

TaxNewsFlash

United States



No. 2019-075
February 25, 2019

U.S. Tax Court: Upper-tier CFC partners' E&P increased by partnership's section 951(a) income inclusions

The U.S. Tax Court today issued a "reviewed opinion" in which the majority concluded that the earnings and profits of upper-tier controlled foreign corporation partners of a U.S. domestic partnership must be increased as a result of the partnership's section 951(a) income inclusions.

The Tax Court granted the government's motion for summary judgment. The case is: *Eaton Corp. v. Commissioner*, 152 T.C. No. 2 (February 25, 2019)

Read the [Tax Court's opinion](#) [PDF 113 KB] that includes concurring and dissenting opinions.

Summary

A controlled foreign corporation (CFC) that is a partner in a domestic partnership must include in gross income its distributive share of that partnership's gross income—including amounts that the partnership included in income under section 951(a) with respect to any lower-tier CFCs. According to the IRS, the upper-tier CFC partners also must increase their earnings and profits (E&P) by that amount.

The amount of the upper-tier CFCs' E&P was relevant for purposes of applying section 956. The IRS and the taxpayer agreed that section 956 applied to the extent of the upper-tier CFC's applicable earnings, but disagreed on whether the CFC's distributive share of the domestic partnership's section 951(a) inclusion increased the CFC's E&P. The IRS argued that the CFC's E&P was increased, and thus, asserted that the correct amounts to be included in the taxpayer's gross income under sections 951 and 956 were approximately \$73 million and \$114 million for tax years 2007 and 2008, respectively.

The taxpayer countered that a domestic partnership's section 951(a) inclusions do not affect the E&P of its upper-tier CFC partners.

The Tax Court majority agreed with the IRS, holding that the E&P of the upper-tier CFC partners of the domestic partnership must be increased by their distributive share of the partnership's section 951(a) income inclusions.

The information contained in TaxNewsFlash is not intended to be "written advice concerning one or more Federal tax matters" subject to the requirements of section 10.37(a)(2) of Treasury Department Circular 230, as the content of this document is issued for general informational purposes only, is intended to enhance the reader's knowledge on the matters addressed therein, and is not intended to be applied to any specific reader's particular set of facts. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. Applicability of the information to specific situations should be determined through consultation with your tax adviser.

KPMG International is a Swiss cooperative that serves as a coordinating entity for a network of independent member firms. KPMG International provides no audit or other client services. Such services are provided solely by member firms in their respective geographic areas. KPMG International and its member firms are legally distinct and separate entities. They are not and nothing contained herein shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners, or joint venturers. No member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind KPMG International or any member firm in any manner whatsoever.

Direct comments, including requests for subscriptions, to [Washington National Tax](#). For more information, contact KPMG's Federal Tax Legislative and Regulatory Services Group at + 1 202.533.4366, 1801 K Street NW, Washington, DC 20006-1301.

To unsubscribe from TaxNewsFlash-United States, reply to [Washington National Tax](#).

[Privacy](#) | [Legal](#)