Kluwer International Tax Blog

William Byrnes & Haydon Perryman Monthly FATCA GIIN Update

William Byrnes (Texas A&M University Law) · Thursday, June 25th, 2015

The FFI GIIN List Update (Lists from June 1, 2014 through June 1, 2015)

On 1 June 2015 the IRS published its thirteenth FATCA GIIN list of "approved FFIs" (a list of the financial firms that have registered on the IRS FATCA portal). Total approved FFIs reached **165,461**, and increase of only 2,851 during the month of May. This FATCA registration trend since January has been described as lethargic, with April's increase just 2,600 additional firms joining, 3,734 additional during March, and 2,479 in February. But when compared to what was forecast by the IRS, by industry, and by the UK, it's a troubling low figure.

In its FATCA FAQs, the IRS suggested a 500,000 potential FFI registration figure. Many industry stakeholders suggested that 800,000 – 900,000 firms fall under the expansive definition of financial institution.

Given the broad definition of a financial institution that must register for a GIIN, the UK HMRC estimated that, even with its IGA and its accompanying local regulations, 75,000 UK entities probably are impacted. Yet, only the UK GIIN population is only 23,256.

If the UK HMRC is correct that 75,000 entities are impacted in the UK, then extrapolated among other large and sophisticated financial service economies like Japan, China, India, and Germany, the IRS estimate of 500,000 may be low.

90 countries and dependencies have entered into a FATCA IGA with the U.S. based on Model 1A (reciprocal), or are awaiting local ratification, accounting for 100,190 of the registrations. A further eight countries signed a Model 1B (non-reciprocal), accounting for a further 39,564 GIINs. A final 14 countries signed a Model 2 version IGA, adding 18,458 FFI registrations covered by an IGA. Thus in total, **158,212, representing 96% of FFI registrations**, are from the 112 IGA states and their dependencies.

The 131 countries and dependencies without an IGA have only registered 6,295 FFIs to date, a surprising low number given that the initial implementation of the 30% withholding for non-compliance with FATCA began 1 July 2014.

The UK and its ten dependencies and overseas territories comprised 74,694 of the GIINs, representing 45% of the total, or without the UK included, 49,898 for 30.6%. The 34 OECD members have produced 79,057 GIIN registrations.

Cayman remains the FFI registration global leader, with 30,868, throughout the entire FATCA registration process. Ironic that the EU Commission just black listed it last week.

The major financial industries of the four BRIC countries have only led to 8,254 FFI registrations, which is seen as a worrying point for FATCA acceptance among non-OECD states. BRIC registrations are now just dripping in, up from 8,186 in May, 8,060 in April and 7,962 in March.

OECD Common Reporting Standard signatories for the a multilateral competent authority agreement to automatically exchange information has reached 61. But a notable holdout of a signatory that has not yet actually ratified the agreement is the U.S. 88 countries and dependencies are signatories to the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, the latest being Mauritius which signed June 23.

What is the Definition of Financial Institution?

The definition of 'financial institution' is very broad. Thus, entities and firms that may not traditionally (such as a banking enterprise or investment fund) be considered a financial institution are subject to FATCA registration and reporting – such as trust companies, certain insurance companies, holding companies, treasury centers. Moreover, the industry, especially the trust industry, is experiencing some confusion over which entities must register as an FFI, and which do not need to register, or are instead an NFFE.

FFIs are primarily banking and financial institutions, as well as certain investment entities, which are defined by FATCA and separated into three broad categories: (i) primarily traditional banks that accept deposits and perform related banking services in their ordinary course of business, (ii) entities a substantial part of the business of which involves holding financial assets for others, and (iii) entities engaged in the business of investing, reinvesting, and trading in securities, partnership interests, commodities, derivatives, and other passive financial assets.

The first category of FFI describes traditional banks. This FFI is defined as a financial institution that accepts deposits in the ordinary course of a banking or similar business. An entity is engaged in a "banking or similar business" if the entity:

- accepts deposits or similar investments of funds;
- makes personal, mortgage, industrial, or other loans;
- provides credit extension;
- purchases, sells, discounts, or negotiates account receivables, installment obligations, notes, drafts, checks, bills of exchange, acceptances, or other evidences of indebtedness;
- issues letters of credit and negotiates drafts drawn on accounts;
- provides trust or fiduciary services;

- finances foreign exchange transactions; or
- enters into, purchases, or disposes of finance leases or leased assets.

The second category of FFI captures "asset holding" companies. This type of FFI holds financial assets for the account of others as a "substantial" portion of its business. An entity is an asset holding company if more than 20 percent of its gross income is from holding financial assets and related financial services during a three-year period ending on December 31 of the year preceding that in which the determination is made (or the period of the entity's existence, if shorter).

The final category of FFI captures "investment funds", and is broadly defined. Thus, this category includes certain securitization vehicles, certain pension funds, and can potentially include certain other private structures that hold investments such as trusts and underlying holding companies. This category of FFI is primarily engaged in the business of investing, reinvesting, or trading in securities, partnership interests, commodities, or any interest (including futures or forward contracts or options). An investment entity is primarily engaged in one or more of the following activities:

- trading in money market instruments, foreign currency, foreign exchange, interest rates, index instruments, transferable securities, or commodity futures;
- managing individual or collective portfolios;
- investing, administering or managing funds, money, or financial assets on behalf of others; or
- functioning as a collective investment vehicle, mutual fund, exchange traded fund, private equity fund, hedge fund, venture capital fund, leveraged buyout fund, or any similar investment vehicle.

An entity is primarily engaged in these activities if more than 50% of its gross income is from such activities during a three-year period.

FATCA IGA Scenarios	**GIINs**	**Jurisdictions**
Model 1A IGA	100,190	90
Model 1B IGA	39,564	8
Model 2 IGA	18,458	14
No IGA	6,295	131
US	886	1
US Territories	68	6
Total	165,461	250

GIIN List (2014/2015) Registrations

June 77,354

July 82,994

August 95,239

September 99,861

October 104,344

November	116,104
December	122,881
January	147,043
February	153,797
March	156,276
April	160,010
May	162,610
June	165,461

5,809 of the total FFI registrations are members of an expanded affiliated group (EAG).

New Contact Details

I am beginning my new faculty position with Texas A&M University School of Law in a week. With the resources of Texas A&M Law, my research colleague Haydon Perryman (who is now with UBS Investment Bank where he is responsible for global regulatory reporting of FATCA and the CRS) and I will be able to expand our FATCA and CRS research capacity. Any readers that want to assist in such research, please contact us at Haydon Perryman or William Byrnes. Please download my FATCA SSRN article here.

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