



# UBTI in IRAs

## FAQs (revised March 2022)

### UBTI Overview

#### **Q1: What is UBTI?**

A1: **Unrelated Business Taxable Income** is generated when a tax-exempt entity, such as an IRA, invests in a partnership that invests in an active trade or business that is unrelated to the IRA's tax-exempt purpose, and/or the partnership uses debt to finance a portion of its investment.

**Example:** An IRA invests in ABC, a publicly traded partnership. ABC specializes in the distribution of propane, fuel oil and refined fuels. Since ABC is in the business of distributing oil and gas to its customers, income generated from the operation of this partnership is considered UBTI and passed through to its tax-exempt investors, which includes IRAs, as reported on the Schedule K-1.

In addition, ABC has borrowed money to invest in its operations which includes the purchase of underlying properties. If the IRA sells its partnership units, some of the gain from the sale may be considered debt-financed UBTI since borrowing at the partnership level passes through to its tax-exempt investors.

#### **Q2: What types of investments generate UBTI?**

A2: UBTI can be generated by partnerships that pass through earnings to their limited partners – typically publicly traded partnerships (PTPs), master limited partnerships (MLPs), private equity partnerships (PEPs), and hedge fund partnerships. In addition, Limited Liability Companies (LLCs) are generally taxed as partnerships and can generate UBTI.

#### **Q3: When did the UBTI requirements go into effect?**

A3: UBTI rules were created by Congress in 1950 and started applying to IRAs upon their creation in 1975.

#### **Q4: Why do rules exist for UBTI?**

A4: UBTI rules pre-date the existence of IRAs and were originally developed so that charitable organizations didn't have a competitive advantage over taxable organizations and businesses.

**Example:** If a tax exempt entity were to buy a gas station, the profits would not be subject to tax. So the gas station could choose to sell gas at a lower cost than its competitors, causing customers to flock to this gas station to purchase lower-cost gas. This would give the gas station unfairly attained high profits and this unfair advantage could potentially drive competitors out of business. As a

result, tax law dictates that the income generated by the gas station would be considered UBTI and therefore would be taxable to the tax-exempt entity.

**Q5: Are limited partnerships such as MLPs permissible investments in IRAs?**

A5: IRAs are not prohibited from investing in partnerships such as MLPs under the Internal Revenue Code.

**Q6: If an investment has the potential to create a taxable event, why include it in an IRA?**

A6: The potential UBTI tax may be worth the potential gains that can be achieved by an investment in a partnership/LLC. An investment that generates UBTI may produce a higher return than other investments that do not generate UBTI, even after the tax is paid. For example, debt financing often offers increased access to opportunities that may offer the potential for greater returns than would have been attainable had debt financing not been utilized.

**Q7: Is all the income generated from partnerships/LLCs considered UBTI?**

A7: No. There are many exceptions to UBTI including most portfolio income (interest, dividends, royalties etc.). Only income that is classified as being generated from a trade or business and/or income from certain assets financed by debt will be treated as UBTI. Additionally, the sale of partnership/LLC units could generate UBTI.

**Example:** IRA invests in a limited partnership. The partnership purchases a stock for \$1,000 that generates \$10 in dividends. Dividends are excluded from UBTI so they are not taxable. However, if the partnership borrows \$500 to purchase the \$1,000 stock, 50% of the investment is financed through debt so 50% of the dividend income (\$5) is treated as UBTI.

**Q8: How can I get an estimate if my IRA will have a UBTI tax liability?**

A8: UBTI taxes for a particular tax year cannot be estimated until all K-1s for that tax year are received from the partnership/LLC investments in the particular IRA. After that, a review can be conducted, resulting in a determination if the IRA has a UBTI tax liability. The amount of UBTI tax due will be available once the IRS Form 990-T is completed. Prior year UBTI is not necessarily an indicator of future year UBTI.

**UBTI tax return filing**

**Q9: How is UBTI reported by a partnership/LLC investment?**

A9: IRAs investing in limited partnerships will receive Schedule K-1s which will report the UBTI generated, if any. In determining whether UBTI has been generated, the following sections of the K-1 must be reviewed to determine the full amount of UBTI:

- a. Box 20V – Unrelated business taxable income – This box indicates the amount of UBTI reported from the operations (mostly ordinary trade or business).
- b. The footnotes to the K-1 – Some limited partnerships will disclose percentages to apply to income reported elsewhere in the K-1 to determine the amount of UBTI.
- c. Sales Worksheet/Schedule – discloses the amount of ordinary (Section 751) gain that should be included as UBTI as well as provides additional information regarding the sale of the limited

partnership units that should be considered in calculating UBTI to the extent PTP utilized debt-financing.

***Please note that all above listed items must be considered in the calculation of UBTI since the total amount of UBTI is not limited solely to Box 20V.***

**Q10: What happens if an IRA investment generates UBTI?**

A10: When UBTI for a particular IRA is \$1,000 or more in a given year, a tax return filing and tax payment is required. The first \$1,000 of UBTI per IRA is exempt from tax and does not require a tax return filing.

**Example:** An IRA invests in an MLP that generates \$3,000 of UBTI. The IRA will owe tax on \$2,000 of UBTI.

**Q11: What form is used to file the UBTI federal income tax return?**

A11: IRS Form 990-T entitled "Exempt Organization Business Income Tax Return" and its supporting forms/schedules are the required filings for UBTI.

**Q12: When did this UBTI tax filing requirement go into effect?**

A12: The requirement to file and pay tax on UBTI has existed for years, but until recently, the IRS had not specified who was responsible for filing the return. While UBS's IRA document has always stated that the Form 990-T tax return filing is the obligation of the IRA owner, UBS now believes that many of its IRA owners may not have understood what this responsibility entailed or been aware that their IRAs were generating UBTI.

**Q13: Why is UBS filing the UBTI tax returns?**

A13: The IRS has now stated that IRA custodians are treated as trustees and should file Form 990-Ts on behalf of IRAs. Consequently, starting with the 2018 tax filing year, UBS no longer expected that its IRA owners prepare Form 990-T on their own, rather UBS now automatically provides this service to all IRAs that have a filing responsibility. While various IRA custodians may take different positions on the filing requirement, like most other brokerage firms, UBS assumes this responsibility on behalf of its IRA owners.

**Q14: What account types will UBS file Form 990-T for?**

A14: UBS will file Form 990-Ts for those IRAs for which UBS is the custodian as of December 31 of the prior tax year. This includes traditional IRAs, Roth IRAs, IRA rollovers, SEP IRAs, SIMPLE IRAs, and Coverdell Education Savings Accounts.

**Q15: Is a Form 990-T filing required if there is less than \$1,000 in UBTI in the IRA?**

A15: No, a Form 990-T does not need to be filed if there is less than \$1,000 in UBTI and therefore no tax liability for the IRA in a particular tax year.

**Q16: Will UBS send the Form 990-T to IRA owners before it is filed with the IRS?**

A16: All returns are posted to the UBS online services ("OLS"), in the Documents & Reports section (Accounts, Documents & Reports. Statements & Documents, Document Search, Tax Documents, select Year, UBTI 990T) before submission to the IRS. Affected IRA owners will be notified that it was

posted to the UBS website and how to access it. Contact your UBS Financial Advisor if you need access to OLS, and in addition, your Financial Advisor also has access to your IRA's 990-T tax return on our internal tax reporting system.

**Q17: Can the IRA owner prepare the UBTI filing instead of having UBS do it?**

A17: No, UBS believes it is in our IRA owners' best interest to let UBS calculate the tax and file the return.

**Q18: What happens if an IRA holds two or more investments that generate UBTI?**

A18: The \$1,000 threshold is per IRA, not per investment, so total UBTI of \$1,000 or more in the account will be the threshold.

**Q19: What if an individual owns multiple IRAs that each has a UBTI tax filing obligation?**

A19: Each IRA is treated as a separate taxpayer requiring a separate Employer Identification Number (EIN) and a separate tax filing for UBTI purposes.

**Q20: Why has UBS engaged Deloitte Tax LLP ("Deloitte")?**

A20: Deloitte is one of the world's "Big Four" accounting firms and possesses the necessary expertise in UBTI tax filings to prepare these tax returns for the IRAs.

**Q21: Is IRS Form 990-T filed under a social security number?**

A21: No, the IRA, not the IRA owner, owes the tax. Therefore, the Form 990-T is filed using an Employer Identification Number (EIN) specific to each IRA that holds UBTI-generating investments.

**Q22: Does an IRA owner need to do anything with the EIN assigned to the IRA?**

A22: No. The IRS considers the IRA to be a taxpayer separate from the IRA owner and therefore requires a separate EIN for the IRA. IRA owners do not need to do anything with this EIN.

**Q23: Does the filing of the Form 990-T return impact an individual's personal tax return?**

A23: No. The IRA will be assigned its own Employer Identification Number (EIN) for the filing of the Form 990-T. This EIN separates the IRA trust from the owner's Social Security Number, which is used in the individual tax return. The Form 990-T is a separately filed return, though due at the same time, and should not be combined with an IRA owner's individual return.

**Q24: How will the IRA get an Employer Identification Number (EIN)?**

A24: UBS will file with the IRS to obtain an EIN for each UBS IRA that potentially has a UBTI filing requirement and will use that EIN each year that a Form 990-T filing is required for a UBS IRA.

**Q25: Who handles the UBTI filings on behalf of a qualified plan (e.g. 401(k))?**

A25: For qualified plans, the plan's trustee or administrator must file the Form 990-T and pay the tax from the plan.

**Q26: Is a Form 990-T filing required if there is a net operating loss (NOL)?**

A26: No, a Form 990-T does not need to be filed if there is no tax liability for the IRA in a particular tax year. However, UBS will track NOLs for the IRAs where filing is not required.

**Q27: Does UBS charge a fee for this service of filing for UBTI?**

A27: At this time, UBS will not charge a fee to the IRA account or IRA owner for the preparation of the Form 990-T. Notification will be sent if the policy changes in the future.

**Q28: When is the deadline for filing the Form 990-T?**

A28: Form 990-T is generally due by April 15 unless the date falls on a weekend or recognized holiday or an extension is applied for, which would extend the filing deadline an additional 6 months (i.e. generally October 15).

**Example:** A taxpayer with its tax year ended 12/31/2021 must file a return by April 18, 2022. If an extension for the Form 990-T is requested, the return must be filed by October 17, 2022.

**Q29: When will UBS file the Form 990-T?**

A29: UBS files for an extension with the IRS without payment and submits payment as the unrelated business income tax calculations and Form 990-T forms are completed. UBS files Form 990-T returns throughout the filing extension period but no later than the extension deadline of October 15.

**Q30: How is UBTI calculated?**

A30: UBTI generated by each investment in an IRA is disclosed on the Schedule K-1 and it is then reported on the Form 990-T.

**Q31: Does UBS' UBTI tax calculation take prior year net operating losses (NOLs) into consideration?**

A31: Yes, the calculation takes into account the prior years of UBS data beginning with the 2015 tax year to determine whether net operating losses are available to be carried forward to offset future income. Accordingly, losses from 2015 forward have been already taken into account for purposes of completing the return where available.

- For IRAs transferred to UBS in 2015 or later, clients can provide UBS with the IRS Form 990-T completed and filed with the IRS by their prior IRA custodian or CPA reflecting the available NOLs for the year end prior to the year of transfer to UBS. This IRS Form 990-T will be forwarded to Deloitte for inclusion in the calculation.
- If the IRA transferred to UBS prior to 2015 and/or if it is believed there are NOLs prior to 2015, clients can provide UBS with the 2014 IRS Form 990-T reflecting the available NOLs which will be forwarded to Deloitte for inclusion in the calculation. Clients will also be required to complete an indemnification letter which will be provided to them by UBS.

**Q32: Do IRA owners need to sign the Form 990-T before it is filed?**

A32: UBS takes responsibility for the filing of the returns and it is therefore required to sign the returns on behalf of the IRAs. Therefore, IRA owners do not need to sign the return.

**Q33: Would only some partnerships/LLCs show up on the IRA's Form 990-T?**

A33: An IRA may have investments that did not generate UBTI and therefore would not be included when calculating UBTI and filing the Form 990-T.

**Q34: Will UBS file for private placements held in IRAs that generate UBTI?**

A34: UBS will file IRS Form 990-Ts if UBTI is generated by any of the few private placements still held in UBS IRAs. However, UBS resigned and appointed Pacific Premier Trust (formerly PENSICO Trust Company) as IRA custodian on most private placements held in IRAs. IRA owners will need to check with their current IRA custodian to make arrangements for the UBTI tax filing for these investments.

**Q35: Will UBTI tax returns be filed for individual States?**

A35: No, UBTI tax returns will not be filed for any States at this time. You will be notified if this changes in future years. Clients should consult with their tax advisor regarding state filing obligations.

**UBTI tax payments**

**Q36: Who pays the UBTI tax when it is owed?**

A36: The tax is an obligation of the IRA and must be paid out of the IRA account and not the IRA owner's personal funds. UBS debits the tax payment amount from the IRA and remits it to the IRS. It may be necessary to liquidate positions in the IRA to cover the tax obligation.

**Q37: How does UBS pay the UBTI tax?**

A37: UBS will provide the IRA owner and their UBS Financial Advisor with written notification of the amount of UBTI tax due and the date UBS will attempt to debit the amount from the IRA. Amounts debited to pay the IRA's UBTI tax liability will be reflected on the UBS statement and/or online services with a plan description of "plan expense" and an activity of "fee charge".

**Q38: What happens if there is insufficient liquidity in the IRA to cover the tax due?**

A38: UBS Financial Advisors and IRA owners need to work together to decide which investments in the IRA will be liquidated in order to remit the tax due to the IRS. To create liquidity, the IRA holder has a few options:

1. Sell assets in the IRA
2. Transfer assets from a different IRA to the impacted IRA
3. Make a contribution to the IRA up to the IRS IRA Contribution Limit (applicable limit can be found on the IRS website)

**Q39: Will an IRA owe UBTI tax each year the IRA owns the investment?**

A39: The K-1 from the investment(s) needs to be reviewed each year to determine whether the UBTI generated for that year that meets the \$1,000 threshold. Where the IRA holds more than one investment potentially generating UBTI, the K-1 from each will have to be reviewed to see if, in aggregate, the \$1,000 threshold has been met.

**Q40: Can the IRA owner pay the tax from outside his/her IRA?**

A40: No, the IRA is the responsible taxpayer and the tax should be paid from the IRA that holds the investment. In lieu of liquidating existing IRA assets or if there are insufficient assets in the IRA, the IRA owner could make a contribution to cover the tax payment up to the annual allowable amount (e.g. \$6,000 for 2022, additional \$1,000 catch-up contribution if age 50 or older). The IRA owner could also transfer assets from another IRA into the IRA that owes the UBTI tax.

**Q41: What is the deadline for paying the UBTI tax?**

A41: Calculated UBTI tax is generally due by April 15 even if an extension is requested for the filing of the Form 990-T. The final due date for the tax is October 15 which would include accumulated interest and penalties through the date the payment is made after April 15.

**Q42: Could the tax for a given tax year be paid after April 15?**

A42: The information from the partnerships required to perform the final UBTI calculations is typically not available early enough to prepare the return prior to the April 15 due date. Therefore, the tax payment and Form 990-T will be submitted to the IRS once the information is gathered and UBTI is calculated.

**Q43: What tax rates apply to UBTI in IRAs?**

A43: UBTI in IRAs are subject to tax at the trust rates which range from 10% to a top rate of 37% and are eligible for lower capital gain tax rates where applicable.

**Q44: What if an IRA owner doesn't want the tax paid?**

A44: The tax is a required payment from the IRA and must be remitted to the IRS by UBS as the IRA custodian.

**Q45: Will the IRA pay interest and/or penalties on the return?**

A45: If the tax is not paid by the original due date (April 15) of the return, interest and penalties are due. UBS will work with the IRS to try to abate or minimize any penalties imposed.

**Q46: Why should the IRA pay interest on late payments?**

A46: As required by law, interest is due on late payments. Note that the IRA had use of the funds between April 15 and the actual payment date.

**Q47: How are interest and penalties calculated?**

- A47:
- Interest - Interest is charged at the underpayment rate as determined by the IRS.
  - Late filing penalty - 5% of unpaid tax for each month or part of a month the return is late, up to 25% maximum. If the return is over 60 days late, there's also a minimum penalty for the late filing; it's the lesser of \$435 or 100% of the tax owed.
  - Late payment penalty - ½ of 1% of unpaid tax each month or part of a month the tax is unpaid, up to 25% maximum.
  - Note - Penalties may be waived if it can be shown that failure to file/pay timely was due to reasonable cause.

**Q48: When the tax is withdrawn will it be reported as a distribution from the IRA?**

A48: No, the tax is an expense of the IRA, it will not be reported as a distribution, and will not be reported on IRS Form 1099-R.

**Q49: Who can help explain the amount of UBTI tax calculated?**

A49: IRA owners can contact their UBS Financial Advisors who have access to Deloitte specialists who can explain the UBTI tax calculations.

### **Distributions, transfers and sales of UBTI generating investments**

**Q50: What if an IRA that owes UBTI tax transferred to a new IRA custodian after December 31 of the prior year?**

A50: The tax is still owed by the IRA. These IRA owners will receive a letter from UBS with a copy of the IRS Form 990-T UBS will be filing on behalf of the IRA since UBS was the custodian on December 31 of the prior year, but the IRA owner will be responsible for making arrangements to have the new IRA custodian remit the taxes due to the IRS.

**Q51: Can the UBTI generating investment be removed from the IRA?**

A51: It may be possible to sell the investment or transfer it out of the IRA. IRA owners should discuss with their external tax advisors whether either of these strategies is appropriate based on their individual circumstances. The UBTI tax liability up until the date of sale or distribution is still owed by the IRA and will need to be paid. Also, there may be additional UBTI liability generated from the sale of partnership units.

In addition, the transfer of the UBTI generating investment out of the IRA itself may generate UBTI, depending on the form of the disposition. Note: that a distribution of an investment could result in a taxable event and a possible early distribution penalty.

**Q52: What happens if the UBTI generating investment was sold in the prior year?**

A52: The UBTI tax liability up until the date of sale is still owed by the IRA and will need to be paid.

**Q53: What happens if an in-kind distribution of the UBTI generating investment is taken?**

A53: IRA owners should determine with their external tax advisors whether the investment can and should be distributed from the IRA. The tax liability up until the date of distribution from the IRA will still need to be paid.

**Q54: What if a traditional IRA owes UBTI tax but was transferred to another IRA at UBS or converted to a Roth IRA at UBS?**

A54: The UBTI tax should be paid out of the IRA that received the transfer, i.e. the new IRA or Roth IRA.

**Q55: What if the owner of the IRA that owes the tax has died?**

A55: The UBTI tax should be paid out of the deceased individual's IRA. If the IRA has already been moved to one or more beneficiary IRAs, the beneficiary(ies) will be responsible for the tax liability referencing the decedent IRA's EIN in the description of the payment to the IRS. UBS Financial Advisors have detailed instructions to assist in this process. The UBTI tax liability is in addition the taxable income reflected on IRS Form 1099-R when the beneficiary receives an IRA distribution. There is no "step up" to beneficiaries who inherit the IRA with the partnership investment.

**Q56: What happens if the partnership/LLC converted to a corporation?**

A56: If a partnership/LLC converted to a corporation, the conversion could be treated as a sale of the partnership/LLC units which may generate UBTI.



## **Offshore investment filing requirements**

### **Q57: Do offshore limited partnerships generate UBTI?**

A57: *Offshore entities treated as corporations* for U.S. federal income tax purposes ("offshore corporation") are generally designed not to incur UBTI. *Offshore entities treated as partnerships* ("offshore partnership") for U.S. federal income tax purposes may result in UBTI.

### **Q58: What schedules are included with or need to be filed with the IRS Form 990-T?**

A58: An IRS Form 926 information return may be required to report contributions in offshore corporations.

An investment in an offshore partnership may result in both a 990-T filing requirement and a Form 8865 information return requirement (see below for more detail).

UBS will attach Forms 926 and 8865 to the Form 990-T when required. UBS will not prepare a Form 926 or Form 8865 if a Form 990-T is not required to be filed; therefore IRA owners should consult their tax advisors to determine if such filings are required.

### **Q59: What is an IRS Form 926?**

A59: Form 926 is a Return by a U.S. Transferor of Property to a *Foreign Corporation* and is required to be filed for transfers of cash to an investment in a foreign corporation, which is commonly used for alternative investments.

### **Q60: What is an IRS Form 8865?**

A60: Form 8865 is a Return of U.S. Persons with Respect to Certain *Foreign Partnerships* and is required to be filed for transfers of cash to an investment in a foreign partnership which is commonly used for alternative investments.

### **Q61: Does an IRS Form 926 or 8865 need to be filed for all offshore entity investments?**

A61: No, in general these forms are required only if an investment over \$100,000 is made to the foreign partnership or corporation during any rolling 12-month period.

Investing involves risks and there is always the potential of losing money when you invest.

### **No tax or legal advice**

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