



United States Tax Court

Washington, DC 20217

Adams Challenge (UK) Limited,)	
)	
Petitioner)	
)	
v.)	Docket No. 4816-15.
)	
Commissioner of Internal Revenue,)	
)	
Respondent)	
)	
)	

ORDER

Currently before the Court is petitioner's Motion to Stay Proceedings, filed June 24, 2021. Pursuant to article 26 of the U.S.-U.K. income tax treaty (Treaty), petitioner has submitted a mutual agreement procedure (MAP) request to the U.K. Competent Authority. Petitioner asks that we stay further proceedings in this case until its MAP request has been resolved. We will deny the Motion.

Background

Petitioner is a company incorporated under the laws of the U.K. For the tax years at issue petitioner's only income-producing asset was a multipurpose support vessel. A U.S. firm chartered petitioner's vessel to perform work decommissioning oil and gas wells and removing hurricane-related debris on portions of the U.S. Outer Continental Shelf in the Gulf of Mexico. From this charter petitioner during 2009-2011 earned gross income of about \$45 million.

On November 25, 2014, the IRS sent petitioner a notice of deficiency. The notice determined that petitioner had failed to report income for 2009-2011 and that petitioner was entitled to no deductions or credits because it had failed to file returns. See I.R.C. § 882(c)(2). On February 20, 2015, petitioner timely petitioned this Court for redetermination.

This case has been the subject of two Opinions in this Court, both issued on cross-motions for partial summary judgment. In January 2020 we held that petitioner's income was "effectively connected" with the conduct of a U.S. trade or

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business and was subject to tax under the Internal Revenue Code and the Treaty. Adams Challenge (UK) Ltd. v. Commissioner, 154 T.C. 37 (2020). In January 2021 we upheld the IRS' disallowance of deductions and credits (for 2009-2010 only) and held that such disallowance did not violate the business profits or nondiscrimination articles of the Treaty. Adams Challenge (UK) Ltd. v. Commissioner, 156 T.C. __ (slip op.) (Jan. 21, 2021).

For the past six months this case has been on a status report schedule. The parties have filed joint status reports indicating that they are working together to resolve the remaining issues in the case, viz., the amount of petitioner's allowable deductions and credits for 2011 and the applicability of additions to tax under sections 6651 and 6655. These issues are largely factual and (if resolved) would obviate the need for any trial. The parties stated in their most recent status report that they "do not anticipate the need for a trial regarding the remaining issues in the case."

On June 21, 2021, petitioner submitted a MAP notice to the U.K. Competent Authority. It requested that the U.K. address (among other things) the elimination of any double taxation that might arise from a decision entered by this Court consistently with its Opinions in this case. On July 16, 2021, the U.K. Competent Authority notified the U.S. Competent Authority that it has accepted petitioner's application and proposes to treat the request as protective, i.e., to seek engagement with the U.S. Competent Authority only if this Court grants petitioner's Motion to Stay Proceedings or (if that Motion is denied) when a final decision is entered in this case following any appeal. See I.R.C. § 7481(a).

Petitioner urges that a stay will "preserve the resources of the parties" and of this Court, asserting that the MAP proceedings "may assist in resolving the disputes in this case" and may eliminate the need for an appeal. Respondent objected to petitioner's Motion on July 28, 2021.

Discussion

"[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the [cases] on its docket with economy of time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936). This Court has discretion to grant a stay and will do so only "when the interests of justice seem to require" it. Iron Bridge Corp. v. Commissioner, T.C. Memo. 2012-158, 103 T.C.M. (CCH) 1843, 1844 (quoting Keating v. Office of Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995)). This Court considers (among other things) whether a stay is warranted in light of the status of the case. See ibid.

Petitioner has sought relief under article 26 of the Treaty. That article provides: “Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national.” The taxpayer must submit its request “within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.” Treaty art. 26(1). With respect to an action of the United States, the term “first notification” means “the later of: (1) an assessment pursuant to a notice of proposed adjustment or a statutory notice of deficiency; (2) when a closing agreement is accepted by the Secretary of the Treasury or his delegate; or (3) if the taxpayer is a party in an action in a U.S. court regarding a redetermination of tax liability or requesting a refund of tax, when such action is finally resolved, including any appeal.” IRS Announcement 2007-107.

Petitioner declined to submit a competent authority request within three years of receiving the notice of deficiency in 2014. Instead it opted to commence litigation in this Court, where its case has been pending for more than six years. In a case like this--where the taxpayer initially chooses litigation over mutual agreement proceedings--the competent authority procedure will function most efficiently if the taxpayer pursues its litigation to a final decision under I.R.C. sec. 7481(a), i.e., to the point where “such [litigation] is finally resolved, including any appeal.” IRS Announcement 2007-107.

As respondent explains, a principal issue in a post-litigation mutual agreement proceeding will be whether the U.K., with a view to eliminating possible double taxation, will afford petitioner correlative relief from U.K. tax. Before affording such relief, the U.K. will presumably want to know whether petitioner actually is liable for U.S. tax, and to what extent. That determination will depend on the outcome of any appeal taken by petitioner from our ultimate decision in this case. The U.K. will have no need to consider petitioner’s request, at the expense of its revenue, if an appellate court reverses our decision.

We will accordingly exercise our discretion to deny petitioner’s Motion to Stay Proceedings. The principal legal issues in this case have been resolved; all that remains is computation of petitioner’s allowable deductions and credits for 2011 and determination of its liability for additions to tax. The parties have represented that these issues will likely be resolved without the need for trial. Given the current status of the case, a stay of proceedings in this Court is unlikely to conserve either the Court’s or the parties’ resources in any meaningful way.

Resolution of the remaining (mainly factual) questions, combined with petitioner's likely appeal of the legal issues to a final decision, will enable the U.S. and U.K. Competent Authorities to conduct any future mutual agreement proceeding with knowledge of what petitioner's U.S. tax liability actually is. Petitioner will suffer no prejudice by exhausting its litigation remedies in this way, because it will have three years after our decision becomes final to seek Treaty relief.

Accordingly, it is

ORDERED that petitioner's Motion to Stay Proceedings, filed June 24, 2021, is denied. It is further

ORDERED that the parties shall file, on or before October 8, 2021, a joint status report detailing the then-present status of the case.

(Signed) Albert G. Lauber
Judge