

FCA Told To Pause Cum-Ex Tax Probe For £1.5B Civil Trial

By **Richard Crump**

Law360, London (February 24, 2021, 5:13 PM GMT) -- The Financial Conduct Authority was ordered by a judge on Wednesday to halt its investigation into a trader involved in so-called cum-ex transactions to await the outcome of a separate case brought by Danish tax authorities into the controversial dividend trading strategy.



The FCA must suspend its probe into a trader and company until 2022 to await the outcome of a separate case, a judge has ruled at the High Court. (iStock)

Judge Jonathan Swift said in a High Court ruling that the FCA must stop its probe into a trader and company — who were not identified — until 2022. They will have to wait until another High Court judge rules on a complex **£1.5 billion (\$2.1 billion) lawsuit** brought by Denmark against former hedge fund manager Sanjay Shah and almost 100 defendants.

The "risk of serious prejudice" to the trader if the FCA investigation continues outweighs the public interest in the swift prosecution of the case, which has been open since at least 2015, Judge Swift said. He questioned the watchdog's commitment to the case.

Investigating the trader and his company's alleged involvement in cum-ex transactions — in which shares of a company are sold or swapped just before a dividend payout, producing two refunds on one basket of stocks — was not "one of the FCA's high priorities," the judge said.

The trader was the sole shareholder and director of a company being sued by Denmark's tax authority, known as SKAT, in a mammoth lawsuit. The authority alleges it was the victim of a conspiracy between 2012 and 2015 that defrauded it out of reimbursed taxes paid to foreign investors falsely claiming to own shares in Danish companies.

The case, which is expected to be the longest and most expensive in British legal history, is set to be handled through three trials.

A six-week trial of preliminary issues, referred to as the validity trial, is listed to begin in October. It will address whether the tax strategy was fraudulent or consistent with established market practice.

"In this context a further delay pending the outcome of the validity trial, say to the beginning of 2022, will not be likely to inflict any significant harm on the generic public interests I have set," Judge Swift said.

The FCA said in a statement it will seek permission to appeal the decision from the Court of Appeal.

Prosecutors in Germany, Belgium and Denmark are **seeking to extradite** several British nationals and residents over their involvement in the cum-ex scandal, which has allegedly cost national European treasuries €55 billion (\$67 billion) in revenues.

Many of the individuals and companies allegedly involved in the schemes are based in London, but British authorities have yet to secure any prosecutions or penalties.

The claimants are represented by Saima Hanif and Ravi Jackson of 3VB, instructed by Keystone Law.

The Financial Conduct Authority is represented by Monica Carss-Frisk QC of and Ajay Ratan of Blackstone Chambers.

The case is R. on the application of T and another v. Financial Conduct Authority, case number CO/3094/2020, in the Administrative Court, Queen's Bench Division of the High Court of Justice of England and Wales.

--Editing by Ed Harris.

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