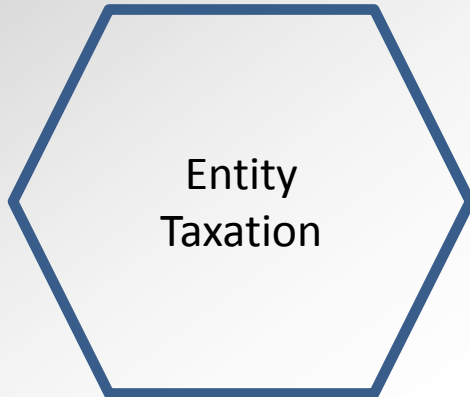


CHOICE OF ENTITY TAX CONSIDERATIONS



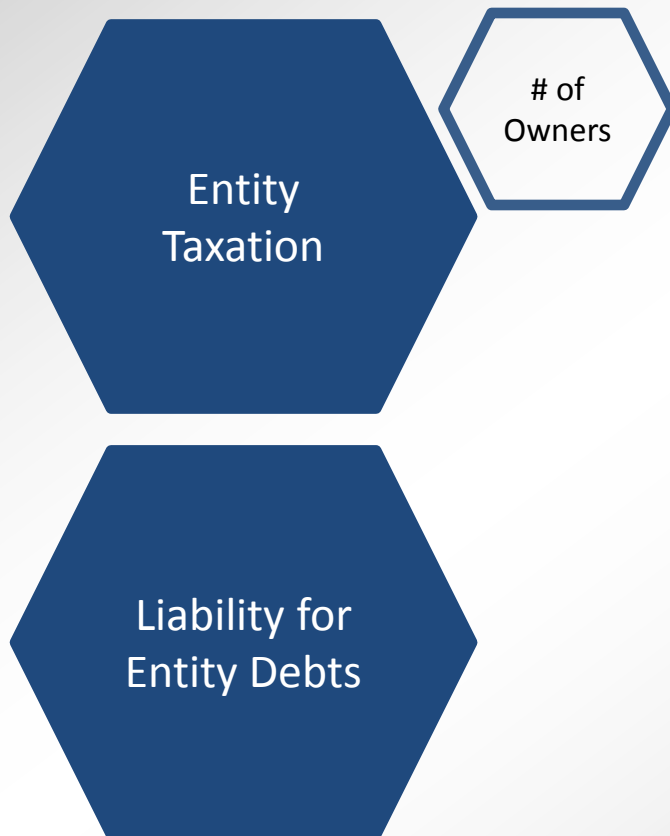
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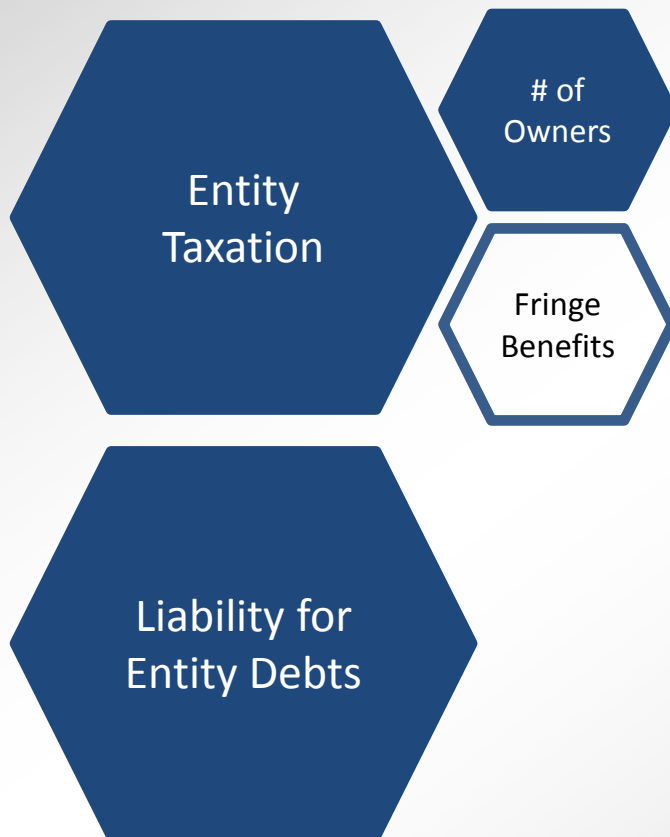
- **LLC and Partnership:** Passthrough for income tax purposes.
- **S Corp.:** Owners immediately taxed on the corporation's taxable income.
- **C Corp.:** Separate taxable entity; two layers of taxation.



- **LLC, S Corp. and C Corp.:** Owners' liability for entity debts is limited.
- **Partnership:** General partners' liability for entity debts is unlimited.



- **LLC and C Corp.:** Any number of owners.
- **S Corp.:** No more than 100 owners, no non-US persons, restricted entity ownership.
- **Partnership:** At least two partners.



- **LLC and Partnership:** Cash value of fringe benefits generally not excludable from member's income or deductible by entity.
- **S Corp.:** Cash value of fringe benefits generally not excludable from $> 2\%$ owner-employee's income or deductible by S corporation.
- **C Corp.:** Deductible by corporation—not included in income of employee.



- **LLC:** \$800 minimum franchise tax; gross receipts fee.
- **S Corp.:** Minimum franchise tax of \$800 or 1.5% taxable income.
- **C Corp.:** 8.84% corporate rate generally applies, or \$800 minimum franchise tax.
- **Partnership:** \$800 minimum franchise tax on limited partnerships, no California income tax on general partnerships.



- **LLC, S Corp. and Partnership:**

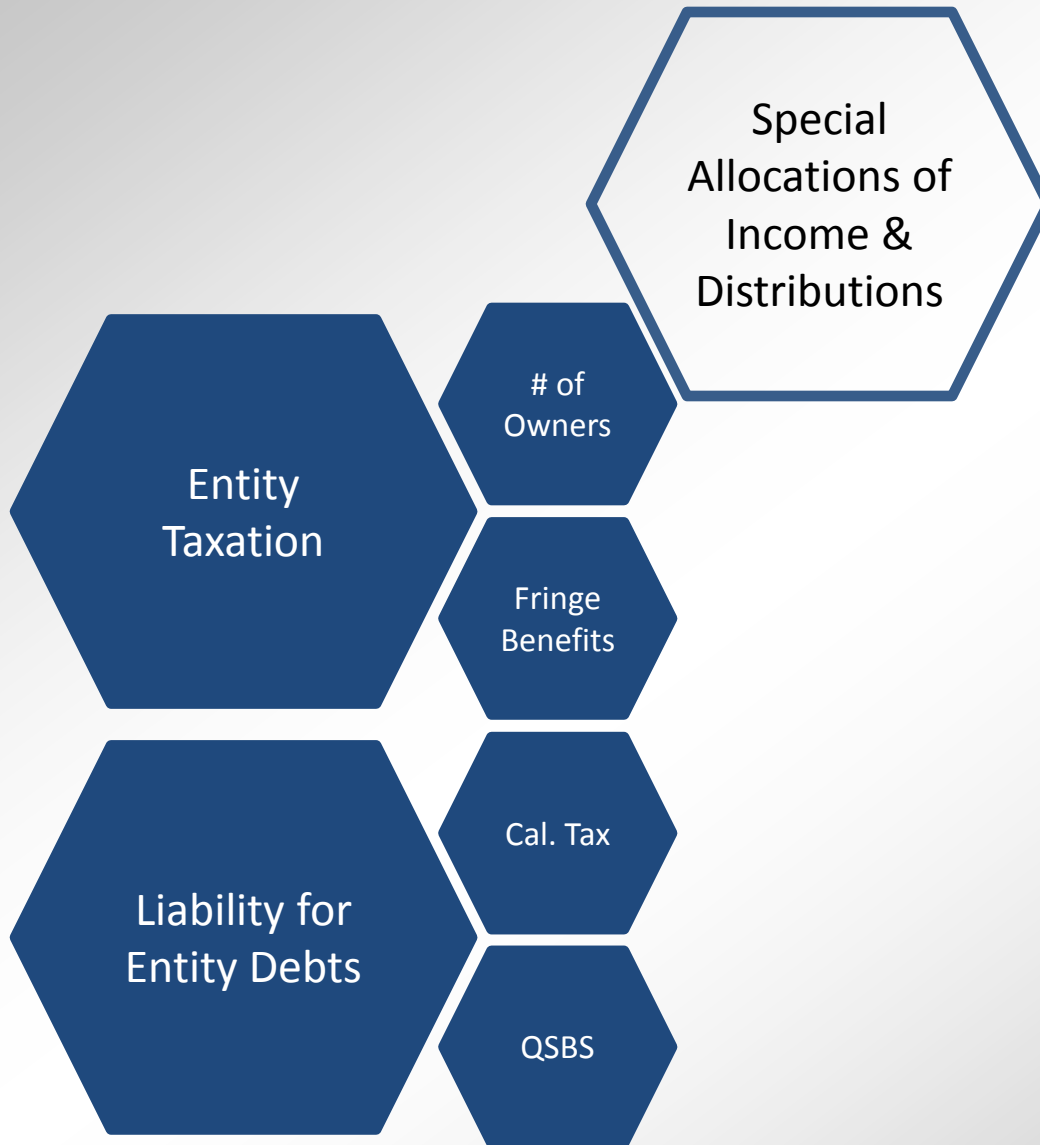
- Issuance: Cannot issue QSBS.

- Ownership: Can hold QSBS; passes income benefit up to its owners via pass-through treatment.

- **C Corp.:**

- Issuance: Can issue QSBS.

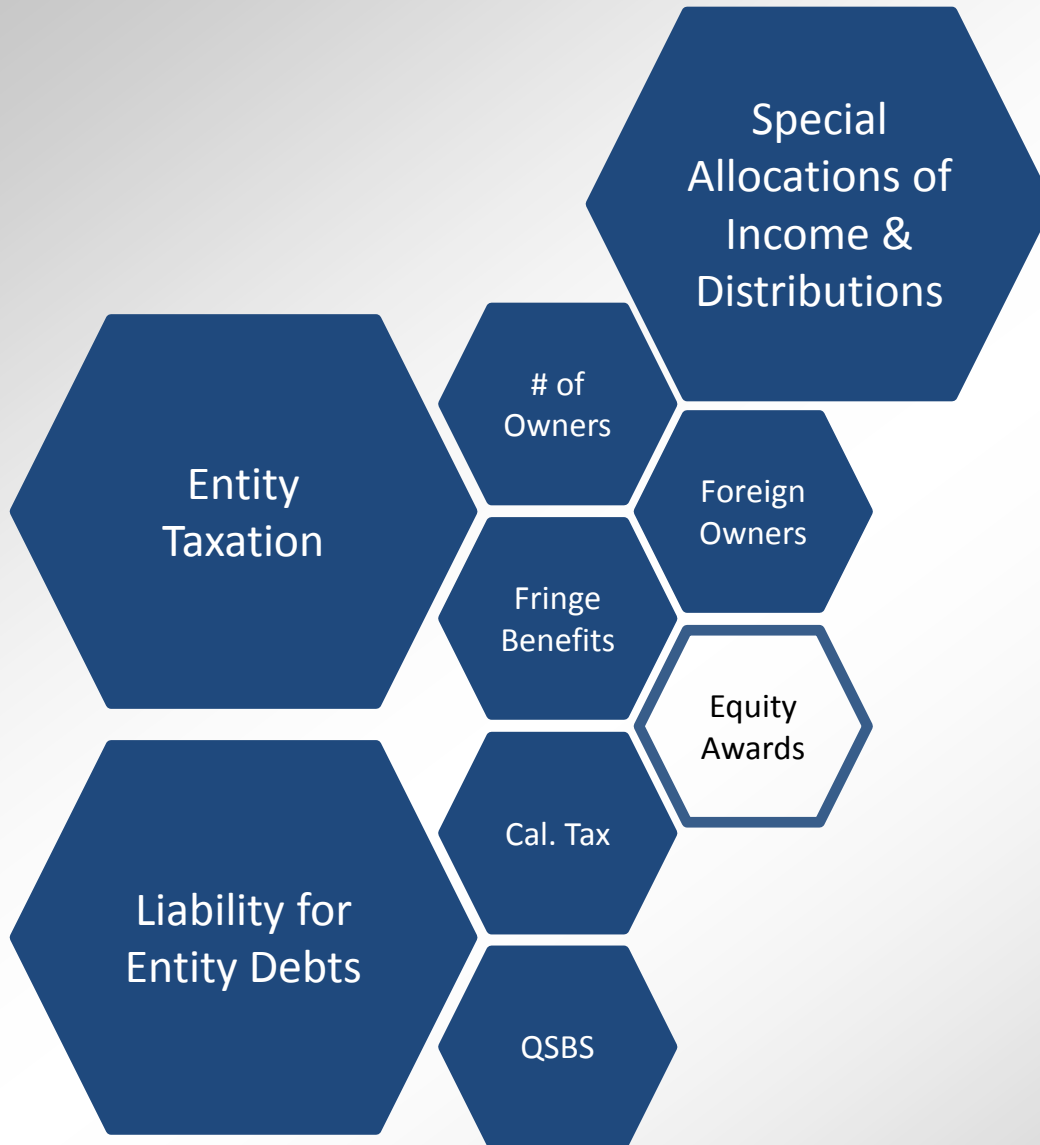
- Ownership: Can own QSBS, but cannot derive any income benefit therefrom. Does not pass QSBS income benefit up to its owners.



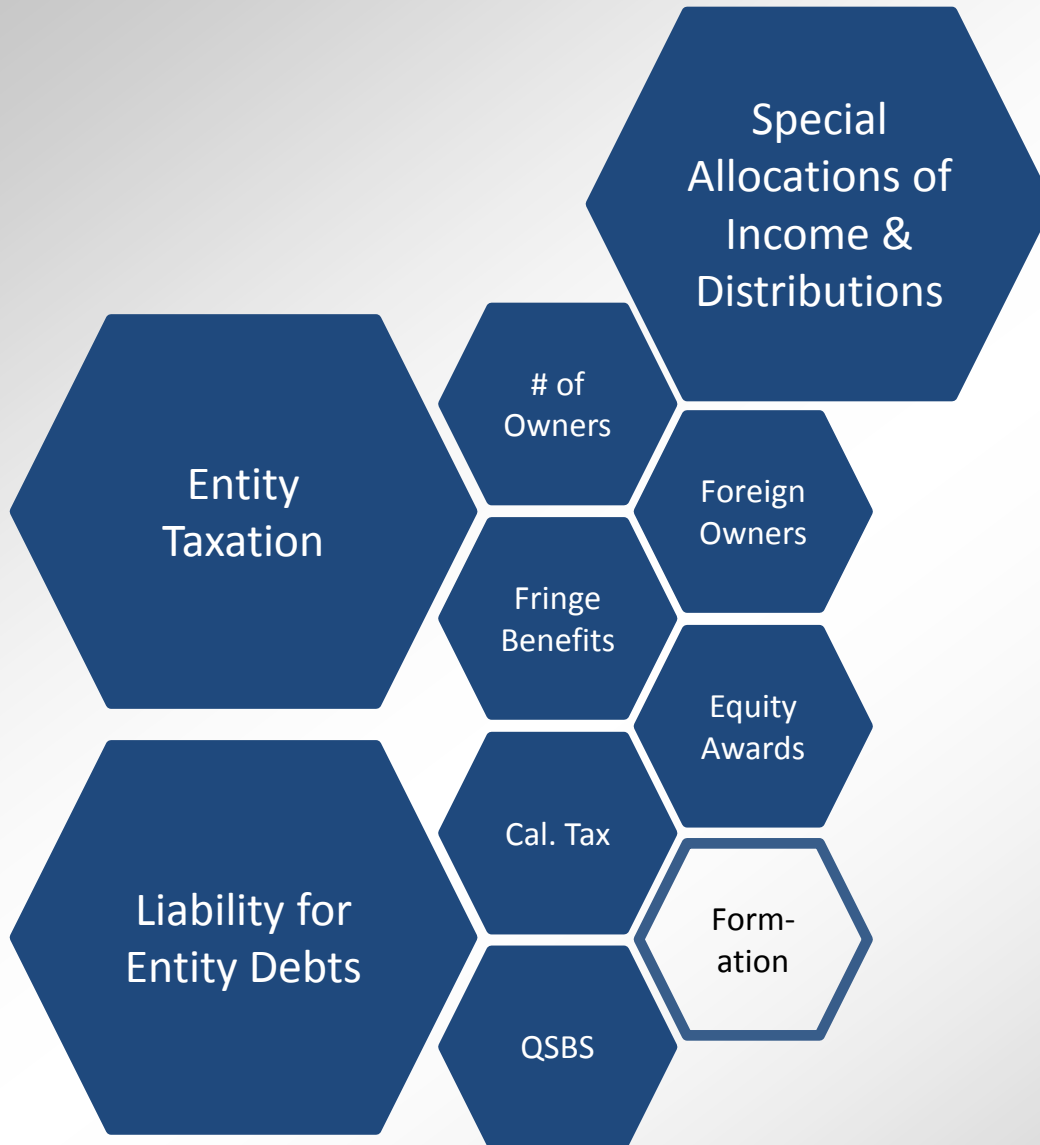
- **LLC and Partnership:** Allowed, subject to substantial economic effect rules.
- **S Corp.:** Not allowed—all allocations are pro rata.
- **C Corp.:** Not allowed.



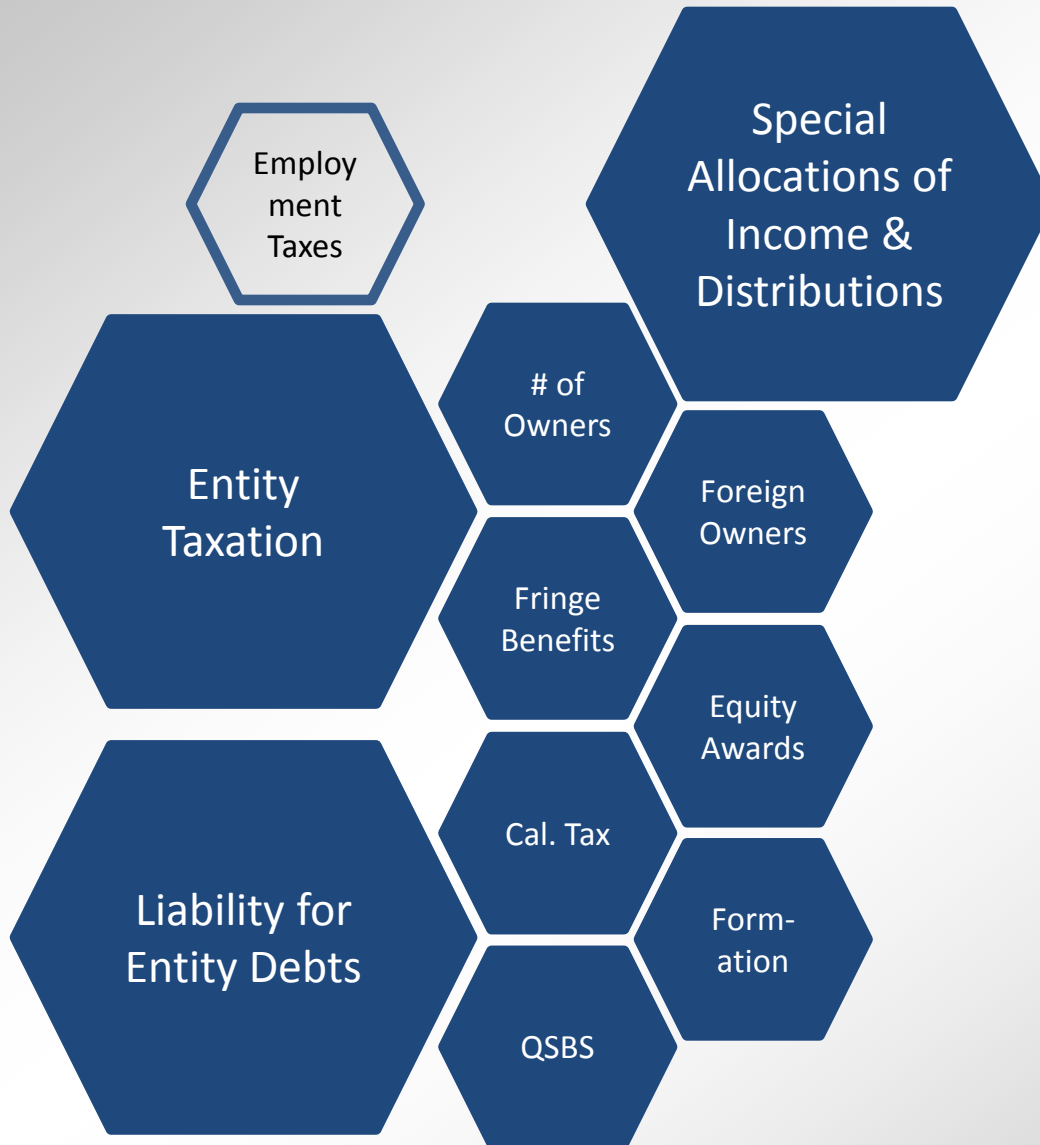
- **LLC and Partnership:** US tax on effectively connected income. Branch profits tax. Withholding taxes.
- **S Corp.:** Foreigners cannot be owners of an S corporation.
- **C Corp.:** Foreign owners may face withholding tax on dividends from US corporations, subject to treaty rate or exemption.



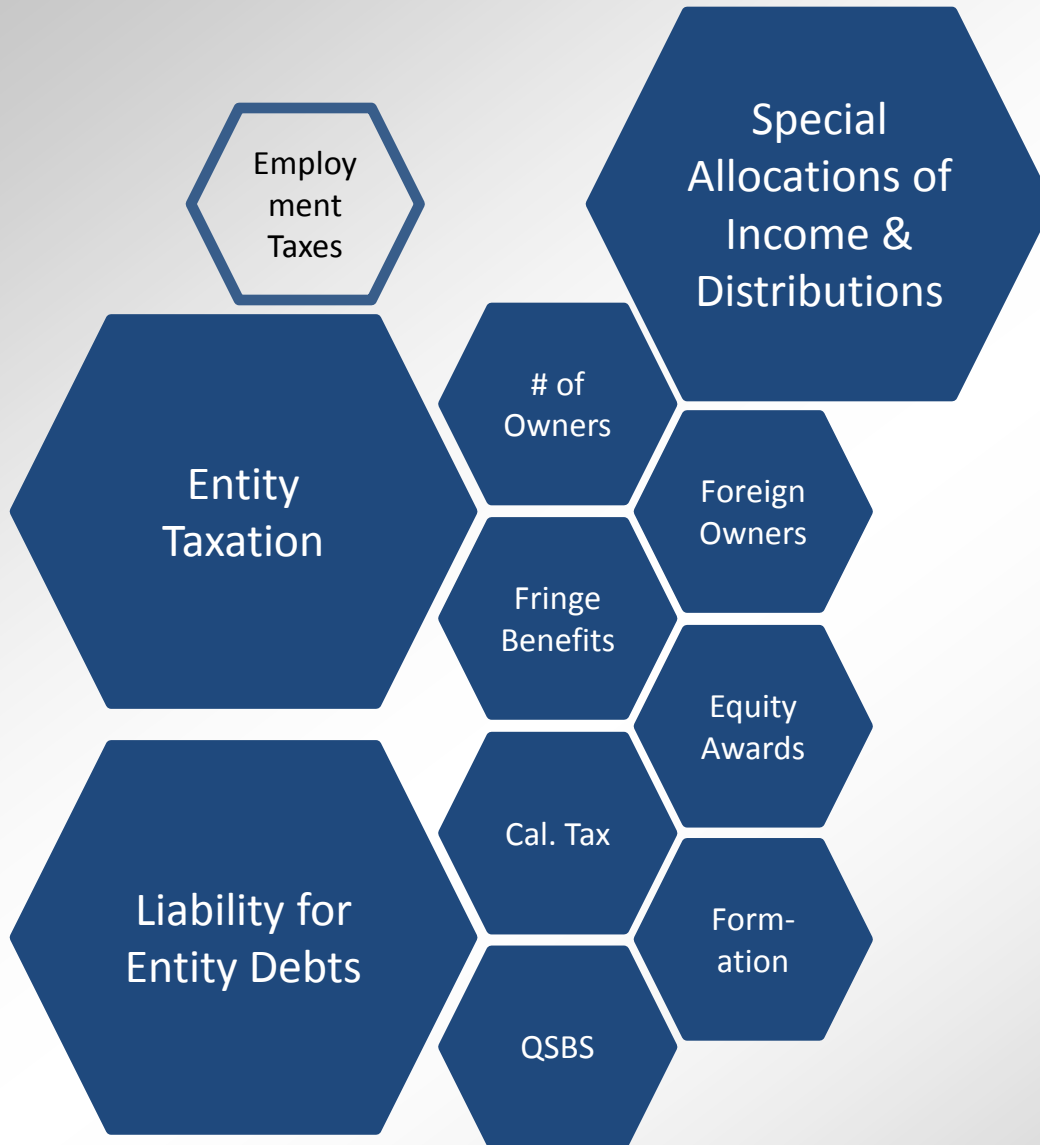
- **LLC and Partnership:** Equity can be given to employees and consultants, but is complex. ISOs are not available.
- **S Corp. and C Corp.:** ISOs commonly granted to employees. NSOs may be granted to employees, consultants and advisors.



- **LLC and C Corp.:** Formation filings required.
- **S Corp.:** Formation filings and S election required.
- **Partnership:** Agreement.



- **LLC and Partnership:** Earnings generally subject to self-employment taxes.
- **S Corp. and C Corp.:** Social security taxes imposed on wages of employee-owners, no self-employment tax on distributions.



- **LLC and Partnership:**

- SE: 12.4%

- Medicare: 2.9%

- **S Corp. and C Corp.:**

- SS: 6.2% + 6.2%
(max base \$113.7k)

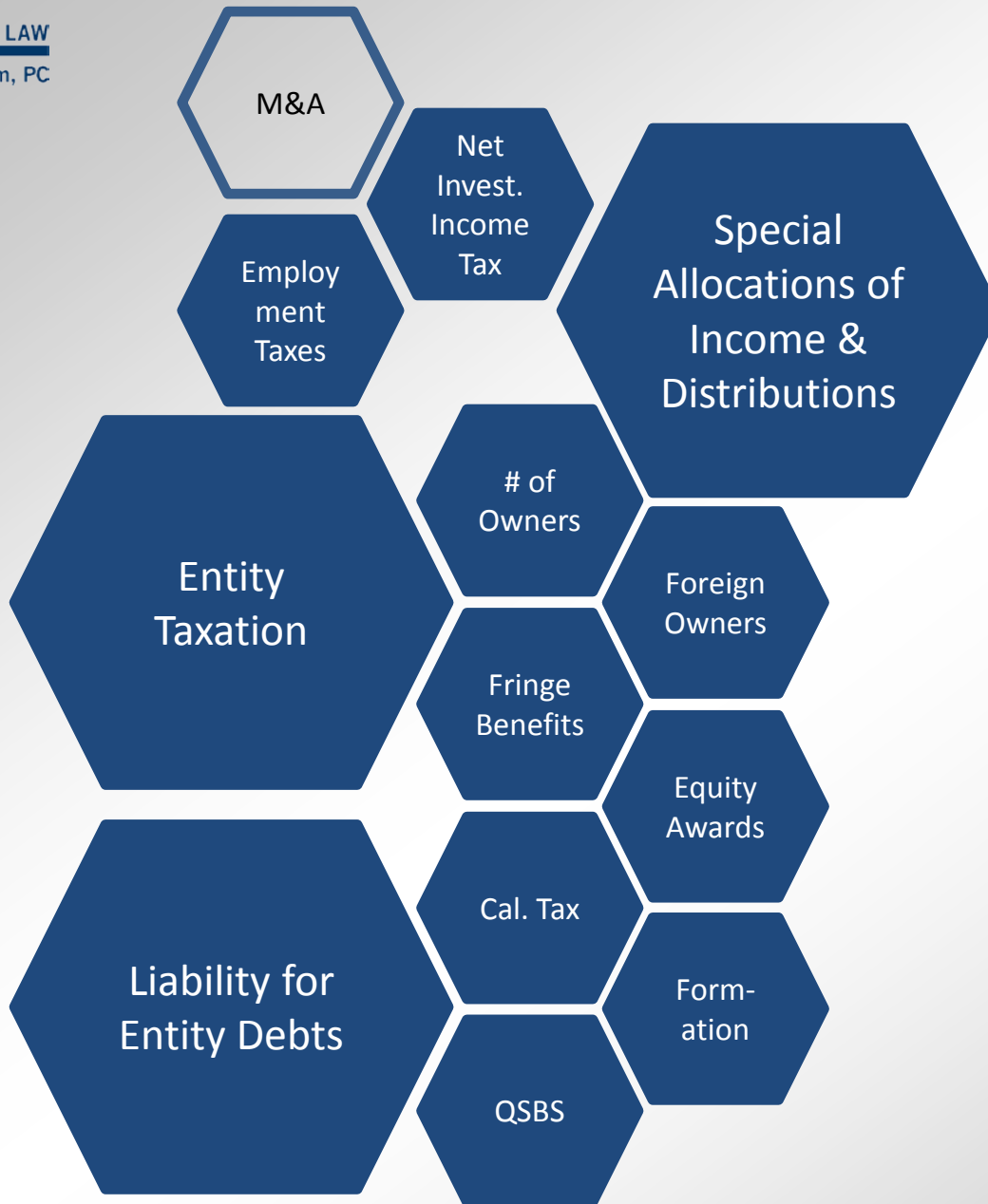
- Medicare: 1.45% + 1.45%

Medicare surtax: 0.9% on earned income > \$200k (single) or \$250k (MFJ).

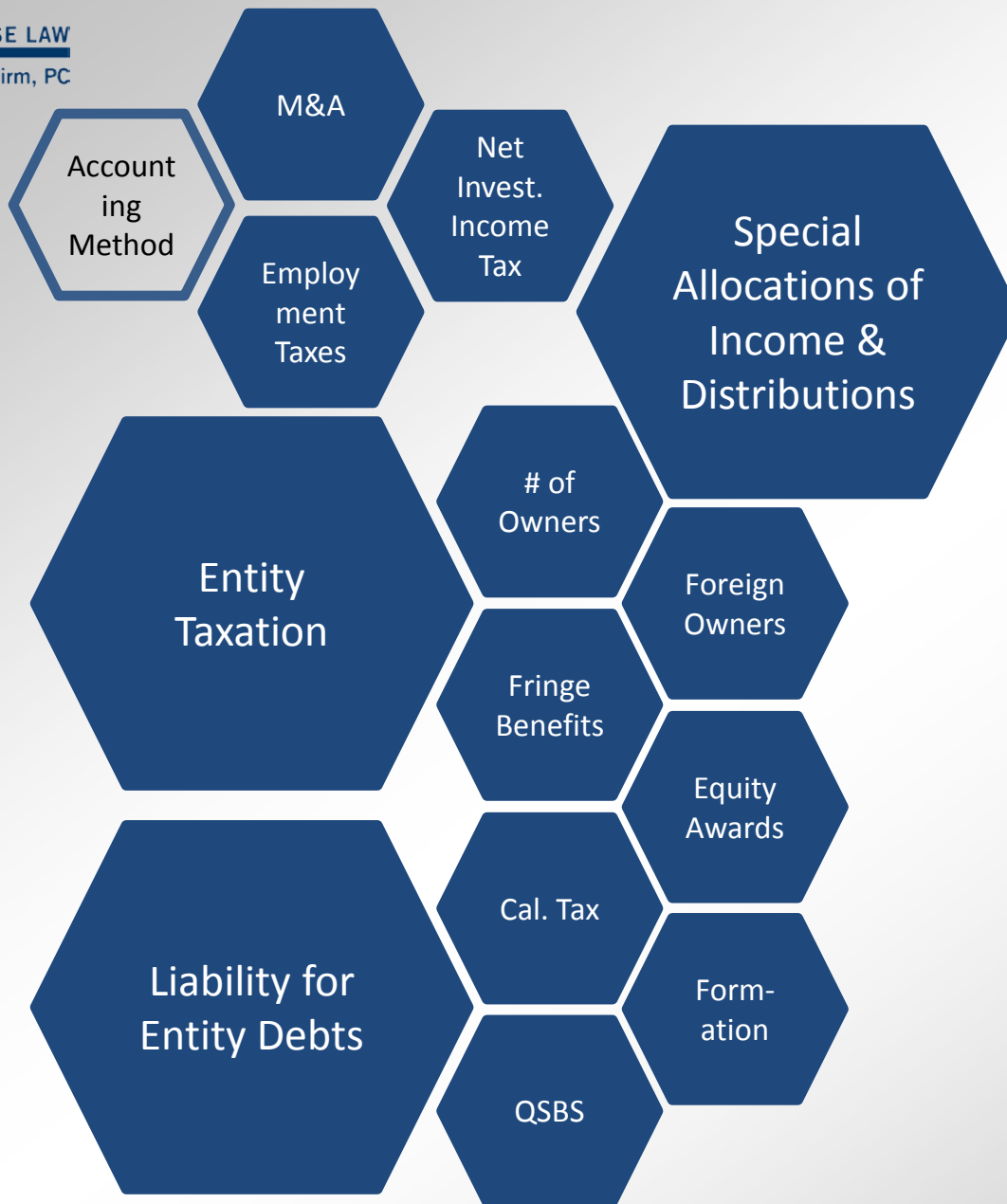


Net Investment Income surtax: 3.8% on the lesser of (i) net investment income or (ii) modified AGI greater than \$200k (single) or \$250k (MFJ), active + passive

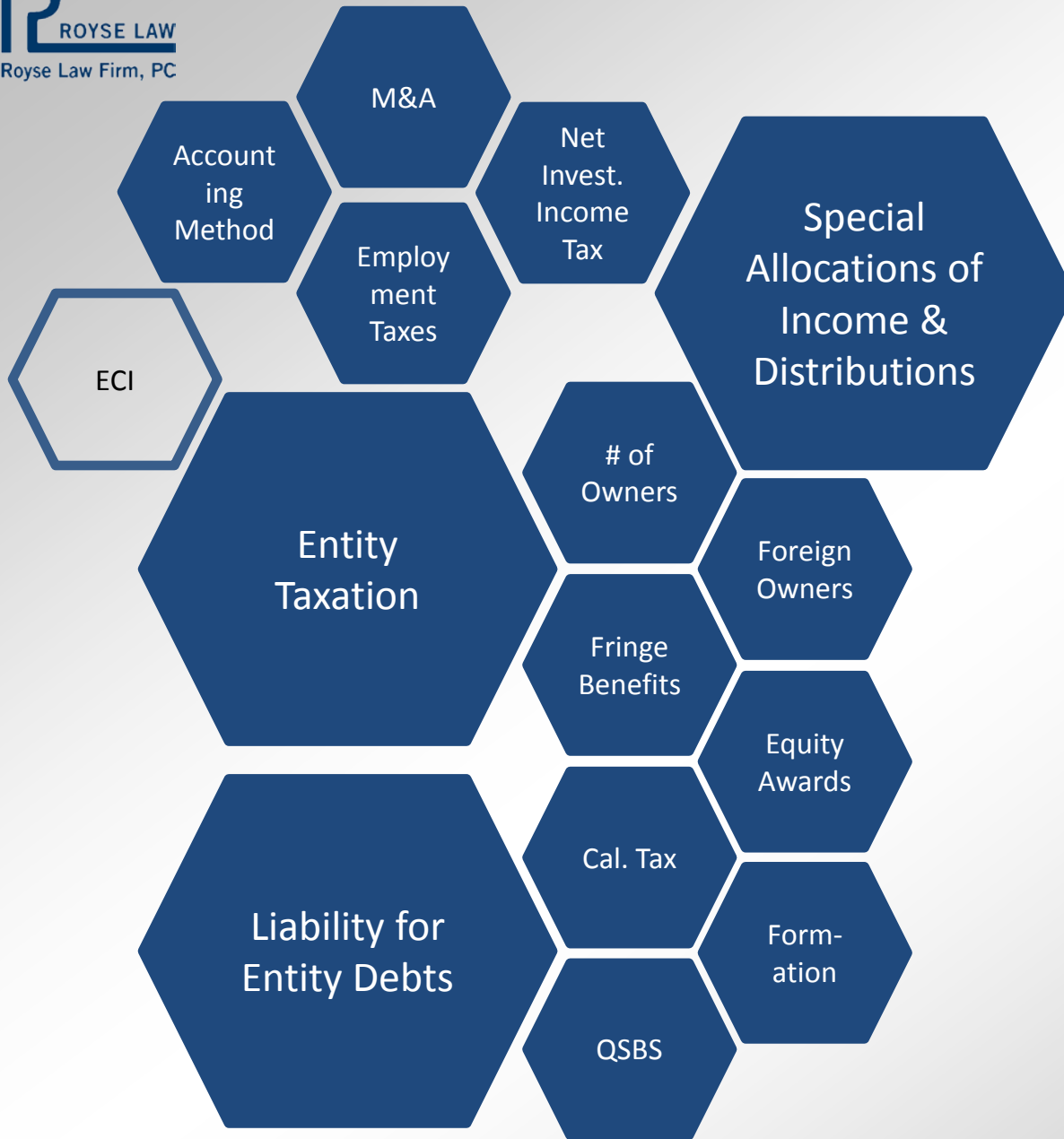
- **LLC, S Corp. and Partnership:** Passive distributions may trigger NII surtax.
- **C Corp.:** Dividends may trigger NII surtax.



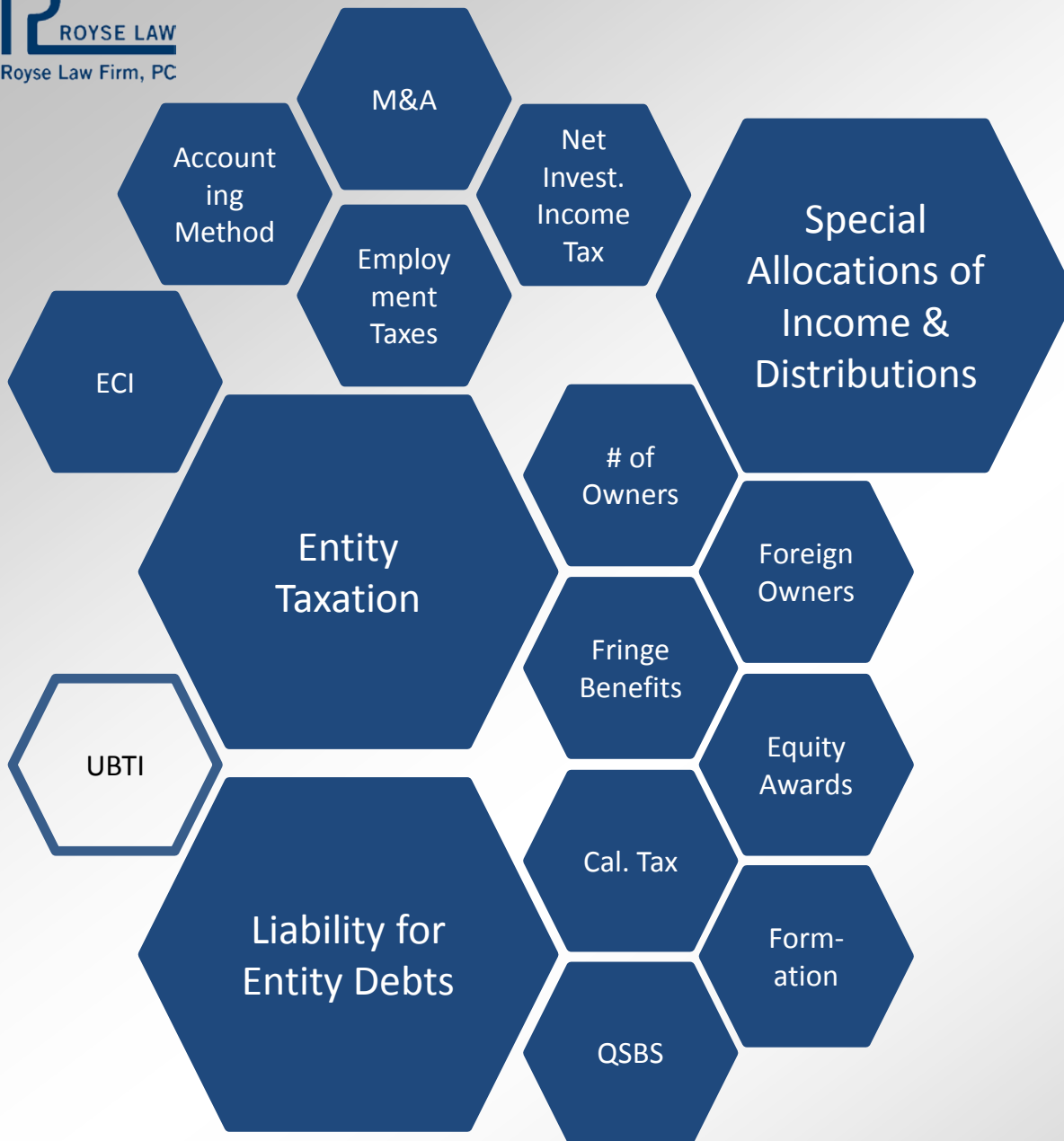
- **LLC and Partnership:** Sale can generate capital gain, subject to related party and “hot asset” rules; different rules apply for foreigners.
- **S Corp. and C Corp.:** Stock or asset sale possible.



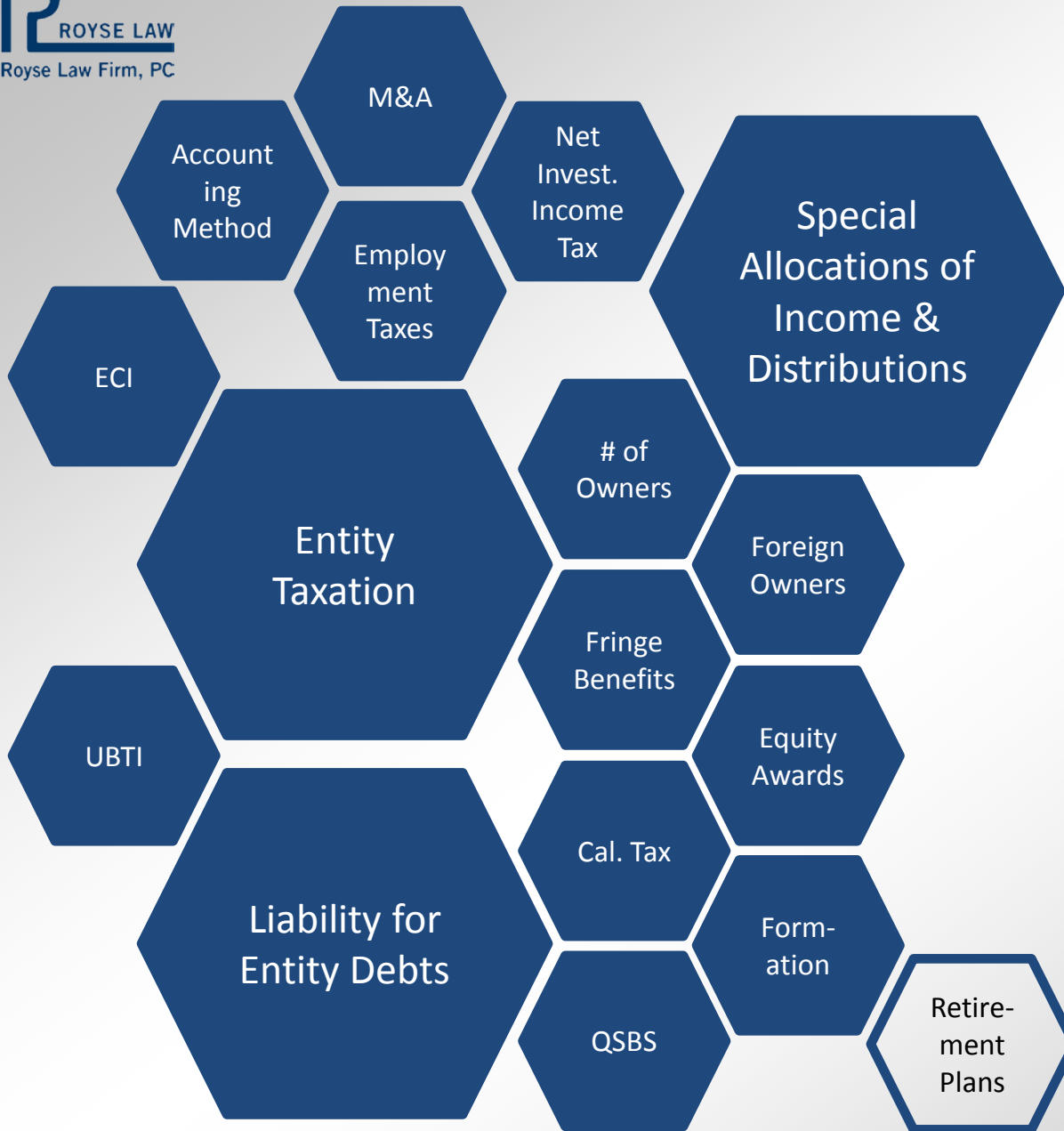
- **LLC and Partnership:** Must use accrual method if a C Corporation is a member, unless the LLC has < \$5 million gross receipts per year.
- **S Corp.:** Can use cash method if annual gross receipts for the last 3 years average \$1 million or less or if inventory is not a material income producing factor.
- **C Corp.:** Generally accrual method if annual gross receipts exceed \$5 million.



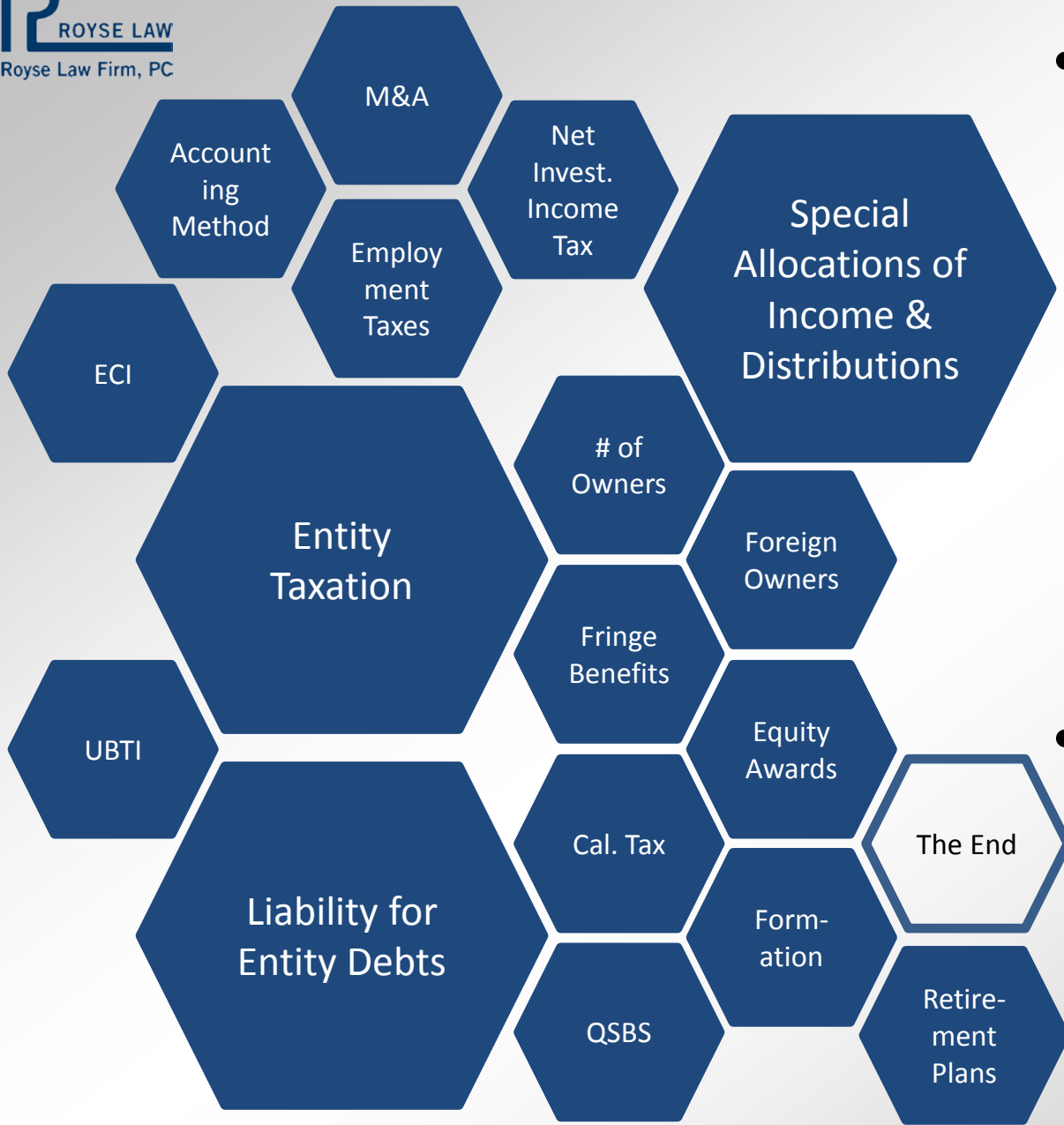
- **LLC and Partnership:** Foreign owners have effectively connected income if the entity has effectively connected income.
- **S Corp.:** Foreigners cannot be owners of an S corporation.
- **C Corp.:** Generally blocks foreign owners from having effectively connected income.



- **LLC, S Corp. and Partnership:** Tax-exempt investors may have unrelated business taxable income through the entity's conduct.
- **C Corp.:** Dividends are not considered unrelated business taxable income.



- **LLC and Partnership:** Maximum amount deductible by self-employed persons is limited by that person's self-employment income minus the amount contributed to a qualified retirement plan.
- **C Corp. and S Corp.:** No such restriction for corporate retirement plan participants.



- **LLC and Partnership:** Terminates for tax purposes on transfer of at least 50% capital and profits interests in 12 months.

- **S Corp. and C Corp.:** No termination of entity on transfer of interests.

Additional Resources



www.mobilesense.net/rroyselaw/legalwizard

Royse Law Incorporator: Designed to help you incorporate and structure your company in Delaware or California.



www.RoyseUniversity.com

Royse University: Providing business, tax, and legal content to founders and executives.



www.RoyseLink.com

RoyseLink: Connecting founders with investors and service partners.



www.rroyselaw.com/ijuris_login_jp.html

Royse Law Legal Wizard: Offering legal document templates and more.

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In accordance with Section 6694 of the Internal Revenue Code of 1986, as amended (the "Code"), we hereby advise you that the positions set forth herein may lack substantial authority and, therefore, may be subject to penalty under Code section 6662(d) unless adequately disclosed on IRS Form 8275.