

Our Ref: FN / 60052.1

Your Ref: IC-79544-J6V7 / RFA0890327

London | Cambridge | Oxford | Hong Kong | Singapore

Sent via email: Emma.Bate@ico.org.uk
Emma Bate
Director of Legal Services
Information Commissioner's Office

31 July 2024

Dear Emma

FATCA – Jennifer ("Jenny") Webster v HMRC
Case Reference IC-79544-J6V7 / RFA0890327

We are lodging a complaint with the Commissioner (the "**ICO**"), under Article 77 of the UK GDPR, on behalf of our client Jennifer Webster ("**Jenny**"), on the basis that she considers that the processing of her personal data by His Majesty's Revenue and Customs ("**HMRC**") continues to infringe the UK GDPR.

To the extent that Jenny's previous complaint to you against HMRC remains pending, this letter revives that complaint, but with the addition of further, highly pertinent information. Alternatively, this is a new complaint.

I have included a table of contents and hyperlinks to relevant sources throughout the document (shown in [blue](#)) for ease of reference.

Contents

1.	Webster v HMRC: Data protection angle unresolved	2
2.	ICO's Review of 2020 decision to Jenny's original complaint (HMRC's disclosure)	2
3.	Developments since ICO's correspondence with HMRC	2
4.	US expert evidence	3
5.	Implications for Jenny's complaint	5
6.	Policy view	5
7.	Conclusion and Request	14

1. **Webster v HMRC: Data protection angle unresolved**
 - 1.1 You may be aware of the High Court [judgment](#)¹ in Jenny Webster's case against HMRC.
 - 1.2 The trial on the merits (data protection) was supposed to be heard in November 2023. However, Jenny was compelled to discontinue the claim, as Mrs Justice Collins Rice ruled that she (Jenny) was not permitted to refuse to disclose the identity of the main funder of her claim to the defendants.
 - 1.3 The upshot is that the substantive data protection angle remains undecided.
2. **ICO's Review of 2020 decision to Jenny's original complaint (HMRC's disclosure)**
 - 2.1 HMRC's disclosure contains correspondence between yourself and HMRC (which we had not previously seen) in relation to the review of your 29 May 2020 decision on Jenny's original complaint in light of the landmark judgment handed down by the CJEU two months later (the "**Schrems II Case**")², on the basis that that case "*led to a significant review of the legality of transfers made to third countries*".
 - 2.2 Previously, the ICO had found that HMRC "may" have violated its transparency obligations, although it refused to make a finding on data minimisation and proportionality³.
 - 2.3 HMRC's correspondence⁴ is very relevant for this case, because they go to the heart of data minimisation and proportionality (see [Article 5\(1\)\(b\)](#) of the UK GDPR).
3. **Developments since ICO's correspondence with HMRC**
 - 3.2 The Schrems II Case was also at the centre of the [Belgian DPA decision](#) of 20 May 2023⁵ banning FATCA transfers to the US⁶ (currently under appeal). I note that this was handed down on 24 May 2023, i.e. after your round of correspondence with HMRC, and so it represents new information.

¹ *Webster v HMRC* [2024] EWHC 530 (KB) (08 March 2024).

² [C-311/18](#), ECLI:EU:C:2020:559; 16 July 2020

³ ICO decision dated 20 May 2020, Ref. EFB/RFA0890327

⁴ Letters from HMRC to the ICO dated 18 December 2020 and 19 February 2021.

⁵ We enclose an English translation (**enclosure 1**).

⁶ Concerns have also been raised by the [Slovakian DPA](#).

3.2 On the US front:






- ① [US Treasury data](#)⁷ and statements from the [IRS Commissioner to Congress](#)⁸ confirm that FATCA data is not really used (raising questions about necessity and data minimisation).
- ② [Separate US Treasury data](#)⁹, [data from the US Government Accountability Office](#)¹⁰ and a [written testimony from the former IRS Chief of Criminal Investigations to Congress](#)¹¹ confirm the outdated and unsafe nature of the IRS database, with the former IRS Chief of Criminal Investigations referring to a system [held together with "bubble gum"](#) at a conference on Big Data organised by the US Center for Taxpayer Rights, which I also attended as a speaker¹². Already, academics have coined a [new term \(Information Insecurity\)](#) to describe the state of America's administrative data¹³.
- ③ Also in the US, an attempt to introduce a domestic version of FATCA was abandoned following an outcry about the implications of an automatic transfer of domestic banking data to the IRS for the rights of bank account holders, confirming the central importance of preserving confidentiality in the absence of strict necessity. Our research in this area includes statements made by the [American Bankers Association](#), the [Independent Community Bankers of America](#), [US Senators](#) and [US Congressmen](#) raising the same concerns about privacy and data protection that were raised a decade earlier in Europe. Eventually, the Biden administration acted on those privacy and data protection concerns and the proposal for a domestic FATCA was abandoned.

4. **US expert evidence**

As part of the High Court claim against HMRC, Jenny provided expert evidence from [Prof. Michael Hatfield](#)¹⁴, which concluded inter alia that:

①	<i>"There is no federal data protection agency in the US"</i>	↔	Art. 51 UK GDPR	✘
②	<i>"Within the IRS, the Chief Information Officer and Chief Privacy Officer are responsible for the IRS's security and</i>			

⁷ The full report is accessible here: [TIGTA Report Number 2022-30-019](#), April 7, 2022.
⁸ The full written testimony is accessible here: [Written Testimony of Charles P. Rettig, Commissioner Internal Revenue Service before the House Ways and Means Committee, Subcommittee on Oversight on the Filing Season and IRS Operations](#), March 17, 2022.
⁹ The full report is accessible here: [TIGTA Report Number: 2023-IE-R008](#); August 8, 2023.
¹⁰ The full report is accessible here: [GAO Report Number: 23-105395](#); August 14, 2023.
¹¹ The full testimony is available here: [Written Testimony of Don Fort, Former Chief, Criminal Investigation Internal Revenue Service Before the Senate Finance Committee on House Republican Supplemental IRS Funding Cuts Analyzing the Impact on Federal law Enforcement and the Federal Deficit](#), May 16, 2023.
¹² The podcast of the conference is accessible here: [Big Data, Information Reporting, Information Exchanges, and Audit Selection \(including racial bias\)](#); May 30, 2023.
¹³ See [Matthew Jensen, Keeping Federal Data Secure](#), National Affairs, Number 59, Spring 2024.
¹⁴ The Expert Opinion provided by Jenny and HMRC are included in the trial documents and can be provided to the ICO on request.

	<i>privacy programs. Neither is comparable to the ICO"</i>		Art. 51 UK GDPR	✘
3	<i>"A taxpayer has no right to correct or amend FATCA data"</i>		Art. 16 UK GDPR , Art. 5.1(d) UK GDPR (<i>'accuracy'</i>)	✘
4	<i>"Generally, a taxpayer does not have any legally enforceable right to notification of a data breach"</i>		Art. 33 UK GDPR Art. 5.1(f) UK GDPR (<i>'integrity and confidentiality'</i>)	✘
5	<i>"A taxpayer does not have any right to legal recourse with respect to the unlawful processing of his or her FATCA data, unless the unlawful processing is an IRS employee knowingly or negligently making an unauthorized inspection or disclosure of the FATCA data that is not with a good faith (but erroneous) interpretation of what is legally authorized"</i>		Chapter 8 UK GDPR	✘
6	<i>"FATCA data is stored for 20 years, which is 14 years longer than the statute of limitations for an individual income tax return. The legal basis for such a long storage period is unclear. A taxpayer does not have the right of erasure of the FATCA data"</i>		Art. 17 UK GDPR Art. 5.1(e) UK GDPR (<i>'storage limitation'</i>)	✘

These findings are unsurprising, because the EU Tax Department ('TAXUD') reached the same conclusion in 2011 (*"the US has lower data protection standards"*), – see para. 6.3 below and **enclosure 5**.

That is, one year before HMRC signed the IGA.

This is also consistent with the CJEU findings in the Schrems II Case.

5. Implications for Jenny's complaint

- 5.1 Data minimisation, and the lack of adequate safeguards are key factors in relation to [Art. 46](#) of the UK GDPR.
- 5.2 All the information we refer to above, in section 3., is publicly available, yet we cannot see from the documents disclosed during Jenny's case that HMRC has had regard to, let alone dealt with, any of it.
- 5.3 Interestingly, in its pleadings (of which we understand you have a copy), HMRC referred to our research as evidence that Jenny's real intention was not to protect her rights in respect of her personal data under the UK GDPR/Data Protection Act 2018 ("**DPA18**"), but to "bring down FATCA". They argued that this should have been brought by way of a judicial review back in 2016, and that, for it be brought at the time it was, constituted an abuse of process (albeit that previously, in pre-trial correspondence, HMRC had submitted that Jenny should not attempt to bring an application for judicial review, but instead should make an application under the DPA18, which she did). The whole tussle about the identity of the funder was about intentions (of Jenny, and her main funder) and HMRC's contention that her case was effectively a (late) judicial review application against the FATCA legislative platform.
- 5.4 Our research, however, reveals evidence that (a) FATCA is not working; (b) FATCA is negatively affecting compliant citizens by cutting them out of financial services¹⁵; (c) FATCA data is not used; and (d) FATCA data is not safe. In the pre-trial stage we also disclosed evidence that HMRC signed the FATCA agreement in September 2012 [against the negative advice](#) from the then EU Article 29 Working Party on data protection (of which the ICO was then a member) issued [only two months earlier](#), and notwithstanding data protection concerns raised by the British Bankers' Association and the European Banking Federation, which we found amidst EU internal documents¹⁶. The [European Banking Federation reiterated those concerns](#) in relation to the Common Reporting Standard.

6. Policy view

6.1 Introduction

In principle, the enforcement of data protection rights by an independent supervisory body should not be tainted by policy considerations¹⁷.

In practice, the history of this file shows that policy considerations have been put at the centre of the ICO's handling of Jenny's complaints, as evidenced by

¹⁵ See paragraph 6.1 below

¹⁶ European Commission, "FATCA: List of Key Concerns Identified by the European Banking Industry, 4 February 2011" (disclosure Ref. Ares (2015) 497021) (**Enclosure 2**); British Bankers Association's letter to the IRS dated 17 October 2021 (**Enclosure 3**).

¹⁷ As per the Supreme Court in [Elgizouli](#) [2020] UKSC 10, at [227]: "*It is apparent that the decision was based on political expediency, rather than strict necessity under the statutory criteria. There was no consideration as to whether transfer of personal data as such was required*".

the email correspondence¹⁸ with this firm and the [ICO's decision in relation to Jenny's FOIA complaint](#) (at para. 24)¹⁹.

The main policy considerations for resisting Jenny's claim are as follows:

1	"An intervention by the ICO is likely to prejudice the relations between the UK and the US"	ICO
2	"FATCA/US law provides appropriate data protection safeguards"	HMRC
3	"FATCA is necessary to fight offshore tax evasion"	HMRC
4	"FATCA is proportionate"	HMRC

However, the evidence tells a different story.

6.2 "FATCA's challenge is likely to prejudice relations with the US"

The US has already suffered two defeats at the hand of the CJEU, namely the two Schrems decisions in [2015](#)²⁰ and [2020](#)²¹.

Neither judgment led to retaliatory measures from the US.

FATCA was declared invalid in a decision by the [Belgian DPA](#) (currently under appeal) and there was no outcry from the US at the time of that decision.

This is because the US authorities are fully aware of the clash between the US regulatory framework and EU/UK data protection rules:

- 1 FATCA's incompatibility with the EU (and UK) data protection framework was at the centre of negotiations between the EU and the US ahead of the introduction of FATCA, as our research into internal EU documents shows²².
- 2 FATCA is facing growing criticism within the US, as shown by [statements from the previous IRS Commissioner](#)²³, [interventions by ranking US](#)

¹⁸ See email of 20 May 2020 from Owen Prendeville (ICO): "Our legal team are now seeking a policy view in order to finalise our response to you and HMRC" – **Enclosure 4**.

¹⁹ "The UK has long-standing ties with the US which, at the time of the request, remained one of the UK's closest allies on the international stage. In assessing the prejudice that would be caused to the UK's relations with another state, the Commissioner is also required to consider the wider context and long-term consequences in which the disclosure of the requested information would result."

²⁰ *Maximilian Schrems v Data Protection Commissioner* (C-362/14), 6 October 2015.


²¹ *Data Protection Commissioner v Facebook Ireland Ltd, Maximilian Schrems* (C-311/18), 16 July 2020

²² See e.g. our [letter](#) dated 27 September 2021 to the European Commission setting out the chronology of EU concerns with hyperlinks to the relevant internal documents

²³ The full article is accessible here: [Charles Rettig, The Problem with Ongoing FATCA Compliance](#).

Senators before the Senate Budget Committee, reports by Democrats Abroad²⁴ and press reports²⁵.

- 3 US criticism of FATCA was on full display during a recent hearing of the powerful US Senate Budget Committee, which took place as recently as 10 April 2024. Concerns about the scope and efficacy of FATCA were set out as follows:



UNITED STATES SENATE
BUDGET COMMITTEE

Hearings
Offshore Tax Evasion
Wednesday, April 10, 2024

MR. GRASSLEY

“Targeted approaches are far preferable to broadly applicable ones that sweep up **innocent taxpayers** in far greater numbers than tax cheats”

“A key word is **reasonable**”

“One example of an **overly broad sweep approach** to offshore tax evasion is FATCA”

“According to a 2022 Treasury report, other than assessing \$14m in penalties, the **IRS haven't been able to quantify** any revenue raised under the law”

“Due to FATCA, many Americans living overseas have seen their **bank accounts closed** or have been unable to open an account”

Against this backdrop, an intervention from the ICO to enforce Jenny's data protection rights is unlikely to have serious repercussions to the relationship between the UK and the US.

6.3 "FATCA/US law provides appropriate data protection safeguards"

- 1 The CJEU has ruled that the US does not have appropriate data protection safeguards (Schrems II Case²⁶).
- 2 In relation to FATCA, the lack of data protection safeguards was at the centre of negotiations between the EU and the US as early as 2010, as shown by our research into internal EU documents²⁷, which included this assessment from the European Commission's Taxation Unit²⁸:

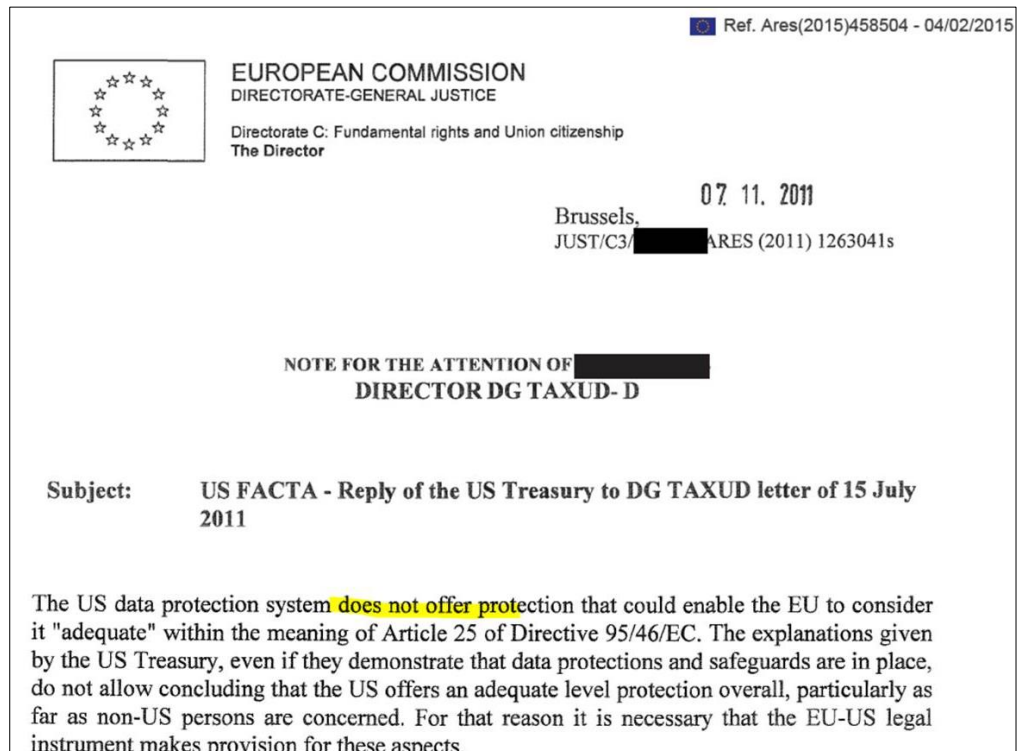
²⁴ Democrats Abroad [2014 FATCA Research Project: FATCA: Affecting Everyday Americans Every Day](#), September 2014; *see also* Democrats Abroad, [letter](#) to Deputy Assistant Secretary – Domestic & International Policy of Treasury, September 8, 2014.

²⁵ Bloomberg, [Americans Abroad Renounce Citizenship to Escape Tax Law's Clutches; FATCA, aimed at cracking down on offshore tax evasion, is hurting accidental US citizens who can't open bank accounts](#), September 30, 2022.

²⁶ See footnote 21

²⁷ See our [chronology](#) with hyperlinks. A copy of the actual internal documents can be provided if requested.

²⁸ See **Enclosure 5**.



③ The same conclusion in relation to FATCA has been reached by:

- the [Belgian DPA in its 77-page long decision](#) of 24 May 2023; and
- the US Expert Report mentioned at paragraph 4 above,

Until and unless HMRC can show that the FATCA framework and US law more generally contain appropriate safeguards that satisfy the requirements of Art. 46 UK GDPR, the ICO should refrain from relying on HMRC's unsubstantiated allegations when forming a policy view.

6.4 "FATCA is necessary to combat offshore tax evasion"

This is HMRC's contention. Indeed, FATCA was projected to bring in US\$ 8.7bn in the first ten years, according to the US Congress in 2010²⁹.

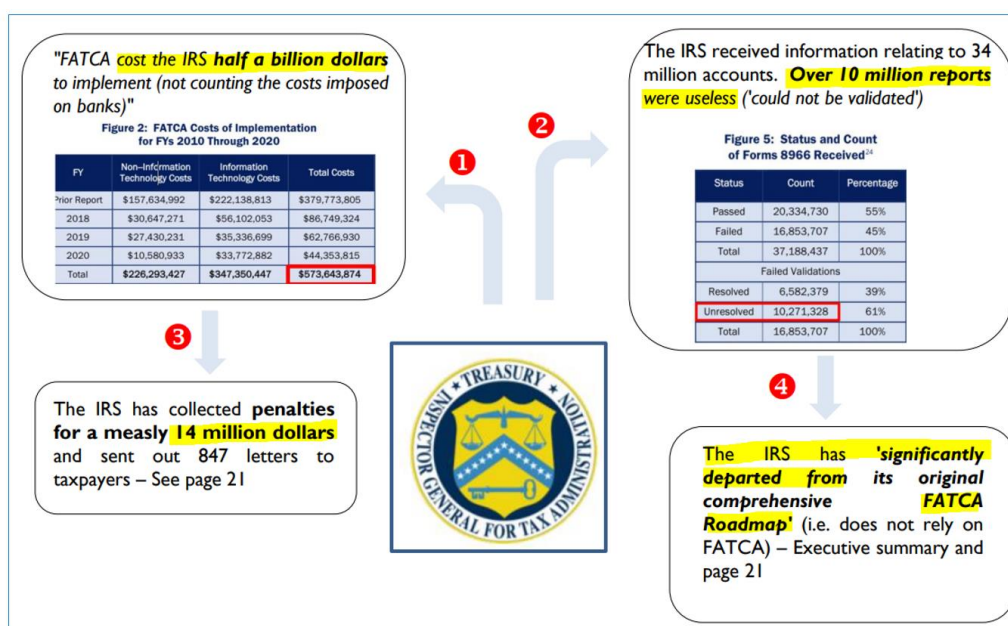
However, [independent US Treasury data](#)³⁰ and statements from the [IRS Commissioner to Congress](#)³¹ confirm that FATCA has not led to any significant increase in tax revenue and the data is not really used.

²⁹ See JCT, "Estimated Revenue Effects of the Revenue Provisions Contained in an Amendment to the Senate Amendment to the House Amendment to the Senate Amendment to H.R. 2847, the Hiring Incentives to Restore Employment Act" JCX-6-10 (Mar. 4, 2010).

³⁰ U.S. Treasury Inspector General for Tax Administration, "Additional Actions Are Needed to Address Non-Filing and Non-Reporting Compliance Under the Foreign Account Tax Compliance Act". The full report is accessible here: [TIGTA Report Number 2022-30-019](#), April 7, 2022.

³¹ The full written testimony is accessible here: [Written Testimony of Charles P. Rettig, Commissioner Internal Revenue Service before the House Ways and Means Committee, Subcommittee on Oversight on the Filing Season and IRS Operations](#), March 17, 2022.

The scale of FATCA's failure to raise additional tax was laid bare in an independent report from the US Treasury Inspector General for Tax Administration (TIGTA)³²:



HMRC has strenuously refused to disclose aggregate data about FATCA. It did so with Jenny and it did the same with the ICO, seemingly to preserve its relationship with the IRS. However, FATCA data has now been scrutinised by the US Treasury in a public report, and so HMRC's approach is pretextual and is designed to avoid scrutiny and accountability.

Has the ICO considered why HMRC refused to provide full disclosure?

What is clear is that HMRC's contention that FATCA is *"necessary to combat offshore US tax evasion"* is not supported by evidence and any policy view on how to approach Jenny's case should not be based on any unsubstantiated allegation to the contrary.

Also, the ICO should consider that FATCA does not affect the UK's tax revenues, because of the unilateral nature of FATCA.

In a remark before FATCA was introduced, the Institute of International Bankers (IIB)³³ noted the lack of return for US partners:

³² See FN 30.

³³ Note of a meeting between representatives of the European banking industry and the US Treasury which took place in December 2010; from the EU disclosure – **Enclosure 6**.

Meetings in Washington DC on 14, 15 and 16 December

(...)

IIB added that there was a **degree of irony** in the Act as the compliance costs for foreign entities were probably going to be tax deductible, effectively forcing **foreign countries** to **subsidise** the compliance with FATCA.

Not only is FATCA not "necessary" to fight [US] tax evasion. In the UK, it led to massive costs without any benefits for the UK coffers:

- FATCA is essentially unilateral, so that HMRC does not receive much in return for harvesting the data of Americans (including many dual UK-US citizens) with bank accounts in the UK;
- In the UK, FACTA required an initial investment of £0.9 billion to £1.6 billion, affected 75,000 financial institutions and requires ongoing annual costs of £50-£90 million a year, according to the UK government's [Tax Impact Note](#)³⁴ and statements made in Parliament³⁵.

Therefore:

- there is no evidence that FATCA is necessary to combat US tax evasion. On the contrary, independent US government data shows that FATCA does not work
- FATCA does not provide the UK with any fiscal benefit. On the contrary, its application causes unnecessary costs.

Both facts should flow into any determination to be reached by the ICO.

6.5 "FATCA is proportionate"

HMRC has been claiming that FATCA is both necessary and proportionate. Again, the evidence shows a different picture.

- 1 HMRC has already confirmed that it gives discretion to UK financial institutions to report bank accounts without any *de minimis* exceptions for reasons of administrative convenience. This goes against the principle of data minimisation set out in [Art. 5.1\(c\) UK GDPR](#)³⁶;
- 2 In practice, UK banks discriminate against US citizens, rather than "offshore tax evaders", reflecting the disproportionate nature of FATCA, as evidenced by [statements from the previous IRS Commissioner](#)³⁷, [interventions by ranking US Senators before the Senate Budget](#)

³⁴ "The International Tax Compliance (United States of America) Regulations 2013", Tax Information and Impact Notes (TIIN), 31 May 2013.

³⁵ See [David Gauke's answer to a written parliamentary question](#), at p. 551W

³⁶ "Personal data shall be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation')".

³⁷ The full article is accessible here: [Charles Rettig, The Problem with Ongoing FATCA Compliance](#).

Committee, reports by Democrats Abroad³⁸, press reports³⁹ as well as testimonies left by ordinary funders on the comments section of Jenny's crowdfunding page:

crowdjustice FATCA & HMRC

♥ **Josh pledged £20**
Match Josh's pledge of £20 >

FATCA is hurting the wrong people. I cannot open a Savings account for my 9-month-old son, who was born and lives in the UK, because he is also a US citizen by birth. Thank you Jenny for leading the fight against this unjust law.

♥ **Miriam pledged £25**
Match Miriam's pledge of £25 >

My biggest problem is my inability to open a UK investment or bank account and the fear that my bank will close my account. This has happened several times already and the number of banks willing to accept Americans as customers is getting smaller and smaller.

♥ **Joseph pledged £50**
Match Joseph's pledge of £50 >

I believe in paying your fair share of taxes, but FATCA and US filing obligations punish US citizens with crushing financial filing costs, and make it impossible for us to open normal bank accounts.

- ③ Concerns with the lack of proportionality of FATCA were raised by the Article 29 Working Party as early as 2012, in an opinion rendered two months before HMRC signed up to FATCA (at [8.7]):

³⁸ Democrats Abroad 2014 FATCA Research Project: FATCA: Affecting Everyday Americans Every Day, September 2014; see also Democrats Abroad, letter to Deputy Assistant Secretary – Domestic & International Policy of Treasury, September 8, 2014.

³⁹ Bloomberg, Americans Abroad Renounce Citizenship to Escape Tax Law's Clutches; FATCA, aimed at cracking down on offshore tax evasion, is hurting accidental US citizens who can't open bank accounts, September 30, 2022.

8 Necessity of FATCA

- 8.1 The WP29 understands that the US government has introduced FATCA to tackle the issue of US persons putting their money in offshore accounts to avoid their US tax obligations. Unlike many other jurisdictions, US tax liability is attached to citizenship or green-card holder status rather than residence, which means regardless of where a US person resides, they will be liable to pay tax in the US.
- 8.2 Whilst there are a number of other mechanisms already established both globally and in the US to tackle tax evasion, weaknesses with the current regimes have been highlighted which has brought about FATCA's introduction¹²¹³.
- 8.3 However, FATCA must be mutually recognised as necessary from an EU perspective. This requires ensuring that there is a lawful basis for the processing through careful assessment of how FATCA's goals balance with that of the EU's fundamental right enshrined in Article 8 of the Charter of Fundamental Rights – the right to a private and family life, i.e. by demonstrating necessity by proving that the required data are the minimum necessary in relation to the purpose. A bulk transfer and the screening of all these data is not the best way to achieve such a goal. Therefore more selective, less broad measures should be considered in order to respect the privacy of law-abiding citizens, particularly; **an examination of alternative, less privacy-intrusive means must to be carried out to demonstrate FATCA's necessity.**

- 4 Concerns were also raised by the European Banking industry, as our research into internal EU documents shows⁴⁰:

4 February 2011

FOREIGN ACCOUNTS TAX COMPLIANCE ACT (FATCA): LIST OF KEY CONCERNS IDENTIFIED BY THE EUROPEAN BANKING INDUSTRY

Lack of proportionality

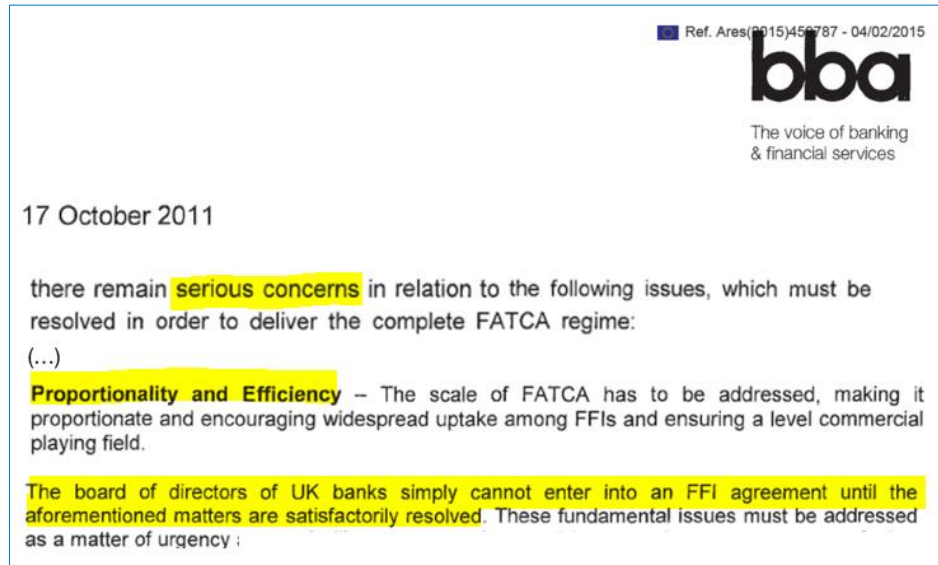
FATCA was intended to recover tax from *high net worth US individuals* with significant offshore assets, but has **lost sight** of this and is now **indiscriminately** impacting all types of client (US and non-US, high worth and low worth) at huge cost to those clients and foreign intermediaries and for very limited return.

FATCA implementation measures and rules are **not proportionate to its essential aims.**

- 5 In the UK, concerns about the lack of proportionality were raised by the British Bankers Association⁴¹ (see next page).

⁴⁰ See enclosure 2.

⁴¹ See enclosure 3.



- 6 There is ample evidence that FATCA affects thousands of ordinary citizens who do not owe any US tax obligations. These adverse effects may range from inconvenience (such as the need to file additional forms) to being debanked, and in many cases, including Jenny's, an unnecessary and unwarranted loss of control over her personal data and (also in many cases, including Jenny's) a loss of personal and national identity through the process of 'expatriation'.
- 7 The US State Department also [confirmed the link between FATCA and expatriations](#)⁴², showing the real effects of the disproportionate data protection intrusion produced by FATCA for ordinary citizens who should benefit from the protections of the UK GDPR, the DPA 2018 and Art. 8 of the European Convention on Human Rights.



In conclusion, the evidence shows that:

- FATCA is disproportionate;
- HMRC has been made aware of it since 2010 – before it signed the IGA;

⁴² [US State Department, Public Notice: 11995](#), October 2, 2023: "While there is no legal requirement for individuals to declare their motivation for renouncing U.S. citizenship, anecdotal evidence suggests that difficulties due at least in part to stricter financial reporting requirements imposed by FATCA, on foreign financial institutions with whom U.S. nationals have an account or accounts may well be a factor."

- HMRC has been consistently refusing to release aggregate data that would show the extent of the fiasco;
- HMRC has been using dilatory tactics and fighting procedural wars to prevent any serious examination of HMRC's official narrative;
- HMRC's culture of carelessness to data protection and data security concerns is also reflected in the use of Fujitsu software to support FATCA reporting, notwithstanding the concerns raised in the Post Office litigation, as confirmed by a FOIA request from our firm⁴³.

When reaching its decision, the ICO should consider HMRC's approach in preventing accountability and scrutiny of its work. For over a decade, HMRC has been fully aware of the concerns raised by everyone, from data protection experts to the banking industry. HMRC has strenuously refused to disclose aggregate information to Jenny and the ICO. In addition, HMRC adopted dilatory tactics to avoid a substantive discussion of the data protection implications of FATCA before the Courts, which remain unresolved.

HMRC's, and the ICO's, consistent failure to address these concerns for almost a decade reflects a culture of silence and carelessness to legitimate data protection concerns.

7. **Conclusion and Request**

FATCA is not victimless. Its scope is disproportionate. It does not bring any benefits to the UK. In the US, it has been discredited by official government data and statements made by IRS Commissioners and Senators in written testimonies and official hearings, so that a confirmation of what is already widely known would not have any significant impact on the relationship between the US and the UK.

The problems are compounded by HMRC giving discretion to UK banks to over-report without any reference to thresholds.

Has the ICO asked itself why HMRC has strenuously refused to disclose aggregate FATCA data?

Webster v HMRC has shown that Jenny never had any US tax obligation. She was never subject to any suspicion of tax evasion. The bulk processing of her personal and financial data violated her rights to data protection and exposed her to unnecessary risks for the safety of her data. There are issues with the principles of transparency, data minimisation and legality. There are also issues in relation to Art. 46 GDPR/UK GDPR (safeguards for transfers to third countries).

HMRC's responses to the ICO's query (which were included in HMRC's disclosure in *Webster v HMRC*) do not provide any satisfactory answers to the concerns raised by Jenny and her legal team.

⁴³ HMRC FOI response dated 17 November 2022 (Ref. FOI2022/65732) – **Enclosure 7**.

We therefore ask the ICO to conclude its Review of its 29 May 2020 decision in response to Jenny's complaint against HMRC, to find that there has been a serious infringement by HMRC of its obligations under the UK GDPR and to order HMRC to bring processing operations into compliance with the provisions of the UK GDPR.

Best regards,

Filippo Nosedà
Partner

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- Encl. **1.** Belgian DPA decision (English translation)
 2. British Bankers' Association letter to the IRS
 3. European Banking Federation's concerns
 4. ICO's email dated 20 May 2020 (*'policy view'*)
 5. TAXUD assessment of lower data protection standards in the US
 6. Minutes – meeting between banking industry and the US Treasury
 7. HMRC FOI response dated 17 November 2022 (Ref. FOI2022/65732) - Fujitsu