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Has there been a prohibition on new GIIN joints?

William Byrnes (Texas A&M University Law) · Thursday, August 27th, 2015

Haydon Perryman's exclamation this month, in the form of the above title, underlies that the FATCA GIIN update as of August 2015 is that there is little to update in terms of new GIINs. From July until August, the GIIN total registration number only moved up to 171,109 from 168,239.

Thus, the IRS release of its fifteenth [FATCA GIIN list](#) of foreign financial institutions (FFIs) that have registered with the IRS through its FATCA portal was a non-event. As of August 2015, FFI registration increased by 2,870, "steady as she goes". This year's month over month trend of FFI registration is as follows:

July: 2,870

June: 2,778

May: 2,851

April: 2,600

March: 3,734

February: 2,479 (from the final 2014 total registrations published 1 January).

Moreover, the number of U.S. FATCA IGAs signed by countries and their dependencies remains unchanged at 112 after many months now, accounting for 160,875 of the GIINs, representing 96 percent of total FFI registration.

Model 1A (reciprocal): 90 – 103,413 of the GIINs.

Model 1B (non-reciprocal): 8 – 41,374 GIINs.

Model 2: 14 countries signed – 18,761 FFI registrations covered by an IGA.

131 countries and dependencies remain without an U.S. IGA and yet have only registered 6,579

FFIs. U.S. withholding agents have since 1 July 2014 been withholding pursuant to I.R.C. Chapter 4 (the FATCA) 30 percent on an expanded definition of “withholdable payments” to all the other financial institution recipients resident in these non-IGA jurisdictions. This expanded definition of withholdable payments at this time includes, most pertinent, interest on bank deposits that are exempt from I.R.C. Chapter 3 withholding.

But from 1 January 2017 the withholdable payments definition of Chapter 4 expands again to include the gross payments associated with bonds and shares. That is, the withholding agent will collect 30 percent of the purchase price of the bond upon its sale or redemption, and 30 percent of the sale price of a share. Under Chapter 3, portfolio interest, such as that associated with public bond issuances, is exempt from withholding when paid to a non-resident, as are capital gains. This ratcheting up of withholding, like a thumb screw, will either lead to the FFIs in the remaining non-IGA countries to obtain a GIIN or exit the U.S. financial market.

Has the lackluster amount of 2015 GIIN registrations driven the IRS to consider returning to its other tools for prying open oyster shells to determine if the pearl of a non-compliant U.S. taxpayer lies therein? In August, the IRS announced that it may return to the use of the summons, leveraging it to identify U.S. offshore account depositors through their foreign financial institutions U.S. correspondent banking relationships. Moreover, the IRS may reinstitute a broker initiative to leverage the summons upon U.S. brokers to identify U.S. beneficial owners of foreign corporations with U.S. brokerage accounts.

The summons tool is unnecessary if FATCA works as it was designed to do, that is to provide the IRS a means to verify that U.S. taxpayers are compliant with regard to the reporting of their foreign assets and income. In theory, the few bad actor financial institutions will be driven from the U.S. financial markets for the reasons presented above, and thereafter from the international financial system assuming FFIs begin to withhold on intermediary pass-thru payments to non-FATCA compliant FFIs (aka “non-participating” FFIs or NPFFIs). Any institutions, and thus noncompliant taxpayers, that manage to squirrel away will be *de minimis*.

The IRS already has at its disposal numerous TIEAs, double tax agreements, and new IGAs by which to solicit information from a majority of the relevant world’s countries and jurisdictions. Not that the summons is a bad tool – it was quite effective in capturing information about U.S. taxpayers who held VISA, Master Card, and American Express credit cards associated to foreign bank accounts. But the IRS did not have the resources to process, audit, and eventually prosecute a vast majority of the non-compliant taxpayers whose information still remains within that initial data dump.

Perhaps calling out the summons it is a psychological additional scare tactic to herd the non-compliant taxpayers into joining the offshore voluntary disclosure initiative (OVDI)? But if the previous summons initiative, FBAR prosecutions, and the current FATCA initiative has not already pushed them through the keyhole, why will this fourth tactic of threat impact them differently this time around? Perhaps better taxpayer education efforts and less scare tactics should be tried to bring in the suspected non-compliant outliers?

I encourage readers to see my post [“Is FATCA chasing a leprechaun and his pot of gold?”](#) in the Cayman Financial Review in which I estimate the size of the non-compliance “offshore” problem.

OECD Common Reporting Standard versus EU Commission Blacklist

OECD Common Reporting Standard signatories remains, as it did in July, 99, the notable holdout continues to be the U.S., with 57 committed to begin in 2017, 37 in 2018, and 5 not yet committed to a start date. The European Commission's 17 June 2015 publication of its amalgamation of blacklists may have weakened the OECD's argument that its CRS regime will be held as a global standard.

Pascal Saint-Amans, Director of the OECD Centre for Tax Policy and Administration and Monica Bhatia, Head, Global Forum Secretariat issued a public letter in response to the EU black-listing many OECD-compliant jurisdictions.

Has the EU has in effect, at least undermined, and potentially made irrelevant, the OECD's agreements with international financial centers. According to the OECD letter:

“Our EU colleagues have confirmed that this is not their intent.”

The OECD then continues:

“As the OECD and the Global Forum we would like to confirm that the **only agreeable assessment** of countries as regards their cooperation is made by the Global Forum and that a number of countries identified in the EU exercise are either fully or largely compliant and have committed to AEOI, sometimes even as early adopters.”

But the EU, [in its communique](#), states that its new blacklist –

“can be used to **screen non-cooperative tax jurisdictions** and develop a common EU strategy to deal with them.”

Perhaps the EU Commission is out of touch with the member states? By example, in a mid June response to the EU Commission proposal to require disclosure of corporate financial, tax, and business operation information among all EU countries, Germany, the UK, Ireland, among other EU states expressed their mutual concern, best stated by the Germany's Finance Minister: *“I doubt whether we should really try to move in the way that the commission will become a tax authority...”*

Is the Commission acting beyond the expressions of the member states? Or are the member states establishing a form of double standard, one that applies to the internal market and another that applies to non-members? Feel free to send me your comments.

(2014/2015) FATCA GIIN 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
July	168,239
August	171,109

IRS FATCA GIIN Registration Updates

The FATCA Online Registration System will be updated with new enhancements in late 2015. Please visit the [FATCA Online Registration System and FFI List Search and Download Tool Enhancements – Coming late 2015](#) page, which provides an overview of these upcoming changes as well as additional resources.

The IRS has provided updates on branch registration (Q2, Q3, and Q5) in the Frequently Asked Questions. The updates can be found on the [FATCA-General FAQs](#) page.

New Release of the Foreign Account Tax Compliance Act (FATCA) International Compliance Management Model (ICMM)

The IRS deployed an updated version of FATCA ICMM on August 8, 2015. The updated release validates record-level processing of FATCA 8966 XML Report files, including files that were submitted before August 8, 2015. The record level processing identified errors within the files and issued new notifications to filers that reflect the outcomes of the validation. The IRS discovered an issue related to the processing of files submitted between January 12th and August 8th of 2015 that resulted in two erroneous field level error messages. These are as follows:

- “Account Holder Type Not Valid” error for an individual filer for whom an entity type is not required. This is for Account Reports in which the account holder is an “Individual”.
- “Pooled Reporting Type Not Populated” error. The issue applied to Pooled Reports.

The two error messages referenced do not require a response or correction by the filer in the situations described above. The IRS is correcting this issue and will resend notifications for files that are impacted. For additional information regarding these two field-level error messages please refer to “Q1” and “Q2” under the “Field Level Errors” category of the [Frequently Asked Questions \(FAQs\)](#).

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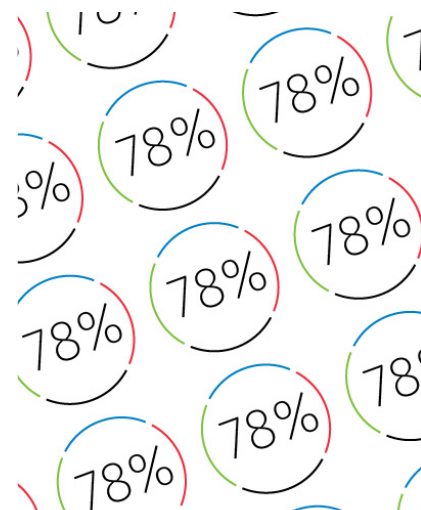
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