

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
ALTABA, INC. (F.K.A. YAHOO! INC.))	
140 East 45th Street, 15th Floor)	
New York, New York 10017-3144,)	
)	
Defendant.)	
_____)	

COMPLAINT TO REDUCE TAX LIABILITIES TO JUDGMENT

Plaintiff, the United States of America, at the request of the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of Treasury, and at the direction of the Attorney General, brings this civil action to collect the unpaid federal tax liabilities of the taxpayer Altaba, Inc. (“Altaba”).

JURISDICTION AND VENUE

1. Jurisdiction over this action is conferred upon this Court pursuant to 28 U.S.C. §§ 1340 and 1345, and 26 U.S.C. § 7402.
2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 because Altaba is incorporated in this jurisdiction.

PARTIES

3. Plaintiff is the United States of America.

4. Altaba is a Delaware corporation with its current headquarters and principal place of business in New York, New York. Ex. A, Chancery Court Pet. ¶ 14.¹

BACKGROUND

5. Yahoo! Inc. (“Yahoo”) was incorporated in 1995 and developed into one of the largest internet companies in the world. Ex. A, Chancery Court Pet. ¶ 15. Yahoo provided a variety of web services, including a web portal and search engine. *Id.* ¶ 16.

6. Yahoo acquired a thirty percent interest in Alibaba Group Holding Limited (“Alibaba”) in 2005 for approximately \$1 billion. Alibaba is a Chinese multinational technology company specializing in e-commerce, retail, internet, and technology.

7. In 2012, Yahoo sold half of its stake in Alibaba.

8. Between 2012 and 2016, Yahoo reported annual gross revenue of approximately \$5 billion and had a market capitalization between \$25 and \$45 billion.

9. On June 13, 2017, Yahoo sold its internet operating business to Verizon Communications, Inc. for approximately \$4.5 billion. Ex. A, Chancery Court Pet. ¶¶ 2, 17.

10. Shortly after the sale, Yahoo changed its name to Altaba (“Altaba”). Ex. A, Chancery Court Pet. ¶¶ 2-3, 17. Altaba’s assets consisted primarily of approximately 383.6 million ordinary shares of Alibaba, a portfolio of marketable debt securities, and its interest in Yahoo Japan Corporation, a joint venture between Yahoo and the Japanese company Softbank. *Id.* ¶¶ 2-3. Altaba also continued to own a portfolio of patent assets through Excalibur IP, LLC, a wholly-owned subsidiary.

¹ “Chancery Court Pet.” references are to Altaba’s petition in the Delaware Chancery Court requesting that Court to determine, *inter alia*, the amount of the security that must be set aside to cover the Internal Revenue Service’s tax claims against Altaba. *See* ¶ 39, *infra*.

11. Altaba is an independent non-diversified, closed-end management investment company. Ex. A, Chancery Court Pet. ¶¶ 3, 19. It was registered under the Investment Company Act of 1940 and was publicly traded on the NASDAQ under the ticker AABA. *Id.*

12. Altaba is taxed as a C Corporation.

13. In its 2018 annual report, Altaba reported approximately \$48 billion in assets, \$12 billion in liabilities, \$266 million in net investment income, and \$17 billion in net realized gains.

14. On April 2, 2019, Altaba's Board of Directors approved a plan of complete liquidation and dissolution ("Dissolution Plan"), which was approved by stockholders on June 27, 2019. Ex. A, Chancery Court Pet. ¶¶ 5, 21, 23.

15. At that time, Altaba had approximately \$49 billion in assets, including its 15% interest in Alibaba, and approximately \$10 billion in reported liabilities.

16. Following the approval of the Dissolution Plan, Altaba began monetizing its holdings in Alibaba and other securities. Ex. A, Chancery Court Pet. ¶ 5.

17. Between July 1, 2019, and August 15, 2019, Altaba sold 143,712,628 shares of Alibaba for approximately \$24.4 billion.

18. During 2019, Altaba sold a total of 278,315,416 Alibaba shares for approximately \$46 billion. During January 2020, Altaba sold its remaining 5,000,000 Alibaba shares for approximately \$1.1 billion.

19. On September 23, 2019, Altaba distributed \$26.8 billion in cash to its shareholders in an initial pre-dissolution liquidating distribution. Ex. A, Chancery Court Pet. ¶ 6. After that distribution, Altaba still had billions of dollars of net assets. *Id.*

20. On October 4, 2019, Altaba filed a certificate of dissolution with the Delaware Secretary of State and formally dissolved in accordance with Delaware law. Ex. A, Chancery Court Pet. ¶ 25.

21. Following the filing of its certificate of dissolution, Altaba's operations and activities were limited to those required to wind up its business under Delaware law.

22. Altaba elected to wind up its affairs through a state-law dissolution process under the General Corporation Law of the State of Delaware ("DGCL"). Ex. A, Chancery Court Pet. ¶ 7.

23. In general, the elective dissolution procedure in DGCL § 280 requires that the dissolved corporation provide notice to all known claimants for the presentation of claims to the corporation; pay all agreed claims; provide notice of rejection for all disallowed claims; petition the Delaware Chancery Court to determine the amount and form of security that will be reasonably likely to be sufficient to provide compensation of all unresolved claims against the corporation; and then post the security ordered by the Chancery Court.

24. Following the completion of such process, the directors of the dissolved corporation will not be personally liable to the claimants and the stockholders will not be liable for claims against the corporation in excess of their pro rata share of the claim or the amount distributed to the shareholder, whichever is less. DGCL §§ 280-282.

25. In accordance with DGCL § 280, Altaba sent notice of its dissolution to the Internal Revenue Service ("Service") on October 7, 2019 ("Dissolution Notice"). Ex. B, Dissolution Notice.

26. The Dissolution Notice informed the Service that any claim against Altaba must be submitted by December 11, 2019. Ex. B, Dissolution Notice.

27. At the time the Service received the Dissolution Notice, Altaba had filed its income tax returns for the 2013 through 2017 taxable years and its employment tax returns (Forms 941 and Forms 940) for all quarterly and annual taxable periods of 2013 through 2017.

28. Altaba filed its 2018 income tax return on October 15, 2019, and paid the tax reported due along with all applicable penalties and interest on February 4, 2020.

29. On December 6, 2019, the Service presented its dissolution claim to Altaba in the total amount of \$12,736,879,763 (“Dissolution Claim”). The Dissolution Claim consisted of a claim for income taxes for the taxable years 2013, 2014, and 2016 through 2029 and a claim for Federal Insurance Contributions Act tax, federal income tax withholding, and Federal Unemployment Tax Act tax (“employment taxes”) for all quarterly and annual taxable periods of 2013 through 2017 and 2019 through 2029. Ex. A, Chancery Court Pet. ¶ 51.

30. After the Service submitted its Dissolution Claim, Altaba made estimated tax payments in the amount of \$5,759,000,000 for the 2019 tax year. These payments, made on December 16, 2019, effectively reduced the Service’s income tax claim for 2019 to \$988,447,686 and reduced the Service’s overall claim to \$6,977,879,763.

31. On February 24, 2020, Altaba issued a letter to the Service accepting-in-part and rejecting-in-part the Service’s claim (“Rejection Notice”). Ex. A, Chancery Court Pet. ¶ 52; Ex. C, Rejection Notice.

32. The Rejection Notice did not specify which parts of the Dissolution Claim it rejected, or provide the basis for such a rejection. *See* Ex. C, Rejection Notice.

33. On March 20, 2020, the Service presented a revised claim in the total amount of \$2,879,738,162 (“Revised Claim”). Ex. D, Revised Claim. The Revised Claim consisted of a

claim for income taxes for the taxable years 2016 through 2029 and a claim for employment taxes for all quarterly and annual taxable periods of 2014 through 2017 and 2019 through 2029.

34. On April 25, 2020, Altaba filed its income tax return for the 2019 tax year.

35. On May 15, 2020, the Service presented its second revised claim in the total amount of \$1,501,161,359 (“Second Revised Claim”). Ex. A, Chancery Court Pet. ¶ 53; Ex. E, 2d Revised Claim. As before, the Second Revised Claim consisted of claims for both income taxes for the taxable years 2016 through 2029 and employment taxes for all quarterly and annual taxable periods of 2014 through 2017 and 2019 through 2029.

36. The Second Revised Claim is, in its entirety, made up of unassessed tax liabilities.

37. Altaba currently has approximately \$13 billion in total assets, of which \$12.9 billion consists of cash and cash equivalents. Ex. A, Chancery Court Pet. ¶ 9.

38. Under DGCL § 280(a)(4), the Service has 120 days from the date of the Rejection Notice to file a suit or proceeding with respect to the claim, otherwise its claim will be barred.

39. On May 28, 2020, Altaba filed a petition for determinations pursuant to DGCL § 280 in the Delaware Chancery Court seeking, among other things, a determination of the amount of security that must be set aside to cover all known and future claims in its dissolution proceedings (“holdback amount”), including the Service’s Second Revised Claim of May 15, 2020. Ex. A, Chancery Court Pet.

40. On June 16, 2020, the United States filed a Notice of Removal with this Court, informing the parties in Altaba’s Delaware Chancery Court dissolution proceeding that it was removing, pursuant to 28 U.S.C. §§ 1441, 1442(a), and 1446(a), the case of *In re Altaba, Inc.*, previously pending in the Delaware Court of Chancery assigned Docket Number 2020-0413-

JTL, to the United States District Court for the District of Delaware (Docket Number _____).

COUNT I - REDUCE FEDERAL INCOME TAX LIABILITIES TO JUDGMENT

41. The United States incorporates by reference the allegations set forth in paragraphs 1 through 40 above.

42. Altaba timely filed its 2017 through 2019 income tax returns.

43. Using information reported on Altaba's tax returns, filings with the Securities and Exchange Commission ("SEC"), prior years' tax returns, adjustments to the returns made in prior years, and additional information provided by Altaba, the Service determined certain adjustments should be made to the tax reported on Altaba's returns.

44. The tax adjustments are laid out in more detail below:

2017 Income Tax Adjustments

45. On its 2017 income tax return, Altaba reported \$2,438,905,101 in total income; \$11,696,159 in taxable income; and no tax due.

46. The Service determined an additional tax liability in the amount of \$17,962,806 based on certain international (cross-border) and domestic adjustments to Altaba's 2017 tax liability.

47. The Service's international adjustments to Altaba's tax liability in the amount of \$11,089,875 are described in more detail below:

- a. Altaba's income was increased \$25,678,373 for cost-sharing transaction charges from increases to cost shared intangible development costs per 26 U.S.C. § 482; and

b. Altaba's income was increased \$6,006,984 for intercompany service charge from allocations of stock-based compensation per 26 U.S.C. § 482.

48. The Service's domestic adjustments to Altaba's tax liability in the amount of \$6,872,931 are described in more detail below:

a. Altaba's income was increased \$10,601,478 for gain from the sale of Yahoo's operating business; and

b. Altaba's income was increased \$9,035,467 for assumption of liabilities from the sale of Yahoo's operating business.

2018 Income Tax Adjustments

49. On its 2018 income tax return, Altaba reported \$28,212,125,850 in total income; \$25,900,879,304 in taxable income; and a tax of \$3,986,067,837.

50. The Service determined an additional tax liability in the amount of \$549,510,900 based on certain international (cross-border) and domestic adjustments to Altaba's 2018 tax liability.

51. The Service's international adjustments to Altaba's tax liability in the amount of \$273,804,029 are described in more detail below:

a. Altaba's income was decreased \$98,213,599 for global intangible low-taxed income ("GILTI") under 26 U.S.C. § 951A;

b. Altaba's income was decreased \$490,623,941 for the 26 U.S.C. § 965(a) inclusion with respect to Alibaba and Yahoo Japan;

c. Altaba's income was increased \$72,799,708 for the disallowance of an 26 U.S.C. § 250 deduction relating to GILTI;

d. Altaba's tax was increased \$570,816,003 for disallowance of foreign tax credits; and

e. Altaba's income was correspondingly decreased \$898,304,901 to reverse the foreign tax credit gross-up under 26 U.S.C. § 78 for the disallowed foreign tax credits.

52. The Service's domestic adjustments to Altaba's tax liability in the amount of \$275,706,871 are described in more detail below:

a. Altaba's income was increased \$1,181,099,866 for net long-term gain from the sale of investments;

b. Altaba's income was increased \$15,515,550 for miscellaneous other income;

c. Altaba's income was increased \$77,032,944 for an exchange gain;

d. Altaba's income was increased \$2,634,612 for the disallowance of a net operating loss deduction; and

e. Altaba's income was increased \$7,687,447 for the disallowance of general business credit carryforwards.

2019 Income Tax Adjustments

53. Altaba filed its 2019 income tax return on April 25, 2020, reporting \$42,419,899,993 in taxable income; and a tax of \$8,745,639,554.

54. The Service determined an additional tax liability in the amount of \$474,825,144.

55. The additional tax liability was based on income of \$43,906,974,751, inclusive of adjustments to income of \$1,711,965,052, as described in more detail below:

- a. \$382,422,450 net investment income, which does not reflect an adjustment to the amount of net investment income reported on the return;
- b. \$219,000,000 income from an indemnification asset, which reflects an adjustment of \$219,000,000 as no income from an indemnification asset was reported on the return;
- c. \$62,131,969 miscellaneous other income, which reflects an adjustment of \$9,060 from the amount of miscellaneous other income reported on the return; and
- d. \$43,243,420,332 realized gain from the sale of Alibaba shares, which reflects an adjustment of \$1,492,955,922 from the realized gain reported on the return.

56. The additional tax liability reflects further adjustments to Altaba's tax return, as described in more detail below:

- a. Altaba's income was decreased \$1,292,078,828 for GILTI under 26 U.S.C. § 951A;
- b. Altaba's income was increased \$783,868,409 for the disallowance of an 26 U.S.C. § 250 deduction relating to GILTI;
- c. Altaba's tax was increased \$162,537,345 for disallowance of foreign tax credits;
- d. Altaba's income was correspondingly decreased \$275,657,989 to reverse the foreign tax credit gross-up under 26 U.S.C. § 78 for the disallowed foreign tax credits;

e. Altaba’s income was increased \$536,171,763 for disallowance of deductions; and

f. Altaba’s income was increased \$22,816,351 for the disallowance of a net operating loss deduction.

57. In summary, Altaba has accrued income tax liabilities for the 2017 through 2019 tax years as follows:

Tax Year	Additional Tax	Interest	Total Amount of Claim as of May 15, 2020
2017	\$17,962,806	\$2,324,948	\$20,287,753
2018	\$549,510,900	\$39,161,540	\$588,672,440
2019	\$474,825,144	\$7,979,519	\$482,804,662
		Total:	\$1,091,764,855

58. Statutory penalties and interest continue to accrue on the income tax liabilities listed in paragraph 57.

59. Altaba has not fully paid the income tax liabilities listed in paragraph 57.

60. Altaba is indebted to the United States for its unpaid income tax liabilities for the 2017 through 2019 tax years in the amount of \$1,091,764,855 as of May 15, 2020, plus interest and other statutory additions to tax that have accrued and will continue to accrue as provided by law.

COUNT II - REDUCE FEDERAL EMPLOYMENT TAX LIABILITIES TO JUDGMENT

61. The United States incorporates by reference the allegations set forth in paragraphs 1 through 60 above.

62. At all times relevant to this action, Altaba has been an employer paying wages to employees within the meaning of Subtitle C of the Internal Revenue Code and, as an employer,

has been subject to the employment tax obligations imposed by federal law, including, but not limited to, duties to:

- a. Withhold federal income and the employees' share of Federal Insurance Contributions Act ("FICA") taxes from employees' wages, and pay over to the Service those withheld taxes, along with the employer's own share of FICA and Federal Unemployment Tax Act ("FUTA") taxes. *See* 26 U.S.C. §§ 3102, 3111, 3301, and 3402.
- b. File with the Service its Employer's Quarterly Federal Tax Returns (Form 941), and annual Employer's FUTA Tax Returns (Form 940). *See* 26 U.S.C. § 6011; 26 C.F.R. §§ 31.6011(a)-1, 31.6011(a)-3, and 31.6011(a)-4.

63. The Service determined Altaba owed additional employment taxes and penalties for the taxable periods of 2015, 2016, 2017, and 2019 using information reported on Altaba's employment tax returns, information from prior years' employment tax returns, adjustments made in prior years, and additional information provided by Altaba.

64. Specifically, the Service adjusted Altaba's timely reported employment tax liabilities as set forth in more detail below:

2015 Employment Tax Adjustments

65. Altaba timely filed its 2015 employment tax returns (Forms 941 and 940).

66. The Service determined Altaba owed additional employment taxes and penalties in the total amount of \$18,056,462, which includes \$14,799,433 in additional income tax withholding and FICA taxes, \$2,959,887 in penalties under 26 U.S.C. § 6662(c), and \$297,142 in penalties under 26 U.S.C. § 6656.

67. The additional employment tax and penalties are based upon the following adjustments:

- a. \$309,944 in additional tax and penalties for adjustments to wages for tax preparation services provided to employees;
- b. \$653,219 in additional tax and penalties for adjustments to wages and taxes for insufficient FICA tax withholdings; and
- c. \$17,093,299 in additional tax and penalties for adjustments to wages for employer-provided meals.

2016 Employment Tax Adjustments

68. Altaba timely filed its 2016 employment tax returns (Forms 941 and 940).

69. The Service determined Altaba owed additional employment taxes and penalties in the total amount of \$16,748,503, which includes \$13,728,737 in additional income tax withholding and FICA taxes; \$2,745,748 in penalties under 26 U.S.C. § 6662(c); and \$274,018 in penalties under 26 U.S.C. § 6656.

70. The additional employment tax and penalties are based upon the following adjustments:

- a. \$288,678 in additional tax and penalties for adjustments to wages for tax preparation services provided to employees;
- b. \$540,480 in additional tax and penalties for adjustments to wages and taxes for insufficient FICA tax withholding; and
- c. \$15,919,345 in additional tax and penalties for adjustments to wages for employer-provided meals.

2017 Employment Tax Adjustments

71. Altaba timely filed its 2017 employment tax returns (Forms 941 and 940).

72. The Service determined Altaba owed additional employment taxes and penalties in the total amount of \$5,880,864, which includes \$4,821,294 in additional income tax withholding and FICA taxes; \$964,259 in penalties under 26 U.S.C. § 6662(c); and \$95,311 in penalties under 26 U.S.C. § 6656.

73. The additional employment tax and penalties are based upon the following adjustments:

- a. \$172,728 in additional tax and penalties for adjustments to wages for tax preparation services provided to employees;
- b. \$152,757 in additional tax and penalties for adjustments to wages and taxes for insufficient FICA tax withholdings; and
- c. \$5,555,379 in additional tax and penalties for adjustments to wages for employer-provided meals.

2019 Employment Tax Adjustments

74. Altaba timely filed its 2019 employment tax returns (Forms 941 and 940).

75. The Service determined Altaba owed additional employment taxes in the total amount of \$2,986,927, which includes \$2,986,591 of income tax withholding and FICA tax for the quarter ending December 31, 2019, and FUTA tax of \$336.

76. The additional employment tax is made up of the following items, less \$136,846 in deposits and payments:

- a. \$436,685 of income tax withholding and FICA tax on wages, which is based upon an average of the prior eight quarters;

- b. \$2,686,374 of income tax withholding and FICA tax on projected annual bonuses, which is based upon the last annual bonuses paid by Altaba; and
- c. \$714 FUTA tax, which is based upon the FUTA tax liability for the prior year.

77. In summary, the Service determined Altaba owes additional employment taxes for all periods of 2015, 2016, 2017, and 2019, plus penalties and interest as follows:

Tax Year	Current Unpaid Liabilities and/or Unrefunded Credits	Additional Tax	Current Balance on Additional Tax	Interest	Total Amount of Claim as of May 15, 2020
2015	\$0	\$18,056,462	\$18,056,462	\$4,188,233	\$22,244,695
2016	\$0	\$16,748,503	\$16,748,503	\$3,108,185	\$19,856,688
2017	(\$3,593)	\$5,880,864	\$5,877,271	\$817,500	\$6,694,771
2019	\$0	\$2,986,927	\$2,986,927	\$81,472	\$3,068,399
				Total:	\$51,864,553

78. Statutory interest continues to accrue on the employment tax liabilities listed in paragraph 77 as provided by law.

79. Altaba has not fully paid the employment tax and penalties listed in paragraph 77.

80. Altaba is indebted to the United States for its unpaid employment tax and penalties for all quarterly and annual taxable periods of 2015, 2016, 2017, and 2019 in the amount of \$51,864,553 as of May 15, 2020, plus interest that has accrued and will continue to accrue as provided by law.

WHEREFORE, the United States prays that this Court:

A. Render judgment in favor of the United States and against Altaba for the 2016 through 2019 income tax liabilities set forth above, in the amount of \$1,091,764,855 as of May

15, 2020, together with all interest and penalties that will continue to accrue thereafter according to law.

B. Render judgment in favor of the United States and against Altaba for the 2015, 2016, 2017, and 2019 employment taxes and penalties set forth above, in the amount of \$51,469,316 as of May 15, 2020, together with all interest that will continue to accrue thereafter according to law.

C. Grant the United States such other relief as it deems just and proper under the circumstances.

Date: June 16, 2020

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