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General Secretariat

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MEETING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Tax Questions (Direct Taxation)

Subject: Proposal for a COUNCIL DIRECTIVE laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU
- Information from the Spanish delegation

In view of the meeting of the Working Party on Tax Questions on 11 July 2022, delegations will find attached an example about tax consequences prepared by the Spanish delegation.

NMS (1)

MS (2)

MS (3)

Source

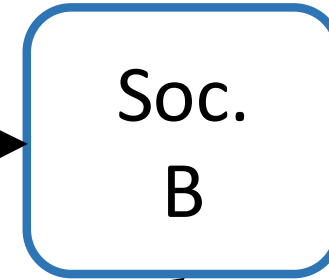
Shareholders' residency



Dividends



Dividends



Domestic WHT1

P-S Directive?

- Receives a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of DTAs
- Applies domestic WHT

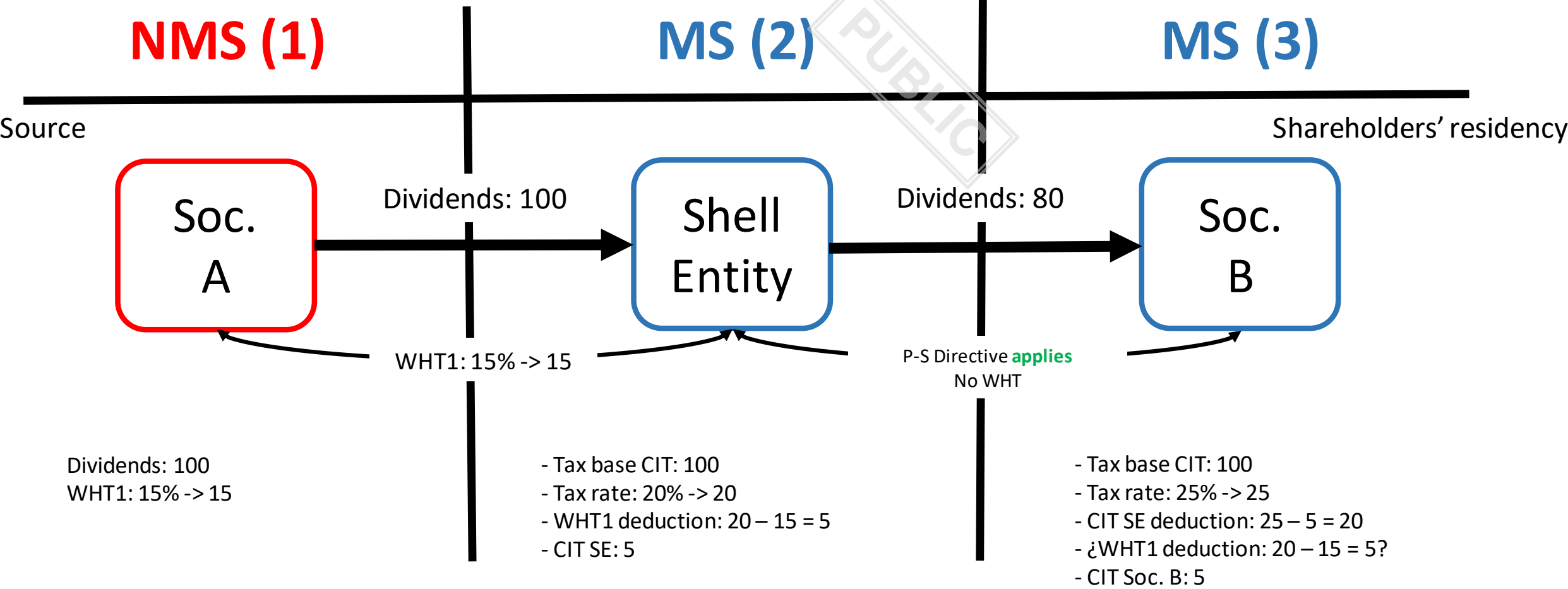
- 12(b): grants a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of DTAs
- Includes revenue in tax base (not explicitly stated in the Directive)
- Deducts WHT1 (not explicitly stated in the Directive)

- 11(2): taxes the dividends in accordance with its national law as if it had directly accrued to the shareholder
- 11(2): deducts any tax paid on such income at the Member State of the undertaking: CIT of the SE and WHT1 (WHT1 not explicitly stated in the Directive)?

When the SE pays the dividends, WHT would be collected if:

- P-S Directive does not apply by design (art. 11(1))
- P-S Directive applies but the conditions are not met (participation < 10%)

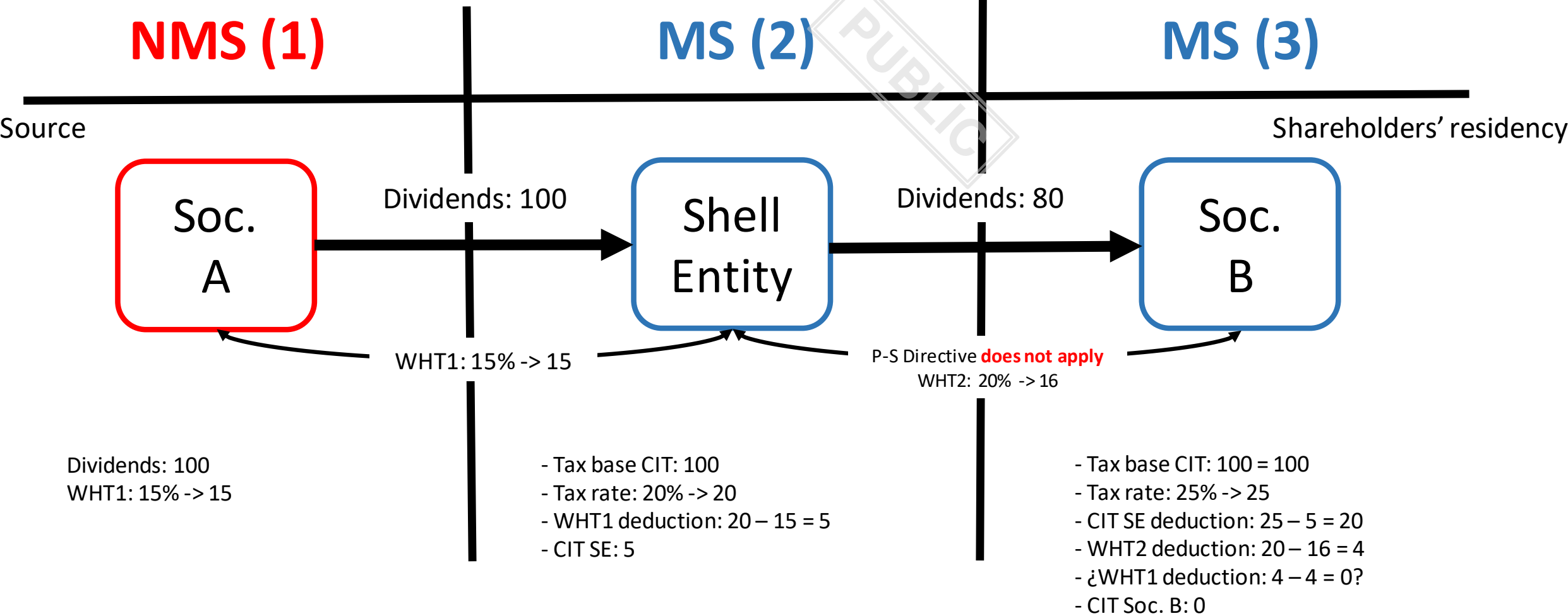
SCENARIO 1: P-S Directive applies



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*No DTAs apply

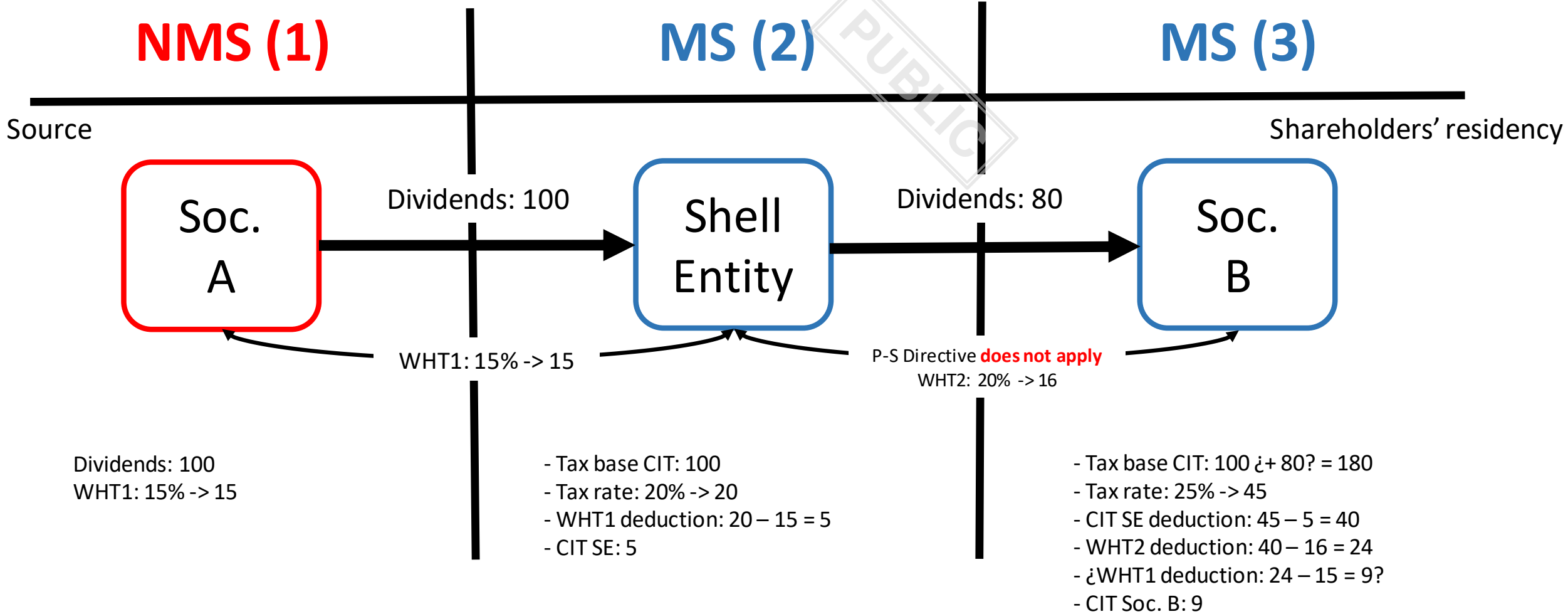
SCENARIO 2: P-S Directive does not apply (1)



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*No DTAs apply

SCENARIO 2: P-S Directive does not apply (2)



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