



Robert W. Wood

THE TAX LAWYER

TAXES 11/24/2014

Even Non-Owner Signers On Offshore Accounts Face FATCA And FBAR Risks

Each U.S. citizen and permanent resident must report worldwide income to the IRS even when paying taxes elsewhere. Moreover, you must file an annual FBAR (now called FinCEN Form 114) disclosing your foreign bank accounts if their aggregate value exceeds \$10,000 at any point during the year. The penalties for either failure are big, potentially even criminal. FBAR penalties are even worse than tax evasion.

An FBAR violation that is non-willful is \$10,000 per account per year. Willful—but still civil—violations can be up to 50% of the value in a foreign account, again, per year. In a recent Florida case, one man had to pay penalties of 150% of his offshore account. An FBAR violation that is criminal is even worse, carrying up to 10 years in prison. You have to file FBARs even if you are only a signatory but not a beneficial owner.

Family joint accounts with parent and child or siblings are common, and ownership may be ambiguous. All U.S. person signatories must file. Of course, being a beneficial owner means income on your tax return too. For all of those reasons, it's important to know if you are a mere signatory on an account without a beneficial interest in it.



You could have FBAR obligations but no income when the account earns interest. You might need to file back FBARs and disclose the account to the IRS, but you might not need to go into the IRS voluntary disclosure program (if you don't owe any tax). But how do you know if you're a beneficial owner, or what the IRS will say if you claim you aren't?

If A and B have a joint interest-earning bank account producing \$100 of income, who pays tax on it? Perhaps it only seems fair for each person to have \$50 of income, but it is often not that simple. If A's Social Security number is linked to a domestic account, A should receive a [Form 1099-INT](#) from the bank for all the interest.

If so, A 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.

With a foreign bank, there will be no 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. If you are a signatory, you should file an FBAR.

But do you also have income from the account that must be reported to the IRS? 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 he has.

Often, who owns the account under prevailing local law should control. But the IRS and the courts will generally evaluate the facts and the conduct of the parties and look for beneficial ownership. That means the local law owner may be different from the beneficial owner.

Follow-through and consistency matter too. If you say the income on your joint account is not yours but belongs to the other signatory, how did they treat it? Did the other signatory report all the income and pay the taxes?

The facts and documents are important. Whatever you do, be careful and get some advice about your situation.

You can reach me 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.