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除了信托和法律实体， 别忘了还有联合银行存款账户

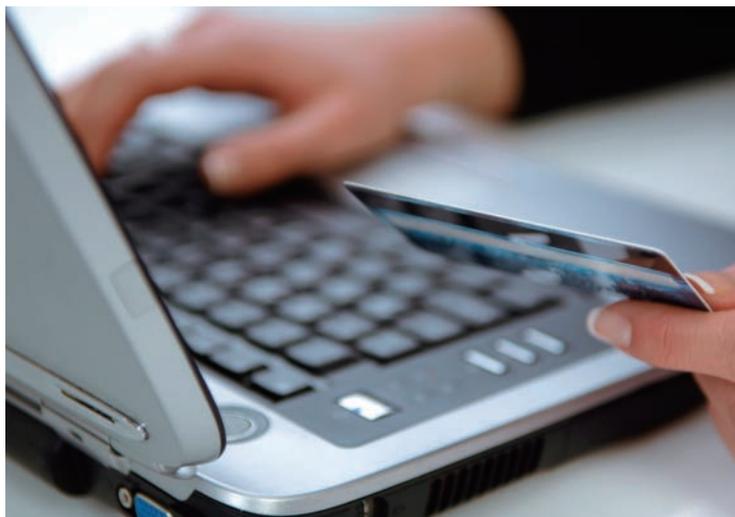
Despite Trusts and Legal Entities, Don't Forget Joint Bank Accounts

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Trusts, holding companies, limited liability companies and various other forms of ownership are the norm for offshore clients and assets. In many jurisdictions, even personal residences are rarely held directly by those who live in them. Yet in the midst of considering offshore income and assets, the age-old joint bank account is often still present. Around the world, joint bank accounts are common between spouses, siblings, parent and child, and in many other situations.

Indeed, even unrelated people may share investment or property accounts. Across myriad situations, joint accounts allow equal access to funds but often have unclear ownership. Since joint account status may be allowed not only for bank accounts but brokerage and other financial accounts, the stakes can be larger than one might assume.

Whose funds are they? And who must pay tax on the interest income? The money may all be beneficially owned



信托、控股公司、有限责任公司和其它各种各样的所有制公司形式都是离岸客户管理资产的方式。在许多金融辖区，即使是个人住宅的所有权被在里面居住的人持有的现象都很鲜见。因此在考虑管理离岸收入和资产时，历史悠久的联合银行账户还是存有一席之地。世界范围内，联合银行账户在配偶之间、兄弟姐妹之间、父母和子女之间和其它许多状况下都很常见。

的确，不相干的人之间甚至也有可能分享投资或物业账户。在很多情况下，联合账户允许账户所有权的平等性，但所有权却经常不明确。由于联合账户的状态不仅有可能针对银行账户，还有可能针对经纪人和其它金融账户，因此风险可能会比想象的更高。

那么账户里到底是谁的钱？谁又要对账户的利息收入缴税？账户里所有的钱可以由一名账户持有人实益拥有，可以一半一半，也可以是其它比率。

现在的忧虑大部分来自于非美国账户。如果一名美国人的子女和他的非美籍父母有一个联合账户，那么谁来申报？美国人必须在全球范围内申报其资产的纳税收入和 FBAR。如果不这么做，惩罚的力度是很大的。

FBARs

在谈到所得税之前，要考虑一下 FBARs。非美国账户的存款门槛起点是 10000 美元的需要进行 FBAR 存档。但是存档的归类是什么？如果你的利息收入微不足道，那么它的归类范围是属于 FBAR 下的一类。



by one holder, 50/50, or in some other ratio.

Much of the worry today is about non-U.S. accounts. If a U.S. person child and a non-U.S. parent have a joint account, who must declare it? U.S. persons must report their worldwide income and worldwide assets on tax returns and FBARs. The potential penalties can be enormous.

FBARs

Before turning to income tax, consider FBARs. Non-U.S. accounts over the \$10,000 threshold carry an FBAR filing requirement. But in what category? If you have a mere signature interest, it goes in one category on the FBAR.

If you are an owner, it goes on another. Yet for income tax purposes, joint accounts are inherently unclear. Equal

access to the funds is not the same as beneficial ownership. Thus, before one can fully answer the FBAR question, one should consider ownership for tax purposes.

Local Law and Exceptions

Federal income tax liability is generally allocated based on entitlements under local law. However, the IRS may seek to impose income tax liability on the beneficial owner of an account regardless of that person's rights under local law. For example, if you hold legal title as an agent, then income is taxed to the principal, even though the agent may appear as a joint signatory.

In *Bollinger*, the Supreme Court enunciated a three-part test for agency:

A. A written agency agreement must be entered into with the agent

如果您是一位资产所有人，则归为另一类。然而对所得税来说，联合账户本身就不是很清晰。对账户资金的同等控制和实益拥有权也不尽相同。因此，在完全回答关于 FBAR 的问题之前，我们需要考虑税务目的的所有权归属问题。

地方法律和免责条款

联邦所得税责任总的来说是基于当地法律的应享权利。不管怎样，美国国税局（IRS）不会考虑此人在当地法律的权利的前提下对账户的实益所有人强行征税。比如说，如果您的法定抬头是经纪人，则您的收入是主要征税对象，即使这个经纪人也许是账户的共同签署人之一。

在勃林格，最高法院针对代理人公司颁布了三个部分的测试：

- A. 在获得资产的同时，必须提交一份书面的经纪人协议书；
- B. 经纪人必须始终且仅作为该资产的经纪人而存在；
- C. 经纪人只能作为经纪人的身份和该资产相关的第三方进行交易时存在。

假设作为一名真正的经纪人，该经纪人应该承担收入所得税。

实益所有人被税

法庭通常只针对产生收入的资产实益所有人强行征税。法庭对实益所有权的定义是“有按意愿处理账户的自由”。法庭也会考虑如下因素：1）谁获得该资产的经济利益；2）谁拥有所有权和控制权；和 3）当事人的意图。

contemporaneously with the acquisition of the asset;

B. The agent must function exclusively as an agent with respect to the asset at all times; and

C. The agent must be held out as merely an agent in all dealings with third-parties relating to the asset.

Assuming a true agency, the agent should not face taxes on the income.

Beneficial Owners Taxed

The courts generally look beyond local law ownership to impose income tax liability on the party with beneficial ownership of the income-producing asset. Courts define beneficial ownership as the “freedom to dispose

of the accounts’ funds at will.” Courts may consider such factors as: (1) who enjoys the economic benefit of the property; (2) who has possession and control; and (3) the intent of the parties.

For example, in CHEM, Inc., a father opened four bank accounts in the names of his four children. He deposited money into the accounts but later withdrew it to facilitate his own business ventures. He claimed that his children owned the four accounts so he did not report any of the income.

He claimed his withdrawals were mere loans and would be repaid. Nonetheless, the Tax Court determined that the father was the beneficial owner and was taxable.



举例说明，一家名为 CHEM Inc. 的公司里，父亲以他四个孩子名义开设了四个银行账户。他在这些账户里存款，但之后又取出来做自己的生意之用。他表示他的子女拥有这四个账户，所以他并没有申报任何收入。

他声称取款只是暂时的借贷且会归还。尽管如此，税务法庭仍判定父亲是实益所有人所以必须纳税。

夫妻共同财产

在州法律或外国法律的规定下，针对夫妻赚取的“共同收入”有特别的法律规则，在一名配偶或配偶双方都不是当地居民的外国人的情况下：

- A. 赚取的收入分配给付出劳动的夫妻中的一方。
- B. 贸易或业务收入，一名合伙人在合伙制收入中的应分配份额，分配给参与该业务的人员手中。
- C. 来源于一名配偶私有财产的夫妻共同收入只分配给该名配偶。
- D. 其它夫妻共同收入应该以当地的夫妻共有财产法律进行分配。

举例

举例 1：Tom 是一名美国的纳税人，有一个和他兄弟 Bill 联名的外国联合银行账户，Bill 是外国人。Tom 向该账户存入所有的资金，希望作为赠送给 Bill 的礼物。Bill 控制这些资金并因为自身利益的原因而取出了这些钱款。Tom 并不控制这些资金，也不会提取资金或从这个账户中获益。

问题 1：联邦收入税是否适用于 Tom



Community Property Income

There is a special statutory rule for married couples earning “community income,” under the laws of a state or foreign country, where one or both spouses are non-resident aliens. In that case:

- A. Earned income is allocated to the spouse who rendered the personal services.
- B. Trade or business income, and a partner’s distributive share of partnership income, is allocated to the person participating in the business.
- C. Community income derived from the separate property of one spouse is allocated to that spouse only.
- D. All other community income shall be treated as provided under the local community property laws.

Examples

Example 1: Tom is a U.S. taxpayer with a foreign joint bank account with his brother Bill, who is foreign. Tom deposited all of the funds and intended them as gifts to Bill. Bill controls them and withdraws funds for his own benefit. Tom does not exercise control over the funds, nor does he withdraw or benefit from the account.

Q1: Can federal income tax be imposed on Tom on the interest?

A1: Yes. As a joint owner, Tom may be taxed according to his ownership interest under local law. However, Tom may be able to avoid income tax liability if the IRS or courts are satisfied that he lacks beneficial ownership of the funds. Tom deposited the funds

所获得的利息收入？

回答 1: 是的。作为联合账户的所有人，可以根据当地法律对 Tom 的所有权利息进行征税。虽然如此，Tom 也可以在 IRS 或法庭认为他并没有从该笔资金获得实际利益的情况下免于缴纳所得税。Tom 向该账户存入钱款来使自己的兄弟 Bill 获益，且从未操作该账户或从中取款。

举例 2: 除了 Tom 和 Bill 同意分享该外国账户的控制权和同等利益之外，和范例 1 相同。根据国际上金融辖区的通行做法，Tom 对该账户中的所有资产拥有所有权。

问题 2: Tom 是否需要缴纳联邦所得税？

回答 2: 是的。Tom 在当地法律的规定下对该账户下的所有资产有所有权，他也被假设成对所有的收入负责。尽管如此，他如果只对账户资产的一半具有所有权那么他是否需要缴纳一半的税款是有争议的。

举例 3: Tom 是美国公民而他的妻子 Wilma 不是。Wilma 没有向美国报税的义务，Tom 则单独向美国报税。他们生活在外国具有夫妻共同财产，且在这个国家有一个夫妻联合账户。Tom 和 Wilma 同意分享账户的控制权和同等利益。

问题 3: Tom 是否需要因为他这个外国账户所获得的收入而缴纳联邦收入税？

回答 3: 是的。虽然 Wilma 并非美国国



to benefit his brother Bill and never operated the account or withdrew money.

Example 2: Same as Example 1, except that Tom and Bill have agreed to share control over the foreign account and benefit equally. Under the law of the prevailing foreign jurisdiction, Tom owns all of the account assets.

Q2: Can federal income tax be imposed on Tom?

A2: Yes. As Tom owns all of the account assets under local law, he is presumptively liable for all income. However, he arguably has beneficial ownership of only one-half of the account assets and one-half of the tax liability.

Example 3: Tom is a U.S. citizen and his wife Wilma is a non-resident alien. Wilma has no obligation to file U.S. tax returns, and Tom files his U.S. tax returns separately. They live in a foreign country with community property laws and hold a joint bank account in that country. Tom and Wilma agreed to share control over the account and benefit equally.

Q3: Can federal income tax be imposed on Tom in connection with the interest earned in this foreign account?

A3: Yes. Although Wilma is not a U.S. taxpayer, Tom is still required to report his worldwide income. There is a statutory rule for married couples that earn "community income," where one or both spouses are non-resident

税人，Tom 仍然需要在全世界范围内向美国政府申报。对夫妻间一方是外国人的“共同收入”有专门的法律规定。Tom 的联邦所得税纳税义务取决于许多因素，包括在该国的夫妻共同财产法律规定下，该账户资产是否被认为是单独或共同财产等。

举例 4：和范例 3 相同，只是现在 Tom 和 Wilma 已经离婚。他们决定继续联合持有这个外国账户。

问题 4：Tom 在这个外国账户中所获得的利息是否需要缴纳联邦所得税？

回答 4：是的。Tom 和 Wilma 虽然已经离婚，但仍保留了联合账户。Tom 的联邦所得税义务在该外国辖区内的法律规定下仍被认为是从账户资产中的一部分获益。虽然如此，Wilma 是否是该账户一半的实益所有人仍具有争议，因此 Tom 也许只需缴纳一半的所得税。Tom 可以以银行对账单以及和 Wilma 之间的协议书、申明书、所得税存档、赠与税申报单和 FBAR 表格或其它表明其控制权和利益分享的文件来支持自己的立场。

举例 5：Tom 是美国纳税人也是一个外国银行账户的唯一所有人。Tom 的父母不是美国纳税人，向该账户存入所有资金来抚养 Tom 的女儿 Daisy。Tom 只根据他父母的指令来取款和使用资金。

问题 5：Tom 在这个外国账户中所获得的利息是否需要缴纳联邦所得税？

回答 5：是的。由于 Tom 是该账户的唯一所有人，国税局针对 Tom 的所有权征税。虽然如此，Tom 也有可能分析

aliens. Tom's federal income tax liability may depend on many factors, including whether the account assets are considered separate or community property under the community property laws of the foreign jurisdiction.

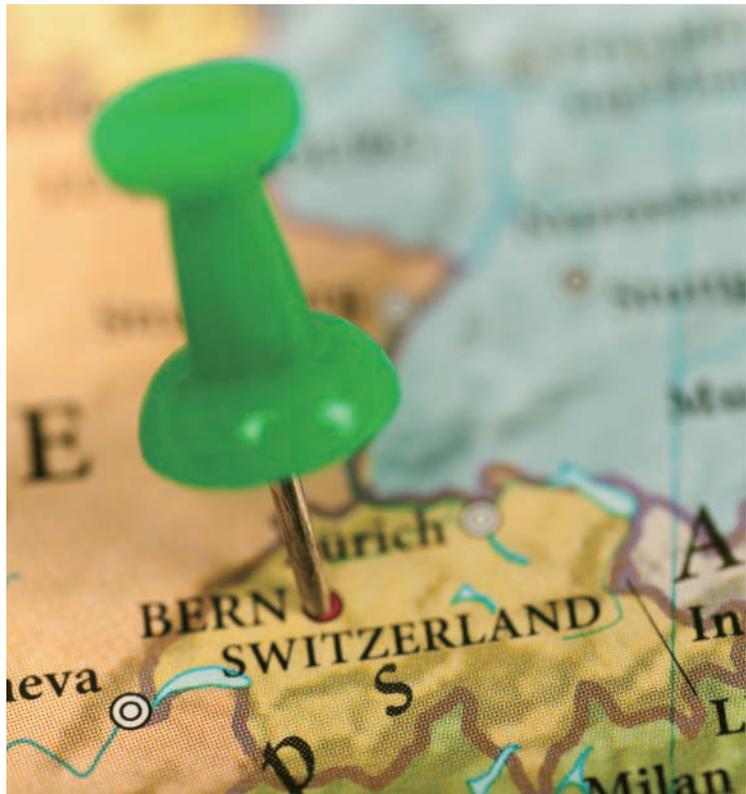
Example 4: Same as Example 3, except that Tom and Wilma have divorced. They have decided to continue the foreign account as joint holders.

Q4: Can federal income tax be imposed on Tom in connection with the interest earned in this foreign account?

A4: Yes. Tom and Wilma divorced but retained the joint account. Tom's federal income tax liability would presumptively be allocated in

proportion to his ownership of the account assets under local law in the foreign jurisdiction. However, Wilma is arguably the beneficial owner of one-half of the account, so Tom might only be taxed on only one-half. Tom could support his position with bank statements, agreements with Wilma, declarations, income tax filings, gift tax returns and FBAR forms, or other documents demonstrating shared control and benefits.

Example 5: Tom is a U.S. taxpayer and is sole signatory on a foreign bank account. Tom's parents, who are not U.S. taxpayers, deposited all of the funds for the support of Tom's daughter Daisy. Tom only withdraws and uses the funds pursuant to his parents' instructions.



其实益所有权的情况下来规避他的纳税义务。资金是由他的父母存入的，Tom 在未得到直接指令之前是不会操作该账户的，而且明确知道所有资金都是为他的女儿 Daisy 所用。

这些事实更证明 Tom 的父母，而不是他自己，是账户的实益所有人。如果 Tom 能证明他对父母的存款没有任何使用权而只在收到指令时才能取款，则更为有效。能够提供有效证明的文件包括书面协议、申报单、遗嘱规划文件、购买凭证和所得税证明和 / 或由 Tom 父母归档的 FBARs 等。

举例 6: 除了 Tom 未使用这些资金来抚养他的女儿 Daisy 之外，其它和范例 5 相同。相反，Tom 把账户资产投资到一

Q5: Can federal income tax be imposed on Tom in connection with the interest earned in this foreign account?

A5: Yes. As Tom is the only account holder, the IRS may seek to tax Tom on all income. However, Tom may be able to avoid income tax liability under the beneficial ownership analysis. The funds were deposited by Tom's parents, Tom never operated the account without explicit instructions, and it was understood that the funds were solely for Daisy's benefit.

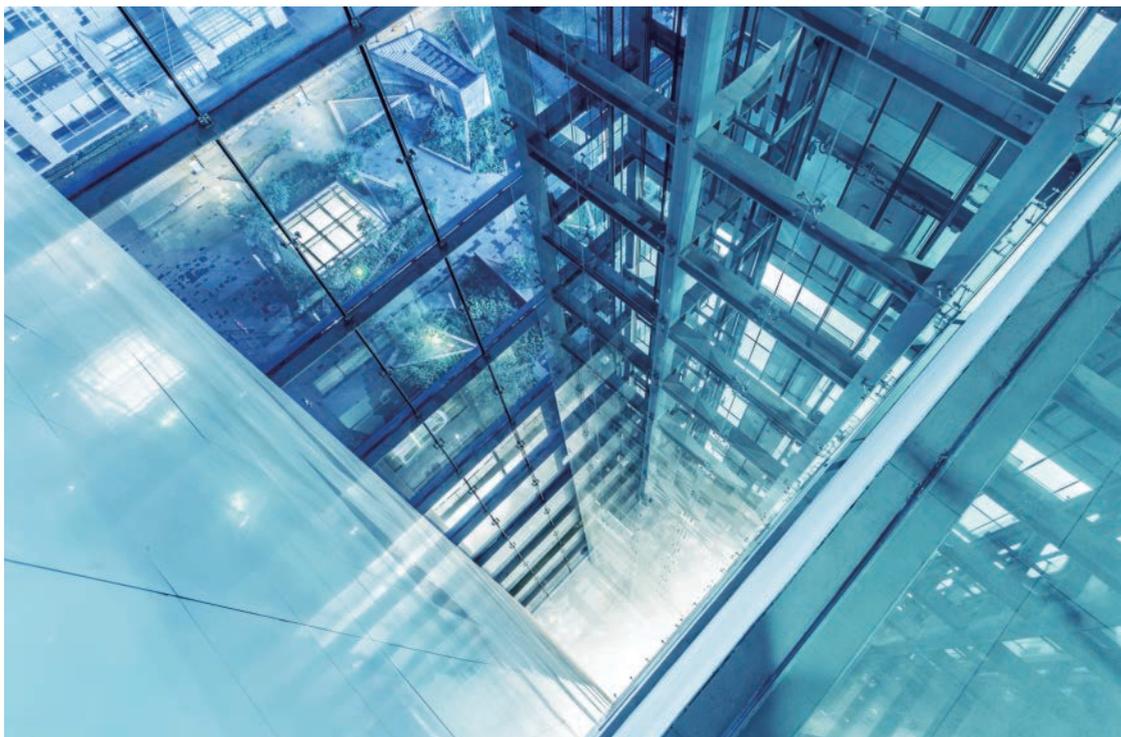
These facts may even suggest that Tom's parents, rather than Tom, remained the beneficial owners. It would help if there were proof of an agreement that Tom lacked any authority over his parents' deposits and complied with their instructions. Written agreements, declarations,

estate planning documents, and purchase receipts may help, as may income tax returns and/or FBARs filed by Tom's parents.

Example 6: Same as Example 5, except that Tom did not use the funds to benefit his daughter Daisy. Instead, Tom invested the account assets in a business venture. Although this was against his parents' wishes, Tom plans on repaying the money.

Q6: Can federal income tax be imposed on Tom in connection with the interest earned in this foreign account?

A6: Yes. Tom appears to have local law ownership. It will be difficult for Tom to avoid this income tax liability through a beneficial ownership analysis. Tom used account assets for his own benefit, something not authorized by



家商业公司。虽然这违背了他父母的意愿，但是 Tom 打算日后归还这些钱。

问题 6: Tom 从这个外国账户中所获得的利息是否需要缴纳联邦所得税?

回答 6: 是的。Tom 显然具有当地法律规定的的所有权。Tom 很难通过实益所有权分析的方式来规避这一所得税义务。Tom 用这个账户资产来为自己牟利，并未得到他父母的授权。这个事实表明 Tom 没有按照他父母的指令来操作账户，因此要达到避税的目的非常困难。

此外，实益所有权通常来源于资产的控制权和获利。Tom 自作主张取款用作他自己的生意之用。这一自由使用该资金的行为让他成为实益所有人，因此需要承担纳税义务。

举例 7: 除了 Tom 的父母去年过世的情况之外，其它和范例 5 相同。在过世之前，他们表达了希望 Tom 继续利用该账户来抚养女儿的愿望。虽然并非法律义务，Tom 只在她女儿 Daisy 需要的情况下才取款。

问题 7: Tom 在这个外国账户中所获得的利息是否需要缴纳联邦所得税?

回答 7: 是的。Tom 的父母并没有正式把资金遗赠给 Daisy，因此根据当地法律的通行规定，Tom 现在业已成为资金的所有人。他在当地法律规定下对该资金的法定实益所有权造成他要以账户收入所获得的利益承担纳税责任。当然 Tom 可以争辩，认为他在父母在世时作为非可征税的经纪人身份而存在。



his parents. The fact that Tom acted outside the scope of his parents' explicit instructions weakens the likelihood of meeting the agency safe harbor.

Moreover, beneficial ownership often turns on control and benefits derived from an asset. Tom withdrew funds at his own discretion and used them for his business venture. This freedom over the funds may suggest beneficial ownership and thus tax liability.

Example 7: Same as Example 5, except that Tom's parents passed away last year. Before passing,

they expressed their hope that Tom continue to use the account for his daughter Daisy's benefit. Although not legally obligated, Tom withdraws the funds solely for the benefit of Daisy.

Q7: Can federal income tax be imposed on Tom in connection with the interest earned in this foreign account?

A7: Yes. Tom's parents did not legally bequeath the funds to Daisy, so Tom is probably the owner of the funds under prevailing local law. His local law ownership may result in federal income tax liability on all income earned in the

但是尽管如此，经纪人关系在主要委托人过世时就终止了，这个案例中，委托人是 Tom 的父母。因此美国国税局和法庭会认为 Tom 对该账户的单独所有权让他成为事实上的实益所有人。因此 Tom 要避免缴纳该账户产生的所有收入所得税会比较困难。

举例 8: Tom 是美国纳税人，他也是一个外国账户的唯一所有人。Tom 控制该账户并是账户的唯一受益人。但是最近 Tom 的非美国纳税人兄弟 Bill 向 Tom 的这个外国账户内存款。Bill 清楚地表明 Tom 需要规划存入的款项或只在 Bill 的要求和指令下才能使用。Tom 表示同意，但之后在 Bill 的要求下把资金从这个外国账户转出到一个第三方账户中。

问题 8: Tom 在这个外国账户中所获得的利息是否需要缴纳联邦所得税?

回答 8: 是的。Tom 曾是该账户的唯一持有人，因此他也许需要对该账户产生的所有收入负责，包括 Bill 存入的钱款。虽然如此，Tom 是否应该为他兄弟存入的资金缴税存有争议，因为他也许不是该笔资金的实益所有人。Tom 并没有从这笔资金获益，且在 Bill 的要求下转存了这笔资金。

在这些转账行为中 Tom 并没有实际获益且没有控制权。不过该笔资金牵扯到 Tom 且是处于他的名下。Tom 可以和 Bill 写一份书面的协议书、申明书或银行对账单来证明。如果 Tom 继续对这笔存入的资金缴纳所得税，且进行反应他财政权益的 FBAR 存档，也许会有所帮助。

account. Tom could argue that he was acting as a non-taxable agent at the time his parents were living.

However, agency generally terminates on the death of the principal, in this case Tom's parents. Therefore, it is possible that the IRS and courts could view Tom's unilateral authority over the account as indicative of beneficial ownership. It may be difficult for Tom to overcome the presumptive income tax liability on all income earned in the account.

Example 8: Tom is a U.S. taxpayer and is sole signatory on a foreign account. Tom controls the account and he alone benefits. Recently, however, Tom's brother Bill, who is not a U.S. taxpayer, deposited money into Tom's foreign account. Bill made it clear that Tom must return the deposited funds or use them only at Bill's request and pursuant to Bill's instructions. Tom agreed, and later transferred the funds out of his foreign account to a third-party at Bill's request.

Q8: Can federal income tax be imposed on Tom in connection with the interest earned on the funds deposited by Bill?

A8: Yes. Tom was the only account holder, so he will probably be liable for all income generated by the account, including the money deposited by Bill. However, Tom arguably should not be taxed on the temporary funds deposited by his brother because he may have lacked beneficial ownership of those funds. Tom did not benefit from the funds and transferred the money at the time and in the manner requested by Bill.

On these transitory deposits Tom had no beneficial right and no control. Nevertheless, the funds were co-mingled and solely in Tom's name. Tom could assemble a written agreement with Bill, declarations, and bank statements. It would be helpful if Bill continued to pay income tax on the deposited funds and filed FBARs reflecting his financial interest.

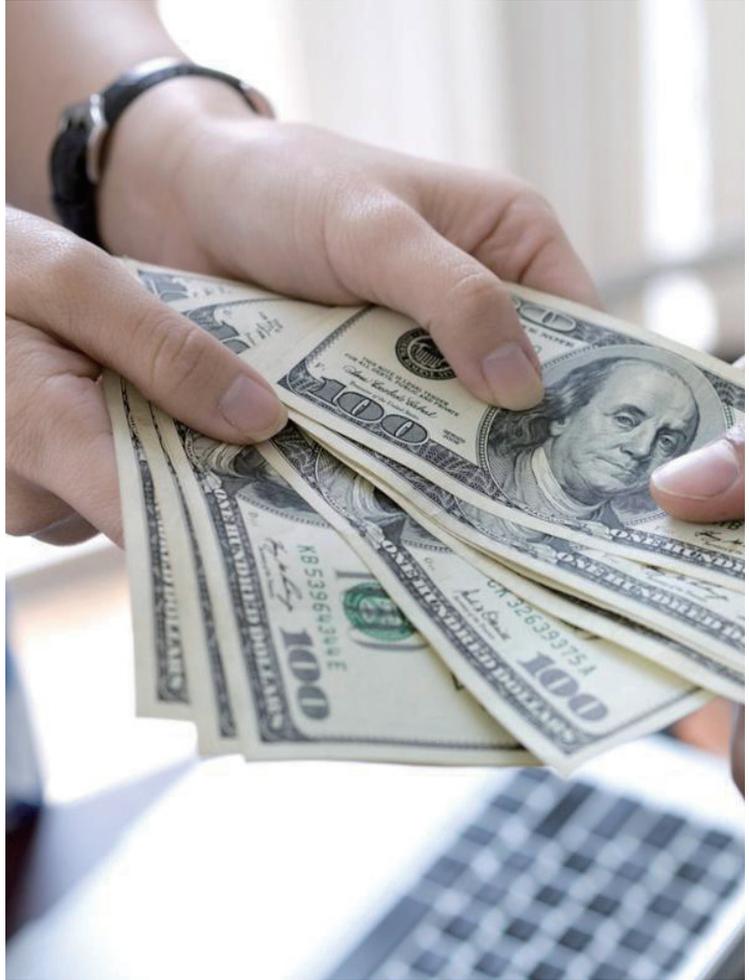


结论

联合账户通常由相互熟识的、亲属间，或有高度信任关系的人们之间设立。对自己所拥有的东西不清楚是很常见的事情，但当牵涉到税务申报的问题时，联合或共同所有权才会变得令人费解。

地方法律和实益所有权有重大关联。对外国账户来说，多个法律制度相互关联，如果联合账户的持有人有不同的公民权或居住权时，情况就变得复杂起来。特别是牵涉到重大惩罚力度甚至犯罪时，这一问题就显得愈发重要。

要时刻留心自己状态和小心自己的选择。由于在事实发生后要去证明的话会很困难，因此就要及时准备充分的文件材料以备日后之需。



Conclusion

Joint accounts are often established by people who know each other well, are related, or have a high degree of mutual trust. It is only natural that who really owns what may not be clear. When it comes to taxes and reporting, joint and other combined ownership is confusing.

Local law and beneficial ownership are both relevant. With foreign accounts, multiple legal regimes

may be relevant, and the situation is complicated if joint account holders have differing citizenships or residencies. When significant penalties and even criminal liability may be at stake, the issues can take on enormous significance.

Be mindful of your facts and be wary of taking inconsistent positions. And since proving something after the fact can be difficult, consider good and timely documentation. 🌐

