



OVERVIEW LEGAL PROVISIONS AND SOME DIFFICULTIES ON MANAGING TAX TOWARDS INDIVIDUALS AND BUSINESS HOUSEHOLDS ON E- COMMERCE TRADING PLATFORM UNDER VIETNAMESE LAW

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Abstract:

In recent years, e-commerce activities have developed rapidly and become popular in Vietnam. The article analyzes overview legal provisions and some difficulties of tax management towards individuals and business households on e-commerce trading platform. Thereby, the authors give some recommendations to amend Vietnamese tax laws.

Keyword: e-commerce, tax management, individuals and business households on e-commerce trading platform

1. Introduction

In recent years, the digitalization of Vietnam's economy has been developed significantly, especially e-commerce is one of the fastest growing segments in Vietnam's digital economy¹. According to Vietnam Electronic Commerce and Information Technology Agency (VECITA)'s report, Vietnam's e-commerce market grows 35% per year, 2.5 times faster than Japan. Additionally, the COVID-19 pandemic was a big push for the development of e-commerce, which has enhanced dynamism in the Vietnamese e-commerce trading platform with increasing numbers of digital sellers and buyers². However, the number of business individuals and business households registering tax, declaring, and paying tax is still limited. According to data

¹ Cameron A, Pham T H, Atherton J, Nguyen D H, Nguyen T P, Tran S T, Nguyen T N, Trinh H Y & Hajkowicz S (2019), *Vietnam's Future Digital Economy – Towards 2030 and 2045*, CSIRO, Brisbane.

² Acclime (2022), The e-commerce pivot in Vietnam, <https://vietnam.acclime.com/downloads/industry-reports/Acclime%20e-commerce%20report.pdf>

from the government of Hanoi City, it is shown that from 2017 to the end of 2020, Ha Noi City's Tax Department reviewed and sent SMS notifications and instructions to 13,422 Facebook account holders with online sales activities and only over 2,000 business individuals have registered and been granted a tax code for tax declaration and tax payment (as of the end of 2020). The total amount of taxes and fines collected from business individuals is more than 22.7 billion Vietnamese Dong³.

E-commerce is an inevitable trend in the digital economy in the world and Vietnam. Therefore, it has become a major challenge requiring Vietnamese tax law to keep up with the times to overcome the existing limitations, thereby ensuring a balance of rights and obligations of the relevant subjects. For example, tax registration, declaration, and payment of taxes by individuals and households on online platforms are still a barrier for lawmakers.

2. Definition of e-commerce and e-commerce trading platform

2.1. Definition of e-commerce

E-commerce activities can be conducted via (a) sales e-commerce websites which serve the owners interests through commercial promotion, sales or service supply; or (b) e-commerce service provision websites which include trading platforms, online auction websites, online promotion websites and other websites regulated by the Ministry of Industry and Trade (the "MOIT")⁴. According to the Model Law on Electronic Commerce of the United Nations Commission on International Trade (UNCITRAL), E-commerce is the exchange of commercial information through electronic means, without the need to print out any of these stages of the entire transaction process. This activity does not require the subjects to conduct direct exchange, negotiation, and contract signing like non-electronic. The parties only need to perform transactions by simple operations through electronic means connected to the Internet. Besides, the delivery of goods or payment is also made very flexibly. Through electronic management tools, the seller can know the status of the goods delivered to the buyer, and basically assess the customer's attitude towards the product. On the contrary, the buyer easily gives feedback on the quality of the goods and the way of delivery. The parties can also pay with tools such as

³ Cao Nguyen & Minh Bang (2020), Banks provide account information: Selling goods online is completely tax evasion, <https://laodong.vn/kinh-te/ngan-hang-cung-cap-thong-tin-tai-khoan-ban-hang-online-het-cua-tron-thue-856787.ldo>, accessed from 15th July 2023

⁴ Vu Thi Hao (2019), "E-commerce tax management: Current status and solutions", Journal Financial, pages 68 - 71

bank cards, e-wallets, or through a delivery person (cash on delivery). With the above characteristics, e-commerce has really become a convenient and popular transaction method in the world, including Vietnam. The research showed that Vietnam's e-commerce revenue in 2021 was estimated at 13.7 billion USD, up 16% compared to 2020 and accounting for 7% of the total retail revenue of the country. The significant expansion in e-commerce activities creates some challenges on state administrative agencies, especially tax authorities⁵.

2.2. Definition of e-commerce trading platform

E-commerce website (hereinafter referred to as website) as defined in Article 3, Clause 8 of Decree 52/2013/ND-CP regulating e-commerce, is an electronic information page set up to serve a part or the whole process of buying and selling goods or providing services. These websites function as an e-commerce trading platform. According to the definition in Clause 8, Article 3 Decree 52/2013/ND-CP: *“E-commerce trading platform is an e-commerce website permitting traders, organizations and individuals that are not the website owner to conduct part or the whole of the process of buying and selling goods or services on that website.”*

E-commerce trading platforms are e-commerce websites that allow entities other than the website owners to conduct a portion or all of the process of selling and purchasing goods and services on the same. According to Clause 15 Article 1 of Decree 85/2021/ND-CP, E-commerce trading platforms

can operate in one of the following forms:

- (i) A website allows users to open booths for display and introduction of goods or services.
- (ii) A website allows users to open accounts for carrying out the process of contract conclusion with the users.
- (iii) A website has a sale and purchase section allowing users to post information on sale and purchase of goods and services.
- (iv) A social network that has one of the forms of activities specified above and users directly or indirectly pay service fees for doing such activities.

⁵ Do Thi Nga (2023), *“Experience in e-commerce tax management and lessons for Vietnam”*, Journal of financial and accounting research, pages 89-92

3. Regulations on tax management for individuals and business households doing business on the e-commerce trading platforms.

3.1. Tax Obligations of individuals and business households doing business on the e-commerce trading platforms.

The household businesses and individuals that sell goods and provide services on e-commerce trading platforms are regulated by Circular No.40/2021/TT-BTC guidance on value-added tax, personal income tax and tax administration of household businesses and individuals and Circular No. 100/2021/TT-BTC amendment to some articles of Circular no. 40/2021/TT-BTC.

According to Article 3 and Clause 2 Article 4 of Decree No. 139/2016/ND-CP regulation on licensing fees, individuals and households who have the production and business of goods and services are responsible for paying licensing fee based on their revenues. The licensing fees is classified as following:

- For the individuals, groups of individuals and households with revenues over 500 million dong/year: 1,000,000 dong/year.
- For the individuals, groups of individuals and households with revenues between 300 and 500 million dong/year: 500,000 dong/year.
- For the individuals, groups of individuals and households with revenues between 100 and 300 million dong/year: 300,000 dong/year.

Besides licensing fees, the law on value-added tax, personal income tax and guidance in Articles 1, 2 and 4 of Circular 40/2021/TT-BTC; Clause 2, Article 1 of Circular 100/2021/TT-BTC stipulates:

The household business or business individuals whose revenues from business operation in the calendar year is not exceeding 100 million Vietnamese Dong shall not be required to pay Value-added tax and personal income tax as prescribed by value-added tax and personal income tax laws. Value-added tax and personal income tax apply to business households and individuals who are residents having activities manufacture, sale of goods and services in any of the business lines and sectors, including e-commerce activities.

3.2. Tax declaration methods

The methods of declaring value-added tax and personal income tax for household business or business individuals are regulated as following table 2:

Subject	Method of tax declaration	Legal basis
<p>Large-scale household business or individuals business.</p> <p>Individuals or other household businesses and individuals that choose to pay tax under periodic declarations</p>	<p>Periodic tax declaration</p>	<p>Clause 2 Article 3, Article 5 of Circular No.40/2021/TT-BTC</p>
<p>Individuals who have casual business operations and do not have fixed business locations.</p> <p>Individuals who have mobility businesses;</p> <p>Individuals that are private construction contractors;</p> <p>Individuals transferring Vietnam’s top-level domains “.vn”;</p> <p>Individuals earning incomes from digital information products and/or services that do not choose to pay tax under periodic declarations.</p>	<p>Separate tax declaration</p>	<p>Article 6 of Circular No.40/2021/TT-BTC</p>
<p>Household businesses and individuals who do not pay tax under periodic declarations and separate declarations</p>	<p>Fixed tax</p>	<p>Article 7 of Circular No.40/2021/TT-BTC</p>

3.3. Tax liability for business activities of individuals or business households on e-commerce trading platform.

According to Article 3 of Vietnamese Law on Tax Administration 2019, it is stipulated that “*tax means a compulsory amount payable to the state budget by organizations, households, household businesses, individuals as prescribed by tax laws*”. At present, there is no separate legal document on tax administration in e-commerce activities, however, e-commerce policies are stipulated in relevant documents such as: Law on Electronic Transactions 2023, Law on commerce 2005, Law on Tax Administration 2019 and several Decrees and Circulars related to e-commerce⁶. Basically, current taxes such as value-added tax, personal income tax (for individuals doing business based on e-commerce activities), corporate income tax (for legal entities doing business based on e-commerce activities), special consumption tax (for taxable goods and services), import tax (for goods imported into Vietnam) may arise and business entities based on e-commerce activities will be the entity who is obligated to pay these taxes.

4. Difficulties on managing tax towards business individuals, household businesses on e-commerce trading platforms.

4.1. Regarding the management of information by tax authorities towards individuals and business households.

For e-commerce transactions through trading platforms, there are many problems that arise when performing these activities. For instance, the customer-to-customer (C2C) model does not require the user to register tax, therefore, tax authorities cannot really grasp the tax source, and it is more difficult to know information about the subject of tax management. Accordingly, individuals or business households participating in e-commerce trading platforms, especially in C2C model can post products, classify products, or create their own page and do not provide services such as delivery, guaranteed payment. Most of the individuals participating in trading on the e-commerce platform do not register for tax, do not submit tax dossiers, and pay tax because the transactions are completely online with virtual accounts, easy to hide their identity and very difficult to verify the address, business scope of accounts. In e-commerce transactions, traditional invoices are hardly used, but digital data is used more. However, current tax

⁶ Nguyen Trung Duong & Le Nhat Hong (2019), “*Tax management for e-commerce activities - Current situation and some recommendations*”, Journal of Law and Practice, No. 40, pages 17-29

administration methods cannot adapt to this change, and traditional audit and information collection processes are difficult to implement in e-commerce businesses.

4.2.Regarding identifying the competent tax authorities for management transactions on the e-commerce trading platform.

The current common tax collection and management model is tax registration; processing tax declarations and documents; tax debt collection management; tax refund consideration; tax finalization; tax exemptions. For traditional businesses with a strict management system from bank accounts to tax registration and sales invoices⁷. In the management of taxpayer information of e-commerce activities, the collection and management of taxpayer information so that tax authorities can build a database of taxpayer information for tax purposes. Tax administration plays a very important role.

When applying current Vietnamese regulations to determine the competent tax authority to manage in each case of business through an e-commerce trading platform, the following shortcomings occur:

Firstly, according to Clause 5, Article 3 of Circular 80/2021/TT-BTC in elaborating of some articles of Vietnamese Law on tax Administration 2019, tax authority directly managing is responsible for the tax administrative division in the case, where:

- (i) The headquarters of taxpayers, except major corporations, are directly managed by the Large Taxpayers Department affiliated to General Department of Taxation that are established under the Prime Minister's Decision No. 15/2021/QD-TTg dated on 30/3/2021.
- (ii) The taxpayer has a dependent unit that is different from the province where the taxpayer is headquartered, but the dependent unit directly declares tax with the local tax authority.

Therefore, tax authority directly managing will be determined according to the taxpayer's location. In fact, on the e-commerce trading platform, the criteria on location should only be

⁷ Nguyen Thi Phuong Thu & Dau Tam Quang (2022), "The current state of electronic commerce tax management in Vietnam", Financial Business Magazine

applied to website owners which operate e-commerce trading platforms, but it is difficult to apply to sellers trading platforms, especially small businesses.

Secondly, according to the provisions of Articles 32, 45, 56 of the Vietnamese Law on Tax Administration 2019, the tax authority is competent at each stage in the tax administration process, giving rise to different competent tax authorities at different stages. To be illustrated, Ms. A resides in Ho Chi Minh City and she has an online store on an e-commerce trading platform, the products of Ms. A's online store are bought and used by consumers in different provinces, different cities as well as different countries. According to Article 32 of Vietnamese Law on Tax Administration 2019, as an individual doing business, Ms. A submits her applications to register tax at tax authority of the area where her headquarter is located, which is sub-departments of Taxation in Ho Chi Minh City. However, according to Clause 1, point b clause 4 of Article 45 of Vietnamese Law on Tax Administration 2019 and Clause 3 Article 11 of Decree No. 126/2020/ND-CP: Taxpayers submit tax declaration dossiers at their tax authorities directly managing, in the case he/she does business in multiple areas, tax declaration dossiers shall be submitted to the tax authorities in charge of such areas. From the above-mentioned legal bases, the competent authorities to receive Ms. A's tax declaration dossiers are the tax authorities in the provinces/cities where Ms. A's consumers have purchased and used goods⁸. The above provisions clearly indicate the following points of inconsistency: in some cases, the tax registration authorities and the tax authorities where are submitted are different, in that reason, it will cause some difficulties for taxpayers.

Thirdly, clause 3 article 11 of Decree No. 126/2020/ND-CP stipulated: "*The competent authority to submit tax declaration dossiers for business households and individuals with production and business activities in multiple areas is the tax authority where the production and business activities are located*". According to the legal provision, the above entities must submit tax declaration dossiers in all localities where their production and business activities cause inadequacies in compliance with tax obligations. Back to the nature of business on the e-commerce trading platform, the entity participates in business activities in multiple places, however, they do not have a physical presence to comply with tax obligations. In addition, the

⁸ Lam Sy Minh, Nguyen Sy Huy; Phung Thu Phuong (2022), "Enhance the legal framework for tax management for electronic commerce platforms", Prosecution Magazine, page 49

provision of Clause 3, Article 11 of the Decree No. 126/2020/ND-CP does not clarify “the area” in this provision is determined based on province/city or district level.

Fourthly, in the management of individuals and business households on e-commerce trading platforms, there are also many difficulties because there is no consensus in the management of these government organizations, in the case of individuals who operate business independently, frequently, without a fixed location, there is no need to register a business. Therefore, if these individuals do business online on e-commerce trading platforms, it is necessary to have the coordination of different government organizations. There still are lacks regulations on management coordination between tax authorities and other government organizations. At present, the regulations on managing tax of individuals and business households doing business on e-commerce trading platforms are contained in many different legal documents making it difficult for taxpayers to access these regulations.

Fifth, the rapid development of the digital economy, especially e-commerce, poses new challenges for tax management. For example, tax authorities lack in-depth expertise in this field, leading to difficulties in identifying subjects, collecting information, inspecting, and monitoring. In addition, the number of individuals and households doing business on e-commerce platforms is too large, leading to much pressure and difficulties for tax authorities in processing.

4.3.Regarding collecting, processing information, data of taxpayers on the e-commerce trading platform.

At present, there are some limitations on tax management when adjusting for e-commerce trading platforms are as follows:

Firstly, the definition of “taxpayer information” in clause 19 article 3 Vietnamese Law on tax Administration 2019 is quite narrow: “*taxpayer information means information on taxpayers and their tax liabilities provided by taxpayers or collected by tax authorities during the process of tax administration*”. This regulation is understood that the two responsible entities that are responsible for providing and collecting information are taxpayers and tax administration authorities. In the position of taxpayers, Vietnamese law allows taxpayers to self-declare their income and revenue levels from which to calculate the payable tax value. However, for e-

commerce activities, the mechanism to control the truthfulness and objectivity in “*voluntary declaration*” is still not feasible⁹.

Secondly, according to Clause 4, Article 98 of Vietnamese Law on tax Administration 2019, other entities relevant to taxpayers shall provide physical or electronic information at the request of tax authorities. Besides, Article 7 of Decree 91/2022/ND-CP for addition Clause 8 to Article 27 of Decree No. 126/2020/ND-CP regulates the responsibility to provide information of the owner of an e-commerce trading platform. To be illustrated, the owner of e-commerce trading platforms has the responsibility to provide fully, accurately, and on time to the tax authority information of the trader, organization or individuals that has conducted part or the whole of the transaction relating to the buying and selling of goods and services on an e-commerce platform, including: sellers’ names, taxpayer identification numbers, ID numbers or passport numbers, addresses, phone numbers; revenue from online orders. Information shall be provided electronically every quarter by the last day of the first month of the succeeding quarter via the web portal of General Department of Taxation in the format announced by General Department of Taxation. This regulation also reflects some shortcomings on some e-commerce trading platforms such as batdongsan.com, chotot.vn. In practical, these platforms do not directly participate in transactions between buyers and sellers, which cannot collect or have information about bank account information, identification number, tax code, address of buyer/seller, moreover, a lot of information about virtual buyer and seller, virtual value, or psychology of tax evasion has long been considered difficult to determine¹⁰.

In the order hands, owners of e-commerce trading platforms also have the right to declare and pay tax on behalf of individuals under authorization according to the regulations of civil laws according to Clause 2 Article 1 of Circular No. 100/2021/TT-BTC to amend point d Clause 1 of Article 8 of Circular No. 40/2021/TT-BTC. This causes the problem in case the individuals do not voluntarily authorize, the owner’s e-commerce trading platform is not required to declare and pay taxes on behalf of the individuals business as well as must provide information to the

⁹ Nguyen Trung Duong & Le Nhat Hong (2019), “Tax management for e-commerce activities - Current situation and some recommendations”, Journal of Law and Practice, No 40, pages 17-29

¹⁰ Hong Vinh (2023), *Collecting taxes on e-commerce platforms: There are still many concerns*, <https://vneconomy.vn/thu-thue-san-thuong-mai-dien-tu-van-con-nhieu-ban-khoan.htm>, accessed from 8th August 2023

tax authority¹¹. This creates “a loophole in the law” for many individuals doing business on e-commerce trading platforms to take advantage of deliberately not paying taxes by many tricks to bypass the control of the tax authorities.

Thirdly, according to Clause 6 of Article 27 of Decree No. 126/2020/ND-CP, it is stipulated “*Other organizations and individuals shall provide information in accordance with the Law on Tax Administration and relevant laws*”. This provision does not specify in which case the related subjects should carry out supporting activities to help tax authorities, or the related subjects are only responsible for providing information when they are requested in writing by tax authorities. Moreover, the failure to prescribe sanctions in cases where relevant organizations and individuals do not carry out this responsibility will be a major shortcoming.

Fourthly, the difficulty for tax authorities is not determining the exact revenue of these individuals and business households on e-commerce trading platforms. In practice, the buyer does not require a VAT invoice, so it will be difficult to know the exact revenue, in many cases the tax authorities need to compare information from many different sources and must track down the actual payment information.

4.4.Regarding the attitude of users

Firstly, the awareness of taxpayer’s compliance is a challenge. Currently, the management of tax declaration faces many difficulties because most business individuals and business households doing business in e-commerce trading platforms find ways to avoid paying taxes timely and accurately, which is seen as “tax evasion”.

Secondly, according to clause 2 Article 30 of Decree No.126/2020/ND-CP, Commercial banks shall provide information about taxpayers’ s current/savings accounts opened at the banks for tax authorities, provide information about each taxpayer's current account, including: name of the account holder, account number according to the tax identification number granted by the tax authority, date of account opening, date of account closing, transaction information via accounts, account balances, transaction data for the purpose of inspection, examination and determination of payable tax obligations and implementation of measures to enforce enforcement of administrative decisions on tax administration. To circumvent the regulation,

¹¹ Lai Huyen Phuong (2023), *Tax management for e-commerce business activities in Vietnam*, Master thesis, Hanoi National University

some individuals doing business on e-commerce trading platforms have used other accounts opened at other banks that are not registered with tax authorities, thus all revenue of selling goods/services are not made tax declaration. Besides, to avoid being reviewed by the tax authorities about the transaction activities of the bank accounts, some individuals and business households conducting transactions on e-commerce trading platforms often ask their customers to pay via bank transfers¹² and only specify the name of sender or/and the phone number instead of specifying the name of the product or service on transfer description. This is a way to avoid the inspection and supervision of tax authorities. Additionally, some individuals and online business households have requested buyers to transfer payments via e-wallets which have not been licensed in Vietnam such as PayPal. These e-wallets will cause difficulties for Vietnamese tax authorities when conduct inspection and review taxpayers.

5. Some recommendations for Vietnamese law

Firstly, it is necessary to expand and develop the tax agent system.

According to Clause 1 Article 101 of Vietnamese Law on Tax Administration 2019, Tax agents “*is an enterprise that is established and operates in accordance with enterprise laws and provides services for taxpayers under agreements*”. In many countries such as China, South Korea, Japan, tax agents are a common type of tax intermediary, which are seen as an “extension arm” of the tax authority, however, tax agents have not been popular in Vietnam. According to the Vietnam Tax Advisory Association, as of 2022, there are only 859 tax agents nationwide¹³. Individuals and business households are those who have limited knowledge of tax regulations, so they need professional consulting services such as tax agents to help them. Therefore, it is necessary to expand and develop the tax agent system to support tax procedures for authorized persons. Besides, tax agents also help reduce the workload for tax administration authorities, limiting errors if taxpayers do not understand the regulations on tax.

Secondly, it is necessary to make compulsory regulations on the registration of providing information on e-commerce trading platforms.

¹² VTV (2020), *Online sellers use many tricks to avoid taxes*”, <https://vtv.vn/kinh-te/dan-ban-hang-online-tung-nhieu-chieu-ne-thue-20201225102819473.htm>

¹³ Gia Cu (2022), *Tax agents: “Extended arm” of the tax agency*, <https://thoibaotaichinhvietnam.vn/dai-ly-thue-can-h-tay-noi-dai-cua-co-quan-thue-100862.html>

Any individuals or business households doing online business must provide their information related to their business operations with the tax authorities. Additionally, Vietnamese Law on Tax Administration 2019 shall supplement the regulations on requiring e-commerce trading platforms owners to collect information of individuals and households doing business on their platforms prior to allow subjects to sign up account. E-commerce platform owners are only allowed to grant accounts to participate in the platform after comparing taxpayer's information to be correct. This will facilitate tax authorities in requiring taxpayers to fulfill their tax obligations if individuals or households doing business on the platform have any tax liabilities.

Thirdly, it is necessary to set up specialized divisions to manage tax on e-commerce activities at tax authorities.

It is evidenced that South Korea have had positive results in tax administration for e-commerce when establishing specialized tax administration department for e-commerce. South Korea establishes a specialized department to tax administration, that is the Department of E-commerce Tax Administration. This department is responsible for analyzing trends in e-commerce related industries and tax evasion questions. The information can be collected from various sources such as from the General Statistics Office of South Korea, the Association of Online Store Managers in South Korea or collected from the business's sales websites, from which specialized departments can detect suspicions of tax evasion by businesses. More addition, South Korea has a High-Tech Tax Evasion Center under the South Seoul Regional Tax Department to investigate tax evasion cases for e-commerce activities. This center has highly qualified tax professionals and information officers. At the remaining regional tax departments, there are specialized information technology officers to support. This center is responsible for detecting tax evasion cases and collecting evidence to fight and require taxpayers to fulfill their tax obligations¹⁴.

Fourthly, it is necessary to modify the location for taxpayers to submit tax declaration dossier according to Clause 3 Article 11 of Decree 126/2020.

¹⁴ Chu Van Hung (2023), *Experience in e-commerce tax management from Japan and Korea*, https://www.gdt.gov.vn/wps/portal!/ut/p/z0/1Y69asMwFEZfJR08CI3LkmyNJYGShkALjRtrMVeW_FMSOSZq2rx9hQOIUyHTdw58w6GaVjyTXArGc7qn2uNl6DAMo8dD9ErLevm6WZabEqDYvaxgvd3m5W69AnjL6TPV3WE0t-vwMU36kepm9MF9B7rvbFjM4kMCZ6yiz3tBb9D_wVOPp-nzmsBN68gu2MH3CTBgaQKFNNIWXBFEOxKe, accessed from 8th August 2023

Taxpayers who have business operations in multiple areas shall submit tax declaration dossiers to the provincial tax authorities where they are headquartered, permanent establishments. The provincial tax authorities are responsible for responsible for sending information to other localities (where business activities of taxpayers occur).

6. Conclusion:

Aligned with the development of digital technology and the trend of economic globalization, business on e-commerce platform has become one of the most popular and attractive business trends today. With many outstanding features and advantages compared to traditional business forms, business on e-commerce trading platform attracts more and more not only individuals, business households but also organizations. However, it also presents lots of challenges for tax authorities due to the inadequacies in the provisions of the current law as well as the increasing tax evasion activities of individuals and business households on e-commerce trading platforms.

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