



**TC04189**

**Appeal number: TC/2009/14920**

*INCOME TAX – Post Office Network Reinvention Programme – whether compensation payment fully taxable on appellant sub-postmaster (to the extent exceeding £30,000) – s 403 ITEPA – appellant in partnership with his wife – whether taxable amount reduced by (a) a redundancy payment to the appellant’s wife in respect of her employment in the sub-post office part of the business, and (b) expenses to remove trappings of the Post Office – s 409*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**HARIKRISHNA S PATEL**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY’S    Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE ROGER BERNER  
                         MR MICHAEL SHARP FCA**

**Sitting in public at Fox Court, Gray’s Inn Road, London WC1 on 5 December  
2014**

**Andrew Young, instructed by Amin Patel & Shah, Accountants, for the  
Appellant**

**Ms Marie McGregor, HM Revenue and Customs, for the Respondents**

## DECISION

1. The appellant, Mr Patel, appeals against an assessment issued on 15 November  
5 2007 for the year ended 5 April 2005 in respect of a payment of £76,008.89 received  
by Mr Patel from the Post Office as compensation for the loss of his office of sub-  
postmaster. That payment, to the extent it exceeds an exempt amount of £30,000, has  
been assessed to income tax under s 403 of the Income Tax (Earnings and Pensions)  
Act 2003 (“ITEPA”).

10 2. Although there has been some history to the dispute between the parties, the  
position arrived at for the purpose of this appeal is that there is no challenge to the  
applicability of s 403. Mr Patel’s case is that the taxable amount falls to be reduced  
by a deduction in respect of a redundancy payment made by Mr Patel to his wife, Mrs  
Bharti Patel, in the sum of £37,122, and by certain costs associated with the removal  
15 of fixtures and fittings associated with the post office business.

### The facts

3. We had witness statements from each of Mr and Mrs Patel and from their  
accountant, Mr Dilip Amin. Each of the witnesses gave oral evidence, subject to  
cross-examination by Ms McGregor for HMRC. We were also referred to a number  
20 of documents.

4. As regards the witness evidence, it became apparent during Mr Patel’s oral  
evidence that he was apt to be rather confused. Mr Young explained that Mr Patel  
had wished to give evidence so as to assist the Tribunal, but his state of health was  
such that his memory was impaired. Although we had no medical evidence before us,  
25 it was evident that, although Mr Patel was genuinely attempting to help the Tribunal,  
his evidence was of little value. We have decided to disregard Mr Patel’s evidence.  
It was not, in the event, material, as Mrs Patel was able to give evidence covering all of  
the matters dealt with in Mr Patel’s witness statement.

5. From the evidence to which we have had regard, we make the following  
30 findings of fact.

6. In 1987 Mr and Mrs Patel purchased a retail newsagents’ business at 5 Mount  
Parade, Cockfosters in which the former owner had run a sub-post office. The  
purchase had been at the suggestion of Mrs Patel, who was at that time employed by  
National Westminster Bank, to fit in with the family’s lifestyle with a small child.

35 7. Before the purchase was concluded, Mr Patel applied to the Post Office to  
become a sub-postmaster. That process included an interview with the Post Office,  
which Mrs Patel also attended. Mr and Mrs Patel explained that they would be jointly  
running the business, with Mrs Patel taking responsibility for the sub-post office side,  
but the Post Office had stated that the appointment as sub-postmaster could only be  
40 given to one person, and that Mr Patel would be so appointed. Mrs Patel was  
informed that she would have to complete the forms on an employee basis. Those

forms were duly completed and sent to Post Office Counters Limited (“POC”). Mrs Patel was approved, and on that basis Mr Patel was appointed. Mrs Patel then undertook training provided by the Post Office.

5 8. The entire business of the shop and the sub-post office was run as a partnership  
between Mr and Mrs Patel, with profits being shared equally. There was no written  
partnership agreement. Partnership accounts were produced, which included, as  
“Other Income”, the Post Office remuneration paid to Mr Patel. Mrs Patel did not  
receive a separate salary or wages in respect of her sub-post office work. All receipts,  
including those related to Mr Patel’s appointment as sub-postmaster, were paid into a  
10 joint business account.

9. Throughout the period of running the shop, it was Mrs Patel who ran the sub-  
post office side. She managed the sub-post office accounts and dealt with the area  
manager of POC; the area manager always made contact with Mrs Patel. The sub-  
post office took up between one-third and one-half of the floor space of the shop.

15 10. The sub-post office side of the business was closed in June 2004, as part of the  
Post Office Network Reinvention Programme. Mrs Patel told us that, in around April  
or May 2004, she had made enquiries with POC by telephone as to what rights she  
might have to a redundancy package, and had been informed that she had a right to  
redundancy pay, but that such rights would be against her employer, Mr Patel. Mrs  
20 Patel also said that she had made enquiries of ACAS, who had given her the same  
information, and who had referred her to an advice leaflet issued by the Employment  
Rights Advice Service, Low Pay Unit, entitled *Statutory Redundancy Pay*.

25 11. Mrs Patel had then enquired of Mr Patel whether she was entitled to redundancy  
pay. He had acknowledged that Mrs Patel was entitled to notice pay and redundancy  
pay.

30 12. The sub-post office closed on 7 June 2004. Mr and Mrs Patel continued running  
the remainder of the business in partnership. On 15 June 2004, Mr Patel received a  
payment of £76,008.89 from the Post Office to compensate him for the loss of his  
office of sub-postmaster. That payment was sent by the Post Office directly to the  
joint business account of Mr and Mrs Patel. We did not have any documentation in  
relation to the particular payment made to Mr Patel, but we infer the position from  
contemporaneous standard materials published by the Post Office:

(1) The compensation payment represented, in its entirety, compensation for  
loss of office.

35 (2) Mr Patel fell within the category of sub-postmasters appointed before 1  
April 1999, for whom the amount of compensation was calculated on the basis  
of a formula, being equal to 28 months’ remuneration based upon the sub-  
postmaster’s most highly remunerated full financial year since 1 April 1999.  
No specific liabilities were included in the calculation: it was made clear that  
40 Post Office Ltd would not be responsible for any costs associated with the  
closure of the sub-post office, except for the costs of removing or disabling Post  
Office Ltd equipment.

13. On 22 June 2004, various cheque payments are recorded as having been made out of Mr and Mrs Patel's joint account, including one for £62,000. The evidence was that this sum included the amount of £37,122 said to have been due to Mrs Patel by way of a package for termination of her employment in the post office part of the business. However, we are not satisfied on the evidence that the cheque payment for  
5 £62,000 did include such a payment by way of compensation, nor that it was paid to Mrs Patel as opposed to being moved from one joint account to another.

14. According to a letter from Amin Patel & Shah to HMRC, which set out the original grounds of appeal to this Tribunal, on a partnership basis the compensation  
10 payment was to be split equally between Mr and Mrs Patel, with each having a deduction for compensation (cost of goodwill) paid by Mr and Mrs Patel to the outgoing sub-postmaster on their acquisition of the business in 1987.

15. Mr Amin confirmed that his view as to the correct treatment of the compensation payment had changed during the course of the investigation and discussions with HMRC when, he said, it had become evident to him that Mrs Patel  
15 was an employee in respect of the sub-post office. He explained that tax returns had not been made on the basis of any employment relationship by virtue of a concession whereby amounts were accounted for as profits of the partnership under Schedule D. However, although such concessional treatment had been accepted by HMRC in  
20 respect of Mr Patel, Mr Amin was not able to point to any such acceptance in the case of Mrs Patel.

16. Thus, no amounts had been returned for Mrs Patel as employment income. We find also that Mr Patel was not registered as an employer for PAYE. Indeed, there was no evidence of any PAYE registration for the business. Mr Amin's evidence in  
25 this regard, when he suggested that a different department of his firm might have filed employer returns on behalf of Mr Patel or the partnership, was unconvincing. We find that no such returns were ever filed, and that neither Mr Patel nor the partnership was registered as an employer for PAYE. We also find that no payments were made  
30 by Mr Patel to Mrs Patel by way of salary or wages or otherwise in the capacity of employer and employee.

17. A revised return for Mr Patel was sent to HMRC in respect of tax year ended 5 April 2005. There was some dispute as to whether this had been properly filed, but we do not consider that question to be material. In that return, which was dated 16  
35 June 2011, Mr Patel for the first time included as employment income an amount in respect of the payment received from the Post Office. The amount returned, which was expressed to have been derived from a P60 or P45, was £46,008. Expenses were claimed, first in respect of professional fees and subscriptions in the sum of £1,763, and secondly in the sum of £37,122, being "redundancy and notice pay paid to the employee". The return also included, in relation to partnership profit of £17,006, a  
40 claim for overlap relief of £7,623.

18. A revised return was also sent in respect of Mrs Patel, also signed on 16 June 2011. That return included employment income of £7,122, and made the same claim for overlap relief in respect of partnership profits as that made by Mr Patel.

19. It can be seen, therefore, that in respect of Mr Patel, the amount of employment income returned by him was the sum received from the Post Office (£76,008) less £30,000 claimed to be exempt under s 403 ITEPA. The expenses were set against that net figure. In respect of Mrs Patel, on the basis that the payment to her was a payment  
5 of compensation for loss of office, the amount returned was the sum of £37,122 less an exempt amount of £30,000.

20. None of the figures appeared on any P45 or P60. The only P45 received by Mr Patel for the relevant period was that dated 11 June 2004, which showed the ordinary remuneration for the year in question, and did not refer to the compensation payment.  
10 Our understanding is that such payments are made gross (on the basis of an NT tax coding) in the case of sub-postmasters for whom agreement has been reached with HMRC for their sub-postmaster income to be accounted for as part of the receipts of a business under Schedule D. The Post Office separately notifies the payments to HMRC.

15 21. Separately, Mr Patel claims a deduction from his compensation payment in respect of what is described as “removal of the trappings” of the Post Office. The evidence was that certain work had been carried out on the premises consequent upon the business ceasing to operate as a sub-post office. In this respect we saw what appears to be a purchase order dated 24 January 2006, addressed to Mr and Mrs Patel,  
20 specifying a job date of 27 February 2006 or 6 March 2006. That order includes a reference to “remove existing post office and existing fittings”, and goes on to describe a refit according to a drawing that we did not see.

22. The total price, before VAT (which, we understand, was fully recoverable), amounted to £19,500. Of this, the sum of £5,000 plus VAT of £875 was initially paid  
25 by W H Smith, effectively by way of interest-free loan to Mr and Mrs Patel’s business, and which we understand was recovered by W H Smith on an instalment basis by direct debit from their account. Invoices for the work were issued to Mr Patel (alone) and to W H Smith on 3 March 2006.

23. We find that none of this work was required to be undertaken by the Post  
30 Office. It was the Post Office itself, at its own expense, that had removed the “trappings” of the sub-post office, in the form of the logos and other identifying features. The Post Office, albeit after some delay, removed the safe, which belonged to POC, again at its own expense.

24. We are satisfied, and we find, that the work carried out in February/March  
35 2006, although it involved removal of fittings that had been used for the purpose of the sub-post office, was part of a reorganisation of the shop. We heard that the space formerly occupied by the sub-post office was used for shelves and racks for greetings cards. The work that was done was in consequence of the termination of Mr Patel’s office as sub-postmaster, but it was for the purpose of the remaining business.

## Discussion

### *Analysis on the facts*

25. Turning first to the claim in respect of a redundancy payment to Mrs Patel, we find that Mrs Patel was not an employee of Mr Patel. Mr Young argued that, absent a  
5 challenge to the truthfulness of the witnesses, we should accept the statements made by Mr and Mrs Patel as to their employer/employee relationship. We reject that submission. Any view expressed in that regard by Mr and Mrs Patel is not evidence of fact, but an expression of opinion on one of the very issues required to be addressed by this Tribunal. It is clear, from the arguments addressed to us, that this is  
10 a matter of dispute, and it is not one that can be resolved by the subjective views of either party.

26. For an employment to exist, the relationship must be one of employment in substance, and not just in name. We even doubt if, until the question arose in the course of the investigation and appeal, Mr and Mrs Patel ever referred to themselves  
15 in this respect as employer and employee. Although we agree with Mr Young that it is not necessary for there to be a written contract of employment, it is not possible to establish an employment without some evidence of such a relationship. There is none.

27. We are not persuaded otherwise by Mrs Patel's evidence of her conversations  
20 with the Post Office and ACAS. Even if, which we doubt, Mrs Patel had fully informed those organisations of the position she occupied, expressions of opinion as to the matter of redundancy are no more than that, and cannot make up for the paucity of evidence as to the existence of an employment.

28. Nor does the evidence of Mrs Patel having at the outset submitted employee  
25 forms to the Post Office, and having received training, affect the position. Such checks as the Post Office required to be made were necessary whatever the relationship between Mr and Mrs Patel was to be. So too is training as consistent with the partnership relationship as it would be for an employee. The employee forms were submitted at the outset, even before Mr Patel was appointed as sub-postmaster.  
30 They cannot be in any way determinative of the subsequent position, for which there is no evidence that an employment relationship was ever created.

29. Mr Young submitted that if, as she said she would have done if Mr Patel had not agreed to her being paid a redundancy payment and payment in respect of notice, Mrs  
35 Patel had made a claim for unfair dismissal to the Employment Tribunal, her rights as an employee would have been recognised. That submission, with respect, can take the matter no further. It amounts to speculation, and in our view speculation without substance. We are not concerned with a finding that might be made in a hypothetical case before a different tribunal. We are required to make our own finding on the basis of the evidence before us.

40 30. The clear finding we make is that at no time was Mrs Patel an employee of Mr Patel. She was a partner in the whole business, including the sub-post office, and as such was entitled to 50% of the profits. As a matter of the partnership arrangements

between them, Mr Patel accounted to the partnership for his receipts as office holder; as a result of such accounting, and in accordance with the operation of the concession agreed in this respect with HMRC, those receipts became partnership income. The compensation received by Mr Patel was accounted for in the same way, although the  
5 concessionary treatment expressly does not apply to it. Mrs Patel was not entitled to a redundancy payment (and we are not satisfied in any event that any such payment was made to her).

31. Accordingly, irrespective of our view as to the law in respect of such a deduction, there can be no such deduction for a redundancy payment in this case.

10 32. We make a similar finding with respect to the claim for a deduction for the cost of removing Post Office trappings. In our view, no relevant cost was incurred by Mr Patel. The work done, and for which Mr Patel (or, more likely, the partnership) paid £19,500 (net of VAT), was not a liability referable to the termination of his office of  
15 sub-postmaster, but was an expense of the partnership business in renovating the business premises following that termination, and following the removal by the Post Office (at the expense of the Post Office) of the relevant trappings.

33. Again, therefore, irrespective of our view of the law, there can be no deduction for the amount of £19,500 paid for the work done on the premises in February/March 2006.

20 *The law*

34. We turn to the law. Under s 7 ITEPA, “employment income” is defined as meaning (a) earnings within Chapter 1 of Part 3, (b) certain amounts treated as earnings, and (c) any amount which “counts as employment income”. Payments and  
25 benefits on termination of employment fall into Chapter 3 of Part 6 ITEPA, and so are in the category of amounts which count as employment income (s 7(6)(a)). They are, accordingly, neither earnings nor amounts treated as earnings, and the provisions dealing with those specific categories are not applicable.

35. The applicable provisions are those in Part 6, Chapter 3, or which are specifically referred to in that Chapter. Section 401 ITEPA sets out what payments  
30 and benefits Chapter 3 applies to. It provides:

**“401 Application of this Chapter**

(1) This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with—

- 35 (a) the termination of a person's employment,  
(b) a change in the duties of a person's employment, or  
(c) a change in the earnings from a person's employment,

by the person, or the person's spouse or civil partner, blood relative, dependant or personal representatives.

...

(3) This Chapter does not apply to any payment or other benefit chargeable to income tax apart from this Chapter.

(4) For the purposes of this Chapter—

5 (a) a payment or other benefit which is provided on behalf of, or to the order of, the employee or former employee is treated as received by the employee or former employee, and

(b) in relation to a payment or other benefit—

10 (i) any reference to the employee or former employee is to the person mentioned in subsection (1), and

(ii) any reference to the employer or former employer is to be read accordingly.”

36. The charge to tax on a payment or benefit is provided for by s 403:

**“403 Charge on payment or other benefit**

15 (1) The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.

20 (2) In this section “the relevant tax year” means the tax year in which the payment or other benefit is received.

...

25 (4) For the purposes of this Chapter the amount of a payment or benefit in respect of an employee or former employee exceeds the £30,000 threshold if and to the extent that, when it is aggregated with other such payments or benefits to which this Chapter applies, it exceeds £30,000 according to the rules in section 404 (how the £30,000 threshold applies).

...”

30 37. Section 409 contains an exception for payments and benefits in certain circumstances, including in respect of employee liabilities. It provides:

**“409 Exception for payments and benefits in respect of employee liabilities and indemnity insurance**

(1) This Chapter does not apply to a payment or other benefit received by an individual if or to the extent that—

35 (a) in the case of a cash benefit, it is provided for meeting the cost of a deductible amount, or

(b) in the case of a non-cash benefit, it is or represents a benefit equivalent to the cost of paying a deductible amount.

40 (2) For the purposes of this section “deductible amount” means an amount which meets conditions A to C.

(3) Condition A is that the amount is paid by the individual.



(4) Condition B is that a deduction for the amount would have been allowed under section 346 from earnings from the relevant employment, if the individual still held the employment when the amount was paid.

5 (5) Condition C is that the amount is paid at a time which falls within the run-off period.

(6) In this section and section 410—

“relevant employment” means the employment mentioned in section 401(1);

10 “run-off period” means the period which—

(a) starts with the day on which the relevant employment terminated, and

(b) ends with the last day of the sixth tax year following the tax year in which the period started.”

15 38. Section 409(4) refers to s 346 ITEPA:

**“346 Deduction for employee liabilities**

(1) A deduction from earnings from an employment is allowed for any or all of the following—

20 A Payment in or towards the discharge of a liability related to the employment.

B Payment of any costs or expenses incurred in connection with—

(a) a claim that the employee is subject to a liability related to the employment, or

25 (b) proceedings relating to or arising out of a claim that the employee is subject to a liability related to the employment.

...

30 (2) But a deduction is not allowed for a payment which falls within paragraph A or B if it would be unlawful for the employer to enter into a contract of insurance in respect of the liability, or costs or expenses, in question.

(2A) Nor is a deduction allowed for a payment which falls within paragraph A, B or C if the payment is made in pursuance of arrangements the main purpose, or one of the main purposes, of which is the avoidance of tax.

35 ...”

39. The expression “liability related to the employment” employed in s 346 is explained in s 348, which relevantly provides:

**“348 Liabilities related to the employment**

40 For the purposes of this Chapter each of the following kinds of liability is related to the employment—

A Liability imposed upon the employee because he did an act, or failed to do an act—

- (a) in his capacity as holder of the employment, or
- (b) in any other capacity in which he acted in the performance of the duties of the employment.”

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*The nature of the receipt*

40. We were referred to the case of *Uppal v Revenue and Customs Commissioners* [2010] UKFTT in this tribunal, which concerned similar facts to those in this case. There, the tribunal held, at [31], that the termination payment was received by the sub-postmaster in his capacity as a partner with his wife in the partnership. It was, the tribunal decided, partnership property, to which the taxpayer and his wife were entitled in equal shares. The tribunal considered that the taxpayer could only be regarded as having “received” one-half of the payment. The other half, in the view of the tribunal, fell to be regarded as having been “received” by the taxpayer’s wife.

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41. The tribunal nonetheless held that, having regard to s 401(1) ITEPA, the receipt of one-half of the payment by the taxpayer’s wife was “directly in consideration or in consequence of, or otherwise in connection with” the termination of the taxpayer’s office as sub-postmaster. Accordingly, the effect of s 401(1) and s 403 was that both halves of the payment were, to the extent exceeding £30,000, counted as employment income of the taxpayer.

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42. Although that conclusion was reached in *Uppal*, we do not make the same finding in this case. In our view, the capacity in which Mr Patel received the termination payment was the same as the capacity in which he received the normal remuneration from the Post Office, namely as the holder of the office of sub-postmaster. That was the source of the payments, whether of normal remuneration or the termination payment. The fact that Mr Patel made arrangements, through the partnership, to share those receipts with Mrs Patel does not alter the nature of his own receipts. Nor is that affected by the fact that the Post Office, knowingly or otherwise, made payments into a joint business account of Mr and Mrs Patel. We find that the only relevant receipt was that of Mr Patel in respect of the whole termination payment, and no recourse is required to the extension of the meaning of his employment income to include receipts of Mrs Patel.

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43. We are not, therefore, faced with the oddity identified by the tribunal in *Uppal*, at [32], that a husband and wife partnership would be treated less favourably in this respect from a partnership business comprising non-relations. Nor do we need to consider arguments raised by Mr Young on discrimination, based on human rights. On our analysis, all partnerships would be treated equally and there is no such discrimination against partners so connected.

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*The s 409 exception*

44. On our findings, Mr Patel is liable to tax, save as to £30,000, on the whole of his receipt of the termination payment. We have found, as a matter of fact, that there can

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be no deduction in respect of a redundancy payment to Mrs Patel, nor for the removal of the Post Office trappings.

45. Even if we had accepted that such expenses had been incurred by Mr Patel, it would remain the case that the whole of the termination payment (less £30,000) would be taxable. The only relevant exception to such liability under ITEPA, Part 6 Chapter 3 is that contained in s 409. In the case of a cash benefit with which we are concerned, that section requires the payment to have been provided “for meeting the cost of a deductible amount”.

46. Leaving aside the question whether the expenses assumed for this purpose to have been incurred by Mr Patel would be “deductible amounts” within s 409(2), there is no evidence before us that the termination payment, or any element of it, was paid in order to enable Mr Patel to meet any particular expenses. The termination payment was paid according to a fixed formula applying a multiple to a calculation of annual earnings. It would have been the same irrespective whether Mr Patel had been liable to pay particular expenses. Although we consider it would be possible for evidence to show that a global sum calculated on such a basis was intended to enable a recipient to meet certain expenses, in the circumstances of this case, and on the basis of the evidence before us, we agree with the submission of Ms McGregor that the condition in s 409(1) is not satisfied.

#### 20 *Deductible amount*

47. For the reasons we have given, we do not accept that either Mr Patel had any liability to make a redundancy payment to Mrs Patel, nor that any such payment was in fact made. In this respect, Condition A for an amount to be a “deductible amount”, as set out in s 409(3), is not satisfied.

48. As regards the re-fitting expenses incurred by Mr and Mrs Patel, Condition A could only be satisfied as to the amount actually borne by Mr Patel, which could only be as to 50%. But in any event, on the facts we have found, those expenses could not have been allowed under s 346 ITEPA, as they were not liabilities of Mr Patel in his capacity as holder of the office of sub-postmaster, or in the performance of his duties under that office, as required by s 348(A). They were, as we have found, incurred in relation to the carrying on of the ongoing business of newsagents by Mr and Mrs Patel.

#### **Decision**

49. For all these reasons, we dismiss this appeal. We confirm the assessment for the year ended 5 April 2005 in the amount of £15,177.68.

#### **Application for permission to appeal**

50. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax

Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**ROGER BERNER  
TRIBUNAL JUDGE**

**RELEASE DATE: 16 December 2014**

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