

## What does it mean for the taxpayer to have a “financial interest” in a foreign account?

A U.S. person has a financial interest in the following situations:

1. The U.S. person is the owner of record or holder of legal title, regardless of whether the account is maintained for the benefit of the U.S. person or for the benefit of another person, including non-U.S. persons;
2. The owner of record or holder of legal title is a person acting as an agent, nominee, attorney, or a person acting on behalf of the U.S. person with respect to the account. Consider this example. John is a U.S. citizen. His brother, Paul, maintains bank accounts in Mexico on John’s behalf. The accounts are held in Paul’s name but Paul only accesses the accounts pursuant to John’s instructions. Does John have a financial interest in the Mexican bank accounts for FBAR-reporting purposes? Yes. Note that if Paul is a U.S. citizen or resident, he also has an FBAR-reporting requirement with respect to the accounts.
3. The owner of record or holder of legal title is a corporation in which the U.S. person owns directly or indirectly:
  - More than 50% of the total value of stock, or
  - More than 50% of the voting power of all shares of stock.
  - **Example One:** A Minnesota corporation owns 100% of a Spanish company. The Spanish company maintains several foreign bank accounts. Must the Minnesota corporation file an FBAR? Yes. Why? Because the Minnesota corporation is a U.S. person and it directly owns more than 50% of the total value of the shares of a Spanish company that, in turn, has legal title of several foreign financial accounts.

- **Example Two:** Assume that Jack, a U.S. person, owns 75% of the Minnesota corporation in the previous example. Must Jack also file an FBAR? Yes. Why? Because he indirectly owns more than 50% of the total value of shares of stock of the Spanish company and the Spanish company is the owner of record of the foreign financial accounts.
4. The owner of record or holder of legal title is a partnership in which the U.S. person owns directly or indirectly:
    - An interest in more than 50% of the partnership's profits, or
    - An interest in more than 50% of the partnership capital.
  5. The owner of record or holder of legal title is a trust of which the U.S. person:
    - Is the trust grantor, and
    - Has an ownership interest in the trust for U.S. federal tax purposes.
    - Example: Diana is a U.S. citizen. She is a grantor of a Foreign Asset Protection Trust but does not control trust assets. Nor does she receive distributions from the trust. Must Diana report the trust's foreign financial accounts on an FBAR? Yes. Why? Because as the grantor, Diana is deemed to be the owner of the trust assets for federal tax purposes.
  6. The owner of record or holder of legal title is a trust in which the U.S. person has a greater than 50% present beneficial interest in the assets or income of the trust for the calendar year. Consider the following example. Amy is a U.S. citizen. She has a remainder interest in a trust that has a foreign financial account. Must Amy report the trust's foreign financial account on an FBAR? No. Why? Because a remainder interest is not considered a present beneficial interest for FBAR purposes.

7. The owner of record or holder of legal title is any other entity in which the U.S. person owns directly or indirectly more than 50% of the voting power, total value of equity interests or assets, or interest in profits.
8. Reporting Jointly Held Accounts: If two persons jointly maintain a foreign financial account, or if several persons each own a partial interest in an account, then each U.S. person has a financial interest in that account. Therefore, each person must report the entire value of the account on an FBAR.
9. Limited Joint Filing For Spouses
  - Must the spouse of an individual who files an FBAR file a separate FBAR?  
No, but only if the following conditions are satisfied:
    - All the financial accounts that the non-filing spouse is required to report are jointly owned with the filing spouse;
    - The filing spouse actually reports the jointly owned accounts on a timely filed FBAR electronically signed in item 44; and
    - The filers have completed and signed Form 114a, Record of Authorization to Electronically File FBARs.
  - If even just one of these conditions is not satisfied, then both spouses must file separate FBARs and each spouse must report the entire value of the jointly owned accounts.