

UK taxman faces lawsuit over Fatca

international-adviser.com/uk-taxman-faces-lawsuit-over-fatca/

By Cristian Angeloni

September 12,
2019



HM Revenue and Customs (HMRC) has been challenged over its handling of personal data regarding British nationals with US citizenship.

The case is especially sensitive for so-called 'Accidental Americans' – people who were born in the US and left shortly after or whose parents are US citizens and have passed down citizenship to them.

Americans living abroad are subject to the Foreign Account Tax Compliance Act 2010 (Fatca), which requires foreign financial institutions to report information about any of their American clients to the Internal Revenue Service (IRS).

The main aim of the legislation is to fight fraud and tax avoidance/evasion, but many have criticised it for causing significant harm to US expats.

Fabien Lehagre, president of the Association of Accidental Americans, told *International Adviser*: "I agree to fight against tax fraud, but this should not be to the detriment of our fundamental freedoms, so I'm pleased to see a new legal challenge against Fatca.

“The time has come for a revision of the Fatca agreement and negotiate a real solution for accidental Americans with the United States.”

The legal challenge

The lawsuit has been brought by a US-born British citizen known as Jenny, who is being represented by law firm Mishcon de Reya.

She said she was not aware of Fatca until she received a letter from her UK bank stating that she “might have tax obligations in the US”, and that it was going to send her information to the IRS; according to her crowdfunding page.

The lawsuit alleges that the sharing of information between foreign financial institutions (in Europe) and the US is in breach of the General Data Protection Regulation (GDPR) – which was introduced in May 2018 – as American citizens cannot decide whether or not they want their information shared with the US tax authorities.

Jenny claimed that the reporting of her personal data could potentially put her, and any other accidental Americans or expats, at risk of hacks and identity fraud – calling Fatca’s objective disproportionate in nature.

Additionally, she is contesting the need for her information to be shared since she earns less than \$104,000 (£84,349, €94,307), which is exempt from income tax for Americans living abroad.

Greater protection

Filippo Nosedo, the lead lawyer from Mishcon de Reya, told *IA*: “This is a complex issue and our client is one of thousands of individuals affected by the new rules.

“If her claim is successful, accidental Americans and others who find themselves in our client’s shoes will have greater protections over their personal and financial information, as HMRC will no longer be able to share this information with the IRS.”

‘Fundamental rights’ in danger

Commenting on his client’s campaign, Nosedo said: “Our client’s claim demonstrates that Fatca gives rise to serious concerns about the violation of fundamental rights to data protection and privacy.

“Our client has no problem with measures to fight crime and tax evasion. Her issues are with the disproportionality of these measures and the breach of various fundamental data protection principles contained in the GDPR, which expose her to potential hacks and identity fraud.

“With Fatca we are seeing public authorities seeking to achieve honourable public objectives through disproportionate – and unnecessary – means. The result is the sharing of personal and financial information that is contrary to the principles of GDPR, which was introduced to give individuals back control of their data.

“With Fatca, there is a particular issue with sending information to a non-EEA country (the US) without appropriate safeguards – in a separate case, the European Court of Justice ruled that this was illegal.”

A spokesperson for the UK taxman told *IA*: “HMRC does not discuss identifiable taxpayers. Fatca plays an important part in the multinational fight against tax avoidance and evasion.”

A legacy of trouble?

This is not the first time Americans living in Europe have tried to overturn their subjugation to the US legislation.

In July 2019, the Association of Accidental Americans also went through the courts in France to stop the country from complying with Fatca, although unsuccessfully.

Many US expats have considered, or have already, surrendered their passports to avoid falling within the legislation’s remit, according to a survey by Greenback Expat Tax Services in July 2019.

As a result, the IRS has recently introduced a scheme for people who have given up their US citizenship with net assets up to \$2m, who owe a maximum of \$25,000 in tax.

Under the taxation programme, they will have their outstanding balance waived by the American taxman.