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American Citizens Abroad (ACA) Statement: Belgian Data Protection Authority rules against exchange of information of Belgian “Accidental Americans”

The Belgian Data Protection Authority (BDPA), on 24th May 2023, told the Belgian tax authority (Federal Public Service Finance) that it cannot lawfully share data with the US under the US-Belgium Intergovernmental Agreement, saying doing so violates applicable General Data Protection Regulation (GDPR) principles. An individual claiming to be a so-called “Accidental American” raised a complaint. He or she was joined by the “Accidental Americans Association of Belgium.”

The complainant, according to the decision, describes himself as an accidental American because he has American citizenship only because of his birth at Stanford, California, and has not retained any significant link with the US country.

The BDPA has given the tax authority three months to confirm its compliance with the decision.

"The ruling can be appealed. It is not self-executing. The tax authority, if the ruling stands, will need to consider what steps to take. Obviously, it will be conferring with the US Treasury. The Belgian banks and other financial institutions will also want to weigh in," said ACA Legal Counsel, Charles Bruce.

Underlying this ruling is a loosely constructed definition of "Accidental American". In truth, it is a term which is as broad as it is wide. The job of sorting out who is and who is not an Accidental American will fall on the banks with the IRS sitting on their shoulder.

This development lays alongside the IRS's project, described in [Notice 2023-11 \(Dec. 30, 2022\)](#), to create a great deal more specificity in FATCA reporting from the banks.

Stating the obvious, everyone – Americans abroad, foreign banks, foreign tax authorities, the IRS, the Justice Department, should love to see a [Same Country Exemption \(SCE\)](#) inserted in the FATCA regulations. Treasury could do this with the stroke of a pen. This would go a long way toward solving the problem for so-called "Accidental Americans". But the best, most comprehensive answer is [Residence-based Taxation \(RBT\)](#).

The silver lining here is taxpayers and groups representing them are pushed to become more vocal, calling for hearings on taxation of Americans abroad. American Citizens Abroad (the only nonpartisan organization representing Americans abroad, which is headquartered in Washington, DC) is continually hitting away at this subject. Other organizations representing US citizens living and working overseas are

also beating the drum for hearings as is the RBT Coalition [rbt-coalition-pr-220629.pdf](#) ([americansabroad.org](#)).

A quick reading of the decision does not yield a precise definition of “Accidental American”.

It seems that many of the different “players” could benefit from greater precision. Maybe implementation of Notice 2023-11 will help more than it will hurt.

The biggest concern in fact is this: People looking at the headline announcing the Belgian Data Protection Authority may think that they can just sit tight, not give information to their bank, and their US tax problems will go away. This, almost certainly, is not the case. US tax laws are on the books. The IRS cannot fail to enforce them. If information does not come to light via FATCA exchange of information, it will come to light some other way. It did before FATCA, and it will do so in the future.

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