as remuneration, received on the basis of the management contract.

An executive director can provide his/her services based on the employment contract (see above) or a civil-law contract. The same principles of taxation apply in both cases. In relation to the social security contributions there are some differences based on the actual circumstances.

Non-residents

→ **Employed directors**

Non-resident executive directors are taxed only on income from employment activities performed or utilized in Slovenia. The employment income has its source in Slovenia when income is paid or borne by a Slovene tax resident / PE of non-resident or the employment is physically exercised in Slovenia. If one of the above criteria is fulfilled, Slovenia has the right to tax the income subject to Article 16 of DTT (Directors' fees).

Income tax paid during the year is considered to be the final tax obligation.



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