

“so that no one can buy or sell who does not have the [FATCA] mark ...” Rev 13:17

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FATCA: GIINs and LEIs

Musings of Professor [William Byrnes](#) with the tremendous brain power of [Haydon Perryman](#)

Firstly, a loud shout out to [Haydon Perryman](#) who crunches the IRS GIIN list into workable data. His research is at the forefront of FATCA and CRS intelligence and the only available for analysis of FATCA. Now unto some numbers.

As of June 1, 2017, GIIN registration had increased to 288,128, up from 274,229 as of February 1, 2017 and 267,707 at year end 2016. Looking back at all our FATCA GIIN posts going back to our original lists analysis of May 2014 (see: [here](#)), it continues to look like a “steady as she goes” scenario with a continual creep up in GIIN registration. GIINs are required to avoid being classified as a non-participating FFI which carries with it the potential for a 30 percent U.S. FATCA imposed withholding sanction. GIINs are also referred to in the OECD CRS forms, albeit not required. However, relative to the initial expectations of the IRS, other revenue authorities, the industry, the GIIN total registrations are a third to two-thirds less than projected after three years.

By example, HMRC estimated that based on the terms of its IGA with the IRS, 75,000 U.K. entities required registration for a GIIN. Yet, as of June 1, 2017, the UK number of registrations have not even breached half that mark at only 30,454 GIINs issued. Is the Cayman Islands financial services sector so much larger than the UK's? 50,306 entities based in Cayman registered for a GIIN as of June 1, 2017.

How is the UK fairing relative to its EU competitor financial service sector? Only 6,635 Swiss entities, which when contrasted to Cayman Islands and the U.K. seems measly. The BRIC countries have picked up FFI registration steam over the past year. India and China are well behind Brazil though with only 300 FFIs registering this year from China moving it from 609 (2014) to 1,082 (2015) to 1,319 (2016) to 1,649 (2017), and 400 additional FFI registrations from India moving it from 393 (2014) to 910 (2015) to 1,506 (2016) to 1,952 (2017). Brazil experienced the largest jump of registrations of all countries this past year, jumping more than 10, from 2,841 (2014) to 5,709 (2015) to 7,442 (2016) to 18,558 (2017), whereas less than 300 additional Russian entities registered (from 961 in 2014 to 1,306 in 2015 to 1,581 in 2016 and 1,821 in 2017).

Why the jump in Brazil? Brazil does not even have a tax treaty with the U.S. Brazilian banks have U.S. exposure but relatively small compared to China which also has a U.S. tax treaty. Let's consider China then turn back to Brazil.

China was initially reluctant to sign onto FATCA, but its desire to enforce worldwide taxation on its citizens apparently won out over its concern that the U.S. legislative aggression. Early in the 1990s, China expressed interest in enforcing worldwide taxation of its residents, sending officials to visit the U.S. But China did not move to enforce worldwide taxation because the Chinese government faced the challenge to access information about its citizens' worldwide income and assets. FATCA has now presented China with the structure it needed to pursue its worldwide tax objectives. China citizens increasingly earning money overseas. Also, Chinese municipalities, which collect individual and corporate income tax from residents and then share a portion with the central government, have seen their share of the tax pie decrease, increasing their incentive to locate residents' income overseas. On June 26, 2014, after apparently recognizing the value of bi-directional tax information sharing, China reached an agreement in substance with the U.S. that is based on the Model I IGA. However, as of June 2017, China has not yet signed the IGA, and the Treasury has said that it reviews all of its agreements in substance on a monthly basis. A jurisdiction may be removed from the list if it is deemed not to be responsive to communications from the U.S. regarding an IGA or if the jurisdictions has communicated its potential inability to sign or implement an IGA. Has not seemed to push China entities to register for a GIIN?

And consider that China has significantly more to gain from the potential pool of its citizens hiding assets in the U.S. than the vastly smaller pool of U.S. persons that may be hiding China assets. As of the 2011 census, 71,493 U.S. persons lived in mainland China and another 23,423 in Hong Kong. On the other hand, the 2012 U.S. Census bureau reported that four million Chinese-born persons resided in the U.S. As of September 2016, China mainland and Hong residents held \$226 billion of banking and short-term securities in U.S. institutions, consisting of \$100,308 billion for persons from China Mainland and \$126,092 billion attributed to Hong Kong persons. Moreover, the United States has recently cooperated with China on corruption cases, including assisting with the return of six allegedly corrupt officials between April 2015 and November 2016. Yet, China is not a country with which the IRS has determined that it is appropriate to have an automatic exchange relationship with respect to the information collected (see [Rev. Proc. 2017-31](#)). Perhaps that is why China has not pushed its entities to sign up with the IRS.

On the other hand, Brazil on September 30, 2015, received its first reciprocal exchange of information under FATCA. According to the information, the Brazilian Federal Revenue Office provided the public, Brazil received through the IRS International Data Exchange Service (IDES) information from 457 Financial institutions on US\$40 million in payments to 22,736 Brazilian individuals' accounts and of US\$265 million to 2,544 legal entities' accounts. Brazil sent to the U.S. through the Brazilian System for Exchange of Information on Taxes Matters information provided by 226 Financial Institutions in e-Finaneira system of a total bank balance of R\$1.056 billion from U.S. individuals and R\$7.194 billion from 273 legal entities. Perhaps the reciprocity, albeit limited compared to what Brazil provides the IRS, has led to Brazil's Federal revenue Office pushing for a higher compliance rate.

What about the GIIN registration of the U.S. closest neighbors - NAFTA? Canada's registration reached 9,964 as of June 1, 2017, versus registered GIINs of 8,119 as of November 1, 2016, albeit that represented a doubling of 2015's 4,549, whereas Mexico's June 1, 2017 registration of 1,908 fell significantly from November 1, 2016's 3,500 but still higher than only 605 in 2015. I wonder about Mexico's steep drop - but that's what the country code registrations say.

Compare GIINs to Legal Entity Identifiers (LEIs)?

As of June 15, 2017, over roughly the same time period Legal Entity Identifiers (LEIs) have been obtained by 518,303 entities from 195 countries. Not quite double, but within range. Which begs the question: should an LEI which seems to have gained more global acceptance be employed in place of an IRS issued GIIN for tax self-certification forms such as the CRS and W-8 series? Let's compare several countries GIIN v LEI registration to inform whether FATCA GIINs closely follows LEI registration. So what about LEIs per country?

First, let's look at the U.K. The LEI registration seems close in line with the FATCA registration: 30,486 LEIs were issued to UK entities. But LEI registration in Cayman is only currently at 13,375, for Brazil only 1,124, China only 686, India 414, and Russia 955. For Canada, 22,516 LEIs whereas Mexico has only 1,287. France has 33,245 LEIs but only 6,772 GIINs registered, Germany 48,634 LEIs compared to 7,012 GIINs. Hard to draw any correlation between LEI and GIINs per country.

LEIs, of course, have quite a different purpose than GIINs. The Global LEI Foundation (GLEIF) states that its global reference code will uniquely identify a legally distinct entity that engages in a financial transaction that will allow smarter, less costly and more reliable decisions about who to do business with.

There are many ways to identify entities, but there is no unified global identification system for legal entities across markets and jurisdictions. The LEI will become a linchpin for financial data—the first global and unique entity identifier enabling risk managers and regulators to identify parties to financial transactions instantly and precisely. The global phase-in of the LEI has been driven by the legislative and rulemaking processes of each jurisdiction requiring the use of the LEI and by the adoption of the LEI by firms for risk management and reporting.

By example, in the U.S., the Commodity Futures Trading Commission (CFTC) has issued a [rule](#) (see [regulation here](#)) requiring swap counterparties to be identified by a legal entity identifier from July 16, 2012. See the [list of other government regulatory authorities](#) around the world that have issued rules referring to the LEI or even requiring it to be obtained. The U.S. Securities and Exchange Commission has also issued a proposed rule that would require the use of an LEI, if available, for derivatives reporting and a final rule for private fund use of an LEI in meeting reporting requirements.

I am curious to readers thoughts about the number of GIINs for countries whereas based on LEIs it seems such should be higher (Germany and France) and visa versa (Cayman)? From the perspective that CRS is here to stay, is the LEI a more accepted and perhaps better tool than the GIIN or just two distinct tools (tax versus financial regulation)? *Look forward to your comments.*

For extensive footnotes, source references, links to documents and my other FATCA research, please see Byrnes, William, Guide to FATCA & CRS Compliance (Matthew Bender 5th ed., 2017) at pp. 30, 33-34, 50, 59, 109-112, and 119-122. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2926119

Byrnes, William, How May the United States Leverage its FATCA IGA Bilateral Process to Incentivize Good Tax Administrations among the World of Black Hat and Grey Hat Governments? A Carrot & Stick Policy Proposal. Emory International Law Review, Vol. 31, No. 1, 2017; Texas A&M University School of Law Legal Studies Research Paper No. 17-16. Available at SSRN: <https://ssrn.com/abstract=2916444> or <http://dx.doi.org/10.2139/ssrn.2916444>

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