



KPMG Taseer Hadi & Co.
Chartered Accountants

KTBA Basic PDP Session No. 6

Withholding of Income Tax
-Sections 153, 233 and 165

Presented by:

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Director, Tax

22 November 2023

Sequel

1. Types and Sources of Taxable Income and Taxation Regimes
2. Business Income, Taxation and Exemptions, Depreciation losses and Business losses
3. Income from Property, Capital Gains on shares, properties, intangible & ESOP
4. Advance Tax Payment
5. Audit and Assessment Proceedings under Income Tax, Sales Tax & Services



Part 1

Withholding of Income Tax under Section 153 and 233

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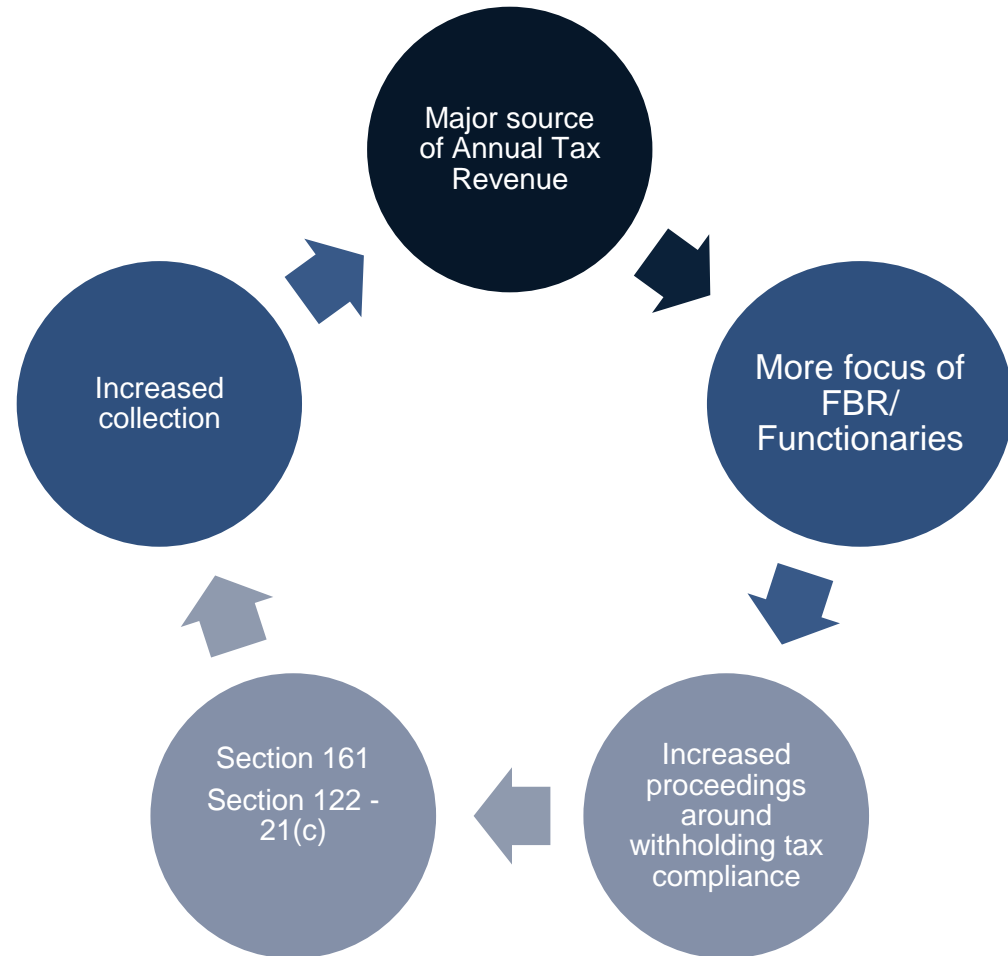
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The Vicious Cycle

Tax Statistics

- There are 10 million registered person with FBR
- Out of this only 4.4 million are active taxpayers
- 5.6 million inactive taxpayers
- Actual taxpayers are only 2.3 million
- Amount of Rs. 3 Trillion collection is made through withholding taxes i.e. 61% of total FBR collection
- Out of which 264 billion is from salaried person
- This huge contribution results more withholding proceedings.



Source: [PERFORMANCE REPORT 2022-23 \(FBR\)](#)
Page No. 16 & 26

Collection Vs Deduction



Payment 100

Collection 25

Total 125

Topped up invoice by service provider

For e.g. Utility bills, event manager



Payment 100

Deduction 10

Total 90

Sliced from invoice settled by service recipient

For e.g. Payment for sales of goods/ services

Sales of Goods- Pertinent terms

Sale of goods:

includes a sale of goods for cash or on credit, whether under written contract or not

Manufacturer:

means a person who is engaged in production or manufacturing of goods, which includes:

- a) any process in which an article singly or in combination with other articles, material, components, is either converted into another distinct article or product is so changed, transferred, or reshaped that it becomes capable of being put to use differently or distinctly; or
- b) a process of assembling, mixing, cutting or preparation of goods in any other manner; and



Sales of Goods - Rate card

S. No	Type of Payment	Rate %	Ind. & AOP	Company
01	Sales of rice, cotton seed oil or edible oil	1.5 / *3	Minimum	<ul style="list-style-type: none"> Minimum Adjustable for manufacturer / listed company
02	Distributors of cigarettes and pharmaceutical products (and for large distribution houses qualifying to be large import house)	1 / *2	Minimum	Minimum
03	Distributors, dealers, sub-dealers, wholesalers and retailers of fast-moving consumer goods, fertilizers, electronics excluding mobile phones, sugar, cement, steel and edible oil, if they are appearing in ATL of income tax and sales tax.	0.25	Minimum	Minimum
04	On supplies of gold, silver and articles thereof	1/*2	Adjustable	Adjustable
05	Sale of any other goods (including toll manufacturing) in the case of:			
	- Company	5 / *10	-	<ul style="list-style-type: none"> Minimum Adjustable for manufacturer / listed company
	- Other taxpayers	5.5 / *11	Minimum	- Minimum

*** The rate to be inflated by 100 percent in case of payment to a person whose name is not appearing in the Active Taxpayers List [10th Schedule]**

Rendering of Services – Pertinent terms

Services:

includes the services of accountants, architects, dentists, doctors, engineers, interior decorators and lawyers, otherwise than as an employee;

Doctrine of mutuality:

- Explanation to section 18(1)(b)
- I.T.R. No.455 of 1990 in Sindh Club KHI dated 26.02.2016
- Judgement dated 10 March 2021 in SRB case
- Implication for withholding tax agents

Exemptions on withholding of taxes on services:

- Section 100C(3)(f) Income from business expended in Pakistan
- Section 159- Income subject to hundred percent tax credit.



Rendering of services- Rate card

S. No	Type of Payment	Rate %
01	Oil tanker contractor services	2 / *4
02	Other services in the case of:	
	- Company	9 / *18
	- Other taxpayers	11 / *22
03	Electronic and print media for advertisement services	1.5 / *3
04	Deduction by exporter or an export house on payment for rendering of certain services	1
05	Prescribed services [Next slide]	4/*8
* The rate to be inflated by 100 percent in case of payment to a person whose name is not appearing in the ATL- [10 th Schedule]		

Rendering of services- Specified services (1/2)

S. No	Description	S. No	Description
1	Transport services,	14	Engineering services including architectural services
2	Freight forwarding services	15	Warehousing services
3	Air cargo services	16	Services rendered by AMCs
4	Courier services	17	Data services provided under license issued by PTA
5	Manpower outsourcing services	18	Telecommunication infrastructure (tower) services
6	Hotel services	19	Building maintenance services
7	Security guard services	20	Services rendered by PSX, PMEX
8	Software development services	21	Inspection, certification Testing and training services
9	IT services and IT enabled services	22	Car rental services
10	Tracking services	23	Oilfield services
11	Advertising services (other than by print or electronic media)	24	Telecommunication services
12	Share registrar services	25	Travel and tour services
13	Collateral management services	26/ 27	REIT Management and NCCPL

Rendering of services- Specified services (2/2)

- No objective basis of demarcation.
- Objective basis should be developed by legislature for bestowing this entitlement.
- There is no definitions - Certain terms may pose difficulty for withholding agents [marked in red]
 - Engineering services [Pakistan engineering counsel]
 - Inspection, certification Testing and training services [composite entry- Intent]
- Effect of proviso added by Finance Act 2021
‘services are subjected to withholding tax on gross receipts and the service provider has not agitated taxation of gross receipts before any court of law’



Execution of contracts- Key aspects

- No precise definition of this term in the law.
- Hybrid arrangements involving goods and services in an inseparable manner may fall into this.
- Examples can be Turnkey contracts, BOT arrangements etc.
- **Engro Vopak Terminal Limited Judgement by High Court 2012 PTD 130 dated 27 September 2011** dilates on application of section 153(1)(c)- Restricted to Oil Terminal operators.



Execution of contracts, other - 153(1)(c) Rate card

S. No	Type of Payment	Rate %	Ind. & AOP	Company
1	Execution of a contract in the case of:			
	- Company	7.5 / *15	-	Minimum Adjustable for listed company subject to conditions
	- Other taxpayers	8 / *16	Minimum	-
	- Sports person	10 / *20	Minimum	-

* The rate to be inflated by 100 percent in case of payment to a person whose name is not appearing in the ATL- [10th Schedule]

Commission and Brokerage- Key aspects

- No precise definition of this term in the law.
- The arrangement in contract rather the nomenclature would determine the precise nature.
- Advertisement agent [special proviso].



Commission- Rate card

S. No	Description	Rate	Individuals /AOPs	Company
1	Advertisement agent	10 / *20	Minimum	Minimum
2	Life Insurance Agent where commission is less than Rs. 0.5 million per annum	8 / *16	Minimum	Minimum
3	Others	12 / *24	Minimum	Minimum
* The rate to be inflated by 100 percent in case of payment to a person whose name is not appearing in the ATL- [10 th Schedule]				

The prescribed persons (1/2)

Section 153(7) - “Prescribed person” means:

- a) the Federal Government;
- b) a company;
- c) an association of persons constituted by, or under law;
- d) a non-profit organization;
- e) a foreign contractor or consultant;
- f) a consortium or joint venture;
- g) an exporter or an export house for the purpose of subsection (2);
- h) an association of persons, having turnover of 100 million rupees or above in any of the preceding tax years
- i) an individual, having turnover of one hundred million rupees or above in any of the preceding tax years.



The prescribed persons (2/2)

Peculiar entries

- an association of persons, having turnover of 100 million rupees or above in any of the preceding tax years
- an individual, having turnover of one hundred million rupees or above in any of the preceding tax years.

Taxation in the hands of recipients

Adjustable/ Minimum tax regime to be determined by recipient becomes subjective.



Exemptions- Part I of 2nd Schedule

Clause No.	Section	Description
12	153(1)(a)	Agricultural produce is bought directly from the grower with prescribed forms and certificates.
43A	153 (1)	An person for self-imported petroleum products under Pakistan's government deregulation policy for POL products.
43B	153 (1)	Sale of air tickets by travelling agents, who have paid withholding tax on their commission income.
43C	153 (1) (a)	Registered petroleum agent or distributor under the Sales Tax Act, 1990 for supplying petroleum products.
43E	153 (1) (a) & (b)	Goods transport contractors taxed at 3.5% for carriage services.
43F	153	A start-up, being recipient of payment as defined in clause (62A) of section 2.
45A	153(1) (a) & (b)	1% withholding tax rate on local sales, supplies, and services for specific categories: textile, carpets, leather, surgical goods, and sports goods.
45B	153	The purchase of used motor vehicles from general public.
46AA Erstwhile SRO 586 (I) / 91	153	Recipients eligible for specified withholding tax exemptions include provincial governments, local authorities, Azad Kashmir residents with proper certification, certain agriculture produce suppliers, electricity, gas, and crude oil companies, hotels, restaurants, shipping and air carriers, unregistered individuals providing materials or services for construction, with specific conditions.
47A	153	Resident person for tax-paid, self-imported goods under Section 148.
77	148 & 153	Tax exemption for imported and locally manufactured items for renewable energy use (solar, wind, etc.).
115	153	Traders being individuals having turnover upto one hundred million Rupees.
119	153(1)	Distributors, dealers, wholesalers and retailers of locally manufactured mobile phone devices as withholding agent.

Other aspects

Time of payment;

- Applicable provisions at the time of payment to be considered- Portal enabled

Exemptions under Part IV- High Court Judgements

Section 159(1)(a)/ Section 159(3)

- Conflicting judgements – Jurisdictional issues
- 2016 PTD 1204 [SHC- Against taxpayers]
- 2016 PTD 2257 [PHC- Against taxpayer]
- 2017 PTD 1544 [IHC- Against taxpayer]
- 2017 PTD 2340 [LHC – In favor of taxpayers]

Effect of netting-off

- Subsection c to section 158 inserted vide Finance Act 2015
- Rule 43B inserted vide SRO dated 29/9/2015
- PTV (vs) CIR(Legal) dated 24 April 2017 reported at 2017 PTD 1372- SCP
- Proviso to 153(1) inserted vide Finance Act 2017



Part 2

Monitoring of withholding taxes

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The scheme of law

Prescribed Person's Obligation

Payments under various provisions mandated for prescribed persons.

Tax Withholding Criteria:

Tax withholding must align with rates specified in relevant sections of the Income Tax Ordinance, 2001.

Timely Tax Deposit:

Tax deducted needs to be deposited under the appropriate section of the Ordinance.

Reporting should be done promptly and accurately.

Monitoring by Tax Authorities:

Tax authorities have the right to scrutinize income tax withholding to ensure compliance.

Consequences of Non-Compliance:

In cases of non-compliance, tax authorities hold the power to impose default surcharge.



Section 161(1B)- The pertinent provision

Section 161(1B) of the ITO,2001- No loss of revenue

Where at the time of recovery of tax under sub-section (1) it is established that the tax that was to be deducted from the payment made to a person or collected from a person has meanwhile been paid by that person, no recovery shall be made from the person who had failed to collect or deduct the tax but the said person shall be liable to pay default surcharge at the rate of 12% per annum from the date he failed to collect or deduct the tax to the date the tax was paid.

- Check the filer status of the recipient
- Presume advance tax discharged by him

Case Law

[Pepsi Cola International \(Pvt.\) Limited and the Federation of Pakistan](#)



The perpetual aberration in the law

Section 161(2) of the Ordinance

A person personally liable for an amount of tax under sub-section (1) as a result of failing to collect or deduct the tax shall be entitled to recover the tax from the person from whom the tax should have been collected or deducted.

In case the tax is deposited by the recipient himself [with return] and also deposited in proceedings under section 161 by the payer, no mechanism exists for refund/ claim of double discharged tax.



Pragmatic proceeding handling tips

- Information seeking u/s 176 as prerequisite is mandatory. Invoke section 161/ 205 at 174 stage should be refuted upfront.
- Banking only on legal observation can be counter productive.
- Details submitted should be conspicuously mentioned [10 bank statements, complete ledgers listed, x number of box files received]
- Submit the soft copies in PDF [we are not meant to ease data mining for the tax authorities];
- The Show cause notice if issued should be refuted with comprehension
- A comprehensive reconciliation of expenses be submitted;
- The preparations for ensuing appeal process should start here.



Model reconciliation under rule 44

Entity's Name		
Withholding tax details - Recon		
TY 2023		
		Rupees
Expense as per the Financial Statements		XXX
Adjustments :		
Acquisition of PPE		XXXX
Increase in advances to suppliers		XXXX
Increase in loans and advances to employees		XXXX
Increase in prepayments		XXXX
(Increase) in payable to suppliers		(XXXX)
Rent payment-As per cashflow statement		XXXXX
Total payments as per the Financial Statements	A	XXXXX
Payments reported in statement u/s 165 [Excluding 236I and 235]	B	XXXXX
Payments not subject to WHT- Breakup below	C=A-B	XXXXX
<u>Details</u>		<u>Remarks</u>
Depreciation	XXXX	Non cash item
Depreciation on right-of-use asset	XXXX	Non cash item
Unrealized loss on remeasurement of investment	XXXX	Non cash item
Impairment Loss on Fee Receivables	XXXX	Non cash item
Rent rates & taxes	XXXX	Government levies etc. Not subject to WHT
Donation	XXXX	Not subject to WHT
Profit on debt	XXXX	Non cash item
Insurance	XXXX	Not subject to WHT- FBR clarification
Stationary (BTL)	XXXX	Below taxable limit misc payments
Utilities	XXXX	Not subject to WHT
Repair maintenance	XXXX	Below taxable limit misc payments
Conveyance	XXXX	Below taxable limit misc payments
Travelling & Conveyance	XXXX	Below taxable limit misc payments
Vehicle Expense	XXXX	Below taxable limit misc payments
Salaries -BTL and others	XXXX	Below taxable limit/ Not subject to WHT
Others	(XXX)	Adjustment
Total	D	XXXX
Difference	E=D-C	XXXX



Judicial scrutiny on the matter (1/2)

- **2002 PTD 1 [SC Pak]- M/s Bilz (Pvt.) Ltd**

Officer is not required to identify the names of the parties to whom the supplies were made [being taxpayer record] once a default is established.

- **2021 SLD 1631 [SC Pak]- MCB**

Issuance of vague show cause notices by borrowing strength from Blitz judgement is unwarranted.

- **CP.s 1920 to 1924/2022 [HC]- IESCO**

Section 161 can be invoked without 177 of the Ordinance.

- **2023 SLD 948 [HC]- IESCO**

- **Proceedings under section 161 are subject to time limitation**



Judicial scrutiny on the matter (2/2)

- **2022 SLD 2105 – [ATIR] - Messrs Spun Yarn Research And Development Company (Pvt) Limited, Multan**

Officer is required to identify specific expenses payments and proceed objectively. Perusal of Rule 44(4) reconciliation is mandatory

- **2014 PTD 1492 [ATIR]**

Establishing of default by applying flat rate on P&L expenses claimed in the return of income is against the principals of invoking section 161.



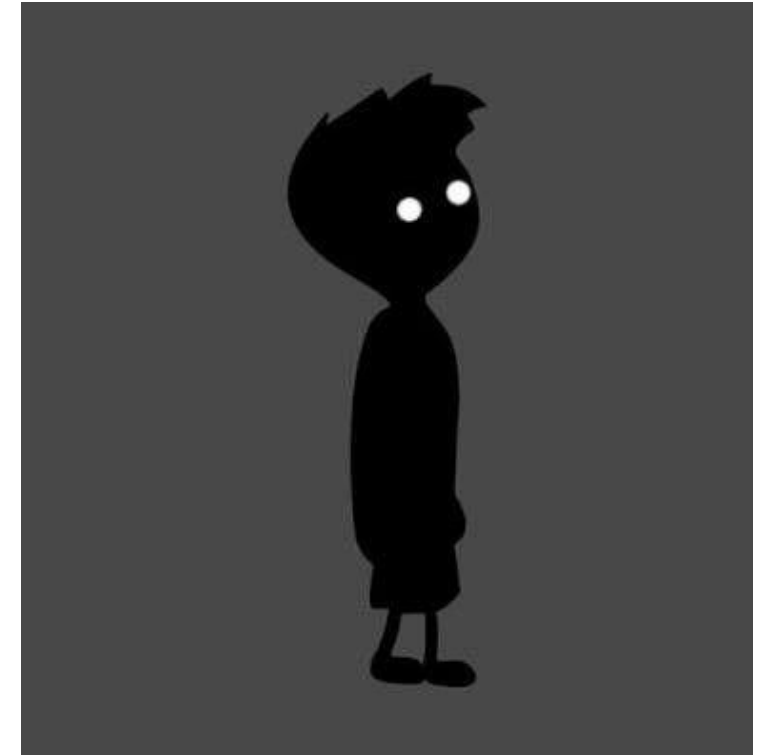
The annual statement and reconciliation of expenses- A statue in LIMBO

Provision of 165(7)/ 165(8) inserted vide Finance Act 2021

- Requirement to file annual statement;
- Requirement to file reconciliation of expenses

Rigorous filing requirement but to channelize the proceedings under section 161

Yet to be prescribed

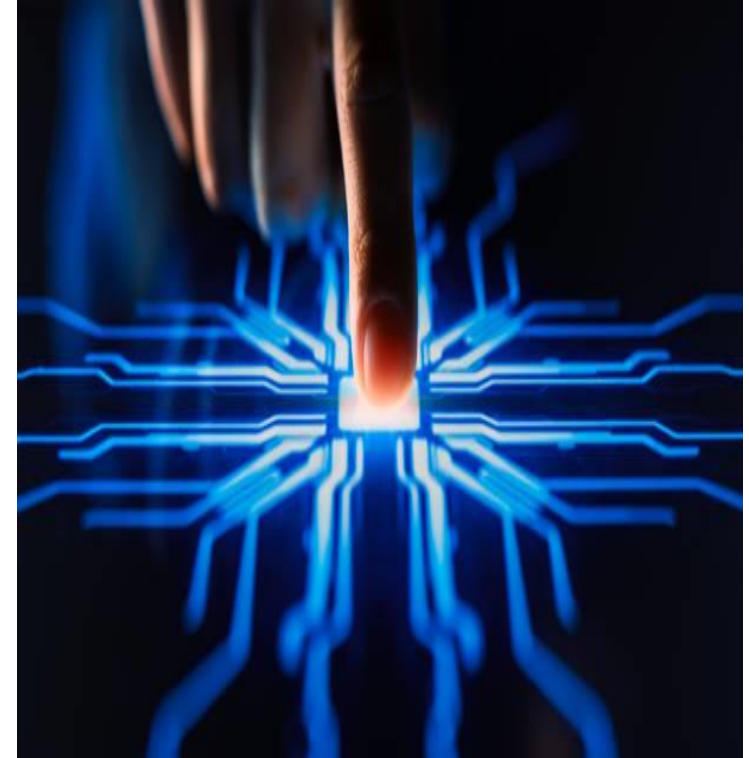


SWAPS agents - Digitalization at infancy stage

2(62B) - Synchronized Withholding Administration and Payment System agent

Section 164A –

- Persons required to deduct or collect tax under the Ordinance to integrate with SWAPS.
- This integration is mandatory subject to penal actions.
- Tax to be credited to Commissioner digitally- Treated as paid u/s 160.
- SPR to replace CPR.
- Recipient eligible to claim credit of tax deposited by SPR





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Questions and answer session



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Thank you



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Color usage

Primary Colors

0
51
141

KPMG blue

30
73
226

Cobalt Blue

12
35
60

Dark Blue

172
234
255

Light Blue

0
184
245

Pacific Blue

114
19
234

Purple

253
52
156

Pink

Accent Colors for Infographics and charts only

118
210
255

Blue

81
13
188

Dark Purple

180
151
255

Light Purple

171
13
130

Dark Pink

255
163
218

Light Pink

9
142
126

Dark Green

0
192
174

Green

99
235
218

Light Green

Neutrals for Infographics and charts only

51
51
51

Grey 1

102
102
102

Grey 2

152
152
152

Grey 3

178
178
178

Grey 4

229
229
229

Grey 5

255
255
255

White

Gradients

- The colors are applied at both ends of the gradient, at 0% and 100% locations
- The mid-point is at 50%
- The gradients are used at a 0° angle
- Use the linear gradient, never radial
- Do not create new gradients; use only the gradients shown here



Purple/
Cobalt gradient

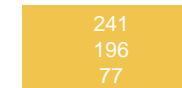


Pacific/
Light Blue gradient

Traffic Light Palette



237
33
36



241
196
77



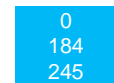
38
153
36

Potential chart color order

- Prioritize our blues, but they don't have to be used all at once
- Mix light, mid and dark tones within data sets



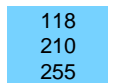
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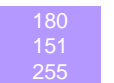
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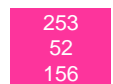
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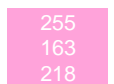
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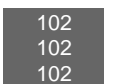
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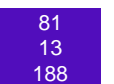
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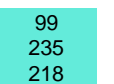
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163
218



102
102
102



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99
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