



GMS Flash Alert

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United States – Belgian Court Opines on Transfer of Americans’ Financial Data

A Belgian appeals court, on June 28, suspended an earlier ruling that prohibited transfers of certain financial information to United States authorities under the U.S.-Belgium FATCA (*Foreign Account Tax Compliance Act*) agreement, as it applies to “accidental Americans”.¹

WHY THIS MATTERS

Foreign nationals who were born in the United States may not realize that they also possess U.S. citizenship. Known as accidental Americans, such dual nationals are subject to U.S. tax and information reporting requirements, including those imposed by FATCA, even if they have no real connection to the United States other than their citizenship. Although the reporting is required of financial institutions rather than the individual, many nonetheless consider the reporting to be intrusive at best.

Background

On May 24, 2023, the Belgian Data Protection Authority ruled² that information about accidental Americans who reside in Belgium should not be transmitted to the United States because such transfers violate EU data privacy rules. However, on June 28, 2023, the Brussels Court of Appeals suspended the ruling,³ allowing transfers of data to continue while the merits of the case are being considered, because, in the opinion of the court, not to honor its commitments under the U.S.-Belgium FATCA agreement would cause reputational damage to Belgium and would risk a reciprocal response from the United States. Observers expect that the case may end up before the Court of Justice of the European Union (CJEU).

KPMG INSIGHTS

A decision in favor of the concerned accidental Americans would significantly lessen the effect of FATCA agreements in Belgium and possibly across the EU. Because there is no standard definition of accidental Americans, who is or is not subject to FATCA reporting could vary from country to country, or could depend on determinations by financial institutions. KPMG LLP (U.S.) will continue to monitor developments in this case.

FOOTNOTES:

- 1 See (in French): <https://www.autoriteprotectiondonnees.be/publications/cour-dappel-arret-provisoire-du-28-juin-2023-2023-ar-801.pdf> .
- 2 See (in French): <https://www.gegevensbeschermingsautoriteit.be/publications/beslissing-ten-gronde-nr.-61-2023.pdf> .
- 3 The EU's General Data Protection Regulation (GDPR) is the bloc's principal statute governing data privacy.

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