UNITED STATES TAX COURT
WASHINGTON, DC 20217

EATON CORPORATION AND SUBSIDIARIES,	)	
Petitioner(s),	)	
v.	)	Docket No. 28040-14.
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent	)	

O R D E R

This case has been pending for over five years and is not currently calendared for trial. Both petitioner and respondent are awaiting a decision in Eaton Corp. & Subs. v. Commissioner, Docket No. 5576-12, before requesting a trial date in the present case.

On September 11, 2019, respondent filed a motion for leave to file second amendment to answer. The second amendment to answer raises a new issue in this case that proposes an adjustment to income of $192,617,171, and an increase to the deficiency of $26,116,392 for taxable year 2010. These amounts were determined pursuant to section 951(a)(1) and section 1.951-1(h), Income Tax Regs.[1] On October 4, 2019, petitioner filed a response to respondent's motion for leave to file a second amendment to answer.

Background

Eaton Worldwide LLC (EW LLC) was a domestic U.S. partnership that was owned by controlled foreign corporations (CFCs) of the U.S. parent company, Eaton. EW LLC's investments included the ownership of other, lower-tier, CFCs.

[1]All section references are to the Internal Revenue Code in effect for the years in issue, and all Rule references are to the Tax Court Rules of Practice and Procedure.

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On May 15, 2017, the parties filed a joint stipulation which included the following as stipulation number 22:

> EW LLC was the United States Shareholder required under section 951(a)(1) of the Code to include in gross income its pro rata share of the Subpart F Income generated by the Lower-Tier CFCs and Section 956 Amounts with respect to the Lower-Tier CFCs during the 2007 through 2010 tax years. The Commissioner has not made an adjustment with respect to this tax treatment.

On October 17, 2017, the parties filed cross-motions for partial summary judgment on the issue of whether the earnings and profits (E&P) of the upper-tier CFC partners of EW LLC, a domestic partnership, must be increased as a result of the partnership's section 951(a) income inclusions. In an Opinion, Eaton Corp. & Subs. v. Commissioner, 152 T.C. 43 (2019), we held that the E&P of upper-tier CFC partners of a domestic partnership, such as EW LLC, must be increased as a result of the partnership's section 951(a) income inclusions. Eaton was thus required to include in its consolidated income, under section 951 and 956, $73,030,810 and $114,065,635 for tax years 2007 and 2008, respectively.

Prior to the Court deciding the cross-motions for partial summary judgment, the Court held a hearing on January 17, 2018, on the cross-motions for partial summary judgment and the parties filed briefs in March 2018 to address issues raised at that hearing. During the hearing, Notice 2010-41, 2010-22 I.R.B. 715, was addressed. Notice 2010-41 provides that the Treasury Department (Treasury) and Internal Revenue Service (IRS) intend to issue regulations that will classify certain domestic partnerships as foreign for purposes of identifying the U.S. shareholder and that these forthcoming regulations will apply to taxable years of a domestic partnership ending on or after May 14, 2010. At the hearing, the Court inquired about Eaton's transaction and the effect that the forthcoming regulations described in Notice 2010-41 would have on Eaton's transaction and asked for respondent to address this issue in respondent's brief.

Respondent's reply to opposition to motion for partial summary, dated March 19, 2018, addressed in detail Notice 2010-41. The response explains that Notice 2009-7, 2009-3 I.R.B. 312, and Notice 2010-41 (the Notices) describe an organizational structure in which a domestic partnership is interposed between two levels of CFCs and that respondent's proposed adjustments are not based on the positions in the Notices. Respondent's response further explains that the issue before the Court in the cross-motions for partial summary judgment is not whether

Eaton must pay current tax with respect to the subpart F income of the lower-tier CFCs which was the subject of the Notices, but rather the issue is whether that income gives rise to an inclusion in the CFC partners' gross income and increases their E&P.

On October 10, 2018, Treasury and the IRS issued a notice of proposed rulemaking which addressed Notice 2010-41 and how Notice 2010-41 stated that proposed regulations were forthcoming. The proposed notice of rulemaking states that ". . . the proposed regulations treat certain controlled domestic partnerships as foreign partnerships for purposes of identifying a U.S. shareholder for purposes of sections 951 through 964." Guidance Related to Section 951A (Global Intangible Low-Taxed Income), 83 Fed. Reg. 51072, 51082 (proposed Oct. 10, 2018) (to be codified at 26 C.F.R. pt. 1).

On July 15, 2019,[2] Treasury and the IRS published T.D. 9866, 2019-29 I.R.B. 261, which finalized certain regulations under section 951, including section 1.951-1(h), Income Tax Regs., which treats a controlled domestic partnership as a foreign partnership under certain circumstances applicable to EW LLC. This new regulation applies to taxable years of domestic partnerships ending on or after May 14, 2010. Sec. 1.951-1(i), Income Tax Regs. EW LLC and Eaton's taxable year ended on December 31, 2010.

Discussion

Respondent seeks a second amendment to answer on the grounds that section 1.951-1(h), Income Tax Regs., requires Eaton to include amounts under section 951(a)(1) in its gross and taxable income as a result of the subpart F income of and section 956 amounts with respect to the lower-tier CFCs in 2010. The proposed amendment to answer is diametrically opposed to the stipulations and respondent's responses to the Court and to petitioner.

Rule 41(a), as applicable to this stage of the case, provides that "a party may amend a pleading only by leave of Court or by written consent of the adverse party, and leave shall be given freely when justice so requires." Whether leave to amend answer will be granted is a question falling within the sound discretion of the Court. Estate of Quick v. Commissioner, 110 T.C. 172, 178 (1998). An important factor in deciding whether leave will be granted is prejudice to the

[2]T.D. 9866, 2019-29 I.R.B. 261, has an effective date of June 21, 2019.

opposing party. Id. at 178-180. Prejudice can occur if the opposing party was required to engage in substantial new preparation at a late stage in the proceedings, necessitating added time and expense.

Granting respondent's motion to leave to file second amendment to answer would be inconsistent with the parties' stipulations. Rule 91(e) provides that "[a] stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties." The Rule further states: "The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or part, except that it may do so where justice requires." In Stanley v. Commissioner, T.C. Memo. 1991-20, we concluded that the parties should be bound by their stipulation even though petitioner contended the stipulation was inconsistent with a recent decision of the Fifth Circuit. In BankAmerica Corp. v. Commissioner, 109 T.C. 1, 12 (1997), the taxpayer was relieved from the effects of a stipulation for the narrow purpose of redetermining interest in a stipulated computation.

The interest of justice does not require us to allow respondent to take a position inconsistent with the parties' stipulations and responses to the Court and petitioner. The Court relied upon the stipulation in question when drafting its Opinion addressing the cross-motions for partial summary judgment. Respondent should have foreseen the proposed regulations, but instead pursued a different legal theory.

Upon due consideration, it is

ORDERED that respondent's motion for leave to file second amendment to answer is denied.

(Signed) Kathleen Kerrigan
Judge

Dated: Washington, D.C.
December 3, 2019