20th Annual International Tax Quantitative and Reporting Conference

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Welcome

Washington update

Joshua Ruland, Moderator
Principal, National Tax Department
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Agenda

1 | Legislative and administrative update

2 | Regulatory update

3 | Judicial update

4 | Other international tax developments

Objectives

1 | Discuss latest developments coming out of Washington.

2 | Identify important regulatory and administrative considerations.

3 | Assess relevant court cases.

4 | Recognize other international tax developments.

Presenters

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01

Legislative and administrative update

Priorities and timelines

Washington, generally

March 14
Government funding expires

Midyear TBD
Debt limit must be addressed

September 30
Additional government funding deadline

December 31
TCJA individual and passthrough provisions expire

Budget reconciliation

March 24
Earliest Senate will vote on House FY25 budget resolution

Early April
When Speaker Johnson expects House bill to come together

May 26 (Memorial Day)
Target for reconciliation bill enactment

September 30
FY25 reconciliation instructions expire

House & Senate's very different FY2025 Budget Resolutions

House	Senate
$300b for border security & defense	$342b for border security & defense
$4.5t Ways & Means instruction to accommodate tax cuts	Only contemplates increased spending for the border in a first budget reconciliation bill, meaning tax would be taken up in a separate bill later in the year
$1.5t in mandatory spending cuts required from other committees, but $2t total required to avoid reduction in $4.5t tax cut ceiling	

Budget resolutions can include reconciliation instructions to House and Senate committees. The House FY2025 includes instructions only to House committees – instructions to Senate committees must be added – while the narrower Senate resolution includes instructions to both House and Senate committees.

House reconciliation instructions to House committees	$
Armed Services	-$100b
Homeland Security	-$90b
Judiciary	-$110b
Ways & Means	-$4.5t
$1.5t floor for deficit reduction from following committees:	
Agriculture	+$230b
Education & Workforce	+$330b
Energy & Commerce	+$880b
Financial Services	+$1b
Natural Resources	+$1b
Oversight & Government Reform	+$50b
Transportation & Infrastructure	+$10b

Senate instructions to House committees	$
Armed Services	-$150b
Homeland Security	-$175b total
Judiciary	
Transportation & Infrastructure	-$20b
Deficit reduction floor from following committees:	
Agriculture	+$1b
Education & Workforce	+$1b
Energy & Commerce	+$1b
Natural Resources	+$1b

Senate instructions to Senate committees	$
Armed Services	-$150b
Homeland Security	-$175b total
Judiciary	
Commerce, Science & Transportation	-$20b
Deficit reduction floor from following committees:	
Agriculture	+$1b
Energy & Natural Resources	+$1b
Environment & Public Works	+$1b
Finance	+$1b
Health, Education, Labor & Pensions	+$1b

Perspectives on tax reconciliation bill

Scope and sequencing

- Senate Republicans want two reconciliation bills
  - Border first
    - FY[1]25 budget on floor week of February 17
  - Tax second (FY26)
- House Republicans want big, all-in-one bill
  - Budget panel cleared FY25 budget February 13

Timeline

- Speaker Johnson envisions:
  - *End of February* – budget resolution complete
  - *Easter (April 20)* – House tax bill passed
  - *Memorial Day* – bill enacted

Add-ons

- President Trump tax proposals:
  - Tip exemption most likely to be included
  - Carried interest hike
- High-tax-state Republicans want higher SALT[2] cap
- Non-TCJA[3] expiring provisions

Revenue

- Senate Majority Leader Thune, tax chairmen Crapo and Smith want "current policy" baseline
  - New starters paid for
- House conservatives want revenue offsets
- President Trump: pay for tax bill with tariffs

House FY25 Budget
Senate FY25 Budget

→ House, Senate will need to negotiate a compromise budget reflecting either the all-in-one or two-bill strategy.

→ House reconciliation bill
→ Senate reconciliation bill

→ Whatever bills come from the reconciliation process will need to be subject to negotiation so House, Senate can pass same version.

[1] Fiscal year | [2] State and Local Tax | [3] Tax Cuts and Jobs Act

President Trump tax and policy proposals

Policy proposals	Average revenue projection
▪ Extend and modify TCJA provisions	-$5.35t
▪ Exempt overtime income from tax	-$2t
▪ End tax on Social Security benefits	-$1.3t
▪ Exempt tip income from tax	-$300b
▪ 15% tax rate on domestic manufacturers	-$200b
▪ Other individual, small business tax reductions	-$200b
▪ Strengthen military	-$400b
▪ Secure border	-$350b
▪ Housing reforms	-$150b
▪ Health care, long-term care, caregiving	-$150b
SUBTOTAL, tax cuts and spending increases	-$10.4t
▪ Universal baseline tariff, additional tariffs	$2.7t
▪ Reverse current energy/environment subsidies and expand production	$700b
▪ Reduce fraud, waste, and abuse	$100b
▪ End Department of Education and support school choice	$200b
SUBTOTAL, revenue increases and spending cuts	$3.7t

President Trump executive orders and international tax

OECD[1] global tax agreement

- Clarifies "that the Global Tax Deal has no force or effect" in the US
- Directs Treasury and US representative to the OECD to "notify the OECD that any commitments made by the prior administration on behalf of the [US] with respect to the Global Tax Deal have no force or effect within the [US] absent an act by Congress"
- Calls for Treasury/USTR[2] investigation of whether any foreign countries are not in compliance with any tax treaty with the US or "have any tax rules in place, or are likely to put tax rules in place, that are extraterritorial or disproportionately affect American companies, and develop and present … a list of options for protective measures or other actions that" the US should adopt, within 60 days

America First Trade Policy

- Treasury/Commerce/USTR to investigate whether any foreign country subjects US corporations to discriminatory or extraterritorial taxes pursuant to Section 891
  - Section 891 allows for the doubling of rates of tax on citizens and corporations of certain foreign countries if the President finds that US citizens or corporations are being subjected to discriminatory or extraterritorial taxes

* FSGG = Financial Services and General Governance

[1] Organisation for Economic Co-operation and Development | [2] United States Trade Representative

BEPS 2.0: Pillar Two changes are coming; President Trump administration/ Republication approaches to OECD agreement

- Rather than "walk away" from future negotiations on Pillar Two guidance, US Treasury likely will seek changes that further protect US MNEs[1] and the US fisc; potential targets for Pillar Two change:
  - Application of the UTPR[2] to the US earnings of US companies
  - Application of the UTPR to the foreign subsidiary earnings of US companies
  - Treatment of GILTI[3] generally, and double tax re: GILTI and QDMTTs[4]
  - Formula for pushing down "blended CFC[5]" taxes – GILTI (current positive pushdown rules expires at the end of 2025)
- Negotiations over a permanent Pillar Two safe harbor regime
  - The existing CbCR[6] based safe harbor expires in a year
  - Discussions with the business community and among delegates on a permanent safe harbor is just beginning
  - Work on additional technical guidance will likely await development of US position on broader issues
- Congressional Republican view:
  - Clear opposition to UTPR imposition of foreign top up tax on the domestic earnings of US MNEs, and broader application of the UTPR to US MNEs
  - Changing on the ETR[7] for QDMTTs is calculated to take into account GILTI
  - The day after the Administration's executive order on the OECD, Ways and Means Chair Smith and all Committee Republicans introduce HR[8] 591, adding more teeth and further targeting IRC[9] Section 891, focus on DSTs[10], UTPR, other extraterritorial, discriminatory taxes
  - On February 3, 2025, a letter from some Ways & Means Committee Republicans to President Trump supported the day-one E.O.[11] and reasserted their commitment to work with the Administration, highlighting the Biden administration's failure within Pillar Two negotiations: UTPR, QDMTTs, and putting GILTI after the QDMTT

[1] Multinational Enterprises | [2] Undertaxed Profits Rule | [3] Global Intangible Low-Taxed Income | [4] Qualified Domestic Minimum Top-Up Taxes | [5] Controlled foreign corporation | [6] Country-by-Country Reporting | [7] effective tax rate | [8] House of Representatives | [9] Internal Revenue Code | [10] Digital Service Taxes | [11] Executive Order

OECD BEPS 2.0, Pillar One

Allocate taxing rights to market jurisdictions

Pillar One – Amount A

Creates a new taxing right outside the ALP[1] that would allocate profits of an MNE group to market jurisdictions through a formulary approach, and in exchange require removal of current DSTs and prevent future DSTs.

- Implementation will require both a MLC[2] and changes to domestic law by the participating countries.
- JCT[3] March 5, 2024: If Pillar One in effect in 2021, $1.4b loss in US Federal receipts. JCT staff also present a range of single-year effects, from a loss of $100m to a loss of $4.4b reflecting different methods of determining final sales in the United States for in-scope MNEs.
- US congressional support for tax convention is in doubt, as Republican tax committee leaders have denounced "a global deal that surrenders U.S. taxing rights, in exchange for other countries' promise to not impose certain discriminatory taxes on American businesses."
- Most members of Inclusive Framework agreed to refrain from imposing newly enacted DSTs or similar measures on any company between January 1, 2024, and earlier of December 31, 2024, or entry into force of the MLC, provided that a sufficient number of jurisdictions sign MLC before the end of 2023.
- On January 13, 2025, OECD released a statement on the current status of negotiations on Amount A and Amount B. Although consensus has not yet been reached on either the MLC to implement Amount A or an Amount B Framework to require jurisdictions to apply Amount B in specified circumstances, the Statement indicates that progress has been made and work is continuing. The Statement sets out some of the outstanding issues that are close to resolution.

Pillar One – Amount B

Framework for simpler, streamlined application of the ALP for baseline distribution transactions.

- Implemented through updates to the Transfer Pricing Guidelines
- The US prefers moving to a mandatory Amount B.
- January 2025 Statement references optional Amount B incorporated in OECD Transfer Pricing Guidelines in February 2024 and indicates that discussions have continued on a framework under which jurisdictions that become parties to the Amount A MLC will be required to apply Amount B to local taxpayers performing in-scope services where the transaction is covered by an income tax treaty in force with another Inclusive Framework jurisdiction that is also a party to the MLC.

[1] arm's-length principle | [2] Multilateral Convention | [3] Joint Committee on Taxation

Polling question 1

When do you anticipate significant tax legislation will be enacted in 2025?

A. January – April

B. May – August

C. September – December

D. Will not be enacted in 2025

E. N/A (EY associate, faculty, etc.)

02

Regulatory update

Regulatory update

- Final and proposed cloud regulations
- Final § 987 regulations
- Final DCL/DPL regulations
- Proposed PTEP regulations
- Proposed CAMT regulations

Background: PTEP

Objectives

Avoid both double taxation and no taxation

- Section 959
  - Previously taxed earning and profit (PTEP) distributions excluded from income
  - Section 956 amounts
- Section 961
  - Basis increases and decreases
  - Gain recognition

Deemed paid foreign tax credits

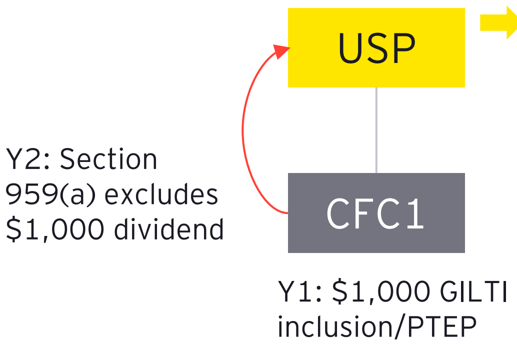
- Section 904 categorization
- Whole or partial disallowance provisions
- When are foreign taxes associated with PTEP for Section 960(b) purposes?

Foreign currency gain or loss (Section 986(c)

Accomplishing all these objectives requires detailed accounting rules

Background: PTEP

Example 1



- Y1: Section 961(a) increases basis to $1,000
- Y2: Section 961(b) reduces basis to $0

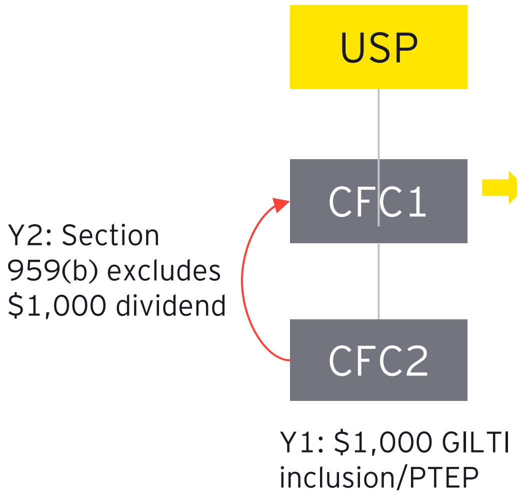
Section 959

- **Section 959(a):** When PTEP of a foreign corporation is distributed to a US shareholder that previously included the related income under Section 951(a) or 951A, distribution is excluded from the US shareholder's gross income.

Section 961

- **Section 961(a):** basis in directly held CFC stock is increased by US shareholder's subpart F or GILTI inclusions
- **Section 961(b)(1):** basis in directly held CFC stock is decreased by PTEP distributions
- **Section 961(b)(2):** gain is recognized to the extent a PTEP distribution exceeds basis

Example 2



- Y1: Section 961(c) increases basis to $1,000
- Y2: Section 961(c) reduces basis to $0

Section 959

- **Section 959(b):** When PTEP of a CFC is distributed through a chain of ownership described under Section 958(a), the distribution is excluded from the gross income of another CFC in the chain for purposes of applying Section 951(a) to such CFC with respect to the US shareholder.

Section 961

- **Section 961(c):** regulatory authority granted for similar adjustments to stock in lower-tier CFCs, "but only for the purposes of determining the amount included under Section 951"

Overview of proposed regulations

Published on December 2, 2024

Basics

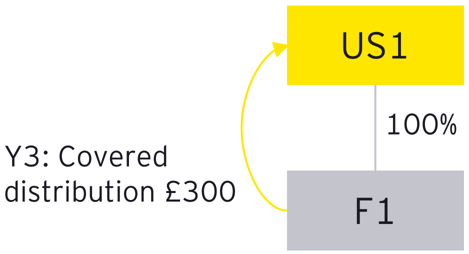
- Generally, would adopt the detailed accounting methodology described in Notice 2019-01 at the shareholder- and foreign corporation-level, which require maintenance of US dollar basis and PTEP tax pools for many separate PTEP accounts.
- Include new proposed rules that would determine the extent to which distributions and stock gain qualify for relevant PTEP regime exemptions.
- Would adopt a detailed share-by-share approach to basis under Section 961.
- Would interpret Section 961(c) to potentially require gain recognition in certain cases.
- Address partnerships, consolidated returns, and foreign currency gain or loss under Section 986(c).

Proposed applicability dates and transition rules

- Provisions described in Notice 2019-01 would apply retroactively to years ending after December 14, 2018.
- Other provisions would apply prospectively to tax years beginning after finalization, but taxpayers could (upon finalization of the regulations) elect early application if they applied the rules consistently and had open statute years.
- When finalized, transition rules generally would require taxpayers to recreate PTEP accounts (and related attributes), as well as Section 961(c) basis and derived basis, as though the regulations had applied to all prior periods.

Background: PTEP

Example 3



Immediately before the covered distribution:

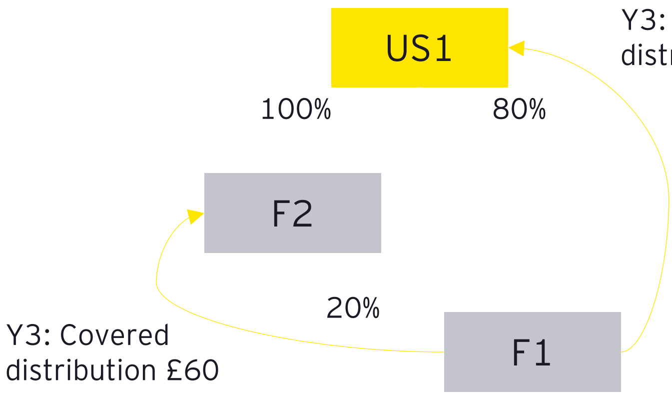
- US1 owns 100 shares of F1 (100%).
- F1 has £180 PTEP, none assigned to the taxable section 962 PTEP group.

- US1's share of the covered distribution is **£300** because the entire amount is made to US1.
- First, US1's share of the covered distribution is allocated to F1's PTEP immediately before the covered distribution (i.e., £180).
  - The PTEP is distributed pro rata with respect to the F1 stock on which US1's share of the covered distribution is made (i.e., **£1.8**) PTEP per share:

$$\text{£180 PTEP} \times \frac{\text{£3 (US1's share of the covered distribution made with respect to the share of F1 stock)}}{\text{£300 (US1's share of the covered distribution)}}$$

  - US1 excludes the £180 from its gross income, without increasing its E&P.
- The remainder of US1's share of the covered distribution (**£120**) is allocated to F1's section 959(c)(3).

Example 4



Of the £300 covered distribution made by F1,

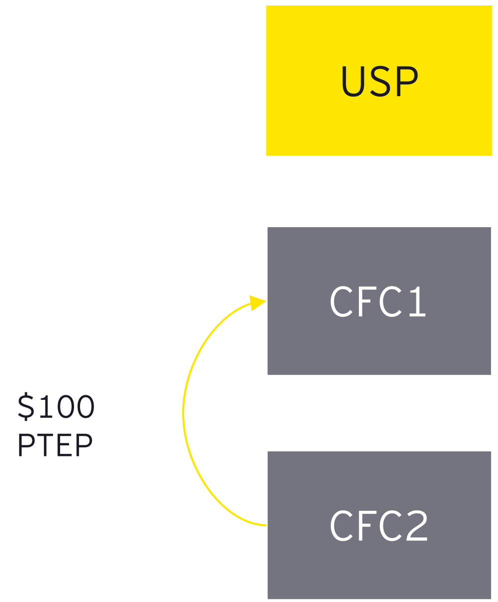
- US1 receives £240, and
- F2 receives £60 (entirely assigned to US1 under Prop. Reg. § 1.951-2).

- US1's share of the covered distribution is **£300** (£240 made to US1 + £60 made to F2 and assigned to US1).
- Same as Example 3, the PTEP of £240 is distributed pro rata with respect to the F1 stock on which the covered distribution is made (i.e., **£1.8**) PTEP per share.
  - US1 receives **£144** of PTEP (£1.8 X 80 shares of F1 stock), and
  - F2 receives **£36** of PTEP (£1.8 X 20 shares of F1 stock).
- US1 excludes the £144 from its gross income.
- F2 excludes the £36 from its gross income, solely for purposes of determining its subpart F income and tested income/loss.

Background: PTEP basics

Illustration

- **Gain recognition events in statute and existing final regulations**
  - Distribution to covered shareholder under Section 961(b)(2): gain recognized when distribution of PTEP exceeds basis in stock
  - Distribution to CFCs under *Section 961(c)*: no explicit gain recognition requirement
  - Distribution to *partnerships*: different considerations based on whether US or foreign, and based on when PTEP arose
- **New gain recognition events in proposed regulations**
  - Section 961(b)(2) – No basis sharing among (1) related covered shareholders; or even (2) different shares of stock held by the same covered shareholder
    - Regulations reserve on treatment of nonrecognition transactions including dividends under Sections 356(a)(2) and 304
  - Section 961(c) – gain recognized when:
    - Negative Section 961(c) basis exceeds adjusted basis
    - Stock with negative Section 961(c) basis is transferred in certain transactions (including nonrecognition exchanges)
  - Partnerships – gain recognized when:
    - Negative derived basis exceeds common basis
    - Stock with negative derived basis is transferred in certain transactions (including nonrecognition exchanges)



	Before distribution	Distribution	After distribution
Regular basis	15	0	15
Section 961(c) basis	25	<40>	<15>
Gain recognized	N/A	<60>	<60>

Guidance on digital content and cloud transactions

Treasury and the IRS released guidance packages on digital content and cloud transactions, comprising:

2025 final regulations

- Adopt a new "predominant character" test for characterizing digital content and cloud transactions with multiple elements.
- Introduce a new sourcing rule for sales of electronically transferred copyrighted articles that is based on the purchaser's billing address.
- Characterize all cloud transactions solely as provisions of services.
- Provide an extensive list of examples of common digital content and cloud business models.

Applicable to tax years beginning on or after January 14, 2025*

2025 proposed regulations

- Provide long-awaited guidance on the sourcing of cloud transactions, which is determined based on three factors:
  - Intangible property factor based on certain R&E[1], royalty, and amortization expenses
  - Personnel factor based on compensation of staff that directly contribute to cloud transactions

  And

  - Tangible property factor based on depreciation/rental of cloud infrastructure

Applicable to tax years beginning on or after publication of final regulations*

Notice 2025-6

- The notice requests comments on:
  - Consequences or interactions that would result if the rules in Treas. Reg.[2] Sections 1.861-18 and 1.861-19 were to apply to all IRC provisions
  - Possible impacts and guidance that may be necessary, including the suggested approach of the guidance
  - Possible impacts and guidance that may be necessary for certain provisions identified in the Notice

Comments are due by April 14, 2025

[1] Research and experimental | [2] Treasury Regulation

*Taxpayers could elect early application of the 2025 final and proposed regulations subject to certain conditions.

Other recent guidance

Link	Subject matter	Date	Description
AM 2025-001	**§ 482 and the CWI standard**	1/17/2025	▪ Discusses the relationship between the general arm's-length standard and the specific periodic adjustment rules, which is used to enforce the **commensurate with income standard** (CWI) clause of Section 482. ▪ Concludes in two scenarios that the taxpayer could not overcome the periodic adjustments because it failed to establish that it satisfied one or more of the relevant exceptions.
CCA 202502005	§ 861 & § 904	1/10/2025	▪ Advising that activities performed by a CFC cannot be attributed to its US shareholder for sourcing service income under Sections 861 and 904 to determine the US shareholder's gross income within the relevant Section 904(d) categories, to the extent the CFC does not meet the factors outlined in *National Carbide* and *Bollinger* for determining whether a corporation functions as an agent.
CCA 202501008	§ 269	1/3/2025	▪ Providing guidance on the application of Section 269 to disallow a deemed incorporation of a foreign corporation made by a check-the-box election combined with a Section 898(c)(2) election for a taxable year end, purportedly made to allocate "gap income" between CFCs, resulting in the elimination of a GILTI amount inclusion. ▪ In the alternative, the IRS applied Treas. Reg. § 1.245A-5T, disallowing the application of the Section 954(c)(6) exclusion to an amount of dividend, resulting in the inclusion of subpart F income.
AM 2024-002	§ 246(b)	10/11/2024	▪ Explains how Section 246(b) taxable income limitation affects deductions under Sections 243, 245, and 250 as impacted by the TCJA, and addresses specific scenarios involving a domestic C corporation with inclusions under Section 951A GILTI, a Section 78 gross-up, and a FDII deduction under Section 250(b).

Polling question 2

What recent and/or forthcoming guidance do you anticipate will have the most significant impact on your organization?

A. Cloud

B. PTEP

C. DCL/DPL

D. §987

E. N/A (EY associate, faculty, etc.)

03

Judicial update

Judicial update

Case name	Issues
▪ Varian	▪ Section 965 transition tax – treatment of section 78 gross up with respect to a section 965 inclusion from non-calendar tax year CFCs
▪ FedEx	▪ On February 13, 2025, the US District Court for the Western District of Tennessee granted FedEx's motion for partial summary judgment, ruling that Section 965(b) offset earnings are not included in Section 951 income and, therefore, the associated foreign tax credit cannot be subject to deductions under Section 965(c) or to a statutory haircut under Section 965(g)(1).
▪ Liberty Global	▪ Application of the economic substance doctrine
▪ 3M	▪ Transfer pricing – treatment of blocked income
▪ Abbott	▪ Inclusion of stock-based compensation (SBC) in cost-sharing arrangements and the cost base of controlled services transactions. ▪ Treatment of the amortization of basis created in gap period basis step-up transactions

Polling question 3

Has your company assessed how these cases will affect your organization?

A. Yes

B. No

C. Currently in progress

D. N/A (EY associate, faculty, etc.)

04

Other international tax developments

Other international tax developments

- Pillar Two administrative guidance
- Brazilian tax reform
  - QDMTT
  - Indirect tax reform

Polling question 4

How relevant are the recent Washington updates to your company?

A. Very relevant

B. Not too relevant

C. Not sure

D. N/A (EY associate, faculty, etc.)

Key takeaways

1 | Review impact of important regulatory and administrative guidance.

2 | Assess relevance of court cases.

3 | Prepare for other international tax developments.

Thank you and questions

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US SCORE no. 26238-251US
2410-11955-CS
ED None

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