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Joint Offshore Accounts: Who Is Taxed And Why It Matters

If you and a family member have a joint foreign bank account, is it 50% yours, 100% yours, or 100% your relative's? It may be any of these, but how do you know? Does it depend how your family member is reporting? What if your family member is not a U.S. person? As long as 100% of the money and income is being reported somewhere and by someone, is that enough?

These are maddening questions without easy answers. They can be terribly important too. After all, if you are a U.S. citizen or permanent resident, you must report your worldwide income to the IRS. In fact, you must do so even if you pay tax on it somewhere else.

Plus, you must file an FBAR every year disclosing your bank accounts if their aggregate value exceeds \$10,000 at any time during the year. The penalties for tax failures or FBAR failures are big, potentially even criminal. Incredibly, FBAR violations alone can carry criminal penalties of up to ten years in prison. But with a joint account, do you report yourself as the account owner? Part owner? Just a signatory? And what do any of these mean for your filing obligations?



Any interest in a foreign account, even if you it is just as a signatory (someone authorized to sign on the account, but without any real ownership), must be reported on an FBAR if you exceed the \$10,000 threshold. But signatories do not own the account, and consequently do not own any interest and have no income to report. If you find yourself in this position, you [may be able](#) to skip some of the more [onerous IRS voluntary disclosure programs](#), and simply file delinquent FBARs under [a special protocol](#) if you did not owe any tax.

But whether you owe tax hinges on who actually owns the account. Family accounts held by parent and child or siblings are common, and ownership may be ambiguous. If A and B have a joint interest-earning bank account producing \$100 of income, who pays tax on it (and possibly pay a penalty)? Perhaps each person has \$50 of income, but it is often not that simple. In fact, to a large extent, local law and the agreement between the parties should determine the ownership question.

Yet if it turns out no one is claiming ownership and no one is reporting the income from the account, expect trouble. The IRS and the courts will evaluate the facts and the conduct of the parties to determine who is the beneficial owner of the account. And to the surprise of many, it can be that the “owner” under local and the “beneficial owner” are different people. The facts and documents are important.

Domestic banks issue [Form 1099-INT](#) to report account interest, and how that form looks answers many questions about ownership. If you and your parent have a U.S. account but your parent’s Social Security number is on the account, that may end the inquiry from the IRS’ perspective. The person receiving the Form 1099 for the interest may feel forced to pay all the tax. Yet some taxpayers finesse the situation by reflecting the Form 1099 on their return but showing a deduction for the interest paid to their co-account holder.

With foreign accounts the stakes are particularly high. Foreign banks generally do not issue an IRS Form 1099 to alert the holders about the income and its reporting. Moreover, nettlesome questions about FBARs and tax return reporting are likely to arise in the absence of such documentation. If you are a signatory, you should file an FBAR, regardless of whether you are a beneficial owner of the account and interest income. Yet if you haven’t previously been filing FBARs, [should you file for the first time?](#)

If you aren’t a beneficial owner, filing may be fine, although it may be safer to file the last six years’ worth and consider the delinquent FBAR program. The statute of limitations on FBARs is a long six years. But if you also have income from the account that must be reported to the IRS, the situation is far more delicate. You may have a formal or informal power of attorney or other signature authority without beneficial ownership. With informal family dealings, each person may not be certain what interest he or she has, or how it should be reported.

Whether you should [choose OVDP or streamlined](#) depends on your facts, the numbers, and your risk profile. Whatever you do, be careful and get some advice about your situation before you take – or don’t take – action.

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