PERSPECTIVE

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Beware Joint Accounts and Taxes, Especially Abroad

By Robert W. Wood

With joint bank accounts, who pays tax on the interest income? It is taxable even if neither account holder withdraws it, but is the interest 50 percent yours, 100 percent yours, or 100 percent attributable to your co-account holder? You may not care if you and your spouse have the account and file joint tax returns.

But in other cases, you should. And it is only a partial answer to say that it depends on which Social Security number is attached to the account. Sure, with U.S. accounts, someone will probably receive an Internal Revenue Service Form 1099. But how do you know if your joint account holder is reporting 100 percent of the interest and then claiming a deduction for 50 percent, saying that you were entitled to half?

Since most joint accounts are between relatives, many of these issues may not seem important. Parent and child, siblings, etc., can hopefully work it out, both in terms of ownership and taxes. But what about non-U.S. accounts, where there will be no IRS Form 1099?

The last half dozen years have seen an explosion in focus on offshore filing compliance. With the fall of secret Swiss banking and numerous IRS victories with John Doe summonses, banks and financial advisers hand over lists of U.S. clients. Plus, more than 50,000 taxpayers have voluntarily declared their offshore accounts to the IRS.

The result is a treasure trove of data the IRS can cross-check. But the granddaddy of all changes is FATCA, the Foreign Account Tax Compliance Act. It has literally changed the face of banking and tax compliance all over the world.

Quietly enacted in 2010, FATCA took effect in 2014 with a threatened tax withholding and other sanctions if financial institutions worldwide fail to hand over American account holders and their data. The result has been astonishing, with virtually every institution participating, either directly or through their own governments. Countries have signed Intergovernmental Agreements with the U.S. in a kind of offshore land rush.

Under these agreements, most non-U.S. financial institutions can hand American account holder details to their own governments. In turn, the data all goes to the IRS.

There are new questions about family joint bank accounts between siblings, parents and children — even between married couples with one U.S. and one foreign spouse.

If you and a family member have a joint foreign bank account, is it 50 percent yours, 100 percent yours, or 100 percent 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 percent of the money and income is being reported somewhere and by someone, is that enough? Not necessarily. If you are a U.S. citizen or permanent resident, you must report your worldwide income to the IRS. You must also file an FBAR every year disclosing foreign 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. 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?

What do any of these mean for your filing obligations? Any interest in a foreign account, even if 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.

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. 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 courts will evaluate the facts and conduct of the parties to determine who is the beneficial owner of the account. In some cases, the "owner" under local law and the "beneficial owner" are different people. The facts and documents are important.

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's perspective. The person receiving the Form 1099 for the interest may feel forced to pay all the tax. Some taxpayers finesse the situation by reflecting the Form 1099 on their tax 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. As a result, nettlesome questions about FBARs and tax return reporting are likely to arise.

If you are a signatory, you should file an FBAR, regardless of whether you are a beneficial owner of the account and interest income. But 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 to 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.

Robert W. Wood *is a tax lawyer with a nationwide practice (www.WoodLLP.com). The author of more than 30 books including "Taxation of Damage Awards & Settlement Payments" (4th Ed. 2009 With 2012 Supplement www.taxinstitute.com), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*