

DRAFT INTERPRETATION NOTE: NO. 20 (ISSUE 4)

DATE:

ACT : INCOME TAX ACT NO. 58 OF 1962 (the Act)

SECTION : SECTION 12H

SUBJECT : ADDITIONAL DEDUCTION FOR LEARNERSHIP AGREEMENTS

Preamble

In this Note –

- any word or expression bears the meaning ascribed to it in the Act unless the context indicates otherwise;
- **“annual allowance”** means a deduction granted under section 12H(2) during any year of assessment in which a learner is a party to a registered learnership agreement;
- **“completion allowance”** means a deduction granted under section 12(3) and (4) in a year of assessment in which a learner successfully completes a learnership;
- **“section”** refers to a section of the Act unless otherwise indicated; and
- **“SETA”** means a sector education and training authority established under the Skills Development Act, 1998.

1. Purpose

This Note provides clarity on the interpretation and application of section 12H which provides certain deductions for learnership agreements.

It does not replace Issue 3 dated 28 January 2010, but deals with the amendments to section 12H effected by section 23 of the Taxation Laws Amendment Act No. 17 of 2009.

The amendments are effective as from the commencement of years of assessment ending on or after 1 January 2010, that is, the 2010 and subsequent years of assessment.

Interpretation Note No. 20 (Issue 3) is therefore still relevant to registered learnership agreements entered into with a learner for years of assessment ended not later than 31 December 2009.

2. Background

Section 12H provides for additional deductions for employers provided certain requirements are met. These additional deductions are intended as an incentive to train employees in a regulated environment in order to encourage skills development and job creation. Training contracts that qualify for these deductions are learnerships

registered with a SETA or contracts of apprenticeship registered with the Department of Labour. These additional deductions consist of an annual allowance and a completion allowance.

While the aim of section 12H is to encourage skills development and job creation, the complexity of section 12H acted as a barrier to employer usage. Section 12H accordingly needed to be simplified so that the allowance would be accessible to all employers. In 2009 section 12H was amended materially to do away with any complexities which hindered employer-accessibility to the allowances.

Should a learnership agreement span the 2009 and 2010 years of assessment, the provisions of section 12H before the 2009 amendments (old provisions) will apply to the 2009 year of assessment and the provisions of section 12H after the 2009 amendments (new provisions) will apply to the 2010 year of assessment.¹ Refer to the case study in 6.

3. The law

Section 12H

12H. Additional deduction in respect of learnership agreements.—(1) For the purposes of this section—

“employer” means—

- (a) where only one employer is party to a registered learnership agreement, that employer; or
- (b) in the case where more than one employer is a party to a registered learnership agreement, the employer which is identified in that agreement as the lead employer;

“learner” means a learner as defined in section 1 of the Skills Development Act, 1998;

“registered learnership agreement” means—

- (a) a contract of apprenticeship entered into before 1 October 2011 and registered in terms of section 18 of the Manpower Training Act, 1981 (Act No. 56 of 1981), if the minimum period of training required in terms of the Conditions of Apprenticeship prescribed in terms of section 13 (2)(b) of that Act before the apprentice is permitted to undergo a trade test is more than 12 months; or
- (b) a learnership agreement that is—
 - (i) registered in accordance with the Skills Development Act, 1998; and
 - (ii) entered into between a learner and an employer before 1 October 2011;

“SETA” means a sector education and training authority established in terms of section 9(1) of the Skills Development Act, 1998, and defined as such in section 1 of that Act;

“Skills Development Act, 1998” means the Skills Development Act, 1998 (Act No. 97 of 1998).

- (2) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—
 - (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer; and

¹ Issue 3 of this Interpretation Note should be consulted for the application of section 12H before the 2009 amendments.

- (ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000.

- (b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R30 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(3) In addition to any deductions allowable in terms of this Act, where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period of less than 24 full months;
- (ii) that agreement was entered into pursuant to a trade carried on by that employer; and
- (iii) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000.

(4) In addition to any deductions allowable in terms of this Act, where—

- (i) during any year of assessment a learner is a party to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;
- (ii) that agreement was entered into pursuant to a trade carried on by that employer; and
- (iii) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R30 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in section 18(3)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.

(6) This section does not apply in respect of any registered learnership agreement where the learner that is the party to that agreement previously failed to complete any other registered learnership agreement and the registered learnership agreement contains the same education and training component as that other registered learnership agreement.

(7) Any SETA with which a learnership agreement has been registered as contemplated in the Skills Development Act, 1998, must submit to the Minister any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

(8) In respect of each year of assessment during which an employer is eligible for any deduction contemplated in this section, the employer must submit to the SETA with which the learnership agreement is registered any information relating to that learnership agreement required by the SETA in the form and manner and at the place and time indicated by the SETA.

4. Application of the law

Section 12H provides a deduction to employers in addition to any other deductions allowable under the Act for any registered learnership agreement if all the requirements referred to in section 12H are met.

Two types of deductions are available, namely –

- an **annual allowance**, to which the employer is entitled in any year of assessment in which a learner is a party to a registered learnership agreement [section 12H(2)]; and
- a **completion allowance** during any year of assessment in which the learner successfully completes the learnership [section 12H(3) and (4)].

The key features of these allowances are that –

- the annual allowance is subject to a *pro-rata* reduction if the learnership agreement does not cover the full 12 months during any year of assessment [section 12H(2)(b)];
- different rules apply in determining the completion allowance for learnership agreements spanning periods of less than 24 months, and those which cover a longer period [section 12H(3) and (4)]; and
- the quantum of these allowances is increased if the learner is disabled [section 12H(5)].

4.1 Registered learnership agreement

A “registered learnership agreement” as defined in section 12H(1) comprises either –

- an agreement registered in accordance with the Skills Development Act, 1998 and entered into between the learner and the employer before 1 October 2011; or
- a contract of apprenticeship entered into before 1 October 2011 registered with the Department of Labour under section 18 of the Manpower Training Act, 1981 if the minimum training period before undergoing a trade test is more than 12 months.

4.2 Requirements for the deduction of the annual allowance

The employer will qualify for the annual allowance if –

- during any year of assessment the learner is a party to a registered learnership agreement with the employer;
- the agreement had been entered into pursuant to a trade carried on by that employer; and
- the employer has derived “income” as defined in section 1 from that trade.

4.3 Requirements for the deduction of the completion allowance

The employer will qualify for the completion allowance if –

- during any year of assessment the learner is a party to a registered learnership agreement with the employer;
- the agreement had been entered into pursuant to a trade carried on by the employer;

- the learner successfully completes the learnership during the year of assessment; and
- the employer has derived “income” as defined in section 1 from that trade.

With regard to the last bullet point above, section 12H(2) states that –

“there must, in that year, be allowed to be deducted from the income derived by that employer *from that trade* an amount of R30 000”.

As noted in the last bullet point, the above wording requires that the deduction be made against income derived from the particular trade in which the employee is employed. This means that there must at least be some income from the particular trade in order to achieve the deduction. The wording does not, however, prevent the allowance from creating a loss from the particular trade. Nor is there anything in the wording to prevent such a loss from being set off against income from another trade.

4.4 Enhanced allowances – disabled learners

In order to encourage employers to develop the skills of disabled persons, the annual and completion allowances are increased for a learner who has a “disability” as defined in section 18(3) at the time of entering into the learnership agreement [section 12H(5)]. Under section 18(3) –

“**disability**’ means a moderate to severe limitation of a person’s ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—

- (a) has lasted or has a prognosis of lasting more than a year; and
- (b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner.

4.5 Prohibition of learnership allowances

An employer may not claim any annual allowance or any completion allowance for a new registered learnership agreement if a learner, who is party to the new registered learnership agreement, has previously failed to complete any other registered learnership agreement which contains the same education and training component as the new registered learnership agreement [section 12H(6)].

4.6 The quantum of the annual allowance

The annual allowance is deductible in each year of assessment in which the learnership agreement is in force [section 12H(2)(i)].

4.6.1 For 12 full months during any year of assessment

The quantum of the annual allowance is equal to –

- R30 000; or
- R50 000 if the learner is a person with a disability as defined in section 18(3).

4.6.2 For each period of less than 12 full months during any year of assessment

The annual allowance is a *pro-rata* portion if the learner is a party to a registered learnership agreement for less than 12 full months during the year of assessment²

² Explanatory Memorandum on the Taxation Laws Amendment Bill, 2009 at 22.

(irrespective of the reason why the period is less than 12 full months), or if the learnership agreement commenced or ended partway through the year of assessment.

The meaning of the term “month” was discussed by James JP in *Subbulutchmi v Minister of Police & another*³. In which he said the following:

“According to the Interpretation Act 33 of 1957 a month means a calendar month. In the absence of any clear indication to the contrary to be found in the words used in any particular legislation a calendar month running from an arbitrary date expires with the day in the succeeding month immediately preceding the day corresponding to the date upon which the period starts. Thus, if a calendar month commences on the 10th of one month it will expire at the end of the 9th day of the succeeding month. See *Nair v Naicker* 1942 NPD 3 in which BROOME J undertook an extensive review of the cases decided up to that date.

“This is in accordance with the ordinary civilian method of calculating periods of time in which the first day is excluded and the last day included. See *Joubert v Enslin* 1910 AD 6 at 35; *South African Mutual Fire and General Insurance Co Ltd v Fouche*; *AA Mutual Insurance Association Ltd v Tlabakoe* 1970 (1) SA 302 (A).“

Thus, if an employer’s year of assessment ends on 31 December, and an employee commenced a nine-month learnership on 10 February the learnership would be completed on 9 November and there would be nine full months. But if the same learnership commenced on 15 October of year 1 it would be completed on 14 July of year 2, and there would be two full months in year 1 and six full months in year 2.

The quantum of the annual allowance is equal to –

- a *pro-rata* portion of R30 000; or
- a *pro-rata* portion of R50 000 if the learner is a person with a disability as defined in section 18(3).

The *pro-rata* portion is calculated in the same ratio as the number of full months that the learner is a party to the agreement during the year of assessment bears to 12 full months.

Example 1 – Calculation of the annual allowance

Facts:

On 1 January 2010 Employer A enters into a registered learnership agreement with Learner B (not a person with a disability) for 18 months. Employer A’s year of assessment ends on 31 December.

Calculate the amount of the annual allowance Employer A may deduct in the 2010 and 2011 years of assessment.

Result:

2010 Year of assessment

Employer A may deduct R30 000 as an annual allowance under section 12H(2)(a).

³ 1980 (3) SA 396 (D).

2011 Year of assessment

Learner B is a party to a learnership agreement with Employer A for only 6 full months during the year of assessment. Employer A may deduct R15 000 as an annual allowance, which is a *pro-rata* portion (6/12) of the R30 000 annual allowance.

See Examples 2 and 3 below for the calculation of the completion allowance.

4.7 The quantum of the completion allowance

The completion allowance is granted once-off in addition to the annual allowance and is deductible in the year of assessment in which the learner successfully completes the learnership.

a) Learnership agreements for less than 24 full months

The quantum of the completion allowance is equal to –

- R30 000; or
- R50 000 if the learner is a person with a disability as defined in section 18(3).

A registered learnership agreement is considered “completed” when confirmation is provided by the SETA, with which the learnership agreement is registered, that the learnership has been successfully completed according to its required standards or the standards of a professional body.

Example 2 – Calculation of the completion allowance – learnership agreement of less than 24 months**Facts:**

On 1 January 2010 Employer C enters into a registered learnership agreement with Learner D (not a person with a disability) for 18 months. Employer C’s year of assessment ends on 31 December.

Calculate the amount of the completion allowance Employer C may deduct if Learner D successfully completes the learnership.

Result:**2011 Year of assessment**

The learnership will only be completed during the 2011 year of assessment. The learnership agreement is for less than 24 full months. Employer C may deduct R30 000 as the completion allowance on the completion of this learnership under section 12H(3).

b) Learnership agreements equal to or exceeding 24 full months

The quantum of the completion allowance is equal to –

- R30 000 multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement; or

- R50 000 multiplied by the number of consecutive 12-month periods within the duration of that learnership agreement if the learner is a person with a disability as defined in section 18(3).

For purposes of this calculation only full periods of 12 months are taken into account.⁴

Example 3 – Calculation of the completion allowance – learnership equals or exceeds 24 months

Facts:

On 1 January 2010 Employer E enters into a registered learnership agreement with Learner F (not a person with a disability) for 2½ years. Employer E's year of assessment ends on 31 December.

Calculate the amount of the completion allowance Employer E may deduct at completion if Learner F successfully completes the learnership.

Result:

2012 Year of assessment

Under section 12H(4), Employer E may deduct R60 000 as the completion allowance, which is calculated as R30 000 x 2 (since there are 2 periods of 12 full months within the duration of the agreement).

Note: The employer may not deduct the completion allowance or any portion thereof if the learner does not complete the learnership.

4.8 Substitution of employers

Under section 17(5) of the Skills Development Act, 1998 an employer may be substituted with the consent of the learner and approval of the SETA that registered the learnership agreement.

Before the 2009 amendments, substitution of employers was not allowed and the employers concerned were unable to claim any of the learnership allowances unless they were employers that fell within the same group of companies. This changed with the introduction of the *pro-rata* rule in section 12H(2)(b).

As a result, when a learner moves from Employer A to Employer B –

- Employers A and B will be entitled to claim a *pro-rata* portion of the annual allowance in the year of assessment in which the learner changes employment;
- Employer A will not be entitled to any further annual allowances or the completion allowance;
- Employer B will be entitled to future annual allowances, subject to apportionment in the year of completion if the final period consists of less than 12 full months; and
- Employer B will be entitled to the completion allowance provided that the learner successfully completes the learnership while in Employer B's employ.

⁴ Explanatory Memorandum on the Taxation Laws Amendment Bill, 2009.

Example 4 – Calculation of the annual allowance and the completion allowance where substitution of employer occurs*Facts:*

On 1 January 2010 Employer G enters into a registered learnership agreement with Learner H (not a person with a disability) for 3 years. Employer G's year of assessment ends on 31 December. On 1 July 2011 Learner H leaves the employment of Employer G and takes up employment with Employer K (31 December year-end) and complies with the provisions of the Skills Development Act, 1998 regarding substitution.

Assume Learner H successfully completes the learnership on 31 December 2012. Calculate the amounts of the commencement and completion allowances that each of the employers may deduct in the 2010, 2011 and 2012 years of assessment.

*Result:***Employer G*****2010 Year of assessment***

Employer G may deduct R30 000 as the annual allowance under section 12H(2)(a).

2011 Year of assessment

Employer G may deduct R15 000 as the annual allowance under section 12H(2)(b), which is a *pro-rata* portion ($6/12 \times R30\,000$), as Learner H is a party to the learnership agreement with Employer G for only six full months in the year of assessment.

2012 Year of assessment

Employer G is not entitled to deduct any amount for either the annual allowance or the completion allowance, as Learner H is no longer a party to a registered learnership agreement with Employer G.

Employer K***2010 Year of assessment***

Employer K is not entitled to deduct any annual allowance as Learner H is not a party to a learnership agreement with Employer K.

2011 Year of assessment

Employer K may deduct R15 000 as the annual allowance under section 12H(2)(b), which is a *pro-rata* portion ($6/12 \times R30\,000$), as Learner H is a party to the learnership agreement with Employer K for only six full months in the year of assessment.

2012 Year of assessment

Employer K may deduct R30 000 as the annual allowance under section 12H(2)(a), as Learner H is a party to the learnership agreement with the employer for 12 full months.

Employer K may also deduct R90 000 as the completion allowance under section 12H(4), which is calculated as R30 000 x 3, since there are three periods of 12 full months within the duration of this agreement.

Example 5 – Substitution when employers have different years of assessment

Facts:

The facts are the same as in Example 4, except that Employer K has a 30 June year-end.

Result:

Employer G

The results for Employer G are the same as in Example 4.

Employer K

2010 and 2011 Years of assessment

Employer K is not entitled to deduct any annual allowance as Learner H is not a party to a learnership agreement with Employer K during the period 1 January 2010 to 30 June 2011.

2012 Year of assessment

Employer K may deduct R30 000 as the annual allowance as Learner H is a party to the learnership agreement with Employer K for a full 12 months in the year of assessment ending 30 June 2012.

2013 Year of assessment

Employer K may deduct R15 000 as the annual allowance under section 12H(2)(b), which is a *pro-rata* portion (6/12 x R30 000), as Learner H is a party to the learnership agreement with Employer K for only six full months in the year of assessment, namely, 1 July 2012 to 31 December 2012.

Employer K may also deduct R90 000 as the completion allowance under section 12H(4), which is calculated as R30 000 x 3, since there are three periods of 12 full months within the duration of this agreement.

4.9 Termination of the learnership agreement

Before the 2009 amendments, the termination of a registered learnership agreement resulted in a recoupment of the learnership allowance for the employer unless the termination was caused by death or ill-health. However, this rule failed to account for practical realities in the market place. Many learners change employment for better pay or better opportunities, resulting in the termination of the registered learnership agreement which triggered a recoupment of the learnership allowance even though the termination of the registered learnership agreement was outside the employer's control.

The 2009 amendments have done away with the recoupment rule. As a result, when a registered learnership agreement is terminated (whether by the employee resigning or by the employer terminating the learner's employment), the employer will still be

able to deduct an amount equal to a *pro-rata* portion of the annual allowance in that year. The employer is not entitled to deduct any further annual allowance or the completion allowance as the learnership agreement is terminated and the learnership is not completed. This amendment was made to ensure that the employer is not burdened by any actions taken by the learner or any events beyond the employer's control.

4.10 Reporting requirements

Under section 12H(8), an employer who becomes entitled to deduct the annual allowance or the completion allowance in any year of assessment must submit certain information relating to that learnership agreement required by the SETA with which the learnership is registered, in the form and manner and at the place and time indicated by the SETA.

The SETA is required under section 12H(7) to submit to the Minister of Finance any information relating to that learnership agreement required by the Minister in the form and manner and at the place and time that the Minister prescribes.

5. Case study

The determination of the amount deductible as a learnership allowance is illustrated by means of the following example:

Example 6 – The determination of the amount deductible as a learnership allowance

Facts:

Employer ABC (Pty) Ltd (ABC) concludes learnership agreements with employees X, Y, Z, and Employee D who is a person with a disability, pursuant to a trade carried on by ABC. The learnership agreements with X, Y, Z have been registered with the relevant SETA and titles and codes have been allocated and issued by the Director-General: Department of Labour. The learnership agreement with Employee D is registered with the Department of Labour. ABC has a 31 March year-end. Assume that the current provisions of section 12H remain unchanged.

(a) Employee X

Employee X enters into a 3-year learnership on 1 October 2008. He was already in the employment of ABC before entering into the learnership agreement. Assume that the learnership is completed on 30 September 2011. Under the agreement of employment, X is entitled to a wage of R3 000 per month, with no benefits.

(b) Employee Y

Employee Y enters into an 18-month learnership on 1 April 2010. Assume Employee Y leaves the employ of ABC on 15 October 2010 without transferring the learnership to a new employer under the Skills Development Act, 1998.

(c) Employee Z

Employee Z enters into a 12-month learnership agreement on 1 July 2010. Assume that at the end of the 12-month period Employee Z fails this learnership and immediately enters into a new learnership with ABC which, according to the

SETA, has the same education and training component as the 12-month learnership, but extends over a two-year period instead.

(d) Employee D

Employee D, a person with a disability, enters into an 18-month learnership agreement on 1 April 2010. Assume that Employee D successfully completes the learnership on 30 September 2011.

Result:

(a) Employee X

Year of assessment ending 31 March 2009

Note: This agreement is entered into before the commencement of the 2010 year of assessment. Thus the old provisions of section 12H are applicable in the 2009 year of assessment. The amendments effected by the Taxation Laws Amendment Act No. 17 of 2009 are only applicable as from the 2010 year of assessment.

An amount limited to R20 000 may be deducted, which is calculated as follows:

Lesser of:

$$\begin{aligned} \text{a)} \quad & 70\% \times \text{annual equivalent} \\ & = 70\% \times (12 \times \text{R}3\,000) \\ & = \text{R}25\,200 \end{aligned}$$

or

$$\text{b)} \quad \text{R}20\,000$$

The section 12H deduction is limited to R20 000.

Year of assessment ending 31 March 2010

An annual allowance of R30 000 is deductible as the learner is a party to the registered learnership agreement with the employer for 12 full months.

Year of assessment ending 31 March 2011

An annual allowance of R30 000 is deductible as the learner is a party to the registered learnership agreement with the employer for 12 full months.

Year of assessment ending 31 March 2012

1. An annual allowance of R15 000 is deductible as the learner is a party to the registered learnership agreement with the employer for only six full months.

$$\text{R}30\,000 \times 6/12 = \text{R}15\,000$$

2. A completion allowance of R90 000 is deductible, which is calculated as follows:

$$\text{R}30\,000 \times 3 = \text{R}90\,000$$

The completion allowance that is deductible, equals R30 000 multiplied by 3, as there are 3 consecutive 12 full months periods within the duration of the registered learnership agreement.

(b) Employee Y***Year of assessment ending 31 March 2011***

An annual allowance of R15 000 is deductible as the learner is a party to the registered learnership agreement with the employer for only 6 full months.

$$R30\ 000 \times 6/12 = R15\ 000$$

The learner left the employ of the employer and therefore the registered learnership agreement is terminated and no further annual allowance or any completion allowance is deductible in respect of that agreement.

(c) Employee Z***Year of assessment ending 31 March 2011******12-Month learnership***

An annual allowance of R22 500 is deductible as the learner is a party to the registered learnership agreement with the employer for only 9 full months.

$$R30\ 000 \times 9/12 = R22\ 500$$

Year of assessment ending 31 March 2012***12-Month learnership***

1. An annual allowance of R7 500 is deductible as the learner is a party to the registered learnership agreement with the employer for only three full months.

$$R30\ 000 \times 3/12 = R7\ 500$$

2. No completion allowance is deductible as the learner did not successfully complete the learnership.

New registered learnership extending over two years

No amount is deductible since section 12H(6) prohibits any deduction for the new registered learnership agreement.

(d) Employee D***Year of assessment ending 31 March 2011***

An annual allowance of R50 000 is deductible as the learner (a person with a disability) is a party to the registered learnership agreement with the employer for 12 full months.

Year of assessment ending 31 March 2012

1. An annual allowance of R25 000 is deductible as the learner (a person with a disability) is a party to the registered learnership agreement with the employer for only six full months.

$$R50\ 000 \times 6/12 = R25\ 000$$

2 A completion allowance of R50 000 is deductible

The completion allowance in this case is R50 000, as the learnership agreement is for a period of less than 24 months [section 12H(3)].

6. Conclusion

Section 12H provides an annual allowance and a completion allowance to employers who are a party to a qualifying learnership agreement with an employee. The annual allowance of R30 000 is subject to a pro-rata reduction when the number of full months in a year of assessment is less than 12. The completion allowance is limited to R30 000 when the learnership is for a period of less than 24 full months. For longer agreements the completion allowance is R30 000 multiplied by the number of consecutive 12 month periods covered by the agreement. The allowances are increased to R50 000 for learnerships entered into with employees having a disability.

**Legal and Policy Division
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