



Let's Go To Tax Town

More on IRC § 512(a)(6)

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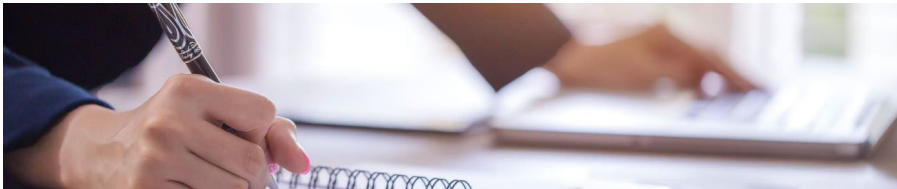
UBTI siloing

Unrelated business taxable income segregation – IRC 512(a)(6)

- Prior Law: Deductions from one unrelated trade or business could be used to offset income from another, thereby reducing total unrelated business taxable income
- TCJA – 512(a)(6)
 - **Statutory Guidance:** In the case of an organization with more than 1 trade or business UBTI shall be computed separately with respect to each trade or business
 - The 2-digit North American Industry Classification System (NAICS) codes are used for identifying separate trade or businesses (with separated designated codes for Qualified Partnership Interests and certain other investment activities). Partnership investments provide the applicable code, such as:

Code	Industry title	Code	Industry title
11	Agriculture, Forestry, Fishing and Hunting	53	Real Estate Rental and Leasing
21	Mining	54	Professional, Scientific, and Technical Services
22	Utilities	55	Management of Companies and Enterprises
23	Construction	56	Administrative and Support and Waste Management and Remediation Services
31-33	Manufacturing	61	Educational Services
42	Wholesale Trade	62	Health Care and Social Assistance
44-45	Retail Trade	71	Arts, Entertainment, and Recreation
48-49	Transportation and Warehousing	72	Accommodation and Food Services
51	Information	81	Other Services (except Public Administration)
52	Finance and Insurance	92	Public Administration

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Unrelated business taxable income segregation – IRC 512(a)(6)

- For June 30 fiscal year entities, effective for the June 30, 2022 tax year, partnership investments may no longer be combined into one activity unless meeting an exception noted below
- The 2-digit North American Industry Classification System (NAICS) codes are used for identifying separate trade or businesses. Partnership investments provide the applicable code.
- Under the final regulations, investment activities can be combined into the general “investment” activity silo if:
 - De minimis test** – Organization holds directly no more than 2 percent of the profits interest and no more than 2 percent of the capital interest in a partnership investment
 - Participation test** – Organization (i) directly holds no more than 20% of the capital interest; and (ii) does not significantly participate in the activities of the partnership
 - Debt-financing** – To the extent UBI is generated from debt-financed income, such UBI can be siloed in the general “investment” activity silo regardless of ownership percentage
 - Look-through rule** – To the extent a partnership investment exceeds the 20% capital interest, look-through the partnership to the activities of any underlying indirectly held partnership interests to see if the De minimis or Participation Test has been met

UBTI Siloing



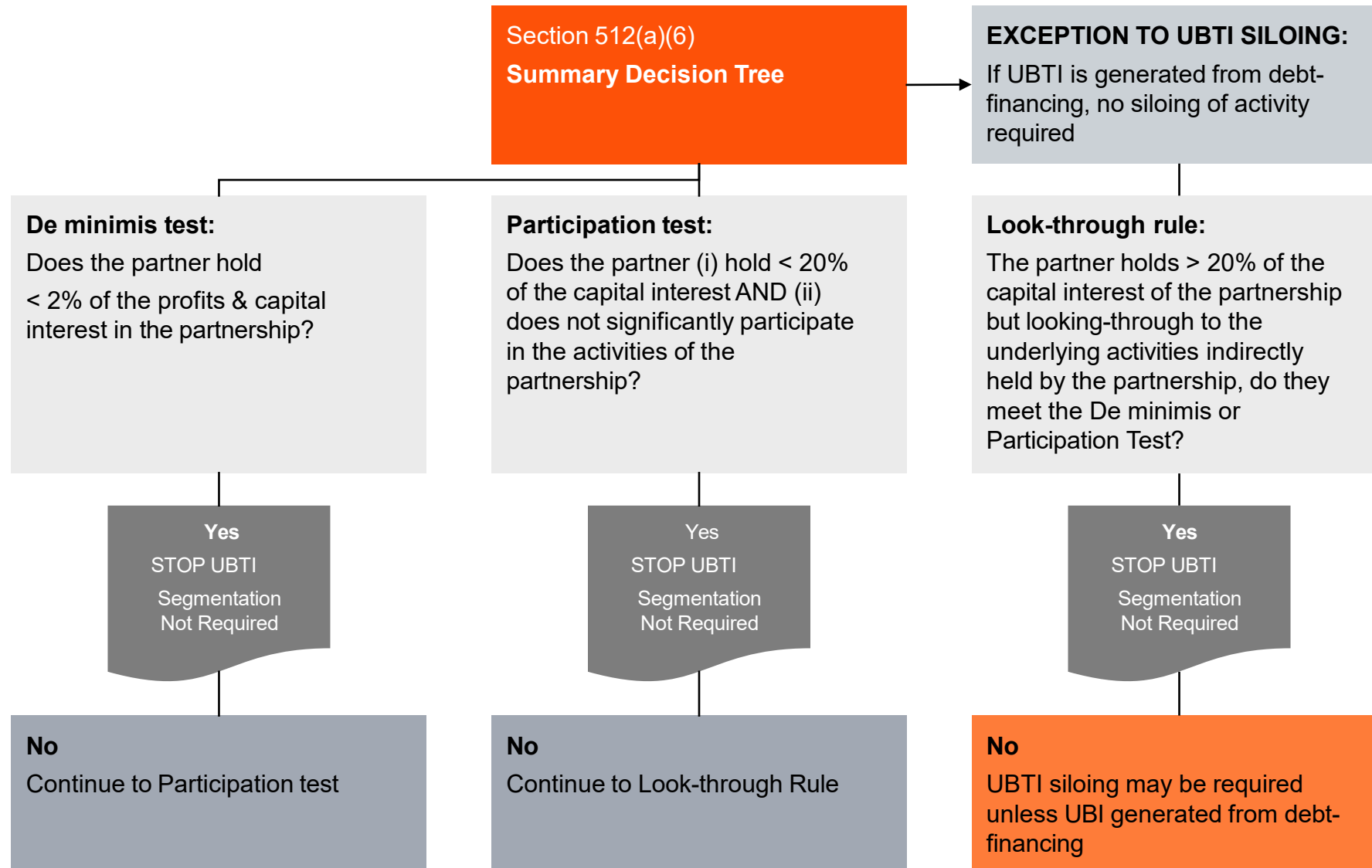
Significant Participation

- The Final Regulations do not include a general facts and circumstances test.
- As modified, the Final Regulations provide that an exempt organization significantly participates in a partnership if one of the following four factors is present:
 1. The exempt organization, by itself, may require the partnership to perform, or prevent the partnership from performing (other than through a unanimous voting requirement or through minority consent rights), any act that significantly affects the operations of the partnership;
 2. Any of the exempt organization's officers, directors, trustees, or employees have rights to participate in the management of the partnership at any time;
 3. Any of the organization's officers, directors, trustees, or employees have rights to conduct the partnership's business at any time; or
 4. The organization, by itself, has the power to appoint or remove any of the partnership's officers or employees or a majority of directors.

CAUTION

- Potential issue with board members who own or manage limited partnerships
- Consider conflict of interest questionnaire revisions

UBTI siloing – Partnerships Investments and QPI IRC §512(a)(6)



Thank you