TBL Licensing LLC v. Commissioner, 158 T. C. No. 1 (U. S. Tax Court 2022)

In TBL Licensing LLC v. Commissioner, the U. S. Tax Court ruled that a U. S. corporation must recognize immediate gain under Section 367(d) when it transfers intangible property to a foreign corporation in an outbound F reorganization and then distributes the foreign corporation's stock to its foreign parent, ceasing to exist as a separate entity. This decision underscores the complexities of tax treatment for outbound reorganizations involving intangible assets.

Parties

Petitioner: TBL Licensing LLC f. k. a. The Timberland Company, and Subsidiaries (a consolidated group), at the trial and appellate levels. Respondent: Commissioner of Internal Revenue, at the trial and appellate levels.

Facts

TBL Licensing LLC (TBL), a domestic corporation, was involved in a post-acquisition restructuring following the business combination of VF Corp. and Timberland Co. VF transferred its membership interest in TBL International Properties LLC (International Properties) to VF Enterprises S. à. r. l. (VF Enterprises), a foreign subsidiary. Subsequently, VF Enterprises contributed the sole member interest in International Properties to TBL Investment Holdings GmbH (TBL GmbH), a Swiss corporation. TBL, which owned Timberland's intangible property, elected to be disregarded as a separate entity for federal tax purposes, effectively transferring the intangible property to TBL GmbH. This series of transactions was treated as an F reorganization under Section 368(a)(1)(F).

Procedural History

The Commissioner issued a notice of deficiency determining a deficiency of $504,691,690 in TBL's income tax for the taxable year ended September 23, 2011. TBL challenged this determination in the U. S. Tax Court, seeking a summary judgment. The Commissioner also moved for summary judgment, arguing that TBL must recognize immediate gain under Section 367(d)(2)(A)(ii)(II) due to the constructive transfer of intangible property to TBL GmbH and the subsequent constructive distribution of TBL GmbH stock to VF Enterprises.

Issue(s)

Whether a U. S. corporation that transfers intangible property to a foreign corporation in an outbound F reorganization and then distributes the foreign corporation's stock to its foreign parent must recognize immediate gain under Section 367(d)(2)(A)(ii)(II)?

Rule(s) of Law

Section 367(d) of the Internal Revenue Code requires a U. S. person to recognize gain upon the transfer of intangible property to a foreign corporation in an exchange described in Section 351 or 361. The gain is treated as ordinary income and must be recognized either annually over the useful life of the property or immediately upon a disposition of the property or the stock of the transferee foreign corporation. Temporary Treasury Regulation § 1. 367(d)-1T provides guidance on the application of Section 367(d).

Holding

The Tax Court held that TBL must recognize immediate gain under Section 367(d)(2)(A)(ii)(II) as a result of the constructive transfer of intangible property to TBL GmbH and the subsequent constructive distribution of TBL GmbH stock to VF Enterprises. The court determined that TBL's constructive distribution of TBL GmbH stock was a "disposition" within the meaning of the statute, necessitating immediate gain recognition.

Reasoning

The court's reasoning focused on the statutory interpretation of Section 367(d) and the applicable regulations. The court found that the constructive distribution of TBL GmbH stock by TBL to VF Enterprises constituted a "disposition" within the meaning of Section 367(d)(2)(A)(ii)(II). This disposition followed the transfer of intangible property to TBL GmbH, triggering immediate gain recognition. The court rejected TBL's argument that the transaction should be treated as a single event under the step transaction doctrine, emphasizing that the distribution of stock logically followed the transfer of intangible property. Furthermore, the court found no regulatory provision allowing TBL to avoid immediate gain recognition by having another entity report deemed annual payments. The court also determined that the fair market value of the transferred trademarks should be calculated based on their entire expected useful life, not limited by the 20-year cap in Temporary Treasury Regulation § 1. 367(d)-1T(c)(3).

Disposition

The court granted the Commissioner's motion for summary judgment, denied TBL's motion for summary judgment, and denied as moot the Commissioner's motion in limine and motion to strike. The court entered a decision for the Commissioner, affirming the deficiency in TBL's income tax for the taxable year in question.

Significance/Impact

This case clarifies the application of Section 367(d) to outbound F reorganizations involving intangible property. It establishes that immediate gain recognition is required when a U. S. corporation transfers intangible property to a foreign corporation and then distributes the foreign corporation's stock to a foreign parent, resulting in the U. S. corporation’s dissolution. The decision underscores the importance of considering the timing and nature of transactions in reorganizations and the potential tax consequences of such actions. It also highlights the limitations of the regulatory framework in addressing complex transactions, emphasizing the need for careful planning and compliance with statutory requirements.

