Personal Wealth Adviser

Managing your personal finances

ISSUE 6

Our Sydney personal wealth management team provides you with a simple solution for your personal wealth needs. We have specialists in wealth management, superannuation, self-managed superfunds, estate planning, debt advisory and insurance services.

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MICHAEL HUTTON
Partner, Personal Wealth Management

HOW TO GET YOUR FINANCIAL AFFAIRS IN ORDER

The sooner you start thinking about the legacy you want to leave, the easier it will be for everyone, including yourself.

Being told to get your affairs in order can seem ominous, particularly if told to do so by a medical professional. But it doesn't have to be an arduous or stressful task.

Indeed, the sooner you start thinking about the state of your financial affairs, and the kind of legacy you'd like to leave, the easier it will be for everyone, including yourself.

Anyone can benefit from having organised financial affairs, not just the dependants and partners who may outlive you. It can offer peace of mind and may even offer some present-day tax benefits at the same time.

Regardless of what is in your Will, it may be a good idea to consider simplifying your financial structure. For example, is your portfolio overweight illiquid assets, such as rental properties or holiday homes? Are they being used? If not, consider selling the properties and investing the proceeds in more liquid assets, which will be easier to divide when the time comes.

Such steps make the process of getting your affairs in order much more straightforward. Unnecessary companies and trusts might also be wound up. Keep in mind that bequeathing assets and property doesn't have to occur solely after your death.

If you start passing on mementos and assets to relatives, family and friends now, you can be sure they have gone to the right people, who also get the opportunity to express their gratitude.

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You could also look to equalise benefits provided to beneficiaries, rather than leaving it to equalisation clauses in your Will.

The same can be said for bequests to charities, known as “living giving”. If you make donations now, you can receive the tax deduction while you are still alive. These deductions may be especially useful if you are simplifying and selling assets, and capital gains are realised.

If you don’t have a Will, make it a priority. Depending on how complex your financial affairs are and how many different assets you own, you may need some professional assistance to find the best tax effective structure for your affairs.

You also need to make sure that your assets will go to your preferred parties and in a tax-effective manner.

But your Will isn’t the only document that controls distribution of assets, with some assets – such as your superannuation and family trusts – potentially falling outside of your estate.

Therefore, your superannuation will need death benefit nominations in place, and you should document who takes over as trustee of your family trust. Also remember that jointly owned assets pass automatically to the survivor, rather than being subject to a will.

While you still have capacity, it is important to think about who your executors will be and to consider appointing a Power of Attorney (PoA), who has authority to deal with financial matters, and an Enduring Guardian (EG), who deals with health and lifestyle matters if you lose the capacity to do so yourself.

Lean on the lawyers

Getting your affairs in order includes simple things like getting all your important financial records in the one place. Along with your Will and holding statements of shares and proof of other investments, you should include the title documents of any properties.

If you’re concerned about losing these, consider keeping them with your solicitor. Include the names and contact details of any financial professionals you use in your document file as well, as this will be helpful for any executors and dependants.

Speaking of partners, are all your bank accounts and credit cards in the name of one spouse or partner only? It could be difficult for a surviving partner to access funds if their name isn’t on the account, so consider having at least one joint account and/or a separate account in each partner’s name.

Also, make sure you have a safe storage mechanism for your important passwords as well.

Other tasks to think about early are downsizing to a smaller property. This may involve a difficult culling out of treasured possessions, which leads some people to put it off indefinitely.

But it can also help with the simplification process of your financial affairs, as well as taking some of the burden off your family when you do pass.

Finally, nobody likes to talk about it, assuming it will never happen to them, but there is a good chance you will need care at some point. You should think about your preferences for in-home care or aged care, and how you will fund it, well before you need it.

You then need to discuss these choices with your friends and family, so they know exactly what you want. Putting this off may mean leaving it too late to make your preferences known, so it’s better to get it done

Michael Hutton has a monthly opinion piece in the Australian Financial Review. This article first appeared as part of this series on 20 July 2021.

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PETER BEMBRICK
Partner, Tax Consulting

CGT ON RESIDENTIAL PROPERTIES – NOT AS SIMPLE AS YOU THINK

When you think of capital gains tax (CGT) and residential properties the two most common situations are the family home (tax free) and an investment property (CGT applies on sale). What is not widely appreciated, however, is that this can be viewed as a spectrum on which lie various other scenarios where the tax treatment can be more complicated. Complications can also arise where people move overseas, so lets assume the taxpayer at all times is an Australian tax resident.

1. The family home becomes an investment property

In this case CGT is payable for the period after you first start renting it out, worked out by assuming that it was acquired for market value at that time, as long as this occurred after 20 August 1996. The 50% CGT discount also applies to the capital gain as long as you hold the property for a further 12 months.

2. The property is rented out and you later use it as your home

This situation is more difficult, as it is necessary to calculate the total capital gain as if it had always been an investment property, and you will then be taxed on the portion before you moved in, calculated pro-rata on a days' basis. One saving grace is that the 12-month test for applying the CGT discount is measured from the original acquisition date.

3. Properties used as a holiday home or occupied by family members

Many people don't realise that CGT applies in much the same way as for an investment property, with one significant difference – any "holding costs" such as council and water rates, land tax, property repairs and mortgage interest that have not been claimed as tax-deductible (because the property was not rented) can be added to the CGT cost base, as long as the property was acquired after 20 August 1991.

Finding this out at the time of selling a property can cause great practical difficulties as typically records of such expenses have not been kept, especially going back several years, so ideally you should be aware of the rule and keep records as you go along, otherwise it will be necessary to undertake as much investigation as possible to maximise the cost base.

If the property was rented out for part of the ownership period, then naturally it is only the non-deductible costs relating to the non-rental period that are included in the cost base.

If the property was initially your main residence and you then moved into another property, as you are generally only allowed to have one exempt main residence at a time, typically you would be subject to CGT on a pro-rata basis in a similar way to that described at scenario 2 above. Note that the deemed market value acquisition rule in scenario 1 cannot be used where the property is not used to earn rent.

4. Effect of divorce on selling jointly acquired properties

Often as part of a family law settlement jointly held assets will be allocated to one party or the other, so that you would acquire your spouse's share of the property. CGT rollover relief applies to such a transfer, so no tax is payable at this point.

You will be treated as having acquired the second portion of the property at the same time and for the cost as applied to your spouse, i.e. in effect you will be treated as having acquired 100% of the property at the original purchase date and as paying all relevant amounts that contribute to the CGT cost base. The same difficulties described in scenario 3 above can arise where the property was used in this way.

In summary, the CGT treatment of selling residential property can be more complicated than many people think, at times involving partial CGT according to the usage of the property for different purposes and with many opportunities to maximise the CGT cost base and minimise the tax payable, with the most common practical hurdle being the ability to locate the required records.

ANDREW YEE
Director, Superannuation

PROPOSED TAX ON SUPER BALANCES OF OVER $3 MILLION

What the government is proposing

If passed, the changes will apply for the 2026 financial year, commencing 1 July 2025 – a reasonably long lead time from announcement to commencement.

The changes have not been finalised – the details still need to be developed and legislation drafted.

The changes will apply to individuals (not superannuation funds) with a total super balance (from all their super funds) in excess of $3 million on 30 June 2026.

A new tax of 15 per cent will be levied on individuals on the earnings derived from their superannuation balance above $3 million. This will be in addition to current superannuation income tax rate of 15 per cent, applying to the whole of fund earnings.

The new tax however will be calculated via a special formula based on the growth in the member balance above $3 million. Under the calculation formula, unrealised earnings will now be taxed, which is a radical change in a tax system that currently only applies tax on income received and realised gains from the sale of an asset.

Under the proposal, unrealised losses can only be carried forward, but will not result in a tax refund.

The tax is levied on the individual and not the superannuation fund, but the individual can elect their superannuation fund pay the tax. The tax collection mechanism will be similar to the collection of Division 293 tax on concessional superannuation contributions for high income earners.

Possible issues and ramifications of the new tax

If passed, those that have been impacted by the changes will need to assess the benefit of having more than $3 million in superannuation and whether it would be more tax effective to invest the excess in other tax entities (or other entities that don't tax earnings on an accruals basis). It also raises questions. Would members who are not yet retired, or met a condition of release to access their superannuation benefits, be able to move their excess balance out of the superannuation environment?

The $3 million threshold and tax applicable is tested only at year end which may be unfair when fund asset values fluctuate throughout the year.

The new tax is levied on individual superannuation balances and not couples, or families. So, a couple can avoid the tax, if the total of their superannuation balances is under $6 million and neither of them individually exceed $3 million in superannuation benefits. Whereas in an example where one partner has say $5 million in super and their partner has zero superannuation, the new tax would apply. The new tax will encourage family tax planning strategies such as building up the superannuation balance of family members who are below the $3 million threshold and reducing balances of family members above the $3 million threshold, perhaps via recontribution strategies or contribution splitting.

Asset allocation in superannuation funds may also be affected. It may discourage investment in high growth (but low or no income yielding) investments. For instance, where will the cash come from to the pay the tax? Will the tax be paid by the member personally? Similarly, it may discourage superannuation fund investment in illiquid assets such as real property.

Elderly people may consider taking out all their superannuation benefits above $3 million to avoid the extra tax, as well as the possibility of the superannuation death benefits tax of up to 17 per cent being levied on these "excess" superannuation benefits upon death.

Observations with SMSF clients

Clients are generally accepting of tax reform on superannuation provided it is fair and not retrospective and that they are not forced to take out superannuation benefits that are already in the system and the proposed changes seem to achieve that. However, many clients have complained about the way the new tax is calculated, in particular basing the tax on a $3 million cap at year end and the calculation of taxable income including unrealised earnings.

Many clients opt for an SMSF so as to invest in unlisted and private or closely held investments such as private equity or business real property as they cannot invest their superannuation in these type of assets through other superannuation vehicles.

These SMSF clients are thinking these assets may be better sitting in another type of entity. It means property may be exited from super, as well as private equity holdings, assets where there are no liquidity events. I think that's maybe where superannuants will change their investment strategies. They are thinking of a re-allocation of capital to more income producing, or high yielding and possibly higher risk assets in superannuation in order to have the liquidity to pay the new tax.

Where to from here?

The client process so far regarding the proposed tax on SMSF member balances above $3 million has been focused on education as opposed to immediate responsive action.

We're telling clients not to panic because we haven't seen the full details yet. There may be changes depending on what happens with the consultation process so wait and see. Clients may commence minor planning, but we're telling them not to over plan as there may be changes to the proposals before commencement in 2 years' time.

But what is clear now is that the new tax will encourage those with more than $3 million in superannuation to look at ways to reduce their superannuation benefits if it is more beneficial for them to do so. It will also discourage those with less than $3 million in superannuation to plan to grow their superannuation balance to more than $3 million, which is currently difficult to do so under the current regime which prohibits voluntary after tax (i.e., non-concessional) contributions when a member has more than $1.7 million in superannuation.

ROBERT MONAHAN
Director, Estate Planning

RELATIONSHIP BREAKDOWNS - CAN YOU PROTECT AN INHERITANCE FROM 'OUTLAWS'?

Clients often joke about 'SKI' – spending the kid's inheritance. We find that many clients talk of another 'SKI' wish – to save (or protect) the kid's inheritance. Many clients have fears that whatever wealth they leave their beneficiaries may be lost in a property dispute following a divorce or relationship breakdown where the former 'in-law' becomes an 'outlaw'.

The Family Court certainly has extensive powers in relation to the adjustment of property between parties to a failed marriage or relationship. An example of such a case is Rigby v Kingston (No 4) which was decided in 2021. In that case the deceased (Mr Kingston) made provision in his Will for his daughter and his two sons. In clause 6 of the Will the deceased set out his view as to who should not benefit from his estate. The clause is set out below.

> *6. I DECLARE that in making this my Will it is my desire that the benefit of my estate should pass to my children and/or grandchildren and that it is my express desire that no entitlement should accrue to any present or future spouse of my children or grandchildren particularly if such entitlement were to disadvantage my children or grandchildren or the continuity of any of the businesses which are conducted by the group of companies controlled by me.*

The daughter's ex-husband made an application to the Family Court for a property settlement. The ex-husband argued that the value of his ex-wife's interest in the estate and its related entities (the Kingston Group) was up to $100,000,000 (one hundred million dollars). The ex-wife disputed that figure, but conceded that her interest in the Kingston Group would be valued at about $50,000,000 (fifty million dollars). Regardless of what figure was accurate, it would be fair to say that it was a very large amount!

Following the Court hearing, the Judge decided that it was not just and equitable to make an order in relation to the Kingston Group. In other words, the ex-husband received no benefit from the Kingston Group assets.

Whilst clause 6 of the Will clearly set out the Willmaker's intentions, that clause, alone, did not result in success for the ex-wife. There were a number of other steps taken by the Willmaker in his estate planning which culminated in his intentions being upheld.

It is generally thought that the best way to protect an inheritance is to quarantine the inheritance within a testamentary trust, that is a trust created by a will. The testamentary trust acts to keep the inherited assets separated from the couple's relationship assets. However, a court exercising power under the Family Law Act 1975 has extensive powers, and there have been cases decided where a Court has included assets within a testamentary trust as either property of the parties, or at least a financial resource of the beneficiary, which justifies the other spouse receiving more of the relationship assets. Whilst the use of testamentary trusts is a great starting point, there are other strategies that can be put in place which will strengthen the protection of the inheritance from claims arising from failed relationships.

As always, it is best to speak to your personal advisers when looking at trusts and wills.

PETER BARDOS
Director, Tax Consulting

FRANKING CREDIT INCOME VS INTEREST INCOME

As interest rates are increasing, investors are getting excited about the 'risk-free' returns that are available. Advice from our wealth management team is that investors are asking about moving away from traditional Australian share investments, into term deposits or other similar interest yielding instruments.

It is important to also understand the 'after tax' returns when considering an investment. For example, consideration needs to be given to the tax outcomes of interest returns, compared to the tax outcome of returns on Australian share investments. Particularly, consideration of franking credits that are available on income returns that come from a share investment, and additionally, the capital gain tax discount that may be available on any capital appreciation of the share price.

Franking Credits

Australia is one of the few countries which has an imputation system, otherwise known as the franking credit system. Broadly, this system allows for any income tax which has been paid by a company to flow through and be available as a refundable tax credit for an investor. In addition to the cash dividend an investor receives a franking credit. Not all dividends have a full tax credit attached, however, most regular dividends from the top end of the ASX are fully franked.

If we take an investment of $100,000 in a term deposit, which contains a 5% interest yield, compared to a similar investment in a big for bank, returning say 5% on dividends, yield the after-tax outcome differs when franking credits are considered.

The following table compares an individual investor with an average tax rate of 32% and a superfund in pension with a 0% tax rate. For simplicity compounding of returns is ignored.

Comparing the analysis in the table, the after-tax return on shares is considerably higher when the starting point is the same income yield. Accordingly franking credits can be considered a form of income for the investor.

	INDIVIDUAL		SUPER FUND	
Investment type	Term Deposit	Shares	Term Deposit	Shares
Investment amount	100,000	100,000	100,000	100,000
Pre-tax income (5%)	5,000	5,000	5,000	5,000
Franking credit	-	2,143	-	2,143
Taxable income	5,000	7,143	5,000	7,143
Income tax	1,600	2,286	1,600	-
Less franking credit	-	(2,143)	-	(2,143)
Tax payable / (refundable)	1,600	143	-	(2,143)
After-tax cash	3,400	4,857	5,000	7,143
After tax return %	3.4%	4.86%	5%	7.14%
Total value incl. investment	**103,400**	**104,857**	**105,000**	**107,143**

Capital Gains

In addition to the varying tax outcomes on income returns, there are also different tax outcomes on capital appreciation to consider. An investment in shares is a CGT asset and any increase in the value of the shares may be eligible for a discount of up to 50% when sold. It is generally unlikely that instruments, such as term deposits, will have capital appreciation. However, some interest yielding investments may, if they are tradable, and where this applies, any return on these interest yielding investments, would not be eligible for the CGT discount. Accordingly, any after-tax cash from the realisation of the investment is generally higher for share investments.

Conversely, capital losses are only able to be offset against capital gains. If a loss is made on a revenue asset these losses can be applied against all other income, including net capital gains.

Take away

The return on investment is an important consideration when deciding a balanced portfolio of investments. It's important to consider not only the cash return but also the income tax considerations that cause a differing after-tax outcome.

ANDREW KENNEDY
Risk Adviser, HLB Insurance Services

LIFE INSURANCE TRENDS IN AUSTRALIA

Life insurance offers a safety net for individuals and their families in case of unexpected events such as illness, injury, or death. In Australia, life insurance has become an integral part of the financial planning process, with millions of Australians relying on insurance to protect their loved ones financially. With the Australian life insurance market evolving rapidly, it's important to understand the latest trends and developments in this industry.

Increasing focus on mental health

Life insurance providers are increasingly focusing on the impacts of mental health on the industry. In recent years, there has been a significant increase in the number of Australians seeking help for mental health issues such as anxiety and depression, with flow on effects on claims particularly for Income Protection and Total & Permanent Disability.

The insurance industry has been hard hit by these increase in claims which has seen significant premium increases and an emerging consideration of products which could voluntarily exclude mental health claims in order to reduce premiums

Premium increases

Over the past few years, both existing and new policy holders have experienced significant increases in premiums. This is due to a range of factors, including:

1. Ageing risk pool – with fewer young people entering the life insurance pool due to changes in default cover within super, the risk pool for insurance products continues to age causing premiums to increase reflecting the higher risk of health issues and mortality that come with age.
2. Increased claims – due to an increase in the number of claims made on life insurance policies, insurance companies have needed to increase premiums to cover the costs of these claims.
3. Low investment returns - life insurance premiums are often tied to the investment returns the insurer can generate. Due to poor yields, particularly in bonds, insurers have failed to generate the investment returns expected and have had to increase premiums to make up for the shortfall.

It's worth noting that these factors may not apply equally to all insurers, and the specific reasons for premium increases may vary depending on the insurer and the policy. It's a good idea to speak to an insurance advisor to understand the specifics of your policy and any premium increases.

Utilisation of technology

Additionally, there is a growing trend towards the use of technology in the life insurance industry. Many life insurance providers are now using digital tools such as artificial intelligence and machine learning to improve the accuracy and speed of underwriting processes. This means that consumers can now get coverage faster and more efficiently, with less paperwork and fewer hassles. Technology is also being used to create more personalized policies and to provide better customer service through online platforms and mobile apps.

The Australian life insurance market is evolving rapidly, with new trends and developments emerging all the time. From the increasing focus on mental health, significant premium increases, utilisation of technology and data analytics, and decreasing access to Life Insurance financial advice, it has never been more important to engage with a qualified risk professional to ensure the financial security of your loved ones is properly looked after.

JONATHAN PHILPOT
Partner, Personal Wealth Management

RATE RISES RECALIBRATING INVESTOR EXPECTATIONS

The 10-year period ending 31 December 2021 was a great period for shares and property (I refer to these as Risky assets, not in the sense that you will lose all your money, but that the values will fluctuate, unlike Secure assets such as fixed interest and cash that has very little fluctuations in price). The Australian share market was up 10.8% p.a. (S&P ASX 200), the MSCI World ex Australia in AUD was up 16.81% p.a. and the A-REIT property index was up 13.85%. The fixed interest Australian bond index delivered 4.15% p.a.

Many retiree portfolios shifted over this period from a 60/40 asset allocation split, between risky and secure investments, to an 80/20 mix. But for a long period, over 40 years, the 60/40 split was the 'Balanced' option for many retiree portfolios and it worked well.

The fall in interest rates to zero percent levels over this 10-year period and the very high returns that were being generated by the share and property markets, because of the falling interest rate environment, meant that you were encouraged to take on more risk.

For the 10 years up to 2022, every additional 10% to risky assets delivered an additional 1% p.a return, for example the 60/40 portfolio delivered a return around 9%, the 70/30 portfolio around 10% and the 80/20 11%. These returns will likely not be replicated for the next 10 years.

The 2022 calendar year was a turning point, an outbreak of war in the Ukraine, inflation then taking off and interest rates both in Australia and around the world moving back to pre GFC levels. The 2022 calendar year was a bit of a disaster for all asset classes, with even the 'secure' Bond market falling 9.71%, in line with many of the global share markets. Australian shares, thanks to Energy and Resources held up to be only slightly negative for the year.

Now that a large portion of the interest rate movements have occurred, we have new forecast returns for both share markets and fixed interest. For equities you should expect 7-8% and fixed interest 3-4% over the next 10 years.

It is the smoothness or lower volatility that is also important, particularly for retirees. With virtually every year, for the 10 years up to 2021 being a positive return, investors were getting all the return without the risk. The 2022 negative return has come as a bit of a surprise for the retiree investor. This should not be a shock; a negative return should be expected every 4 to 5 years.

The 'risk premium', the reward for taking on risk, that for much of the last decade was about 10% p.a, will now be about 5% p.a., which is in line with the long term average.

Particularly for retirees, the stability of returns over their lifetime is an important factor. The only way to 'smooth' returns is to have assets that when one falls the other rises, like the traditional share and bond relationship. We will start to see a move back towards more 'secure', fixed interest investments in portfolios back towards a 60/40 asset allocation split.

A sudden switch back to 60/40 portfolio does not make sense, however. Investors may start to consider slowly reducing their exposure to share markets, particularly as markets move into overvalued territory over these next few years. These changes should be based on valuations not market volatility and are best done in smaller increments than one big change.

Some other asset classes such as infrastructure investments and high yield debt should also be considered as alternative investments for share markets, however it is important to understand the underlying risks in all of the different types of asset classes.

The other beneficiary of the higher interest rates is for the short-term investor (less than 3 years) who may be saving for a home deposit or large capital purchase, they can now invest in term deposits or higher interest earning accounts and receive an interest return on their savings that has not been available for the last few years.

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Information based on historical performance is often not a reliable indicator of future performance. You should not rely solely on this material to make investment decisions.

LINDZI CAPUTO
Director, Personal Wealth Management

END OF FINANCIAL YEAR WEALTH STRATEGIES

With the end of financial year approaching now is the time to review your wealth planning and talk with your adviser or accountant about tax saving strategies that could be used before June 30.

Planning could be done over the next two months to optimise your financial position and take advantage of opportunities to reduce your personal taxable income.

Reduce your tax with a deductible contribution to super

Superannuation is considered the most tax effective place for wealth to be invested during retirement as during pension phase earnings are tax-free. The tax-free pension cap will increase from the current $1.7M to $1.9M from 1 July 2023. Where possible, individuals should strive to achieve the maximum tax-free pension balance by the time they retire. Building a strong super balance requires the benefit of time so planning should begin early to make the most of deductible contribution limits.

The annual deductible contribution limit is $27,500 for most and includes contributions made by your employer or amounts you claim a personal tax deduction for. For those with a super balance over $500,000 any unused part of this annual limit is lost.

Pre 30 June is a good time to check the deductible contributions made to your super account and consider making extra contributions to make the most of your limit. Making extra contributions up to your limit could reduce your taxable income and potentially reduce your tax.

Extra contributions can be made direct to the superannuation account or via salary sacrifice. Salary sacrifice can be an automated savings option and provides an immediate tax benefit.

Those with a super balance under $500,000 may have the chance to contribute more than their annual contribution limit if they have unused deductible contributions over the past 5 years. Where cashflow allows and taxable income warrants, the unused contributions can be effective in reducing taxable income, particularly in years where an investment was sold leading to a large capital gain.

Take the example of Fran who sold an investment property during the 2022/23 financial year. Fran owned the property for many years and made a capital gain of $185,000 on the sale (after the 50% CGT discount). Fran has a super balance under $500,000 and has unused deductible contributions of $130,000, being $102,500 in carried forward amounts plus the 2023FY limit of $27,500.

By adding $130,000 of the sales proceeds to her super as a deductible contribution Fran reduces her taxable income from $185,000 to $55,000. Fran has also significantly increased her superannuation savings.

Spouse contributions

You may consider making an after-tax contribution to your spouse's super of up to $3,000 if they are not working or earning a low income. This is a way to boost their balance and could also benefit you as you may qualify for a tax offset of up to $540.

Government Co-contributions

If you earn less than $57,016 during the 2022/23 FY and 10% or more of your income is from employment or running a business, you may consider making an after-tax contribution to super as you may qualify for the government co-contribution of up to $500.

Superannuation contribution rules are very complex. It is a good idea to seek advice to find out if you can benefit from any of these strategies.

Please reach out to your HLB contact to review your personal situation.

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