



OFFENCES IN THE VAT SYSTEM AND ITS PREVENTION

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Abstract:

It is well known that one of the elements affecting the stability of each country is a properly structured tax system. There is also no doubt that VAT receipts are a key component of the budget. As suggested by Gomulowicz & Malecki, (2010, pp. 303-304); Kałdoński (2016, p. 5); Brzeziński (2013, p. 232); Pietrasz (2007, pp. 48-49) the taxpayer, as a *homo oeconomicus*, seeks to minimize its tax burden. According to Gomulowicz & Mączyński (2016, p. 379) and Ziółek (2007, p. 163) tax resistance seems to be as extensive as the tax bases are. The globalization of tax avoidance using cross-border schemes is very visible in all developed market economies. Many European countries are struggling with the VAT gap. Recently, the fraud sector internationally and nationally has increased significantly. As Gomulowicz (1996) and Gomulowicz & Malecki (2002, pp. 35-36) noted it should be remembered that any tax crime constitutes a threat to the constitutional value of budget balance and the sustainability of public finances. The state's ability to act and fulfill its tasks will depend on the effectiveness of its protection. This phenomenon, in addition to the obvious consequences in the form of a decrease in budget revenues, also leads to many pathologies throughout the economy and has an impact on the safety and efficiency of doing business by honest taxpayers. According to the European Commission reports, the VAT gap is widening, and the seriousness of threats should force a unified fight against criminal practices. Leśniak (2013) and Szulc (2018) indicate that it should be remembered that the introduced changes should be systemic solutions, not attempts to control the situation in specific sectors of the economy only temporarily. It is important not to stop at just detecting and punishing the perpetrators, as 'fighting' understood in this way will only remove the effects instead of addressing the causes.

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1. Introduction

Nowadays, in the era of international enterprises often conducting their activities on a global scale, situations of dealing with an economic crime under the guise of business entities are becoming increasingly popular. Transactions of significant value that they make usually involve high losses for the State Treasury.

In the paper (Jamrózy, 2014, p. 255) we can find that due to the progressing processes of globalization and internationalization, conducting business activity abroad is becoming more and more common, even among small and medium-sized enterprises. Kozub-Skalska (2015, p. 59) claims that the increase in the openness of economies means that enterprises have to face not only domestic but also global competition. The need to compete for international investment capital means that many tax breaks are introduced in Poland, e.g. for foreign entities starting investments in our country. Moreover Goniszewski (2016, p. 58) claims that the effect of having to compete with other countries for international investment capital is the introduction in Poland of many tax breaks for foreign entities starting investments in our country, the creation of special economic zones and one of the lowest corporate tax in Europe - CIT.

Increasing activity of criminal groups in the field of banking is more and more often observed and is manifested in:

- extortion of loans,
- extortion of leasing,
- forgery of payment cards,
- the use of false documents,
- using false certificates and transfers,

- extorting goods using counterfeit means of payment.

It is also popular to extort VAT regardless of whether it is fictitious domestic trade or sham export.

It is not a discovery to say that the main goal of any business is to maximize profit. According to Dębniak (2018, p. 151) taxes undoubtedly play a significant role in maintaining financial liquidity and in the very functioning of an enterprise. It is believed (Iniewski, 2013) that high tax burdens are one of the biggest obstacles, especially in the SME sector, they may affect the financial problems of the enterprise, to doing business. There is a view (Jamroży & Sobieszek, 2010) that taxes as an important cost element should be managed as all other costs are managed. It should be noted, however, that the effects of the tax environment are mainly derived from tax structures and procedures, as well as the specifics of the taxpayer. This approach, according to Blajer (2013, p. 244), involves understanding high taxes as the total tribute paid, not the nominal or effective rate. Also, the Polish tax law system leaves certain zones at the discretion of the taxpayer, e.g.

- choosing the legal form of business activity,
- simplified tax settlement procedures,
- places of business.

The above may have a sky-high impact on the company's financial standing because it affects the amount of tax burden.

Any changes that are taking place in the EU's value-added tax system are aimed at supporting the Member States in eliminating the tax gap. Unfortunately, due to the existence of a zero VAT rate on intra-Union transactions, this is not a simple task. Kołdys (2018, p. 43) submits that common fictitious transactions, extortion of undue returns or the use of non-deductible deductions result in a black market for costs. In the European Economic and Social Committee opinion (2011) we can find that one of the examples of such costs are costs that do not reflect actual

economic events. According to Laszczak- Łasut & Michalak (2016, p. 5) the dysfunctionality of system solutions affects the development of tax crime on a large scale.

The two most popular forms of fraud on the Poland - EU country line are imports into Poland of materials that are not disclosed in public administration but they are the initial phase of carousel crime. The second option is only the apparent export of goods purchased in Poland to another country. Eurostat data on Polish imports and exports clearly point to growing discrepancies. From the data, it can be read that Member States report higher exports of goods to Poland than Poland reports imports. In addition, the asymmetry increases year by year. Institute of Structural Research (2013, p. 7) claims that while in the years 2006-2010 for Poland it fluctuated between 3% -6% of all registered exports, in 2011-2012 it increased first to 7.8%, and then to 9.5% of registered exports. At the same time, the average size of the divergence for the entire EU remained at 2% -3%.

This is a signal that may mean an increase in the level of undisclosed intra-Community transactions and be associated with the fraud in which these transactions are used.

2. Types of crime in VAT

There are a number of fraudulent transactions involving VAT transactions that are made for financial gain. Their fundamental assumptions seem similar but differ in their course. In report (Institute of Structural Research, 2013, p. 21) is said that particularly among them are crimes directed against the interests of the European Union, carried out using entities that are taxpayers in various EU countries. The methods of VAT offences can be divided into 2 groups:

1. VAT offences regarding output tax- in the paper, e.g. Komorniczak (2015, pp. 1-2) we can find that the common purpose of the actions is the lack of payment of the tax liability and to obtain an

independent benefit that does not exceed the amount of tax due:

- **fictitious exports** are declared by ICS or exports even though the goods do not actually leave the country,
 - **apparent act** - the export of goods abroad actually takes place, but the declared object of export and its value is forged,
 - **understatement of output tax** - declaration of services rendered as an activity taxed at 0% or at a reduced rate when they are taxed at the basic rate in the country,
 - **fictitious place of performance** - a fictitious declaration of services performed within the territory of the country as activities performed outside this territory. The most important examples of this category are VAT offences using the so-called reverse charge.
 - **fictitious lack of subjectivity** - declaring goods as being subject to a 'domestic' reverse charge, and which were not listed in Annex 11 to the Act of 11st March 2004 on tax on goods and services.
2. VAT offences regarding input tax and tax refund- on the website (Żakiewicz, 2017) we can find that all actions share a common goal in the form of obtaining an undue advantage of reducing or non-payment of the tax liability:
- **unreliable invoices**- the entity that issued the invoice that documents the activities objectively taking place actually exists, but the taxpayer was really someone else. This is the most common type of offence. The motives for this type of action are e.g. the purchase of goods that originate from theft or tax-free turnover, or mutual assistance in invoicing foreign deliveries in the absence of invoicing own turnover and the need to find

something to declare and finally to deduct. The fight against this criminal phenomenon has intensified in recent years. This is confirmed by Supreme Administrative Court in the Judgment I FSK 493/17 (2019).

- **blank invoices** - issuing invoices that did not appear at all. Invoicing of activities that have not been performed is used so that input tax on invoices issued in this way can be deducted by the recipient. It should be added that in the case of issuing 'empty' invoices, good faith does not matter. This view is confirmed by case law in Supreme Administrative Court's Judgments e.g. I FSK 1687/13 (2013); I FSK 390/13 (2014); I FSK 2147/16 (2017); I FSK 1527/15 (2017); I FSK 48/16 (2017); I FSK 1059/16 (2018). Moreover, according to Supreme Administrative Court's Judgments such as: I FSK 1496/10 (2011), I FSK 258/11 (2012), I FSK 177/14 (2015), I FSK 1415/16 (2018), I FSK 1411/16 (2018); it should be noted that the taxpayer who issued the 'blank invoice' in which he calculated VAT should pay it.
- **invoices issued by a fictitious entity** - the entity that issues invoices (I FSK 1489/14, 2016) was created only to issue them. Such an entity neither pays tax liabilities nor submits declarations. It is commonly called a fictitious company. There are two types of such companies: 'national fictitious company' and 'international fictitious company' that are created in exotic jurisdictions;
- **invoices issued for sham activity** - the invoice was actually issued, but it hides another event that was actually a completely different transaction.

According to the European Anti-Fraud Office- OLAF (2008) which was created specifically to detect and combat fraud

committed within the European Union, there are specified the following types of mechanisms of action in the VAT system based on intra-Community transactions:

1. Correct operation

This is a situation when each stage of trade exchange is properly accounted for. The entities fulfill their obligations towards the State Treasury, and finally, VAT is charged to the final consumer (CJEU Judgment, 2006), i.e. one who does not use the acquired goods in the course of business. The general idea of the European VAT system claims that taxation should take place in the country of consumption.

Moreover CJEU Judgment (1984) claims that each transaction should be considered individually and *per se*, and should not refer to the purpose or results of the transaction. This is due to the fact that there is an assumption that the common VAT system should be neutral and the law should be certain, which is foreseeable for the entities that are subject to it. The scheme of operation, thanks to which VAT remains neutral at every stage of the transaction, i.e. thanks to which entrepreneurs neither gain nor lose their transfer to the budget, is based on the following assumptions:

- at every stage of the supply chain, VAT is added to the goods sold in order to charge the buyer with tax,
- the buyer of the good or service, excluding the final consumer, adds VAT to the price of the goods he sells and charges his buyer,
- each entity in the chain transfers to the budget only the difference between input tax and input tax.

2. Undeclared intra-Community acquisition of goods

The form that can be considered the simplest among frauds based on the taxation of intra-Community transactions is the buyer's failure to declare intra-Community acquisitions of goods. As a result, in the buyer's country, the goods can be resold without VAT. However, such transactions are easy to

detect, and therefore organized crime groups do not use them at all. To demonstrate inconsistency, it is enough to confront the tax returns of the buyer and supplier and thus establish that the transaction has been concluded.

3. Fictitious intra-Community supply of goods

The fraudulent practice is that the entity purchases goods on the local market and then falsifies their intra-Community supply. Due to the fact that 'counterparties' are established in the territory of another Member State, the supplier exercises the right to deduct input tax. The scammer applies for a tax refund to the competent authorities, showing invoices that document purchases made for the purposes of the 'intra-Community transaction' taxed at 0%. However, the truth is quite different. The goods never leave the territory of the supplier's country, yet they are sold without VAT. This practice is also quite simple to detect because the ICS quarterly summary will show discrepancies between the 'supplier' data and the data of the entity that does not knowingly participate in the fraud.

4. Carousel offenses

This type of fraud is very advanced. According to judgments of the Provincial Administrative Court in Białystok Judgments (2019):

- Disappearing trader - this is an entity that uses an unnotified ICA because it does not declare it and does not pay tax in the country of destination. He makes further deliveries of products within his territory to local entrepreneurs. It should be noted that deliveries are documented by standard invoices. The amounts of tax due listed therein will never be paid. In case of control, the disappearing trader withdraws from the market.
- The so-called 'layman' - they are at the forefront of entities like 'disappearing trader'. These are the most

often substitute people who do not have knowledge about the activities of an economic entity, although the documents show that they are allegedly managing it.

- The so-called 'buffers'- it is a chain of entities whose task is to blur the connection between a 'disappearing trader' and a 'broker'. The goods are transferred between them in order to divert attention from the real nature of the transaction. The function of buffers can be performed by specially established companies and unaware of participating in the crime, honest entrepreneurs whose mediation is to give the carousel greater credibility in the eyes of specific tax authorities.
- 'The Broker' - sells goods abroad. It is the entity that applies for a refund of input tax paid on the purchase of goods that are currently in the intra-Community supply phase.
- 'Distribution channel' - the final buyer of goods resold by a broker. It can be the same entity that sold the same product to a 'disappearing trader'. It is located outside the jurisdiction where the crime is actually committed. At this stage, extensive operational knowledge and strict compliance with the tax laws of the country are required.

According to the Judgment of the Provincial Administrative Court in Wrocław (2017) 'fraud of a carousel is not an abuse of law. These are two different legal institutions. It is incorrect to assume that in the case of a tax carousel, collective responsibility should apply to entities in the supply chain. General Advocate Póiares Maduro in his opinion (2005) said that: '(...) The Tribunal clearly indicates that each transaction should be considered individually, regardless of its purpose or result. The nature of a given transaction in the chain does not change the fact that the

goods then pass through the hands of the same supplier. A fraudulent purpose may be at the heart of the transaction chain, but this fraud is a kind of activity; it is not an inseparable element of the trade in goods and does not change the nature of individual transactions elsewhere in the chain'.

There is no doubt that the activities of taxpayers, seeking to hide transactions from which tax should be paid, and which is aimed at achieving material increment, are very often found throughout the European Union e.g. in Speech by a Member of the European Commission (Kovacs, 2007). Report (Institute of Structural Research, 2013) submits that can even be said that fraud is getting worse every year. In addition, this state can be linked to the alarming rate of increase in the tax gap.

The general reasons for the decrease in VAT fiscal efficiency in Poland before and in the first years after joining the Community can be divided into four groups:

- non-reflective implementation of intra-Community solutions,
- repealing the most important tax sanctions for submitting false tax declarations,
- failure to adapt the previous tax infrastructure to the challenges arising from the disadvantages of its Community version,
- failure to apply the principle of proportionality in adapting penalties for committed crimes.

3. Prevention of offences in the VAT system

Offences prevention in the tax system on goods and services manifests itself in counteracting fraud and decreasing the shadow economy. Occurring irregularities are consistently and systematically detected and controlled. Reducing the tax gap could undoubtedly be an alternative to raising tax rates, which is applied at the time of uncertainty about the level of revenues to the state budget.

Control activities are of particular importance in eliminating irregularities in Poland. Elimination of irregularities should focus primarily on recovering lost state budget receivables. One should also aim at complete liquidation of the practice and, consequently, the break-up of criminal groups whose main motive is to extort goods and services tax and excise duties. According to Minister of Finance (2015) these include:

- comprehensive analytical and control activities,
- interactive information platform- the purpose of the platform is to inform about entities suspected of participating in VAT fraud in intra-Community trade. Such information could improve the efficiency of recognition and elimination of tax fraud throughout the country. In addition, its advantages include efficient ongoing identification of fraudsters, shorter time needed to perform the analysis, quick location of frauds in the chain of entities, and the ability to identify industries affected by tax fraud,
- warning letters published on the websites of the Ministry of Finance and the Ministry of Economy- warning letters are issued to inform about detected fraud in VAT in electronics and fuel trading. The purpose of their creation was to protect fair competition and limit the scale of VAT fraud involving a disappearing taxpayer. Great emphasis is placed on economic operators exercising due diligence when selecting a supplier and taking all possible precautions to avoid being accused of intentional involvement in a VAT offence,
- cooperation of the Minister of the Interior, the Minister of Finance and the Prosecutor General in developing common solutions in preventing and combating economic crime,
- Expert Team for VAT and excise duties- the team's task is, among others identifying areas exposed to VAT

crime and coordinating activities related to counter-acting this crime,

- participation of the Polish tax administration in Eurofisc- it is a network of information exchange between countries. It aims to facilitate multilateral cooperation in combating VAT fraud. Tax control offices must conduct analyzes thanks to which entities are then selected. Selected entities will be monitored in the Eurofisc network. In addition, it will be easier to detect new types of VAT fraud,
- introduction of a reverse VAT mechanism- Poland for the first time took advantage of this solution in relation to trading in scrap metal and greenhouse gas emission allowances, introducing them on 1st April 2011 by amendment to the applicable law (Act, 2004),
- strengthening actions against entities with registered offices in the so-called virtual office,
- the institution of the buyer's tax liability for the seller's tax obligations- the institution of tax liability supplements the control activities. This institution primarily performs a preventive function and consists of more accurate control of its contractors by taxpayers,
- liquidation of quarterly VAT settlement for monthly settlements- the obligation of monthly VAT settlement allows eliminating the non-uniform seller and buyer billing periods,
- changes were made to the guarantee bail by law (Act, 2015). The minimum bail was increased from PLN 200,000 to PLN 1 million and the maximum increased from PLN 3 million to 10 million; due to the significant scale of fraud in the fuel industry,
- an information and warning campaign whose motto is 'Do not let them make you a Layman'- the main goal of the campaign is to draw the public's attention to the threats associated with the activities of members of

organized criminal groups who want to extort funds from the state budget.

The enforcement of tax obligations is based on the Act on enforcement proceedings in administration. As far as the improvement of this process as well as the process of tax arrears management is concerned, organizational units for credit matters, which were established on the basis of the Regulation of the Minister of Finance (2014) on the organization of tax offices and chambers, are responsible for giving them statutes. One of their main tasks is to carry out activities preceding the initiation of enforcement proceedings so as to positively affect the level of voluntary payments and discipline of taxpayers. Information and disciplining activities are currently carried out using direct means of communication, i.e. telephone, SMS, e-mails informing about the lack of payment of tax liability.

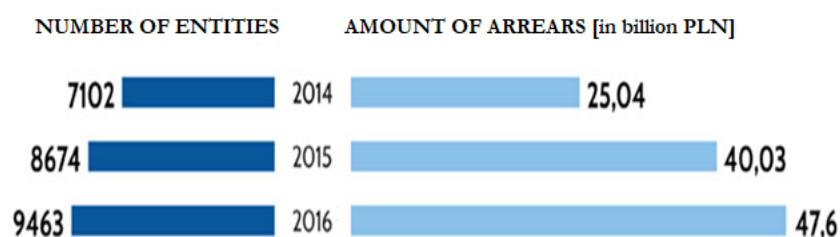
In order to increase the level of voluntary payments and discipline taxpayers, the Minister of Finance in his Ordinance (2014) enabled creditors to remind obligated parties of all outstanding obligations. In addition, it is possible to inform the debtor about the consequences of non-payment, including the threat of administrative enforcement and its potential costs. As part of improving enforcement, two institutions were established, namely:

- the Competence Center for Trustee Matters, located in the Tax Chamber in Opole,
- Competence Center of Administrative Execution, located in the Tax Chamber in Szczecin- one of the tasks of CKEA is to create a modern IT tool for comprehensive management of the enforcement process as the successor to the EGAPOLTAX system.

The government has introduced measures to improve tax compliance and efficiency and has introduced a unified tax identification number database. According to the CAE (2016, p. 43); NIK (2013, p. 10) and Institute of Structural

Research (2013, p. 29) reports it was also necessary to improve the course of enforcement proceedings. One of the most important solutions that were implemented to recognize and eliminate tax fraud in the country was an interactive information platform about entities suspected of participating in fraud in goods and services tax in intra-Community trade called POLFISC.

Figure 1. The number of entities with arrears over PLN 1 million registered in tax offices and the amount of arrears held by these entities in 2014-2016.



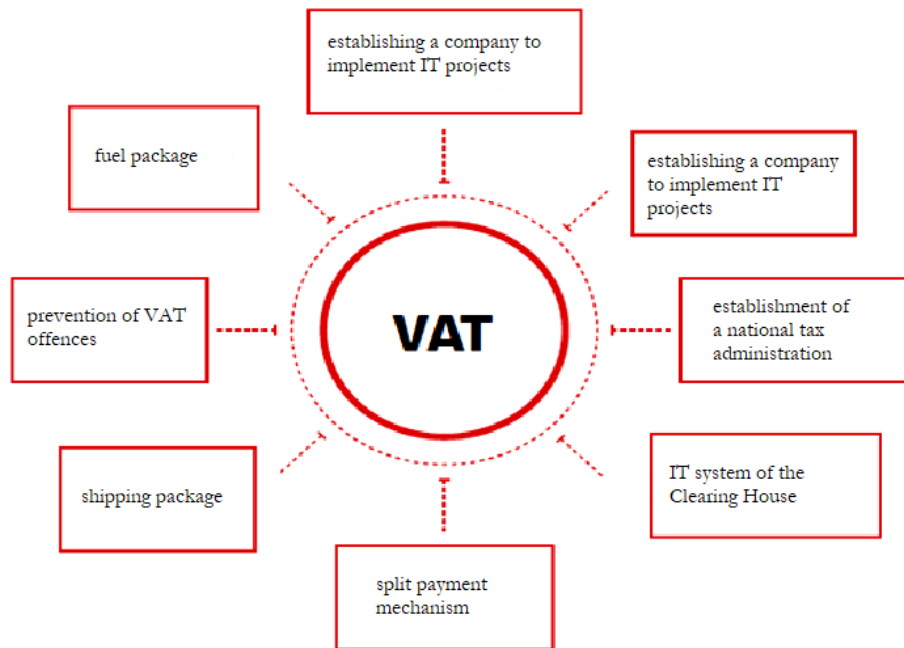
Source: NIK, *About respecting the interests of taxpayers and secured interests of the Treasury in administrative enforcement*, <https://www.nik.gov.pl/aktualnosci/nik-o-poszanowaniu-interesow-podatnikow-i-zabezpieczeniu-interesow-skarbu-panstwa-przy-egzekucji-administracyjnej.html>.

Public authorities are aware of the income being lost. According to Małecka-Ziemińska (2017, pp. 56-57) more and more new solutions in the field of value-added tax are called for, such as:

- development of IT solutions,
- central invoice register,
- public register of taxpayers' bank accounts,
- limiting the possibility of quarterly settlements in VAT,
- universal standardization of data records,
- extension of the scope of joint and several liabilities,

- limitation of cash payments.

Figure 2. A package of systemic changes to prevent VAT fraud.



Source: Ministry of Finance, <https://www.gov.pl/web/finanse/szancunkowe-wykonanie-budzetu>.

3. Conclusion

Fraud that involves intra-Community transactions has far-reaching consequences. The obvious result is the budget losses of the respective Member States and the introduction of market distortions. In addition, they negatively affect trade within the EU. The tax administration is forced to carry out intensified inspections with particular emphasis on paying attention to the transactions in question. According to Institute of Structural Research (2013, p. 26) this has a direct impact on the increased level of bureaucracy and the undermining of trust between entrepreneurs within the Union.

There is no doubt that measures to reduce VAT crime are a priority and are subtracted on three levels:

- legislative - includes e.g. reverse charge mechanism and joint and several tax liability,
- organizational - e.g. improving the organization of work of organs, the cooperation of services, organs and institutions, both domestic and foreign,
- preventive.

The further need to modernize the VAT system in the EU is undeniable, as evidenced by the tax gap analysis or the need to keep pace with today's digital and mobile economy. In April 2016, the European Commission adopted an action plan on VAT - towards a single VAT area in the European Union. The direction of the system reform that is required is:

- facilitation for enterprises in applying the VAT system - the excessive complexity of regulations hinders operation; especially for small and medium-sized enterprises,
- combating the increasing risk of fraud,
- effective use of the opportunities arising from digital technology and reducing the costs of collecting amounts due,
- basing the system on greater trust.

According to Szostak (2017, pp. 196-197) in order to modernize and simplify EU solutions, current VAT standards should be included in the following action plan for modernizing regulations:

1. The future definitive EU VAT system must limit the possibility of fraud by taxpayers. The current system has been designed as a transitional one and is not secured against fraud. In the PAP's paper (2016) we can find that the system will continue to be based on the principle of taxation in the country of destination of the good, but the method of collecting taxes will be gradually changed.

2. Measures to close the VAT gap must be implemented immediately and taken in three areas:
 - higher effectiveness of administrative cooperation,
 - improving voluntary compliance,
 - improving the functioning of European tax administrations. The plan to integrate the European VAT area provides for treating cross-border transactions in the same way as domestic ones.
3. Modernization of the policy on VAT rates - it is proposed to ensure an appropriate policy on rates, i.e. streamlining the regulatory framework and leaving more freedom to member states. Two options were proposed:
 - maintaining a minimum basic rate of 15% while constantly reviewing the list of goods and services that are subject to reduced rates.
 - abolishing the list of goods and services subject to reduced rates, and freedom in the quantity and amount of reduced rates offered by a given country.
4. Modernization and simplification of VAT in relation to cross-border e-commerce and simplification of rules for SMEs. In the paper by European Commission (2010) we can find that the complexity of VAT rules is a source of administrative burden for companies. According to entrepreneurs, this situation makes the EU a less attractive place to invest.

In the European Economic and Social Committee's opinion (2007) that tax fraud related to intra-Community transactions caused damage at the level of 2 - 2.5% of Community GDP, i.e. around 200 - 250 billion euros per year. Only close cooperation between the competent authorities of individual Member States can reduce these

estimates, all the more so as border control has been lifted as part of intra-Community trade.

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