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TAXATION LAW

BAR QUESTIONS & ANSWERS

(2007-2017)

*with Table of Frequently
Asked Topics in the Bar*

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I. GENERAL PRINCIPLES

1. Real property taxes should not disregard increases in the value of real property occurring over a long period of time. To do otherwise would violate the canon of a sound tax system referred to as: (2011 Bar Question)
 - A) theoretical justice.
 - B) fiscal adequacy.
 - C) administrative feasibility.
 - D) symbiotic relationship.

SUGGESTED ANSWER: A

2. The actual effort exerted by the government to effect the exaction of what is due from the taxpayer is known as: (2011 Bar Question)
 - A) assessment.
 - B) levy.
 - C) payment.
 - D) collection.

SUGGESTED ANSWER: D

3. (17) Although the power of taxation is basically legislative in character, it is NOT the function of Congress to: (2011 Bar Question)
 - A) fix with certainty the amount of taxes.
 - B) collect the tax levied under the law.
 - C) identify who should collect the tax.
 - D) determine who should be subject to the tax.

SUGGESTED ANSWER: B

4. An example of a tax where the concept of progressivity finds application is the: : (2011 Bar Question)
 - A) income tax on individuals.
 - B) excise tax on petroleum products.
 - C) value-added tax on certain articles.
 - D) amusement tax on boxing exhibitions.

SUGGESTED ANSWER: A

A. Power of taxation as distinguished from Police Power and Eminent Domain

5. Congress passed a sin tax law that increased the tax rates on cigarettes by 1,000%. The law was thought to be sufficient to drive many cigarette companies out of business, and was questioned in court by a cigarette company that would go out of business because it would not be able to pay the increased tax.

The cigarette company is _____. (1%) (2013 Bar Question)

- A) wrong because taxes are the lifeblood of the government
- B) wrong because the law recognizes that the power to tax is the power to destroy

- C) correct because no government can deprive a person of his livelihood
- D) correct because Congress, in this case, exceeded its power to tax

SUGGESTED ANSWER:

(B) wrong because the law recognizes that the power to tax is the power to destroy (*McCulloch v. Maryland*, 17 U.S. 4 Wheat. 316 (1819)).

B. Inherent and constitutional limitations of taxation

6. Money collected from taxation shall not be paid to any religious dignitary EXCEPT when: (2011 Bar Question)
- A) the religious dignitary is assigned to the Philippine Army.
 - B) it is paid by a local government unit.
 - C) the payment is passed in audit by the COA.
 - D) it is part of a lawmaker's pork barrel.

SUGGESTED ANSWER: A

7. In January 2011, the BIR issued a ruling that Clemen's vodka imports were not subject to increased excise tax based on his claim that his net retail price was only P200 per 750 milliliter bottle. This ruling was applied to his imports for May, June, and July 2011. In September 2011, the BIR revoked its ruling and assessed him for deficiency taxes respecting his May, June and July 2011 vodka imports because it discovered that his net retail price for the vodka was P250 per bottle from January to September 2011. Does the retroactive application of the revocation violate Clemen's right to due process as a taxpayer? (2011 Bar Question)
- A) Yes, since the presumption is that the BIR ascertained the facts before it made its ruling.
 - B) No, because he acted in bad faith when he claimed a lower net retail price than what he actually used.
 - C) No, since he could avail of remedies available for disputing the assessment.
 - D) Yes, since he had already acquired a vested right in the favorable BIR ruling.

SUGGESTED ANSWER: B

8. Which theory in taxation states that without taxes, a government would be paralyzed for lack of power to activate and operate it, resulting in its destruction? : (2011 Bar Question)
- A) Power to destroy theory
 - B) Lifeblood theory
 - C) Sumptuary theory
 - D) Symbiotic doctrine

SUGGESTED ANSWER: B

9. Anne Lapada, a student activist, wants to impugn the validity of a tax on text messages. Aside from claiming that the law adversely affects her since she sends messages by text, what may she allege that would strengthen her claim to the right to file a taxpayer's suit? : (2011 Bar Question)
- A) That she is entitled to the return of the taxes collected from her in case the court nullifies the tax measure.
 - B) That tax money is being extracted and spent in violation of the constitutionally guaranteed right to freedom of communication.
 - C) That she is filing the case in behalf of a substantial number of taxpayers.
 - D) That text messages are an important part of the lives of the people she represents.

SUGGESTED ANSWER: B**10. Choose the correct answer. Tax laws - (1%) (2014 Bar Question)**

- A) may be enacted for the promotion of private enterprise or business for as long as it gives incidental advantage to the public or the State
- B) are inherently legislative; therefore, may not be delegated
- C) are territorial in nature; hence, they do not recognize the generally-accepted tenets of international law
- D) adhere to uniformity and equality when all taxable articles or kinds of property of the same class are taxable at the same rate

SUGGESTED ANSWER

(D) adhere to uniformity and equality when all taxable articles or kinds of property of the same class are taxable at the same rate. (*City of Baguio v. de Leon*, 25 SCRA 938).

11. Jennifer is the only daughter of Janina who was a resident in Los Angeles California, U.S.A. Janina died in the U.S. leaving to Jennifer one million shares of Sun Life (Philippines), Inc., a corporation organized and existing under the laws of the Republic of the Philippines. Said shares were held in trust for Janina by the Corporate Secretary of Sun Life and the latter can vote the shares and receive dividends for Janina. The Internal Revenue Service (IRS) of the U.S. taxed the shares on the ground that Janina was domiciled in the U.S. at the time of her death.

- A) Can the CIR of the Philippines also tax the same shares? Explain. (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

Yes. The property being a property located in the Philippines, it is subject to the Philippine estate tax irrespective of the citizenship or residence of the decedent (Sec. 85, NIRC). However, if Janina is a non-resident alien at the time of her death, the transmission of the shares of stock can only be taxed applying the principle of reciprocity (Sec. 104, NIRC).

- B) Explain the concept of double taxation. (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

Double taxation occurs when the same subject or object of taxation is taxed or more. Double taxation is prohibited when it is an imposition of taxes on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period, with the same kind or character of a tax (84 C.J.S. 131-132). It is permissible if taxes are of different nature or character, or the two taxes are imposed by different taxing authorities (*Villanueva v. City of Iloilo*, G.R. No. L-26521, December 28, 1968, 26 SCRA 578). (2016 BAR)

12. Explain the principles of a sound tax system. (3%) (2016 Bar Question)**SUGGESTED ANSWER:**

The principles of a sound tax system and their respective explanations, are as follows:

- A) Fiscal adequacy which means that the sources of revenue should be sufficient to meet the demands of public expenditures (*Chavez v. Ongpin*, G.R. No. 76778, June 6, 1990);
- B) Equality or theoretical justice which means that the tax burden should be proportionate to the taxpayer's ability to pay (Sec. 28(1), Art. VI, 1987 Constitution); and

- C) Administrative feasibility which means that the tax law should be capable of convenient, just and effective administration, as well as, easy compliance by taxpayer. (2012 BAR)

13. What is the “rational basis” test? Explain briefly. (2%) (2016 Bar Question)

SUGGESTED ANSWER:

The “rational basis test” is applied to gauge the constitutionality of an assailed law in the face of an equal protection challenge. It has been held that “in areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification”. Under the rational basis test, it is sufficient that the legislative classification is rationally related to achieving some legitimate State interest (*British American Tobacco v. Camacho and Parayno*, GR No. 163583, April 15, 2009).

14. Enumerate the four (4) inherent limitations on taxation. Explain each item briefly. (4%) (2010 Bar Question)

SUGGESTED ANSWER:

The inherent limitations on the power to tax are:

- A) Taxation is for a public purpose. - The proceeds of the tax must be used (a) for the support of the State or (b) for some recognized objective of the government or to directly promote the welfare of the community.
- B) Taxation is inherently legislative. - Only the legislature has full discretion as to the persons, property, occupation or business to be taxed provided these are all within the State’s territorial jurisdiction. It can also determine the amount or rate of tax, the kind of tax to be imposed and the method of collection (1 Cooley 176184).
- C) Taxation is territorial. - Taxation may be exercised only within the territorial jurisdiction of the taxing authority (61 Am. Jur. 88).
- D) Taxation is subject to international comity. - This is a limitation which is founded on reciprocity designed to maintain a harmonious and productive relationships among the various states. Under international comity, a state must recognize the generally- accepted tenets of international law, among which are the principles of sovereign equality among states and of their freedom from suit without their consent, that limit the authority of a government to effectively impose taxes on a sovereign state and its instrumentalities, as well as on its property held, and activities undertaken in that capacity.

15. Philippine National Railways (PNR) operates the rail transport of passengers and goods by providing train stations and freight customer facilities from Tutuban, Manila to the Bicol Province. As the operator of the railroad transit, PNR administers the land, improvements and equipment within its main station in Tutuban, Manila.

Invoking Section 193 of the Local Government Code (LGC) expressly withdrawing the tax exemption privileges of government-owned and controlled corporations upon the effectivity of the Code in 1992, the City Government of Manila issued Final Notices of Real Estate Tax Deficiency in the amount of P624,000,000.00 for the taxable years 2006 to 2010. On the other hand, PNR, seeking refuge under the principle that the government cannot tax itself, insisted that the PNR lands and buildings are owned by the Republic.

Is the PNR exempt from real property tax? Explain your answer. (5%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes. The properties of PNR are properties of public dominion owned by the PH, which are exempt from real property tax (Sec. 234, LGC). In *Manila International Airport Authority v. CA* (495 SCRA 591, [2006]), the Supreme Court held that MIAA is a government instrumentality and is not a government-owned or controlled corporation. The real properties then owned by MIAA are not subject to real estate tax, except when MIAA leases its real property to private parties. In the said case, PNR was cited as an example of such government instrumentality, deemed exempt.

C. Requisites of a valid tax

D. Tax as distinguished from other forms of exactions

16. XYZ Corporation manufactures glass panels and is almost at the point of insolvency. It has no more cash and all it has are unsold glass panels. It received an assessment from the BIR for deficiency income taxes. It wants to pay but due to lack of cash, it seeks permission to pay in kind with glass panels.

Should the BIR grant the requested permission? (1%) (2013 Bar Question)

- A) It should grant permission to make payment convenient to taxpayers.
- B) It should not grant permission because a tax is generally a pecuniary burden.
- C) It should grant permission; otherwise, XYZ Corporation would not be able to pay.
- D) It should not grant permission because the government does not have the storage facilities for glass panels.

SUGGESTED ANSWER:

(B) It should not grant permission because a tax is generally a pecuniary burden (Characteristics of Taxes).

E. Kinds of taxes

F. Doctrines in taxation

17. The power to tax is the power to destroy. Is this always so? (2011 Bar Question):
- A) No. The Executive Branch may decide not to enforce a tax law which it believes to be confiscatory.
 - B) Yes. The tax collectors should enforce a tax law even if it results to the destruction of the property rights of a taxpayer.
 - C) Yes. Tax laws should always be enforced because without taxes the very existence of the State is endangered.
 - D) No. The Supreme Court may nullify a tax law, hence, property rights are not affected.

SUGGESTED ANSWER: D

18. Mr. Alas sells shoes in Makati through a retail store. He pays the VAT on his gross sales to the BIR and the municipal license tax based on the same gross sales to the City of Makati. He comes to you for advice because he thinks he is being subjected to double taxation.

What advice will you give him? (1%) (2013 Bar Question)

- A) Yes, there is double taxation and it is oppressive.
- B) The City of Makati does not have this power.
- C) Yes, there is double taxation and this is illegal in the Philippines.

- D) Double taxation is allowed where one tax is imposed by the national government and the other by the local government.**

SUGGESTED ANSWER:

(D) Double taxation is allowed where one tax is imposed by the national government and the other by the local government (*CIR v. Solidbank Corp.*, G.R. No. 148191, Nov. 25, 2003).

- 19. A law that allows taxes to be paid either in cash or in kind is valid. (2009 Bar Question)**

SUGGESTED ANSWER:

True. There is no law which requires the payment of taxes in cash only. However, a law allowing payment of taxes in kind, although valid, may pose problems of valuation, hence, will violate the principle of administrative feasibility.

1. Construction and interpretation of tax laws, rules, and regulations

- 20. Heeding the pronouncement of the President that the worsening traffic condition in the metropolis was a sign of economic progress, the Congress enacted Republic Act No. 10701, also known as An Act Imposing a Transport Tax on the Purchase of Private Vehicles.**

Under RA 10701, buyers of private vehicles are required to pay a transport tax equivalent to 5% of the total purchase price per vehicle purchased. RA 10701 provides that the Land Transportation Office (LTO) shall not accept for registration any new vehicles without proof of payment of the 5% transport tax. RA 10701 further provide that existing owners of private vehicles shall be required to pay a tax equivalent to 5% of the current fair market value of every vehicle registered with the LTO. However, RA 10701 exempts owners of public utility vehicles and the Government from the coverage of the 5% transport tax.

A group of private vehicle owners sue on the ground that the law is unconstitutional for contravening the Equal Protection Clause of the Constitution.

Rule on the constitutionality and validity of RA 10701. (5%) (2017 Bar Question)

SUGGESTED ANSWER:

RA 10701 is valid and constitutional. A levy of tax is not unconstitutional because it is not intrinsically equal and uniform in its operation. The uniformity rule does not prohibit classification for purposes of taxation [*British American Tobacco v. Jose Isidro N. Camacho*, G.R. No. 163583 (2009)].

Uniformity does not forbid classification as long as: (1) the standards that are used therefore are substantial and not arbitrary, (2) the categorization is germane to achieve the legislative purpose, (3) the law applies, all things being equal, to both present and future conditions, and (4) the classification applies equally well to all those belonging to the same class [*Rufino R. Tan v. Ramon R. Del Rosario, Jr.*, G.R. Nos. 109289 (1994)]. All of the foregoing requirements of a valid classification having been met and those which are singled out are a class in themselves. Therefor there is no violation of the "Equal Protection Clause" of the Constitution.

- 21. Which statement below expresses the lifeblood theory? (2012 Bar Question)**

- A) The assessed taxes must be enforced by the government.**
B) The underlying basis of taxation is government necessity, for without taxation, a government can neither exist nor endure;

- C) Taxation is an arbitrary method of exaction by those who are in the seat of power;
- D) The power of taxation is an inherent power of the sovereign to impose burdens upon subjects and objects within its jurisdiction for the purpose of raising revenues.

SUGGESTED ANSWER:

b) The underlying basis of taxation is government necessity, for without taxation, a government can neither exist nor endure

Without taxes, government cannot fulfill its mandate of promoting the general welfare and well-being of the people. (*National Power Corporation vs. City of Cabanatuan*)

22. In civil cases involving the collection of internal revenue taxes, prescription is construed strictly against the government and liberally in favor of the taxpayer. (1%) (2010 Bar Question)

SUGGESTED ANSWER:

TRUE. [*CIR v. BF Goddrich, Phils. Inc.*, GR No. 104171, Feb 24, 1999; *Phil. Journalists Inc. v. CIR* G.R. No. 162852, Dec. 16, 2004]

23. In criminal cases involving tax offenses punishable under the National Internal Revenue Code (NIRC), prescription is construed strictly against the government. (1%) (2010 Bar Question)

SUGGESTED ANSWER:

FALSE. [*Lim v. Court of Appeals*, GR No. 48134-37, Oct 18, 1990.]

24. In civil cases involving the collection of internal revenue taxes, prescription is construed strictly against the government and liberally in favor of the taxpayer. (1%) (2010 Bar Question)

SUGGESTED ANSWER: True.**2. Prospectivity of tax laws****3. Imprescriptibility of taxes****4. Double taxation**

25. Double taxation in its general sense means taxing the same subject twice during the same taxing period. In this sense, double taxation: (2011 Bar Question)
- A) violates substantive due process.
 - B) does not violate substantive due process.
 - C) violates the right to equal protection.
 - D) does not violate the right to equal protection.

SUGGESTED ANSWER:

D. Double taxation in the general sense does not violate the constitution.

26. Choose the correct answer. Double Taxation - (1%) (2014 Bar Question)

- A) is one of direct duplicate taxations wherein two (2) taxes must be imposed on the same subject matter, by the same taxing authority, within the same jurisdiction, during the same

- period, with the same kind or character of tax, even if the purposes of imposing the same are different.
- B) is forbidden by law; and therefore, it is a valid defense against the validity of a tax measure.
 - C) means taxing the same property twice when it should be taxed only once; it is tantamount to taxing the same person twice by the same jurisdiction for the same thing.
 - D) exists when a corporation is assessed with local business tax as a manufacturer, and at the same time, value-added tax as a person selling goods in the course of trade or business.

SUGGESTED ANSWER:

(C) means taxing the same property twice when it should be taxed only once; it is tantamount to taxing the same person twice by the same jurisdiction for the same thing. (*Victorias Milling Co. v. Municipality of Victorias, Negros Occidental*, [L-21183, Sept. 27, 1968]).

27. Upon his retirement, Alfredo transferred his savings derived from his salary as a marketing assistant to a time deposit with AAB Bank. The bank regularly deducted 20% final withholding tax on the interest income from the time deposit.

Alfredo contends that the 20% final tax on the interest income constituted double taxation because his salary had been already subjected to withholding tax.

Is Alfredo's contention correct? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

No. Double taxation means taxing for the same tax period the same thing or activity twice, when it should be taxed but once, for the same purpose and with the same kind of character of tax [*CIR v. Citytrust Investment Phils., G.R. Nos. 139786, 140857 (2006)*]. The 20% final tax is imposed on the *interest income*, while the tax earlier withheld is on the *salary or compensation income*. Thus, though both pertain to income tax, they do not pertain to the same thing or activity and consequently, there is no double taxation.

28. Differentiate between double taxation in the strict sense and in a broad sense and give an example of each. (4%) (2015 Bar Question)

SUGGESTED ANSWER:

Double taxation in the strict sense pertains to the direct double taxation. This means that the taxpayer is taxed twice by the same taxing authority, within the same taxing jurisdiction, for the same property and same purpose. Example: Imposition of final withholding tax on cash dividend and requiring the taxpayer to declare this tax-paid income in his income tax returns.

On the other hand, double taxation in the broad sense pertains to indirect double taxation. This extends to all cases in which there is a burden of two or more impositions. It is the double taxation other than those covered by direct double taxation (*CIR v. Solidbank Corp.*, 436 SCRA 416 [2003]). Example: Subjecting the interest income of banks on their deposits with other banks to the 5% gross receipts tax (GRT) despite of the same income having been subjected to 20% final withholding tax (FWT), is only a case of indirect double taxation. The GRT is a tax on the privilege of engaging in business while the FWT is a tax on the privilege of earning income (*CIR v. Bank of Commerce*, JUNE 8, 2005, 459 SCRA 638 [2005]).

29. ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.- based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income — 30% for individual and 35% for corporate non-resident stockholders — was deducted at source and remitted to the BIR.

On May 15, 1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. the Commissioner denied the claim.

On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.

Is the contention of ABCD Corporation correct? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes. The provision of a treaty must take precedence over and above the provisions of the local taxing statute consonant with the principle of the international community. Tax treaties are accepted limitations to the power of taxation. Thus, the CTA should apply the treaty provision so that the claim for refund representing the difference between the amount actually withheld and paid to the BIR and the amount due and payable under the treaty, should be granted (*Hawaiian-Philippine Company v. CIR*, CTA Case No. 3887, May 31, 1988).

ANOTHER SUGGESTED ANSWER:

The contention of ABCD Corporation that it overpaid the withholding tax is correct provided it can establish:

(1) The existence of RP-US Tax Treaty is imposing a lower rate of tax of 25%; (2) the said tax treaty is applicable to its case; and (3) its payment with the BIR of a tax based on a higher rate of 30% and 35%, respectively. (BAR 2009)

30. Briefly explain the following doctrines: lifeblood doctrine; necessity the benefits received principle; and, doctrine of symbiotic relationship (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The following doctrines, explained:

- A) **Lifeblood doctrine** – Without revenue raised from taxation, the government will not survive, resulting in detriment to society. Without taxes, the government would be paralyzed for lack of motive power to activate and operate it (*CIR v. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 158 SCRA 9).
- B) **Necessity theory** – The exercise of the power to tax emanates from necessity, because without taxes, government cannot fulfill its mandate of promoting the general welfare and well being of the people (*CIR v. Bank of Philippine Islands*, G.R. No. 134062, April 17, 2007, 521 SCRA 373).
- C) **Benefits received principle** – Taxpayers receive benefits from taxes through the protection the State affords to them. For the protection they get arises their obligation to support the government through the payment of taxes (*CIR V. Algue, Inc.*, G.R. No. L-28896, February 17, 1988, 158 SCRA 9).
- D) **Reciprocal relation of protection a taxpayers** – the state gives protection an protection, it must be supported by (*CIR v. Algue, Inc.*, G.R. No. L-28896, Februar
- E) **Doctrine of symbiotic relationship** – Taxation arises because of the reciprocal relation of protection and support between the state and taxpayers. The state gives protection and for it to continue giving protection, it must be supported by the taxpayers in the form of taxes. (*CIR v. Algue, Inc.*, GR. No. L-28896, February 17, 1988, 158 SCRA 9).

5. Escape from taxation

31. Maria Suerte, a Filipino citizen, purchased a lot in Makati City in 1980 at a price of P1 million. Said property has been leased to MAS Corporation, a domestic corporation engaged in manufacturing paper products, owned 99% by Maria Suerte. In October 2007, EIP Corporation, a real estate developer, expressed its desire to buy the Makati property at its fair market value P300 million, payable as follows : (a) P60 million down payment; and (b) balance, payable equally in twenty four (24) monthly consecutive installments. Upon the advice of a tax lawyer, Maria Suerte exchanged her Makati property for shares of stock of MAS Corporation. A BIR ruling, confirming the tax-free exchange of property for shares of stock, was secured from the BIR National Office and a Certificate Authorizing Registration was issued by the Revenue District Officer (RDO) where the property was located. Subsequently, she sold her entire stock holdings in MAS Corporation to EIP Corporation for P300 million. In view of the tax advice, Maria Suerte paid only the capital gains tax of P29,895,000 (P100,000 x 5% plus P298,900,00 x 10%), instead of the corporate income tax of P104,650,00 (35% on P299 million gain from sale of real property). After evaluating the capital gains tax payment, the RDO wrote a letter to Maria Suerte, Slating that she committed tax evasion.

Is the contention of the RDO tenable? Or was it tax avoidance that Maria Suerte had resorted to? Explain. (6%) (2008 Bar Question)

SUGGESTED ANSWER:

The contention of the RDO is not tenable. Maria Suerte resorted to tax avoidance and not tax evasion. Tax avoidance is the use of legal means to reduce tax liability and it is the legal right of a taxpayer to decrease the amount of what otherwise would be his taxes by means which the law permits. (*Heng Tong Textiles Co., Inc. v. Commissioner*, 24 SCRA 767 [1968]). There is nothing illegal about transferring first the property to a corporation in a tax free exchange and later selling the shares obtained in the exchange at a lower tax than what could have been imposed if the property was sold directly.

ANOTHER SUGGESTED ANSWER:

The contention is devoid of basis. To constitute tax evasion there must be an integration of three factors, namely: 1) the end to be achieved, i.e. payment of an amount of tax less than what is known by the taxpayer to be legally due; 2) an accompanying state of mind which is described as being evil, in bad faith, willful or deliberate and not merely accidental; and 3) a course of action or failure of action which is unlawful. The second and third factors are not present in the instant case, hence there is no tax evasion that was committed. The means employed to reduce taxes being allowed by law, it was a case of tax avoidance that was resorted to. (*Commissioner v. Toda*, 438 SCRA 290 [2004]).

a. Shifting of tax burden

32. Prior to the VAT law, sales of cars were subject to a sales tax but the tax applied only to the original or the first sale; the second and subsequent sales were not subject to tax.

Deltoid Motors, Inc. (Deltoid) hit on the idea of setting up a wholly owned subsidiary, Gonmad Motors, Inc. (Gonmad), and of selling its assembled cars to Gonmad at a low price so it would pay a lower tax on the first sale. Gonmad would then sell the cars to the public at a higher price without paying any sales tax on this subsequent sale.

Characterize the arrangement. (1%) (2013 Bar Question)

- A) The plan is a legitimate exercise of tax planning and merely takes advantage of a loophole in the law.

- B) The plan is legal because the government collects taxes anyway.
- C) The plan is improper; the veil of corporate fiction can be pierced so that the second sale will be considered the taxable sale.
- D) The government must respect Gonmad's separate juridical personality and Deltoid's taxable sale to it.

SUGGESTED ANSWER:

(C) The plan is improper; the veil of corporate fiction can be pierced so that the second sale will be considered the taxable sale (*Koppel Philippines, Inc. v. Yatco*, 77 Phil. 496).

b. Tax avoidance**33. Choose the correct answer. Tax Avoidance – (1%) (2014 Bar Question)**

- A) is a scheme used outside of those lawful means and, when availed of, it usually subjects the taxpayer to further or additional civil or criminal liabilities.
- B) is a tax saving device within the means sanctioned by law.
- C) is employed by a corporation, the organization of which is prompted more on the mitigation of tax liabilities than for legitimate business purpose.
- D) is any form of tax deduction scheme, regardless if the same is legal or not.

SUGGESTED ANSWER:

(B) is a tax saving device within the means sanctioned by law (*Philip Manufacturing Corp. v. CIR*, L-19737, August 26, 1968).

c. Tax evasion**6. Exemption from taxation**

34. San Juan University is a non-stock, non-profit educational institution. It owns a piece of land in Caloocan City on which its three 2-storey school buildings stood. Two of the buildings are devoted to classrooms, laboratories, a canteen, a bookstore, and administrative offices. The third building is reserved as dormitory for student athletes who are granted scholarships for a given academic year.

In 2017, San Juan University earned income from tuition fees and from leasing a portion of its premises to various concessionaires of food, books, and school supplies.

- A) Can the City Treasurer of Caloocan City collect real property taxes on the land and building of San Juan University? Explain your answer. (5%) (2017 Bar Question)

SUGGESTED ANSWER:

Yes, but only on the leased portion. Article XIV, Section 4(3) of the 1987 Constitution provides that the assets of a non-stock, non-profit educational institution shall be exempt from taxes and duties only if the same are used actually, directly, and exclusively for educational purposes. The test of exemption from taxation is the *use of the property* for purposes mentioned in the Constitution. The leased portion of the building may be subject to real property tax since such lease is for commercial purposes, thereby, it removes the asset from the property tax exemption granted under the Constitution [*CIR v. De La Salle University, Inc.*, G.R. Nos. 196596, 198841, 198941 (2016)].

- B) Is the income earned by San Juan University for the year 2017 subject to income tax? Explain your answer. (5%)-(2017 Bar Question)**

SUGGESTED ANSWER:

No, provided that the revenues are used actually, directly, and exclusively for educational purposes as provided under Article XIV, Section 4(3) of the 1987 Constitution. The requisites for availing the tax exemption under Article XIV, Section 4 (3) are as follows: (1) the taxpayer falls under the classification non-stock, non-profit educational institution; and (2) the income it seeks to be exempted from taxation is used actually, directly and exclusively for educational purposes; thus, so long as the requisites are met, the revenues may be exempt from tax [*CIR v. De La Salle University, Inc.*, G.R. Nos. 196596, 198841, 198941 (2016)].

7. Equitable recoupment

- 35. The doctrine of equitable recoupment allows a taxpayer whose claim for refund has prescribed to offset tax liabilities with his claim of overpayment. (2009 Bar Question)**

SUGGESTED ANSWER:

True. The doctrine arose from common law allowing offsetting of a prescribed claim for refund against a tax liability arising from the same transaction on which an overpayment is made and underpayment is due. The doctrine finds no application to cases where the taxes involved are totally unrelated, and although it seems equitable, it is not allowed in our jurisdiction (*CIR v. VST*, 104 Phil. 1062 [1958]).

8. Prohibition on compensation and set-off

9. Compromise and tax amnesty

- 36. Which of the following are NOT usually imposed when there is a tax amnesty? (2011 Bar Question)**
- A) Civil, criminal, and administrative penalties
 - B) Civil and criminal penalties
 - C) Civil and administrative penalties
 - D) Criminal and administrative penalties

SUGGESTED ANSWERS: A

- 37. Lucky V Corporation (Lucky) owns a 10-storey building on a 2,000 Sous meter lot in the City of Makati. It sold the lot and building to Rainiere P80million. One month after, Rainier sold the lot and building to Health Smoke Company (HSC) for P200 million. Lucky filed its annual tax return and declared its gain from the sale of the lot and building in the amount of P750,000.00**

An investigation conducted by the BIR revealed that two months prior to the sale of the properties to Rainier, Lucky received P40 million from HSC and not from Rainier. Said amount of P40 million was debited by HSC and reflected in its trial balance as “other inv. — Lucky Bldg.” The month after, another P40million was reflected in HSC’s trial balance as “other inv. — Lucky Bldg.” The BIR concluded that there is tax evasion since the real buyer of the properties of Lucky is HSC and not Rainier. It issued an assessment for deficiency income tax in the amount of P79 million against Lucky. Lucky argues that it resorted to tax avoidance or a tax saving device, which is allowed by the NIRC and BIR rules since it paid the correct taxes based on its sale to Rainier. On the other hand, Rainier and HSC also paid the prescribed taxes arising from the sale by Rainier to HSC. Is the BIR correct in assessing taxes on Lucky? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Yes. The sale of the property by Lucky V Corporation (Lucky) to Rainer and consequently the sale by Rainer to HSC being prompted more on the mitigation of tax liabilities than for legitimate business purposes, therefore, constitutes tax evasion. The real buyer from Lucky is HBC as evidenced by the direct receipt of payments by the former from the latter where the latter recorded “other investments – Lucky Building”. The scheme of resorting to a two-step transaction in selling the property to the ultimate buyer in order to escape paying higher taxes is considered as outside of those lawful means allowed in mitigating tax liabilities which makes Lucky, criminally and civilly liable. Hence, the BIR is correct in assessing taxes on Lucky (*CIR v. Estate of Benigno P. Toda, Jr.*, G.R. No. 147188, September 14, 2004, 438 SCRA 290).

II. NATIONAL TAXATION

1. What kind of taxes, fees and charges are considered as National Internal Revenue Taxes under the National Internal Revenue Code (NIRC)? (2007 Bar Question)

SUGGESTED ANSWER:

The following taxes, fees and charges are considered to be National Internal Revenue Taxes under the National Internal Revenue Code:

- a) Income tax;
- b) Estate and donor's taxes;
- c) Value-added tax;
- d) Other percentage taxes;
- e) Excise taxes;
- f) Documentary stamp taxes; and

Such other taxes as are or hereafter may be imposed and collected by the Bureau of Internal Revenue. (Section 21, NIRC).

A. Taxing authority

1. Jurisdiction, power, and functions of the Commissioner of Internal Revenue

- a. Interpreting tax laws and deciding tax cases

- b. Non-retroactivity of rulings

2. XYZ Corporation, an export-oriented company, was able to secure a Bureau of Internal Revenue (BIR) ruling in June 2005 that exempts from tax the importation of some of its raw materials. The ruling is of first impression, which means the interpretations made by the Commissioner of Internal Revenue are one without established precedents. Subsequently, however, the BIR issued another ruling which in effect would subject to tax such kind of importation. XYZ Corporation is concerned that said ruling may have a retroactive effect, which means that all their importations done before the issuance of the second ruling could be subject to tax.

What are BIR rulings? (2007 Bar Question)

ALTERNATIVE ANSWER:

The general rule is that a BIR ruling does not have a retroactive effect if giving it a retroactive application is prejudicial to the taxpayer. However, if the first ruling is tainted with either of the following: (1) misstatement or omission of material facts, (2) the facts gathered by the BIR are materially different from the facts upon which the ruling is based, or (3) the taxpayer acted in bad faith, a subsequent ruling can have a retroactive application. (*ABS-CBN Broadcasting Co. v. CTA & CIR*, 08 SCRA 142 [1981]; Sec 246, NIRC).

3. The Commissioner of Internal Revenue issued a BIR ruling to the effect that the transaction is liable to income tax and value added tax. Upon receipt of the ruling, a taxpayer does not agree thereto. What is his proper remedy? (2012 Bar Question)
- A) File a petition for review with the Court of Tax Appeals within thirty (30) days from receipt thereof;
 - B) File a motion for reconsideration with the Commissioner of Internal Revenue;
 - C) File an appeal to the Secretary of Finance within thirty (30) days from receipt thereof;
 - D) File an appeal to the Secretary of Justice within thirty (30) days from receipt thereof.

SUGGESTED ANSWER:

C) File an appeal to the Secretary of Finance within thirty (30) days from receipt thereof Section 4, NIRC.

4. Which statement is correct? (2012 Bar Question)
- A) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions and ordinances;
 - B) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as resolutions;
 - C) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances;
 - D) Both ordinances and resolutions are solemn and formal acts.

SUGGESTED ANSWER:

C) Legislative acts passed by the municipal council in the exercise of its lawmaking authority are denominated as ordinances Section 2227, Revised Administrative Code of 1917.

5. Which of the following statements is NOT a test of a valid ordinance? (2012 Bar Question)
- A) It must not contravene the Constitution or any statute;
 - B) It must not be unfair or oppressive;
 - C) It must not be partial or discriminatory;
 - D) It may prohibit or regulate trade.

SUGGESTED ANSWER:

D) It may prohibit or regulate trade. To be valid, an ordinance must not prohibit but may regulate trade. (*Magtajas v. Pryce Properties Corporation, Inc.*, G.R. No. 111097, July 20, 1994).

2. Rule-making authority of the Secretary of Finance

6. Ferremaro, Inc., a manufacturer of handcrafted shoes, maintains its principal office in Cubao, Quezon City. It has branches/sales offices in Cebu and Davao. Its factory is located in Marikina City where most of its workers live. Its principal office in Quezon City is also a sales office.

Sales of finished products for calendar year 2009 in the amount of P10 million were made at the following locations:

1) Cebu branch	25%
2) Davao branch	15%
3) Quezon City branch	60%
Total	100%

Where should the applicable local taxes on the shoes be paid? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

Under the LGC, the manufacturers maintaining a branch or sales outlet shall record the sale in the branch or sales outlet making the sale and pay the tax in the city or municipality where the branch or sales outlet is located. Since Ferremaro, Inc., maintains one factory, the sales recorded in the principal office shall be allocated and 30% of said sales are taxable in the place where the principal office is located while the 70% is taxable in the place where the factory is located.

Hence, 25% of total sales or Php 2.5M shall be taxed in Cebu and 15% of total sales or Php 1.5M shall be taxed in Davao. For the remaining 60% sales amounting to Php 6.0M which is recorded in the principal office, 30% thereof or Php 1.8M is taxable in Quezon City where the principal office is located and 70% or Php 4.2M is taxable in Marikina City where the factory is located. (Sec. 150, LGC)

B. Income tax

7. John McDonald, a U.S. Citizen residing in Makati City, bought shares of stock of a domestic corporation whose shares are listed and traded in the Philippine Stock Exchange at the price of P2 million Yesterday, he sold the shares of stock through his favorite Makati stockbroker at a gain of P200,000.

A) Is John McDonald subject to Philippine Income Tax on the sale of his shares through his stockbroker? Is he liable for any other tax? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

No. The gain on the sale or disposition of shares of stock of a domestic corporation held as capital assets will not be subject to income tax if these shares sold are listed and traded in the stock exchange. (Section 24(C), NIRC). However, the seller is subject to the percentage tax should be updated based on new rate: 6/10 of 1% the gross selling price or gross value on money. (Section 127 (A), NIRC).

- B) If John McDonald deriectly sold the shares to his best friend, who is another U.S. Citizen residing in Makati, at a gain of P200,000. Is he liable for Philippine Income Tax? If so, what is the ntax base and rate? (3%) (2008 Bar Question)

SUGGESTED ANSWER:

Yes. The sale of shares of stocks of a domestic corporation held as capital asset, not through a trading in the local stock exchange, is subject to update rate based on TRAIN: 15% capital gains tax based on the net capital gain during the taxable year.

1. Definition, nature, and general principles

a. Criteria in imposing Philippine income tax

8. There is no taxable income until such income is recognized. Taxable income is recognized when the: (2011 Bar Question)
- A) taxpayer fails to include the income in his income tax return.
 - B) income has been actually received in money or its equivalent.
 - C) income has been received, either actually or constructively.
 - D) transaction that is the source of the income is consummated.

SUGGESTED ANSWER: C

9. In 2010, Mr. Platon sent his sister Helen \$1,000 via a telegraphic transfer through the Bank of PI. The bank's remittance clerk made a mistake and credited Helen with \$1,000,000 which she promptly withdrew. The bank demanded the return of the mistakenly credited excess, but Helen refused. The BIR entered the picture and investigated Helen.

Would the BIR be correct if it determines that Helen earned taxable income under these facts? (1%) (2013 Bar Question)

- A) No, she had no income because she had no right to the mistakenly credited funds.
- B) Yes, income is income regardless of the source.
- C) No, it was not her fault that the funds in excess of \$1,000 were credited to her.
- D) No, the funds in excess of \$1,000 were in effect donated to her.

SUGGESTED ANSWER:

(B) Yes, income is income regardless of the source (*Javier v. Commissioner* [199 SCRA 824] G.R. No. 78953).

Which of the following statement is NOT correct? (2012 Bar Question)

- A) In case of doubt, statutes levying taxes are constructed strictly the government;
- B) The construction of a statute made by his predecessors is not binding upon the successor, if thereafter he becomes satisfied that a different construction should be given;
- C) The reversal of a ruling shall not generally be given retroactive application, if said reversal will be prejudicial to the taxpayer;
- D) A memorandum circular promulgated by the CIR that imposes penalty for violations of certain rules need not be published in a newspaper of general circulation or official gazette because it has the force and effect of law.

SUGGESTED ANSWER:

A memorandum circular promulgated by the CIR that imposes penalty for violations of certain rules need not be published in a newspaper of general circulation or official gazette because it has the force and effect of law.

A revenue memorandum circular shall not begin to be operative until after due notice thereof maybe fairly presumed. (*Commissioner of Internal Revenue vs. Philippine Airlines*, G.R. No. 180066, July 8, 2009).

10. A resident corporation is one that is: (2012 Bar Question)

- A) Organized under the laws of the Philippines that does business in another country;
- B) Organized under the laws of a foreign country that sets up a regional headquarter in the Philippines doing product promotion and information dissemination;
- C) Organized under the laws of the Philippines that engages business in a special economic zone;
- D) Organized under the laws of a foreign country that engages in business in Makati City, Philippines.

SUGGESTED ANSWER:

d) Organized under the laws of a foreign country that engages in business in Makati City, Philippines Section 22 (H), NIRC.

11. Which among the following taxpayers is required to use only the calendar year for tax purposes? (2011 Bar Question)

- A) Partnership exclusively for the design of government infrastructure projects considered as practice of civil engineering.
- B) Joint-stock company formed for the purpose of undertaking construction projects.
- C) Business partnership engaged in energy operations under a service contract with the government.
- D) Joint account (cuentas en participacion) engaged in the trading of mineral ores.

SUGGESTED ANSWER: A

12. Jose Ramos, single, died of a heart attack on October 10, 2011, leaving a residential house and lot with a market value of P1.8 Million and cash of P100,000.00. Funeral expenses paid amounted to P250,000.00. (2012 Bar Question)

- A) His estate will be exempt from estate tax because the net estate is zero;
- B) His estate will be subject to estate tax because net estate is P1,650,000.00;
- C) His estate will be subject to estate tax because net estate is P1,700,00.00;
- D) His estate will be subject to estate tax because net estate is P800,000.00.

SUGGESTED ANSWER:

A) His estate will be exempt from estate tax because the net estate is zero Section 85 & 86, NIRC.

2. Income

13. What is the “all event test”? Explain Briefly. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

The “all events test” is a test applied in the realization of income and expense by an accrual-basis taxpayer. The test requires (1) the fixing to the right to the income or liability to pay; and (2) the availability of reasonably accurate determination of such income or liability, to warrant the inclusion of the income or expense I the gross income or deductions during the taxable year. (*CIR v. Isabela Cultural Corporation*, GR No. 172231, Feb 12, 2007).

- a. Definition and nature
- b. When income is taxable
- c. Tests in determining whether income is earned for tax purposes

1. Realization test

14. Income is considered realized for tax purposes when: (2011 Bar Question)

- A) it is recognized as revenue under accounting standards even if the law does not do so.
- B) the taxpayer retires from the business without approval from the BIR.
- C) the taxpayer has been paid and has received in cash or near cash the taxable income.
- D) the earning process is complete or virtually complete and an exchange has taken place.

SUGGESTED ANSWER: D

2. Economic benefit test, doctrine of proprietary interest

3. Severance test

d. Tax-free exchanges

e. Situs of income taxation

15. Which among the following concepts of taxation is the basis for the situs of income taxation? (2011 Bar Question)

- A) Lifeblood doctrine of taxation
- B) Symbiotic relation in taxation
- C) Compensatory purpose of taxation
- D) Sumptuary purpose of taxation

SUGGESTED ANSWER: B

16. BCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.- based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income — 30% for individual and 35% for corporate non-resident stockholders — was deducted at source and remitted to the BIR.

On May 15, 1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. the Commissioner denied the claim.

On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.

Is the contention of ABCD Corporation correct? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes. The provision of a treaty must take precedence over and above the provisions of the local taxing statute consonant with the principle of the international comity. Tax treaties are accepted limitations to the power of taxation. Thus, the CTA should apply the treaty provision so that the claim for refund representing the difference between the amount actually withheld and paid to the BIR and the amount due and payable under the treaty, should be granted (*Hawaiian-Philippine Company v. CIR*, CTA Case No. 3887, May 31, 1988). (BAR 2009)

ANOTHER SUGGESTED ANSWER:

The contention of ABCD Corporation that it overpaid the withholding tax is correct provided it can establish:

- (1) The existence of RP-US Tax Treaty is imposing a lower rate of tax of 25%;
- (2) the said tax treaty is applicable to its case; and
- (3) its payment with the BIR of a tax based on a higher rate of 30% and 35%, respectively.

- 17. Mr. A, a citizen and resident of the Philippines, is a professional boxer. In a professional boxing match held in 2013, he won prize money in United States (US) dollars equivalent to P300,000,000.**

Is the prize money paid to and received by Mr. A in the US taxable in the Philippines? Why? (2%)

SUGGESTED ANSWER:

Yes. Under the Tax Code, the income within and without of a resident citizen is taxable. Since Mr. A is a resident Filipino citizen, his income worldwide is taxable in the Philippines (Sec. 23 A, NIRC). (2015 BAR)

- 18. Ms. C, a resident citizen, bought ready-to-wear goods from Ms. B, a non-resident citizen.**

If the goods were produced from Ms. B's factory in the Philippines, is Ms. B's income from the sale to Ms. C taxable in the Philippines? Explain. (2%)

SUGGESTED ANSWER:

Yes, the income of Ms. B from the sale of ready-to-wear goods to Ms. C is taxable. A nonresident citizen is taxable only on income derived from sources within the Philippines (Sec. 23(B), NIRC). In line with the source rule of income taxation, since the goods are produced and sold within the Philippines, Ms. B's Philippine sourced income is taxable in the Philippines.

- 19. Z is a Filipino immigrant living in the United States for more than 10 years. He is retired and he came back to the Philippines as a balikbayan. Every time he comes to the Philippines, he stays here for about a month. He regularly receives a pension from his former employer in the United States, amounting to US\$1,000 a month. While in the Philippines, with his pension pay from his former employer, he purchased three condominium units in Makati which he is renting out for P15,000 a month each.**

Will Z be liable to pay income tax on the P45,000 monthly income? Reason briefly. (2007 Bar Question)

SUGGESTED ANSWER:

Yes. The rental income from property located in the Philippines is considered as income derived from within. Z, a non-resident citizen is taxable on income derived from sources within the Philippines. (Section 42 in relation to Section 23, NIRC).

20. **YYY Corporation engaged the services of the Manananggol Law Firm in 2006 to defend the corporation's title over a property used in the business. For the legal services rendered in 2007, the law firm billed the corporation only in 2008. The corporation duly paid.**

YYY Corporation claimed this expense as a deduction from gross income in its 2008 return, because the exact amount of the expense was determined only in 2008. Is YYY's claim of deduction proper? Reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No. The expense is deductible in the year it complies with the all-events test. The test is considered met if the liability is fixed, and the amount of such liability is determined with reasonable accuracy. The liability to pay is already fixed in 2007 when the services were rendered, and the amount of such liability is determinable with reasonable accuracy in the same year. Hence the deduction should have been claimed in 2007 and not in 2008. (*CIR v. Isabela Cultural Corporation*, SIS SCRA 556 [2007]).

21. **In May 2010, Mr. And Mrs. Melencio Antonio donated a house and lot with a fair market value of P10 Million to their sob, Roberto, who is to be married during the same year to Josefina Angeles. Which statement below is INCORRECT? (2012 Bar Question)**

- A) There are four (4) donations made – two (2) donations are made by Mr. Melencio Antonio to Roberto and Josefina, and two (2) donations are made by Mrs. Antonio;
- B) The four (4) donations are made by the Spouses Antonio to members of the family, hence, subject to the graduated donor's tax rates (2%-15%);
- C) Two (2) donations are made by the spouses to members of the family, while two (2) other donations are made to strangers;
- D) Two (2) donations made by the spouses to Roberto are entitled to deduction from the gross gift as donation proper nuptias.

SUGGESTED ANSWER:

D) Two (2) donations made by the spouses to Roberto are entitled to deduction from the gross gift as donation proper nuptias. Section 101, NIRC; *Tang Ho v. Court of Appeals*.

22. **What is the "all event test"? Explain Briefly. (2%) (2012 Bar Question)**

SUGGESTED ANSWER:

The "all events test" is a test applied in the realization of income and expense by an accrual-basis taxpayer. The test requires (1) the fixing to the right to the income or liability to pay; and (2) the availability of reasonably accurate determination of such income or liability, to warrant the inclusion of the income or expense I the gross income or deductions during the taxable year. (*CIR v. Isabela Cultural Corporation*, GR No. 172231, Feb 12, 2007).

23. **The "all events test" refers to: (2012 Bar Question)**

- A) A person who uses the cash method where all sales have been fully paid by the buyers thereof;
- B) A person who uses the installment sales method, where the full amount of consideration is paid in full by the buyer thereof within the year of sale;
- C) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and the amount thereof could be determined with reasonable accuracy;

- D) A person who uses the completed method, whereby the construction project has been completed during the year the contract was signed.**

SUGGESTED ANSWER:

C) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and the amount thereof could be determined with reasonable accuracy.

The accrual of income and expense is permitted when the all-events test has been met. This test requires: (1) fixing of a right to income or liability to pay; (2) the availability of the reasonable accurate determination of such income or liability. "The amount of liability does not have to be determined exactly; it must be determined with reasonable accuracy." (*Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007).

- 24. In 2006, Mr. Vicente Tagle, a retiree, bought 10,000 CDA shares that are unlisted in the local stock exchange for P10 per share. In 2010, the said shares had a book value per share of P60 per share. In view of a car accident in 2010, Mr. Vicente Tagle had to sell his CDA shares but he could sell the same only for P50 per share. The sale is subject to tax as follows: (2012 Bar Question)**

- A) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost);**
- B) 5%/10% capital gains tax on the capital gain of P50 per share, arrived at by deducting the cost (P10 per share) from the book value (P60 per share);**
- C) 5%/10% capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost) plus donor's tax on the excess of the fair market value of the shares over the consideration;**
- D) Graduated income tax rates of 5% to 32% on the net taxable income from the sale of the shares.**

NOTE: Examinees might be confused by old rates

SUGGESTED ANSWER:

C) 5%/10% (rate must be updated based on) capital gains tax on the capital gain from sale of P40 per share (P50 selling price less P10 cost) plus donor's tax on the excess of the fair market value of the shares over the consideration Section 24(C) in relation to Section 100, NIRC; RR No. 6-2008.

- 25. On January 10, 2011, Maria Reyes, single-mother, donated cash in the amount of P50,000.00 to her daughter Cristina, and on December 20, 2011, she donated another P50,000.00 to Cristina. Which statement is correct? (2012 Bar Question)**

- A) Maria Reyes is subject to donor's tax in 2011 because gross gift is P100,000.00;**
- B) Maria Reyes is exempt from donor's tax in 2011 because gross gift is P100,000.00;**
- C) Maria Reyes is exempt from donor's tax in 2011 only to the extent of P50,000.00;**
- D) Maria Reyes is exempt from donor's tax in 2011 because the donee is minor.**

SUGGESTED ANSWER:

B) Maria Reyes is exempt from donor's tax in 2011 because gross gift is P100,000.00 Section 99(A), NIRC. (Note new there should under TRAIN)

- 26. Sure Arrival Airways (SAA) is a foreign corporation, organized under the laws of the Republic of Nigeria. Its commercial airplanes do not operate within Philippine territory, or service passengers**

embarking from Philippine airports. The firm is represented in the Philippines by its general agent, Narotel. SAA sells airplane tickets through Narotel, and these tickets are serviced by SAA airplanes outside the Philippines. The total sales of airplane tickets transacted by Narotel for SAA in 2012 amounted to P10,000,000.00. The Commissioner of Internal Revenue (CIR) assessed SAA deficiency income taxes at the rate of 30% on its taxable income, finding that SAA's airline ticket sales constituted income derived from sources within the Philippines. SAA filed a protest on the ground that the alleged deficiency income taxes should be considered as income derived exclusively from sources outside the Philippines since SAA only serviced passengers outside Philippine territory. It, thus, asserted that the imposition of such income taxes violated the principle of territoriality in taxation. Is the theory of SAA tenable? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER

No. The activity which gives rise to the income is the sale of ticket in the Philippines, hence, the income from sale of tickets is an income derived from Philippine sources which is subject to the Philippine income tax. Accordingly, there is no violation of the principle of territoriality in taxation (*Air Canada v. CIR*, G.R. No. 169507, January 11, 2016, 778 SCRA 131). (2016 BAR)

[Note: As the case which is the basis of the answer was decided before the cut-off date for the 2016 Bar Examinations, it is recommended that this question be considered a bonus question, with any answer to be given full credit.]

3. Gross income

a. Definition

b. Concept of income from whatever source derived

27. Income from the performance of services is treated as income from within the Philippines, if: (2012 Bar Question)

- A) The payment of compensation for the service is made in the Philippines;
- B) The contract calling for the performance of services is signed in the Philippines;
- C) The service is actually performed in the Philippines;
- D) The recipient of service income is a resident of the Philippines.

SUGGESTED ANSWER:

- c) The service is actually performed in the Philippines. (Section 42, NIRC.)

c. Gross income vs. net income vs. taxable income

28. The excess of allowable deductions over gross income of the business in a taxable year is known as: (2011 Bar Question)

- A) net operating loss.
- B) ordinary loss.
- C) net deductible loss.
- D) NOLCO.

SUGGESTED ANSWER: A

d. Classification of income subject to tax**1. Compensation income****2. Fringe benefits****3. Professional income****4. Income from business**

29. In 2010, Juliet Ulbod earned P500,000.00 as income from her beauty parlor and received P250,000.00 as Christmas gift from her spinster aunt. She had no other receipts for the year. She spent P150,000.00 for the operation of her beauty parlor. For tax purposes, her gross income for 2010 is: (2011 Bar Question)
- A) P750,000.00.
 - B) P500,000.00.
 - C) P350,000.00.
 - D) P600,000.00.

SUGGESTED ANSWER: B

30. Gains realized by the investor upon redemption of shares of stock in a mutual fund company are exempt from income tax.

SUGGESTED ANSWER:

TRUE [Sec 32(B)(7)(h),NIRC](2010 BAR)

5. Income from dealings in property

31. Income from dealings in property (real, personal, or mixed) is the gain or loss derived: (2011 Bar Question)
- A) only from the cash sales of property.
 - B) from cash and gratuitous receipts of property.
 - C) from sale and lease of property.
 - D) only from the sale of property.

SUGGESTED ANSWER: D

32. In March 2009, Tonette, who is fond of jewelries, bought a diamond ring for P750,000.00, a bracelet for P250,000.00, a necklace for P500,000.00, and a brooch for P500,000.00. Tonette derives income from the exercise of her profession as a licensed CPA. In October 2009, Tonette sold her diamond ring, bracelet, and necklace for only P1.25 million incurring a loss of P250,000.00. She used the P1.25 million to buy a solo diamond ring in November 2009 which she sold for P1.5 million in September 2010. Tonette had no other transaction in jewelry in 2010. Which among the following describes the tax implications arising from the above transactions? (2011 Bar Question)
- A) Tonette may deduct his 2009 loss only from her 2009 professional income.
 - B) Tonette may carry over and deduct her 2009 loss only from her 2010 gain.
 - C) Tonette may carry over and deduct her 2009 loss from her 2010 professional income as well as from her gain.
 - D) Tonette may not deduct her 2009 loss from both her 2010 professional income and her gain.

SUGGESTED ANSWER: B

6. Passive investment income

33. Passive income includes income derived from an activity in which the earner does not have any substantial participation. This type of income is: (2011 Bar Question)

- A) usually subject to a final tax.
- B) exempt from income taxation.
- C) taxable only if earned by a citizen.
- D) included in the income tax return.

SUGGESTED ANSWER: A

34. The payor of passive income subject to final tax is required to withhold the tax from the payment due the recipient. The withholding of the tax has the effect of: (2011 Bar Question)

- A) a final settlement of the tax liability on the income.
- B) a credit from the recipient's income tax liability.
- C) consummating the transaction resulting in an income.
- D) a deduction in the recipient's income tax return.

SUGGESTED ANSWER: A

7. Annuities, proceeds from life insurance or other types of insurance

8. Prizes and awards

9. Pensions, retirement benefit or separation pay

10. Income from any source

e. Exclusions and exemptions

35. The proceeds received under a life insurance endowment contract is NOT considered part of gross income

- A) if it is so stated in the life insurance endowment policy.
- B) if the price for the endowment policy was not fully paid.
- C) where payment is made as a result of the death of the insured.
- D) where the beneficiary was not the one who took out the endowment contract.

SUGGESTED ANSWER: C

36. Mr. A, a citizen and resident of the Philippines, is a professional boxer. In a professional boxing match held in 2013, he won prize money in United States (US) dollars equivalent to P300,000,000.

May Mr. A's prize money qualify as an exclusion from his gross income? Why? (2%) (2015 Bar Question)

SUGGESTED ANSWER:

No. Under the law, all prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the Philippines or abroad and sanctioned by their national sports associations are excluded from gross income. The exclusion find application only to amateur athletes where the prize was given in an event sanctioned by the appropriate national sports association affiliated with the

Philippine Olympic Committee and not to professional athletes like Mr. A. Therefore, the prize money would not qualify as an exclusion from Mr. A's gross income (Sec. 32 B [7] [d], NIRC).

37. What are de minimis benefits and how are these taxed? Give three (3) examples of de minimis benefits. (4%) (2015 Bar Question)

SUGGESTED ANSWER:

De minimis benefits are facilities and privileges furnished or offered by an employer to his employees, which are not considered as compensation subject to income tax and consequently to withholding tax, if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as means of promoting the health, goodwill, contentment, or efficiency of his employees. If received by rank-and-file employees they are exempt from income tax on wages; if received by supervisory or managerial employees, they are exempt from the fringe benefits tax (RR No. 2-98, as amended by RR No. 8-2000).

The following shall be considered as de minimis benefits:

(Note: The examinee may choose any three)

1. Monetized unused vacation leave credits of private employees not exceeding 10 days during the year;
2. Monetized value of vacation and sick leave credits paid to government officials and employees;
3. Medical cash allowance to dependents of employees, not exceeding P1,500 per employee per semester or P250 per month;
4. Rice subsidy of P2,000 or 1 sack of 50 kg rice per month amounting to not more than P2,000;
5. Uniform and clothing allowance not exceeding P6,000 per annum;
6. Actual medical assistance not exceeding P10,000 per annum;
7. Laundry allowance not exceeding P300 per month;
8. Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding P10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
9. Gifts given during Christmas and major anniversary celebrations not exceeding P5,000 per employee per annum;
10. Daily meal allowance for overtime work and night/graveyard shift not exceeding 25% of the basic minimum wage on a per region basis;
11. Benefits received by an employee by virtue of a collective bargaining agreement (CBA) and productivity incentive schemes provided that the total annual monetary value received from both CBA and productivity incentive schemes combined do not exceed P10,000 per employee per taxable year (RR 11-2018)

38. Aleta sued Boboy for breach of promise to marry. Boboy lost the case and duly paid the court's award that included, among others, P100,000 as moral damages for the mental anguish Aleta suffered.

Did Aleta earn a taxable income? (1%) (2013 Bar Question)

- A) She had a taxable income of P100,000 since income is income from whatever source.
- B) She had no taxable income because it was a donation.
- C) She had taxable income since she made a profit.
- D) She had no taxable income since moral damages are compensatory.

SUGGESTED ANSWER:

(D) She had no taxable income since moral damages are compensatory (Section 32(B)(4), NIRC).

1. Rationale

2. Taxpayers who may avail

3. Distinguished from deductions and tax credits

- 39. The Board of Directors of Sumo Corporation, a company primarily engaged in the business of marketing and distributing pest control products, approved the partial cessation of its commercial operations, resulting in the separation of 32 regular employees. Only half of the affected employees were notified of the board resolution.**

Rule on the taxability of the separation pay and indemnity that will be received by the affected employees as the result of their separation from service. Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

It shall be tax-exempt. Section 30(B)(6)(b) of the 1997 NIRC, as amended, provides that any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee shall be exempt from taxation.

- 40. All the items below are excluded from gross income, except: (2012 Bar Question)**

- A) Gain from sale of long-term bonds, debentures and indebtedness;**
- B) Value of property received by a person as donation or inheritance;**
- C) Retirement benefits received from the GSIS, SSS, or accredited retirement plan;**
- D) Separation pay received by a retiring employee under a voluntary retirement program of the corporate employer.**

SUGGESTED ANSWER:

D) Separation pay received by a retiring employee under a voluntary retirement program of the corporate employer. Section 32(B)(6), NIRC.

- 41. Mapagbigay Corporation grants all its employees (rank and file, supervisors, and managers) 5% discount of the purchase price of its products. During an audit investigation, the BIR assessed the company the corresponding tax on the amount equivalent to the courtesy discount received by all the employees, contending that the courtesy discount is considered as additional compensation for the rank and file employees and additional fringe benefit for the supervisors and managers. In its defense, the company argues that the discount given to the rank and file employees is a de minimis benefit and not subject to tax. As to its managerial employees, it contends that the discount is nothing more than a privilege and its availment is restricted.**

Is the BIR assessment correct? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

No. The courtesy discounts given to rank and file employees are considered “de minimis benefits” falling under the category of other facilities and privileges furnished or offered by an employer to his employees

which are of relatively small value intended to promote the health, goodwill, contentment or efficiency of the employee. These benefits are not considered as compensation subject to income tax and consequently to the withholding tax (Sec.2.78.1 of RR No. 10-2008). If these “de minimis benefits” are furnished to supervisors and managers, the same are also exempt from the fringe benefits tax (RR No. 3-98; Sec. 33, NIRC).

ALTERNATIVE ANSWER:

Yes, the BIR assessment is correct. De minimis benefits are benefits of relatively small values provided by the employers to the employee on top of the basic compensation intended for the general welfare of the employees. It is considered exempt from income tax on compensation as well as from fringe benefit tax, provided it does not exceed P10,000 per employee per taxable year. Tax exemption is not _____ I strictly against the taxpayer. The discount is not listed among the _____ benefits under the tax code and RR 11-2018, and thus cannot be considered a tax exempt __ benefit.

Pursuant to RR No. 1-2015, which amended RR No. 2-98, 3-98, 5-2008, 5-2011 and 8-2012, the following are considered de minimis benefits:

- 42. Patrick is a successful businessman in the United States and he is a sole proprietor of a supermarket which has a gross sales of \$10 million and an annual income of \$3million. He went to the Philippines on a visit and, in a party, he saw Atty. Agaton who boasts of being a tax expert. Patrick asks Atty. Agaton: if he (Patrick) decides to reacquire his Philippine citizenship under RA 9225, establish residence in this country, and open a supermarket in Makati City, will the BIR tax him on the income he earns from his U.S. business? If you were Atty. Agaton, what advice will you give Patrick? (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

I will advise Patrick that once he re-acquires his Philippine citizenship and establishes his residence in this country, his income tax classification would then be a ‘resident citizen’. A resident citizen is taxable on all his income, whether derived within or without the Philippines; accordingly, the income he earns from his business abroad will now be subject to the Philippine income tax, subject to tax credits for foreign tax paid (Sec. 23, NIRC).

ALTERNATIVE ANSWER:

If Patrick becomes a dual citizen under RA 9225 in our country, he shall be allowed to acquire real properties and engage himself in business here just like an ordinary Filipino without renouncing his foreign citizenship. In addition, his income abroad will not be taxed here. These are among the incentives we have extended to former Filipinos under the Dual Citizenship Law so that they will be encouraged to come home and invest their money in our country.

- 43. Ernesto, a Filipino citizen and a practicing lawyer, filed his income tax return for 2007 claiming optional standard deductions. Realizing that he has enough documents to substantiate his profession-connected expenses, he now plans to file an amended income tax return for 2007, in order to claim itemized deductions, since no audit has been commenced by the BIR on the return he previously filed. Will Ernesto be allowed to amend his return? Why or why not? (4%) (2009 Bar Question)**

SUGGESTED ANSWER:

No. Since Ernesto has elected to claim the optional standard deduction, said election is irrevocable for the taxable year for which the return is made (Section 34(L), NIRC).

44. Which of the following is an exclusion from gross income? (1%) (2014 Bar Question)
- A) Salaries and wages
 - B) Cash dividends
 - C) Liquidating dividends after dissolution of a corporation
 - D) De minimis benefits
 - E) Embezzled money

SUGGESTED ANSWER:

(D) De minimis benefits (Section 33(C)(4); RR No. 3-98).

4. Deductions from gross income

45. Freezy Corporation, a domestic corporation engaged in the manufacture and sale of ice cream, made payments to an officer of Frosty Corporation, a competitor in the ice cream business, in exchange for said officer's revelation of Frosty Corporation's trade secrets.

May Freezy Corporation claim the payment to the officer as deduction from its gross income? Explain. (4%) (2014 Bar Question)

SUGGESTED ANSWER:

No. The payments made in exchange for the revelation of a competitor's trade secrets is considered as an expense which is against law, morals, good customs or public policy, which is not deductible (3M Philippines, Inc. v. CIR, G.R. No. 82833, September 26, 1988). Also, the law will not allow the deduction of bribes, kickbacks and other similar payments. Applying ejusdem generis, payment made by Freezy Corporation would fall under "other similar payments" which are not allowed as deduction from gross income (Section 34(A)(1)(c), NIRC). (2014 Bar Question)

46. A, B, and C, all lawyers, formed a partnership called ABC Law Firm so that they can practice their profession as lawyers. For the year 2012, ABC Law Firm received earnings and paid expenses, among which are as follows: (6%)

Earnings:

- (1) Professional/legal fees from various clients
- (2) Cash prize received from a religious society in recognition of the exemplary service of ABC Law Firm
- (3) Gains derived from sale of excess computers and laptops

Payments:

- (1) Salaries of office staff
- (2) Rentals for office space
- (3) Representation expenses incurred in meetings with clients

- (A) What are the items in the above mentioned earnings which should be included in the computation of ABC Law Firm's gross income? Explain.
- (B) What are the items in the above-mentioned payments which may be considered as deductions from the gross income of ABC Law Firm? Explain.
- (C) If ABC Law Firm earns net income in 2012, what, if any, is the tax consequence on the part of ABC Law Firm insofar as the payment of income tax is concerned? What, if any, is the tax consequence on the part of A, B, and C as individual partners, insofar as the payment of income tax is concerned?

SUGGESTED ANSWER:

(A) The three (3) items of earnings should be included in the computation of ABC Law Firm's gross income. The professional/legal fees from various clients is included as part of gross income being in the nature of compensation for services (Section 32(A)(1), NIRC). The cash prize from a religious society in recognition of its exemplary services is also included there being no law providing for its exclusion. This is not a prize in recognition of any of the achievements enumerated under the law hence, should form part of gross income (Section 32(B)(7)(c), NIRC). The gains from sale of excess computers and laptops should also be included as part of the firm's gross income because the term gross income specifically includes gains derived from dealings in property (Section 32(A)(3), NIRC).

(B) The law firm being formed as a general professional partnership is entitled to the same deductions as allowed to corporations (Section 26, NIRC). Hence, the three (3) items of deductions mentioned in the problem are all deductible, they being in the nature of ordinary and necessary expenses incurred in the practice of profession (Section 34(A), NIRC).

(C) The net income having been earned by the law firm, which is formed and qualifies as a general professional partnership, is not subject to income tax because the earner is devoid of any income tax personality. Each partner shall report as gross income his distributive share, actually or constructively received, in the net income of the partnership. The partnership is merely treated for income tax purposes as a pass-through entity so that its net income is not taxable at the level of the partnership but said net income should be attributed to the partners, whether or not distributed to them, and they are liable to pay the income tax based on their respective taxable income as individual taxpayers (Section 26, NIRC).

ALTERNATIVE ANSWER TO (B):

The law firm being formed as a general professional partnership is entitled to the same deductions as allowed to corporations (Section 26, NIRC). Hence, the three (3) items of deductions mentioned in the problem are all deductible, they being in the nature of ordinary and necessary expenses incurred in the practice of profession (Section 34(A), NIRC). However, the amount deductible for representation expenses incurred by a taxpayer engaged in sale of services, including a law firm, is subject to a ceiling of 1% of net revenue (RR No. 10-2002).

- 47. Mr. A, a citizen and resident of the Philippines, is a professional boxer. In a professional boxing match held in 2013, he won prize money in United States (US) dollars equivalent to P300,000,000.**

The US already imposed and withheld income taxes from Mr. A's prize money. How may Mr. A use or apply the income taxes he paid on his prize money to the US when he computes his income tax liability in the Philippines for 2013? (4%) (2015 Bar Question)

SUGGESTED ANSWER:

The income taxes withheld and paid to the U.S. government may be claimed by Mr. A, either as a deduction from his gross income or as a tax credit from the income tax due, when he computes his Philippine income tax liability for taxable year 2013 (Sec. 34(C)(1)(b), NIRC).

- 48. Dr. Taimtim is an alumnus of the College of Medicine of Universal University (UU), a privately-owned center for learning which grants yearly dividends to its stockholders.**

UU has a famous chapel located within the campus where the old folks used to say that anyone who wanted to pass the medical board examinations should offer a dozen roses on all the Sundays of October. This was what Dr. Taimtim did when he was still reviewing for the board examinations. In his case, the folk saying proved to be true because he is now a successful cardiologist. Wanting to give back to the chapel and help defray the costs of its maintenance, Dr.

Taimtim donated P50,000.00 to the caretakers of the chapel which was evidenced by an acknowledgment receipt.

In computing his net taxable income, can Dr.Taimtim use his donation to the chapel as an allowable deduction from his gross income under the National Internal Revenue Code (NIRC)? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

No, the donation is not deductible. The chapel is owned by privately-owned university hence the donation for the maintenance of the chapel is a donation to the university. The donation to be deductible must comply with the requirement that the net income of the donee must not inure to the benefit of any private stockholder or individual. In the instant case, the university is granting yearly dividends to its stockholders which is a clear violation of the law appertaining to the so-called “private inurement doctrine” thereby making the donation non-deductible (Section 34(H)(1), NIRC).

49. Which of the following should not be claimed as deductions from gross income? (1%) (2014 Bar Question)

- A) discounts given to senior citizens on certain goods and services.
- B) advertising expense to maintain some form of goodwill for the taxpayer’s business.
- C) salaries and bonuses paid to employees.
- D) interest payment on loans for the purchase of machinery and equipment used in business.

SUGGESTED ANSWER:

(B) advertising expense to maintain some form of goodwill for the taxpayer’s business (General Foods Corporation v. CIR, G.R. No. 143672, April 24, 2003).

a. Concept as return of capital

b. Itemized deductions vs. Optional Standard Deduction

50. In 2012, Dr. K decided to return to his hometown to start his own practice. At the end of 2012, Dr. K found that he earned gross professional income in the amount P1,000,000.00. While he incurred expenses amounting to P560,000.00 constituting mostly of his office space rent, utilities, and miscellaneous expenses related to his medical practice. However, to Dr. K’s dismay, only P320,000.00 of his expenses were duly covered by receipts. What are the options available for Dr. K so he could maximize the deductions from his gross income? (3%) (2015 Bar Question)

SUGGESTED ANSWER:

In order to maximize his deductions, Dr. K may avail of the optional standard deduction (OSD) which is an amount not exceeding forty percent (40%) of his gross sales or gross receipts. The OSD can be claimed without being required to present proof or evidence of expenses paid or incurred by him (Sec. 34(L), NIRC; Rev. Regs. 16-08, as amended).

c. Items not deductible

51. Calvin Dela Pisa was a Permits and Licensing Officer (rank-and-file) of Sta. Portia Realty Corporation (SPRC). He invited the Regional Director of the Housing and Land Use Regulatory Board (HLURB) to lunch at the Sulo Hotel in Quezon City to discuss the approval of SPRC’s application for a development permit in connection with its subdivision development project in

Pasig City. At breakfast the following day, Calvin met a prospective client interested to enter into a joint venture with SPRC for the construction of a residential condominium unit in Cainta, Rizal.

Calvin incurred expenses for the lunch and breakfast meetings he had with the Regional Director of HLURB and the prospective client, respectively. The expenses were duly supported by official receipts issued in his name. At month's end, he requested the reimbursement of his expenses, and SPRC granted his request.

- A) Can SPRC claim an allowable deduction for the expenses incurred by Calvin? Explain your answer. (2.5%) (2017 Bar Question)**

SUGGESTED ANSWER:

SPRC cannot claim as a deduction, the amount spent for lunch in the meeting with the Regional Director of HLURB. While the expense is business connected, the same is not allowed as deduction because it was incurred as an indirect payment to a government official which, not only amounts to a violation of the Anti Graft and Corrupt Practices Act, but also constitutes bribes, kickbacks and similar payments [*See Sec 34 (a) (c) NIRC*].

With respect, however, to the amount spent for breakfast with a prospective client, the same is deductible from gross income of SPRC. The expense complies with the requirements for deductibility, namely: (a) the expense must be ordinary and necessary; (b) it must have been paid or incurred during the taxable year; (c) it must have been paid or incurred in carrying on the trade or business of the taxpayer, and (d) it must be supported by receipts, records or other pertinent papers [*CIR v. General Foods (Phils.), Inc., G.R. No. 143672 (2003)*]. Section 34 (A)(1)(b) of the 1997 NIRC, as amended, does not require that the substantiation be in the form of official receipts or invoices issued in the name of the taxpayer claiming the expense. It must only be proven that there is a "direct connection or relation of the expense being deducted to the development, management, operation and/or conduct of the trade, business or profession of the taxpayer".

- B) Is the reimbursement received by Calvin from SPRC subject to tax? Explain your answer. (2.5%)**

SUGGESTED ANSWER:

No. Any amount paid as reimbursements for representation incurred by the employee in the performance of his duties is not compensation subject to withholding, if the following conditions are satisfied: (i) It is for ordinary and necessary representation expense paid or incurred by the employee in the pursuit of the trade, business or profession, and (ii) The employee is required to account/liquidate for the such expense in accordance with the specific requirements of substantiation pursuant to Sec. 34 of the 1997 NIRC, as amended. The amounts are actually spent by the employee for the benefit of his employer, so no income is considered to have flowed to the employee. (2017 BAR)

- 52. Rakham operates the lending company that made a loan to Alfonso in the amount of P120,000.00 subject of a promissory note which is due within one (1) year from the note's issuance. Three years after the loan became due and upon information that Alfonso is nowhere to be found, Rakham asks you for advice on how to treat the obligation as "bad debt." Discuss the requisites for deductibility of a "bad debt?" (5%) (2012 Bar Question)**

SUGGESTED ANSWER:

I will advise Rakham that the obligation of Alfonso may now be considered as bad debts for having met the yardstick of a debt which had become worthless. In order to be considered worthless, the taxpayer should establish that during the year from which a deduction is sought, a situation developed as a result of which it became evident in the exercise of sound, objective business judgment that there remained no

practical, but only vaguely theoretical, prospect that the debt would ever be paid (*Collector of Internal Revenue v. Goodrich International Rubber Co.*, G.R. No. L-22265, December 22, 1967, 21 SCRA 1336). A bad debt is deductible if it complies with the following requisites:

- (a) There must be a valid and subsisting debt.
- (b) The obligation is connected with the taxpayer's trade or business and is not between related parties.
- (c) There is an actual ascertainment that the debt is worthless.
- (d) The debt is charged-off during the taxable year. A partial write-off is not allowed. (*PRC v. CA*, G.R. No. 118794, May 8, 1996, 256 SCRA 667).

53. Congress issued a law allowing a 20% discount on the purchases of senior citizens from, among others, recreation centers. This 20% discount can then be used by the sellers as a "tax credit." At the initiative of BIR, however, Republic Act No. (RA) 9257 was enacted amending the treatment of 20% discount as a "tax deduction." Equity Cinema filed a petition the RTC claiming that RA 9257 is unconstitutional as it forcibly deprives sellers a part of the price without just compensation.

A) What is the effect of converting the 20% discount from a "tax credit to a "tax deduction"? (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

The effect of converting the 20% discount from a "tax credit" to a "tax deduction" is that the tax benefit enjoyed by sellers of goods and services to senior citizens is effectively reduced. A tax credit reduces the tax liability while a tax deduction merely reduces the tax base. Under the tax credit scheme, the establishments are paid back 100% of the discount they give to senior citizens while under the tax deduction scheme, they are only paid back 30% (for Corporate taxpayers) of the 20% discount granted to senior citizens. (2016 BAR)

B) If you are the judge, how will you decide the case? Briefly explain your answer. (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

I will decide in favor of the Constitutionality of the law. The 20% discount as well as the tax deduction scheme is a valid exercise of the police power of the State (*Manila Memorial Park Inc. v. Department on Social Welfare and Development*, G.R. No. 175356, December 3, 2013, 711 SCRA 302).

54. Peter is the Vice President for Sales of Golden Dragon Realty Conglomerate Inc. (Golden Dragon). A group of five (5) foreign investors visited the country for possible investment in the condominium units and subdivision lots of Golden Dragon. After a tour of the properties for sale, the investors were wined and dined by Peter at the posh Conrad's Hotel at the cost of P150,000.00. Afterward, the investors were brought to a party in a videoke club which cost the company P200,000.00 for food and drinks, and the amount of P80,000.00 as tips for business promotion officers. Expenses at Conrad's Hotel and the videoke club were receipted and submitted to support the deduction for representation and entertainment expenses. Decide if all the representation and entertainment expenses claimed by Golden Dragon are deductible. Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Reasonable allowance for entertainment, amusement, and recreation expenses during the taxable year that are directly connected or related to the operation or conduct of the trade, business or profession, or that are directly related to or in furtherance of the conduct of his/its trade, business, or exercise of a profession

not to exceed such ceilings prescribed by rules and regulations, are allowed as deduction from gross income. In this case, the expenses incurred were to entertain the investors of Golden Dragon; thus, the amount deductible for entertainment, amusement and recreation expenses is limited to the actual amount paid or incurred but in no case shall the deduction exceed 0.50% of net sales for taxpayers engaged in the sale of goods or properties (Sec. 34(A)(1)(a) (iv), NIRC as implemented by RR No. 10-2002). (2016 BAR)

[Note: Reasonableness and liberality are recommended in considering an examinee's answer to this question.]

- 55. Henry, a U.S. naturalized citizen, went home to the Philippines to reacquire Philippine citizenship under RA 9225. His mother left him a lot and building in Makati City and he wants to make use of it in his trading business. Considering that he needs money for the business, he wants to sell his lot and building and make use of the consideration. However, the lot has sentimental value and he wants to reacquire it in the future. A friend of Henry told him of the "sale-leaseback transaction" commonly used in the U.S., which is also used for tax reduction. Under said transaction, the lot owner sells his property to a buyer on the condition that he leases it back from the buyer. At the same time, the property owner is granted an option to repurchase the lot on or before an agreed date. Henry approaches you as a tax lawyer for advice.**

Explain what tax benefits, if any, can be obtained by Henry and the buyer from the sale-leaseback transaction? (5%) (2012 Bar Question)

SUGGESTED ANSWER:

Henry will be entitled to claim rental expense as a deduction from his gross income in the trading business. His lease payments plus interest would be substantially higher than the depreciation expense he may claim in computing his taxable income; hence, the lease would result in the additional benefit of increasing his additional tax deductions. The buyer will be deriving rental income from the property and be able to claim business deductions such as real property taxes, repairs and maintenance, depreciation and other expenses necessary for the renting out of the property.

- 56. A is a travelling salesman working full time for Nu Skin Products. He receives a monthly salary plus 3% commission on his sales in a Southern province where he is based. He regularly uses his own car to maximize his visits even to far flung areas. One fine day a group of militants seized his car. He was notified the following day by the police that the marines and the militants had a bloody encounter and his car was completely destroyed after a grenade hit it.**

A wants to file a claim for casualty loss. Explain the legal basis of your tax advice. (2010 Bar Question)

SUGGESTED ANSWER:

A is not entitled to claim a casualty loss because all of his income partake the nature of compensation income. Taxpayers earning compensation income arising from personal services under an employer-employee relationship are not allowed to claim deduction except those allowed under Sec. 34(M) of the Tax Code referring only to Php 2,400 health and hospitalization insurance premiums. Therefore, the claim of casualty loss has no legal basis. (Sec. 34, NIRC)

- 57. Masarap Food Corporation (MFC) incurred substantial advertising expenses in order to protect its brand franchise for one of its line products. In its income tax return, MFC included the advertising expense s deduction from gross income, claiming it as an ordinary business expense. Is MFC correct? Explain. (3%) (2009 Bar Question)**

SUGGESTED ANSWER:

No. The protection of taxpayer's brand franchise is analogous to the maintenance of goodwill or title to one's property which is in the nature of a capital expenditure. An advertising expense, of such nature does not qualify as an ordinary business expense, because the benefit to be enjoyed by the taxpayer goes beyond one taxable year (*CIR v. General Foods Inc.*, 401 SCRA 545 [2003]).

5. Income tax on individuals

58. Raffy and Wena, husband and wife, are both employed by XXX Corporation. After office hours, they jointly manage a coffee shop at the ground floor of their house. The coffee shop is registered in the name of both spouses. Which of the following is the correct way to prepare their income tax return? Write the letter only. **DO NOT EXPLAIN YOUR ANSWER.** (2%) (2009 Bar Question)
- A) Raffy will declare as his income the salaries of both spouses, while Wena will declare the income from the coffee shop.
 - B) Wena will declare the combined compensation income of the spouses, and Raffy will declare the income from the coffee shop.
 - C) All the income will be declared by Raffy alone, because only one consolidated return is required to be filed by the spouses.
 - D) Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Each spouse shall be taxed separately on their corresponding taxable income to be covered by one consolidated return for the spouses.
 - E) Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Raffy will file one income tax return to cover all the income of both spouses, and the tax is computed on the aggregate taxable income of the spouses.

SUGGESTED ANSWER:

D) Raffy will declare his own compensation income and Wena will declare hers. The income from the coffee shop shall be equally divided between them. Each spouse shall be taxed separately on their corresponding taxable income to be covered by one consolidated return for the spouses.

59. Dondon and Helena were legally separated. They had six minor children, all qualified to be claimed as additional exemptions for income tax purposes. The court awarded custody of two of the children to Dondon and three to Helena, with Dondon directed to provide full financial support for them as well. The court awarded the 6th child to Dondon's father with Dondon also providing full financial support. Assuming that only Dondon is gainfully employed while Helena is not, for how many children could Dondon claim additional exemptions when he files his income tax return? (2011 Bar Question)
- A) Six children.
 - B) Five children.
 - C) Three children.
 - D) Two children.

SUGGESTED ANSWER: D

60. In January 2013, your friend got his first job as an office clerk. He is single and lives with his family who depends upon him for financial support. His parents have long retired from their work, and his two (2) siblings are still minors and studying in grade school. In February 2014, he consulted you as he wanted to comply with all the rules pertaining to the preparation and filing of his income tax return. He now asks you the following: (2014 Bar Question)

- A) Is he entitled to personal exemptions? If so, how much? (1%)**
- B) Is he entitled to additional exemptions? If so, how much? (1%)**
- C) What is the effect of the taxes withheld from his salaries on his taxable income? (2%)**

SUGGESTED ANSWER:

- A) Yes. The law allows a basic personal exemption of P50,000 for each individual taxpayer (Section 35(A), NIRC).
- B) No. While his parents and minor siblings are living with and dependent upon him for financial support, they are not qualified dependents for purposes of additional exemptions. The term “dependent” for purposes of the additional personal exemption would include only legitimate, illegitimate or legally adopted child (Section 35(B), NIRC).
- C) The taxes withheld from his salaries will not affect his taxable income because they are not allowed as tax deductions but as tax credits. Tax deductions reduce the taxable income while tax credits reduce the tax liability (Central Drug Corporation v. CIR).

61. In January 1970, Juan Gonzales bought one hectare of agricultural land in Laguna for P100,000. This property has a current fair market value of P10 million in view of the construction of a concrete road traversing the property. Juan Gonzales agreed to exchange his agricultural lot in Laguna for a one-half hectare residential property located in Batangas, with a fair market value of P10 million, owned by Alpha Corporation, a domestic corporation engaged in the purchase and sale of real property. Alpha Corporation acquired the property in 2007 for P9 million.

- A) What is the nature of real properties exchanged for tax purposes - capital asset or ordinary asset? Explain. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

The one hectare agricultural land owned by Juan Gonzales is a capital asset because it is not a real property used in trade or business. The one-half hectare residential property owned by Alpha Corporation is an ordinary asset because the owner is engaged in the purchase and sale of real property. (Section 39, NIRC, Revenue Regulation No. 7-03)

- B) Is Juan Gonzales subject to income tax on the exchange of property? If so, what is the tax based and rate? Explain. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

Yes. The tax base in a taxable disposition of a real property classified as a capital asset is the higher between two values: the fair market value of the property received in exchange and the fair market value of the property exchanged. Since the fair market value of these two properties are the same, the said fair market value should be taken as the tax base which is P10 million. The income tax rate is 6%. (Section 24(D) (1), NIRC)

62. Informer's reward is subject to a final withholding tax of 10%. (2010 Bar Question)

SUGGESTED ANSWER:

True. (Sec. 282, NIRC)

63. A non-resident alien who stays in the Philippines for less than 180 days during the calendar year shall be entitled to personal exemption not to exceed the amount allowed to citizens of the Philippines by the country of which he is subject or citizen. (2010 Bar Question)

SUGGESTED ANSWER:

False. [Sec. 25(A)(1) in relation to Sec. 35, NIRC]

64. In 2009, Caruso, a resident Filipino citizen, received dividend income from a U.S.- based corporation which owns a chain of Filipino restaurants in the West Coast, U.S.A. The dividend remitted to Caruso is subject to U.S. withholding tax with respect to a non-resident alien like Caruso.

A) What will be your advice to Caruso in order to lessen the impact of possible double taxation on the same income? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Caruso has the option either to claim the amount of income tax withheld in U.S. as a deduction from his gross income in the Philippines, or to claim it as a tax credit (Sec. 34(C)(1)(b), NIRC).

B) Would your answer in A. be the same if Caruso became a U.S. immigrant in 2008 and had become a non-resident Filipino citizen? Explain the difference in treatment for Philippine income tax purposes. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

No. The income from abroad of a non-resident citizen is exempt from the Philippine income tax; hence, there is no international double taxation on said income (Sec. 23, NIRC).(2010 BAR)

65. Mr. E and Ms. F are both employees of AAA Corp. They got married on February 14, 2011. On December 29, 2011, the couple gave birth to triplets. On June 25, 2013, they had twins. What were the personal exemptions/deductions which Mr. E and Ms. F could claim in the following taxable years:

- A) For 2010 (2%)
 - B) For 2011 (3%)
 - C) For 2013 (2%)
- (2015 Bar Question)

SUGGESTED ANSWER:

- A) For 2010, Mr. E and Ms. F are each entitled to personal exemptions of P50,000.00 (Sec. 35A, NIRC).
- B) For 2011, Mr. E and Ms. F are each entitled to basic personal exemption of P50,000.00. In addition to his basic personal exemption, Mr. E could claim additional personal exemptions for three (3) qualified dependent children in the amount of P25,000.00 for each child (Sec. 35B, NIRC).
- C) For 2013, Mr. E and Ms. F are each entitled basic personal exemptions of P50,000.00. Mr. E could claim additional personal exemptions for four (4) qualified dependent children in the amount of P25,000.00 for each child (Sec. 35B, NIRC).

a. Resident citizens, non-resident citizens, and resident aliens

66. Pierre de Savigny, a Frenchman, arrived in the Philippines on January 1, 2010 and continued to live and engage in business in the Philippines. He went on a tour of Southeast Asia from August 1 to November 5, 2010. He returned to the Philippines on November 6, 2010 and stayed until April 15, 2011 when he returned to France. He earned during his stay in the Philippines a gross income

of P3 million from his investments in the country. For the year 2010, Pierre's taxable status is that of: (2011 Bar Question)

- A) a non-resident alien not engaged in trade or business in the Philippines.
- B) a non-resident alien engaged in trade or business in the Philippines.
- C) a resident alien not engaged in trade or business in the Philippines.
- D) a resident alien engaged in trade or business in the Philippines.

SUGGESTED ANSWER: B

67. Alain Descartes, a French citizen permanently residing in the Philippines, received several items during the taxable year. Which among the following is NOT subject to Philippine income taxation?: (2011 Bar Question)

- A) Consultancy fees received for designing a computer program and installing the same in the Shanghai facility of a Chinese firm.
- B) Interests from his deposits in a local bank of foreign currency earned abroad converted to Philippine pesos.
- C) Dividends received from an American corporation which derived 60% of its annual gross receipts from Philippine sources for the past 7 years.
- D) Gains derived from the sale of his condominium unit located in The Fort, Taguig City to another resident alien.

SUGGESTED ANSWER: A

68. Federico, a Filipino citizen, migrated to the United States some six years ago and got a permanent resident status or green card. He should pay his Philippine income taxes on: (2011 Bar Question)

- A) the gains derived from the sale in California, U.S.A. of jewelry he purchased in the Philippines.
- B) the proceeds he received from a Philippine insurance company as the sole beneficiary of life insurance taken by his father who died recently.
- C) the gains derived from the sale in the New York Stock Exchange of shares of stock in PLDT, a Philippine corporation.
- D) dividends received from a two year old foreign corporation whose gross income was derived solely from Philippine sources.

SUGGESTED ANSWER: C

69. PRT Corp. purchased a residential house and lot with a swimming pool in an upscale subdivision and required the company president to stay there without paying rent; it reasoned out that the company president must maintain a certain image and be able to entertain guests at the house to promote the company's business. The company president declared that because they are childless, he and his wife could very well live in a smaller house.

Was there a taxable fringe benefit? (1%) (2013 Bar Question)

- A) There was no taxable fringe benefit since it was for the convenience of the employer and was necessary for its business.
- B) There was a taxable fringe benefit since the stay at the house was for free.
- C) There was a taxable fringe benefit because the house was very luxurious.
- D) There was no taxable fringe benefit because the company president was only required to stay there and did not demand free housing.

SUGGESTED ANSWER:

(A) There was no taxable fringe benefit since it was for the convenience of the employer and was necessary for its business (Section 33, NIRC; RR No. 3-98).

- 70. Triple Star, a domestic corporation, entered into a Management Service Contract with Single Star, a non-resident foreign corporation with no property in the Philippines. Under the contract, Single Star shall provide managerial services for Triple Star's Hongkong branch. All said services shall be performed in Hongkong.**

Is the compensation for the services of Single Star taxable as income from sources within the Philippines? Explain. (4%) (2014 Bar Question)

SUGGESTED ANSWER:

No. The compensation for services rendered by Single Star is an income derived from sources without the Philippines. To be considered as income from within, the labor or service must be performed within the Philippines (Section 42(A)(3) and Section 42(C)(3), NIRC). Since all the services required to be performed by Single Star, a non-resident foreign corporation, is to be performed in Hongkong, the entire income is from sources without.

- 1. Inclusions and exclusions for taxation on compensation income**
- 2. Taxation of business income/income from practice of profession**

- 71. BBB, Inc., a domestic corporation, enjoyed a particularly profitable year in 2014. In June 2015, its Board of Directors approved the distribution of cash dividends to its stockholders. BBB, Inc. has individual and corporate stockholders. What is the tax treatment of the cash dividends received from BBB, Inc. by the following stockholders:**

A) A resident citizen (1%) (2015 Bar Question)

SUGGESTED ANSWER:

A final withholding tax for ten percent (10%) shall be imposed upon the cash dividends actually or constructively received by a resident citizen from BBB, Inc. (Sec. 24 (b)(2), NIRC). (2015 BAR)

B) Non-resident alien engaged in trade or business (1%) (2015 Bar Question)

SUGGESTED ANSWER:

A final withholding tax of twenty percent (20%) shall be imposed upon the cash dividends actually or constructively received by a non-resident alien engaged in trade or business from BBB, Inc. (Sec. 25(a)(2), NIRC).

C) Non-resident alien not engaged in trade or business (1%) (2015 Bar Question)

SUGGESTED ANSWER:

A final withholding tax equal to twenty-five percent (25%) of the entire income received from all sources within the Philippines, including the cash dividends received from BBB, Inc. (Sec. 25(b), NIRC). (2015 BAR)

- 72. Indicate whether each of the following individuals is required or not required to file an income tax return:**

A) Filipino citizen residing outside the Philippines on his income from sources outside the Philippines. (1%) (2015 Bar Question)

SUGGESTED ANSWER:

Not required. The income of a non-resident Filipino citizen are taxable only on income sourced within the Philippines. Accordingly, his income from sources outside the Philippines is exempt from income tax (Sec. 51A (1)(b), NIRC).

B) Resident alien on income derived from sources within the Philippines. (1%) (2015 Bar Question)

SUGGESTED ANSWER:

Required. A resident alien is taxable only for income derived from sources within the Philippines (Sec. 51A (1)(c), NIRC).

C) Resident citizen earning purely compensation income from two employers within the Philippines, whose income taxes have been correctly withheld. (1%) (2015 Bar Question)

SUGGESTED ANSWER:

Required. A resident citizen who is earning purely compensation income from two employers should file income tax return. If the compensation income is received concurrently from two employers during the taxable year, the employee is not qualified for substituted filing (Sec. 51A (2)(b), NIRC).

D) Resident citizen who falls under the classification of minimum wage earners. (1%) (2015 Bar Question)

SUGGESTED ANSWER:

Not required. Under the law, all minimum wage earners in the private and public sector shall be exempt from payment of income tax. (Sec. 51A (2)(d), NIRC in relation to Republic Act No. 9504).

E) An individual whose sole income has been subjected to final withholding tax. (1%) (2015 Bar Question)

SUGGESTED ANSWER:

Not required. Under the law, an individual whose sole income has been subjected of final withholding tax pursuant to Sec. 57(A), NIRC, need not file a return. What he received is a tax-paid income (Sec. 51A (2)(c) NIRC).

3. Taxation of passive income

4. Taxation of capital gains

73. True or False. (1% each)

Gains realized by the investor upon redemption of shares of stock in a mutual fund company are exempt from income tax. (2010 Bar Question)

SUGGESTED ANSWER:

TRUE [Sec 32(B)(7)(h), NIRC]

- 74. Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600,000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3,000.00 per square meter.**

A) Is Melissa liable to pay Value Added Tax (VAT) on the sale of the property? If so, how much and why? If not, why not? (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No. The real property sold, being in the nature of a capital asset, is not subject to VAT. The sale is subject to VAT only if the real property sold is held primarily for sale to customers or held for lease in the ordinary course of trade or business. A real property classified as a capital asset does not include a real property held for sale or for lease, hence, its sale is not subject to VAT (Section 39 and Section 106, NIRC).

B) Is Melissa liable to pay Value Added Tax (VAT) on the sale of the property? If so, how much and why? If not, why not? (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No. The real property sold, being in the nature of a capital asset, is not subject to VAT. The sale is subject to VAT only if the real property sold is held primarily for sale to customers or held for lease in the ordinary course of trade or business. A real property classified as a capital asset does not include a real property held for sale or for lease, hence, its sale is not subject to VAT (*Section 39 and Section 106, NIRC*).

- 75. Mr. H decided to sell the house and lot wherein he and his family have lived for the past 10 years, hoping to buy and move to a new house and lot closer to his children's school. concerned about the capital gains tax that will be due on the sale of their house, Mr. H approaches you as a friend for advice if it is possible for the sale of their house to be exempted from capital gains tax and the conditions they must comply with to avail themselves of said exemption. How will you respond? (4%) (2015 Bar Question)**

SUGGESTED ANSWER:

I would advise Mr. H that he may be exempted from the payment of the capital gains tax on the sale or disposition of the house and lot where his family lives because the sale of principal residence by a natural person is exempt provided the following conditions are complied with, viz:

1. The proceeds of the sale is fully utilized in acquiring or constructing new principal residence within 18 calendar months from the date of sale or disposition;
2. The historical cost or adjusted basis of the real property sold or disposed will be carried over to the new principal residence built or acquired;
3. The Commissioner has been duly notified, through a prescribed return, within 30 days from the date of sale or disposition of the person's intention to avail of the tax exemption; and
4. The exemption was availed only once every 10 years (Sec. 24(d)(2), NIRC).

- 76. Hopeful Corporation obtained a loan from Generous Bank and executed a mortgage on its real property to secure the loan. When Hopeful Corporation failed to pay the loan, Generous Bank extrajudicially foreclosed the mortgage on the property and acquired the same as the highest bidder. A month after the foreclosure, Hopeful Corporation exercised its right of redemption and**

was able to redeem the property. Is Generous Bank liable to pay capital gains tax as a result of the foreclosure sale? Explain. (4%) (2014 Bar Question)

SUGGESTED ANSWER:

No. In a foreclosure of a real estate mortgage, the capital gains tax accrues only after the lapse of the redemption period because it is only then that there exists a transfer of property. Thus, if the right to redeem the foreclosed property was exercised by the mortgagor before expiration of the redemption period, as in this case, the foreclosure is not a taxable event (See RR No. 4-99; *Supreme Transliner, Inc. v. BPI Family Savings Bank, Inc.*, G.R. No. 165617, February 25, 2011).

5. Capital asset vs. ordinary asset

- 77. John McDonald, a U.S. citizen residing in Makati City, bought shares of stock of a domestic corporation whose shares are listed and traded in the Philippines Stock Exchange at the price of P2 million. Yesterday, he sold the shares of stock through his favorite Makati stockbroker at a gain of P200,000.**

Should the Shanghai Branch of Anchor Bank remit profit to its Head Office in the Philippines in 2011, is the branch liable to the 15% branch profit remittance tax imposed under Sec. 28 (A)(5) of the 1997 Tax Code? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

NO. The branch profit remittance tax is imposed only on remittances by branches of Foreign Corporation in the Philippines to their Home Office abroad. It is the outbound branch profit that is subject to the tax not the inbound profits (Sec. 28(A)(5), NIRC).

- 78. ABC Corp. was dissolved and liquidating dividends were declared and paid to the stockholders. What tax consequence follows? (1 %) (2013 Bar Question)**

- A) ABC Corp. should deduct a final tax of 10% from the dividends.
- B) The stockholders should declare their gain from their investment and pay income tax at the ordinary rates.
- C) The dividends are exempt from tax.
- D) ABC Corp. should withhold a 10% creditable tax.

SUGGESTED ANSWER:

(B) The stockholders should declare their gain from their investment and pay income tax at the ordinary rates (Sec. 39, BIR Ruling 39-02, Nov. 11, 20002).

- 79. Ernesto, a Filipino citizen and a practicing lawyer, filed his income tax return for 2007 claiming optional standard deductions. Realizing that he has enough documents to substantiate his profession-connected expenses, he now plans to file an amended income tax return for 2007, in order to claim itemized deductions, since no audit has been commenced by the BIR on the return he previously filed. Will Ernesto be allowed to amend his return? Why or why not? (4%) (2009 Bar Question)**

SUGGESTED ANSWER:

No. Since Ernesto has elected to claim the optional standard deduction, said election is irrevocable for the taxable year for which the return is made (Section 34(L), NIRC).

80. Kenya International Airlines (KIA) is a foreign corporation, organized under the laws of Kenya. It is not licensed to do business in the Philippines. Its commercial airplanes do not operate within Philippine territory, or service passengers embarking from Philippine airports. The firm is represented in the Philippines by its general agent, Philippine Airlines (PAL), a Philippine corporation.

KIA sells airplane tickets through PAL, and these tickets are serviced by KIA airplanes outside the Philippines. The total sales of airline tickets transacted by PAL for KIA in 1997 amounted to P2,968,156.00. The Commissioner of Internal Revenue assessed KIA deficiency income taxes at the rate of 35% on its taxable income, finding that KIA's airline ticket sales constituted income derived from sources within the Philippines.

KIA filed a protest on the ground that the P2,968,156.00 should be considered as income derived exclusively from sources outside the Philippines since KIA only serviced passengers outside Philippine territory.

Is the position of KIA tenable? Reasons. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

KIA's position is not tenable. The revenue it derived in 1997 from sales of airplane tickets in the Philippines, through its agent PAL, is considered as income from within the Philippines, subject to the 35% tax based on its taxable income pursuant to Section 25(a)(1) of the Tax Code of 1977. The transacting of business in the Philippines through its local sales agent, makes KIA a resident foreign corporation despite the absence of landing rights, thus, it is taxable on income derived from within. The source of an income is the property, activity or service that produced the income. In the instant case, it is the sale of tickets in the Philippines which is the activity that produced the income. KIA's income being derived from within, is subject to Philippine income tax (*CIR v. British Overseas Airways Corporation*, 149 SCRA 395, [1987]).

81. The capitalization rules may be resorted to by the BIR in order to compel corporate taxpayers to declare dividends to their stockholders regularly. (2010 Bar Question)

SUGGESTED ANSWER:

TRUE. [Sec. 244, NIRC; Rev. Reg. No. 2-2001 implementing Sec. 29, NIRC.]

82. Johnny transferred a valuable 10-door commercial apartment to a designated trustee, Miriam, naming in the trust instrument Santino, Johnny's 10-year old son, as the sole beneficiary. The trustee is instructed to distribute the yearly rentals amounting to P720,000.00. The trustee consults you if she has to pay the annual income tax on the rentals received from the commercial apartment.

A) [What advice will you give the trustee? Explain. (3%) (2009 Bar Question)]

SUGGESTED ANSWER:

I will advise the trustee that she has nothing to pay in annual income taxes because the trust's taxable income is zero. This is so because the amount of income to be distributed annually to the beneficiary is a deduction from the gross income of the trust but must be reported as income of the beneficiary (Section 61(A), NIRC).

B) Will your advice be the same if the trustee is directed to accumulate the rental income and distribute the same only when the beneficiary reaches the age of majority? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, the trustee has to pay the income tax on the trust's net income determined annually if the income is required to be accumulated. Once a taxable trust is established, its net income is either taxable to the trust, represented by the trustee, or to the beneficiary depending on the provision for distribution of income following the one-layer taxation scheme (Section 61(A), NIRC).

83. ABC, a domestic corporation, entered into a software license agreement with XYZ, a non-resident foreign corporation based in the U.S. Under the agreement which the parties forged in the U.S., XYZ granted ABC the right to use a computer system program and to avail of technical know-how relative to such program. In consideration for such rights, ABC agreed to pay 5% of the revenues it receives from customers who will use and apply the program in the Philippines. Discuss the tax implication of the transaction. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

The amount payable under the agreement is in the nature of a royalty. The term royalty is broad enough to include compensation for the use of an intellectual property and supply of technical know-how as a means of enabling the application or enjoyment of any such property or right (Sec. 42(4), NIRC). The royalties paid to the non-resident U.S. corporation, equivalent to 5% of the revenues derived by ABC for the use of the program in the Philippines, is subject to a 30% final withholding tax, unless a lower tax rate is prescribed under an existing tax treaty. (Sec. 28(B)(1), NIRC).

b. Income tax on non-resident aliens engaged in trade or business**c. Income tax on non-resident aliens not engaged in trade or business****d. Individual taxpayers exempt from income tax****6. Income tax on corporations****a. Income tax on domestic corporations and resident foreign corporations**

84. (11) Guidant Resources Corporation, a corporation registered in Norway, has a 50 MW electric power plant in San Jose, Batangas. Aside from Guidant's income from its power plant, which among the following is considered as part of its income from sources within the Philippines? (2011 Bar Question)
- A) Gains from the sale to an Ilocos Norte power plant of generators bought from the United States.
 - B) Interests earned on its dollar deposits in a Philippine bank under the Expanded Foreign Currency Deposit System.
 - C) Dividends from a two-year old Norwegian subsidiary with operations in Zambia but derives 60% of its gross income from the Philippines.
 - D) Royalties from the use in Brazil of generator sets designed in the Philippines by its engineers.

SUGGESTED ANSWER: A

85. **MGC Corp. secured an income tax holiday for 5 years as a pioneer industry. On the fourth year of the tax holiday, MGC Corp. declared and paid cash dividends to its stockholders, all of whom are individuals.**

Are the dividends taxable? (1 %) (2013 Bar Question)

- A) The dividends are taxable; the tax exemption of MGC Corp. does not extend to its stockholders.
- B) The dividends are tax exempt because of MGC Corp.'s income tax holiday
- C) The dividends are taxable if they exceed 50% of MGC Corp.'s retained earnings
- D) The dividends are exempt if paid before the end of MGC Corp.'s fiscal year.

SUGGESTED ANSWER:

(A) The dividends are taxable; the tax exemption of MGC Corp. does not extend to its stockholders (Sunio v. NLRC, G.R. No. 57767, Jan 31, 1984).

86. **What is the “immediacy test”? Explain briefly. (2%) (2010 Bar Question)**

SUGGESTED ANSWER:

The “immediacy test” is applied to determine whether the accumulation of the tax profits by a domestic or resident foreign corporation is really for the reasonable needs of the business. Under this test, the reasonable needs of the business, including reasonably anticipated needs. The corporation should be able to prove an immediate need for the accumulation of earnings and profits, or the direct correlation of anticipated needs to such accumulation of profits to justify the said accumulation. (Sec. 3, RR No. 2-2001; Mertens, Law of Federal Income Taxation, Vol 7, Chapter 39, p. 103, cited in *Manila Wine Merchants, Inc. v. CIR*, GR No. L-26145, Feb. 20, 1984).

A corporation can claim the optional standard deduction equivalent to 40% of its gross sales or receipts, as the case may be.

87. **The OSD of a corporation is based on gross income, not gross sales or receipt. (2010 Bar Question)**

SUGGESTED ANSWER:

FALSE. [Sec. 34(L), NIRC, as amended by RA No. 9504.]

1. Minimum Corporate Income Tax

88. **KKK Corp. secured its Certificate of Incorporation from the Securities and Exchange Commission on June 3, 2013. It commenced business operations on August 12, 2013. IN April 2014, Ms. J, an employee of KKK Corp. in charge of preparing the annual income tax return of the corporation for 2013, got confused on whether she should prepare payment for the regular corporate income tax or the minimum corporate income tax.**

- A) As Ms. J's supervisor, what will be your advice? (2%) (2015 Bar Question)**

SUGGESTED ANSWER:

As Ms. J's supervisor, I will advise that KKK Corp. should prepare payment for the regular corporate income tax and not the minimum corporate income tax. Under the Tax Code, minimum corporate income tax is only applicable beginning on the fourth taxable year following the commencement of business operation (Sec. 27(e)(1), NIRC).

B) What are the distinctions between regular corporate income tax and minimum corporate income tax? (3%) (2015 Bar Question)

SUGGESTED ANSWER:

The distinctions between regular corporate income tax and the minimum corporate income tax are the following:

1. As to taxpayer: Regular corporate income tax applies to all corporate taxpayers; while minimum corporate income tax applies to domestic corporations and resident foreign corporations.
2. As to tax rate: Regular corporate income tax is 30%; while minimum corporate income tax is 2%.
3. As to tax base: Regular corporate income tax is based on the net taxable income; while minimum corporate income tax is based on gross income.
4. As to period of applicability: Regular corporate income tax is applicable once the corporation commenced its business operation, while minimum corporate income tax is applicable beginning on the fourth taxable year following the commencement of business operation.
5. As to imposition: The minimum corporate income tax is imposed whenever it is greater than the regular corporate income tax of the corporation (Sec. 27(A) and (E), NIRC; RR No. 9-98).

- 89. Mirador, Inc., a domestic corporation, filed its Annual Income Tax Return for its taxable year 2008 on April 15, 2009. In the Return, it reflected an income tax overpayment of P1,000,000.00 and indicated its choice to carry-over the overpayment as an automatic tax credit against its income tax liabilities in subsequent years.**

On April 15, 2010, it filed its Annual Income Tax Return for its taxable year 2009 reflecting a taxable loss and an income tax overpayment for the current year 2009 in the amount of P500,000.00 and its income tax overpayment for the prior year 2008 of P1,000,000.00.

In its 2009 Return, the corporation indicated its option to claim for refund the total income tax overpayment of P1,500,000.00

Choose which of the following statements is correct. (2010 Bar Question)

- A) Mirador, Inc. may claim as refund the total income tax overpayment of P1,500,000.00 reflected in its income tax return for its taxable year 2009;**
- B) It may claim as refund the amount of P500,000.00 representing its income tax overpayment for its taxable year 2009; or**
- C) No amount may be claimed as refund. Explain the basis of your answer. (5%)**

SUGGESTED ANSWER:

B. It may claim as refund the amount of P500,000 representing its income tax overpayment for its taxable year 2009.

Since the taxpayer has opted to carry-over the P1 million overpaid income tax for taxable year 2008, said option is considered irrevocable and no application for cash refund shall be allowed for it. (Sec. 76, NIRC; *CIR v. Bank of the Philippine Island*, G.R. No. 178490, July 7, 2009).

2. Branch Profit Remittance Tax

3. Itemized deductions vs. Optional Standard Deductions

- 90. Political campaign contributions are NOT deductible from gross income: (2011 Bar Question)**

- A) if they are not reported to the Commission on Elections.
- B) if the candidate supported wins the election because of possible corruption.
- C) since they do not help earn the income from which they are to be deducted.
- D) since such amounts are not considered as income of the candidate to whom given.

SUGGESTED ANSWER C

4. Taxation of passive income

5. Taxation of capital gains

91. Anktryd, Inc., bought a parcel of land in 2009 for P7 million as part of its inventory of real properties. In 2010, it sold the land for P12 million which was its zonal valuation. In the same year, it incurred a loss of P6 million for selling another parcel of land in its inventory. These were the only transactions it had in its real estate business. Which of the following is the applicable tax treatment? (2011 Bar Question)
- A) Anktryd shall be subject to a tax of 6% of P12 million.
 - B) Anktryd could deduct its P6 million loss from its P5 million gain.
 - C) Anktryd's gain of P5 million shall be subject to the holding period.
 - D) Anktryd's P6 million loss could not be deducted from its P5 million gain.

SUGGESTED ANSWER: B

b. Income tax on non-resident foreign corporations

92. Zygomite Minerals, Inc., a corporation registered and holding office in Australia, not operating in the Philippines, may be subject to Philippine income taxation on: (2011 Bar Question)
- A) gains it derived from sale in Australia of an ore crusher it bought from the Philippines with the proceeds converted to pesos.
 - B) gains it derived from sale in Australia of shares of stock of Philex Mining Corporation, a Philippine corporation.
 - C) dividends earned from investment in a foreign corporation that derived 40% of its gross income from Philippine sources.
 - D) interests derived from its dollar deposits in a Philippine bank under the Expanded Foreign Currency Deposit System.

SUGGESTED ANSWER: B

93. Aplets Corporation is registered under the laws of the Virgin Islands. It has extensive operations in Southeast Asia. In the Philippines, Its products are imported and sold at a mark-up by its exclusive distributor, Kim's Trading, Inc. The BIR compiled a record of all the imports of Kim from Aplets and imposed a tax on Aplets net income derived from its exports to Kim. Is the BIR correct? (2011 Bar Question)
- A) Yes. Aplets is a non-resident foreign corporation engaged in trade or business in the Philippines.
 - B) No. The tax should have been computed on the basis of gross revenues and not net income.
 - C) No. Aplets is a non-resident foreign corporation not engaged in trade or business in the Philippines.

- D) Yes. Aplets is doing business in the Philippines through its exclusive distributor Kim's Trading, Inc.

SUGGESTED ANSWER: C

c. Income tax on special corporations

1. Proprietary educational institutions and hospitals

94. What is the rule on the taxability of income that a government educational institution derives from its school operations? Such income is: (2011 Bar Question)
- A) subject to 10% tax on its net taxable income as if it is a proprietary educational institution.
 - B) Exempt from income taxation if it is actually, directly, and exclusively used for educational purposes.
 - C) subject to the ordinary income tax rates with respect to incomes derived from educational activities.
 - D) Exempt from income taxation in the same manner as government-owned and controlled corporations.

SUGGESTED ANSWER: B

95. Lualhati Educational Foundation, Inc., a stock educational institution organized for profit, decided to lease for commercial use a 1,500 sq. m. portion of its school. The school actually, directly, and exclusively used the rents for the maintenance of its school buildings, including payment of janitorial services. Is the leased portion subject to real property tax? (2011 Bar Question)
- A) Yes, since Lualhati is a stock and for profit educational institution.
 - B) No, since the school actually, directly, and exclusively used the rents for educational purposes.
 - C) No, but it may be subject to income taxation on the rents it receives.
 - D) Yes, since the leased portion is not actually, directly, and exclusively used for educational purposes.

SUGGESTED ANSWER: D

96. A group of philanthropists organized a non-stock, non-profit hospital for charitable purposes to provide medical services to the poor. The hospital also accepted paying patients although none of its income accrued to any private individual; all income were plowed back for the hospital's use and not more than 30% of its funds were used for administrative purposes.

Is the hospital subject to tax on its income? If it is, at what rate? (2013 Bar Question)

SUGGESTED ANSWER:

Yes. Although a non-stock, non-profit hospital organized for charitable purposes, is generally exempt from income tax, it becomes taxable on income derived from activities conducted for profit. Services rendered to paying patients are considered activities conducted for profit which are subject to income tax, regardless of the disposition of said income. The hospital is subject to income tax of 10% of its net income derived from the paying patients considering that the income earned appears to be derived solely from hospital-related activities (*CIR v. St. Luke's Medical Center, Inc.*, G.R. Nos. 195909 & 195960, September 26, 2012).

ALTERNATIVE ANSWER:

No. The hospital is organized exclusively for charitable purposes and since no part of its income inures to the benefit of any private individual, it should not lose its exempt character by simply admitting paying patients. the revenues derived from paying patients are necessary to maintain “its head above the waters” and allow it to sustain its charitable activities (*CIR v. CA, CTA, & YMCA*, G.R. No. 124043, 298 SCRA 83, October 14, 1998).

2. **Non-profit hospitals**
 3. **Government-owned or controlled corporations, agencies, or instrumentalities**
 4. **Domestic depository banks (foreign currency deposit units)**
 5. **International carriers doing business in the Philippines**
 6. **Off-shore banking units**
 7. **Resident foreign depository banks (foreign currency deposit units)**
 8. **Regional or area headquarters and regional operating headquarters of multinational companies**
- d. Improperly Accumulated Earnings Tax (IAET)**

97. The capitalization rules may be resorted to by the BIR in order to compel corporate taxpayers to declare dividends to their stockholders regularly. (2010 Bar Question)

SUGGESTED ANSWER:

TRUE. [Sec 244, NIRC; Rev Reg. No. 2-2001 implementing Sec 29, NIRC]

98. In 2009, Spratz, Inc.’s net profit before tax was P35 million while its operating expenses was P31 million. In 2010, its net profit before tax was P40 million and its operating expenses was P38 million. It did not declare dividends for 2009 and 2010. And it has no proposed capital expenditures for 2011 and the immediate future. May Spratz be subject to the improperly accumulated tax on its retained profits for 2009 and 2010? (2011 Bar Question)
- A) Yes, since the accumulated amounts are reasonable for operations in relation to what it usually needed annually.
 - B) Yes, since the accumulation is not reasonably necessary for the immediate needs of the business.
 - C) No, because there is no showing that the taxpayer's 2009 and 2010 net profit before tax exceeded its paid-up capital.
 - D) No, because the taxpayer is not shown to be a publicly-listed corporation, a bank, or an insurance company.

SUGGESTED ANSWER: B

99. In its final adjustment return for the 2010 taxable year, ABC Corp. had excess tax credits arising from its over-withholding of income payments. It opted to carry over the excess tax credits to the following year. Subsequently, ABC Corp. changed its mind and applied for a refund of the excess tax credits.

Will the claim for refund prosper? (6%) (2013 Bar Question)

SUGGESTED ANSWER:

No. The claim for refund will not prosper. While the law gives the taxpayer an option whether to carry-over or claim as refund the excess tax credits shown on its final adjustment return, once the option to carry-over has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. (Section 76, NIRC; *CIR v. PL Management International Phils., Inc.*, April 4, 2011, 647 SCRA 72 (2011) G.R. No. 160949).

e. Exemptions from tax on corporations

100. Ms. C, a resident citizen, bought ready-to-wear goods from Ms. B, a non-resident citizen.

If Ms. B is an alien individual and the goods were produced in her factory in China, is Ms. B's income from the sale of the goods to Ms. C taxable in the Philippines? Explain. (2%) (2015 Bar Question)

SUGGESTED ANSWER:

Yes, assuming the sale was made in the Philippines. Gains, profits and income from the sale of personal property produced by the taxpayer without and sold within the Philippines, shall be treated as derived partly from sources within and partly from sources without the Philippines (Sec. 42E, NIRC). B, being a non-resident citizen, is taxable on income from sources within the Philippines.

f. Tax on other business entities: general partnerships, general professional partnerships, co-ownerships, joint ventures, and consortia

101. XYZ Law Offices, a law partnership in the Philippines and a VAT registered taxpayer, received a query by e-mail from Gainsburg Corporation, a corporation organized under the laws of Delaware, but the e-mail came from California where Gainsburg has an office. Gainsburg has no office in the Philippines and does no business in the Philippines.

XYZ Law Offices rendered its opinion on the query and billed Gainsburg US\$1,000 for the opinion. Gainsburg remitted its payment through Citibank which converted the remitted US\$1,000 to pesos and deposited the converted amount in the XYZ Law Offices account.

What are the tax implications of the payment to XYZ Law Offices in terms of VAT and income taxes? (7%) (2013 Bar Question)

SUGGESTED ANSWER:

The payment to XYZ Law Offices by Gainsburg Corporation is subject to VAT and income tax in the Philippines.

For VAT purposes, the transaction is a zero-rated sale of services where the output tax is zero percent and XYZ is entitled to claim as refund or tax credit certificate the input taxes attributable to the zero-rated sale. The services were rendered to a nonresident person, engaged in business outside the Philippines, which services are paid for in foreign currency inwardly remitted through the banking system, thereby making the sale of services subject to tax at zero-rate. (Section 108(B)(2), NIRC).

For income tax purposes, the compensation for services is part of the gross income of the law partners professional partnership are not considered corporations. Therefore, the net income of the partnership whether distributed or not will be declared by the partners as part of their gross income who are to pay the income tax thereon in their individual capacity. (Section 26, NIRC).

102. Keyrand, Inc., a Philippine corporation, sold through the local stock exchange 10,000 PLDT shares that it bought 2 years ago. Keyrand sold the shares for P2 million and realized a net gain of P200,000.00. How shall it pay tax on the transaction? (2011 Bar Question)

- A) It shall declare a P2 million gross income in its income tax return, deducting its cost of acquisition as an expense.
- B) It shall report the P200,000.00 in its corporate income tax return adjusted by the holding period.
- C) It shall pay 5% tax on the first P100,000.00 of the P200,000.00 and 10% tax on the remaining P100,000.00.
- D) It shall pay a tax of one-half of 1% of the P2 million gross sales.

SUGGESTED ANSWER: D

103. A resident Filipino citizen (not a dealer in securities) sold shares of stocks of a domestic corporation that are listed and traded in the Philippine Stock Exchange. (2012 Bar Question)

- A) The sale is exempt from income tax but subject to the 6/10 of 1% stock transaction tax;
- B) The sale is subject to income tax computed at the graduated income tax rates of 5% to 32% on net taxable income;
- C) The sale is subject to the stock transaction tax and income tax;
- D) The sale is both exempt from the stock transaction tax and income tax.

SUGGESTED ANSWER:

The sale is exempt from income tax but subject to the 1/2 of 1% stock transaction tax Section 127, NIRC.

104. A general professional partnership (GPP) is one: (2012 Bar Question)

- A) That is registered as such with the Securities and Exchange Commission and the Bureau of Internal Revenue;
- B) That is composed of individuals who exercise a common profession;
- C) That exclusively derives income from the practice of the common profession;
- D) That derives professional income and rental income from property owned by it.

SUGGESTED ANSWER:

C) Section 26, NIRC.

[Note: The question is unfair because it gives an initial impression that the examiner is asking the statement which best characterizes a GPP but the real question is found after the enumeration of the choices which might not be noticed by the examinee.]

105. Which statement is correct? A non-stock, non-profit charitable association that sells its idle agricultural property is: (2012 Bar Question)

- A) Not required to file an income tax return nor pay income tax on the transaction to the BIR, provided the sales proceeds are invested in another real estate during the year;
- B) Required to pay the 6% capital gains tax on the gross selling price of fair market value, whichever is higher;
- C) Mandated to pay the 30% regular corporate income tax on the gain from sale;
- D) Required to withhold the applicable expanded withholding tax rate on the transaction and remit the same to the BIR.

SUGGESTED ANSWER:

B) Required to pay the 6% capital gains tax on the gross selling price of fair market value, whichever is higher Section 30, NIRC.

106. ABS Corporation is a PEZA-registered export enterprise which manufactures cameras and sells all its finished products abroad. Which statement is NOT correct? (2012 Bar Question)

- A) ABS Corporation is subject to the 5% final tax on gross income earned, in lieu of all national and local taxes;
- B) ABS Corporation is exempt from the 30% corporate income tax on net income, provided it pays value added tax;
- C) ABS Corporation is subject to the 30% corporate income tax on net income;
- D) ABS Corporation is exempt from all national and local taxes, except real property tax.

SUGGESTED ANSWER:

ABS Corporation is subject to the 5% final tax on gross income earned, in lieu of all national and local taxes Sections 23 & 24, RA 7916.

7. Filing of returns and payment

107. A corporation may change its taxable year to calendar or fiscal year in filing its annual income tax return, provided: (2011 Bar Question)

- A) it seeks prior BIR approval of its proposed change in accounting period.
- B) it simultaneously seeks BIR approval of its new accounting period.
- C) it should change its accounting period two years prior to changing its taxable year.
- D) its constitution and by-laws authorizes the change.

SUGGESTED ANSWER: A

108. In 2007, spouses Renato and Judy Garcia opened peso and dollar deposits at the Philippine branch of the Hong Kong Bank in Manila. Renato is an overseas worker in Hong Kong while Judy lives and works in Manila. During the year, the bank paid interest income of P10,000 on the peso deposit and US\$1,000 on the dollar deposit. The bank withheld final income tax equivalent to 20% of the entire interest income and remitted the same to the BIR.

- A) Are the interest incomes on the bank deposits of spouses Renato and Judy Garcia subject to income tax? Explain. (4%) (2008 Bar Question)

SUGGESTED ANSWER:

Yes. The interest income from the peso bank deposit is subject to 20% final withholding tax. The interest income from the dollar deposit is subject to 7.5% final withholding tax but only on the portion of the interest attributable to Judy or \$500. The interest on the dollar deposit attributable to Renato, a non-resident, is exempt from income tax. (Section 24(B)(1), NIRC).

- B) Is the bank correct in withholding the 20% final tax on the entire interest income? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

No. Only the interest income on a peso deposit is subject to 20%. The interest income from a dollar deposit is subject to 7.5% if the earner is a resident individual. (Section 24(B), NIRC).

a. Period within which to file income tax return of individuals and corporations

b. Substituted Filing

109. On April 30, 2015, Daryl resigned as the production manager of 52nd Avenue, a television studio owned by SSS Entertainment Corporation. 52nd Avenue issued to her a Certificate of Withholding Tax on Compensation (BIR Form No. 2316), which showed that the tax withheld from her compensation was equal to her income tax due for the period from January 2015 to April 30 2015.

A month after her resignation, Daryl put up her own studio and started producing short films. She was able to earn a meager income from her short films but did not keep record of her production expenses.

Is Daryl qualified for substituted filing for taxable year 2015? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

No. Following the relevant revenue issuance, only an individual receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer, shall qualify for substituted filing of income tax return [*Revenue Regulations No. 3-2002*]. Daryl, within the same calendar year, derived income from producing short films; thus, she did not receive purely compensation income for calendar year 2015. Accordingly, the amount withheld from her compensation income is not equal to the income tax due on his aggregate taxable income during the taxable year.

8. Withholding taxes

a. Concept

110. Weber Realty Company which owns a three-hectare land in Antipolo entered into a Joint Venture Agreement (JVA) with Prime Development Company for the development of said parcel of land. Weber Realty as owner of the land contributed the land to the Joint Venture and Prime Development agreed to develop the same into a residential subdivision and construct residential houses thereon. They agreed that they would divide the lots between them.

Does the JVA entered into by and between Weber and Prime create a separate taxable entity? Explain briefly.

Are the allocation and distribution of the saleable lots to Weber and prime subject to income tax and to expanded withholding tax? Explain briefly.

Is the sale by Weber or Prime of their respective shares in the saleable lots to third parties subject to income tax and to expanded withholding tax? Explain briefly. (2007 Bar Question)

SUGGESTED ANSWER:

The JVA entered into between Weber and Prime does not create a separate taxable entity. The joint venture is formed for the purpose of undertaking construction projects; hence, is not considered as a corporation for income tax purposes. (Section 22(B), NIRC).

[NOTE: this exception may only be claimed if both Weber and Prime are licensed real estate contractors; otherwise the JV will not qualify as an exception to the definition of “Corporation” under Section 22 (B). However, for there to be a joint venture, there must be sharing of profits. Persons who contribute property or funds for a common enterprise and agree to share the gross returns of that enterprise in proportion to their contribution, but who severally retain the title to their respective contribution, are not thereby rendered partners. *Pascual v CIR*, G.R. No. 78133 October 18, 1988]

- 111. ABCD Corporation (ABCD) is a domestic corporation with individual and corporate shareholders who are residents of the United States. For the 2nd quarter of 1983, these U.S.- based individual and corporate stockholders received cash dividends from the corporation. The corresponding withholding tax on dividend income — 25% for individual and 30% for corporate non-resident stockholders — was deducted at source and remitted to the BIR.**

On May 15, 1984, ABCD filed with the Commissioner of Internal Revenue a formal claim for refund, alleging that under the RP-US Tax Treaty, the deduction withheld at source as tax on dividends earned was fixed at 25% of said income. Thus, ABCD asserted that it overpaid the withholding tax due on the cash dividends given to its non-resident stockholders in the U.S. the Commissioner denied the claim.

On January 17, 1985, ABCD filed a petition with the Court of Tax Appeals (CTA) reiterating its demand for refund.

Does ABCD Corporation have the legal personality to file the refund on behalf of its non-resident stockholders? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes, withholding agents is not only an agent of the government but is also an agent of the taxpayer/income earner. Hence, ABCD is also an agent of the beneficial owner of the dividends with respect to the actual payment of the tax to the government, such authority may reasonably be held to include the authority to file a claim for refund and to bring an action for recovery of such for refund and to bring an action for recovery of such claim (*CIR v. Procter & Gamble*, 204 SCRA 377, {1991})

b. Creditable vs. withholding taxes

c. Duties of a withholding agent

- 112. Nutrition Chippy Corporation gives all its employees (rank and file, supervisors and managers) one sack of rice every month valued at P800 per sack. During an audit investigation made by the Bureau of Internal Revenue (BIR), the BIR assessed the company for failure to withhold the corresponding withholding tax on the amount equivalent to the one sack of rice received by all the employees, contending that the sack of rice is considered as additional compensation for the rank and file employees and additional fringe benefit for the supervisions and managers. Therefore, the value of the one sack of rice every month should be considered as part of the compensation of the rank and file subject to tax. For the supervisors and managers, the employer should be the one assessed pursuant to Section 33 (a) of the NIRC. Is there a legal basis for the assessment made by the BIR? Explain your answer. (2007 Bar Question)**

SUGGESTED ANSWER:

There is no legal basis for the assessment. The one sack of rice given to the supervisors and managers are considered *de minimis* fringe benefits considering that the value per sack does not exceed P1,000, hence exempted from the fringe benefits tax. (Section 33, NIRC as implemented by RR. No. 10-2000)

113. A dealer in securities sold unlisted shares of stocks of a domestic corporation in 2010 and derived a gain of P1 Million therefrom. The gain is: (2012 Bar Question)

- A) Taxable at 30% regular corporate income tax based on net taxable income;
- B) Taxable at 5%/10% capital gains tax based on net capital gain;
- C) Taxable at 1/2 of 1% stock transaction tax based on the gross selling price or fair market value, whichever is higher
- D) Exempt from income tax

SUGGESTED ANSWER:

A) Taxable at 30% regular corporate income tax based on net taxable income Section 22 (U) in relation to Section 27, NIRC.

114. Interest income of a domestic commercial bank derived from a peso loan to a domestic corporation in 2010 is: (2012 Bar Question)

- A) Subject to the 30% income tax based on its net taxable income;
- B) Subject to the 20% final withholding tax;
- C) Subject to the 7.5% final withholding tax;
- D) Subject to 10% final withholding tax.

SUGGESTED ANSWER:

A) Subject to the 30% income tax based on its net taxable income Section 27 (A).

115. The interest expense of a domestic corporation on a bank loan in connection with the purchase of a production equipment: (2012 Bar Question)

- A) Is not deductible from gross income of the borrower-corporation;
- B) Is deductible from the gross income of the borrower-corporation during the year or it may be capitalized as part of cost of the equipment;
- C) Is deductible only for a period of five years from date of purchase;
- D) Is deductible only if the taxpayer uses the cash method of accounting.

SUGGESTED ANSWER:

B) Is deductible from the gross income of the borrower-corporation during the year or it may be capitalized as part of cost of the equipment. Section 34(B)(3), NIRC.

116. The "all events test" refers to: (2012 Bar Question)

- A) A person who uses the cash method where all sales have been fully paid by the buyers thereof;
- B) A person who uses the installment sales method, where the full amount of consideration is paid in full by the buyer thereof within the year of sale;
- C) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and the amount thereof could be determined with reasonable accuracy;
- D) A person who uses the completed method, whereby the construction project has been completed during the year the contract was signed.

SUGGESTED ANSWER:

C) A person who uses the accrual method, whereby an expense is deductible for the taxable year in which all the events had occurred which determined the fact of the liability and the amount thereof could be determined with reasonable accuracy.

The all-events test requires the right to income or liability be fixed, and the amount of such income or liability be determined with reasonable accuracy. The test does not demand that the amount of income or liability be known absolutely, only that a taxpayer has at his disposal the information necessary to compute the amount with reasonable accuracy. (*Commissioner of Internal Revenue vs. Isabela Cultural Corporation*, G.R. No. 172231, February 12, 2007)

C. Transfer taxes

1. Estate tax

117. State the conditions for allowing the following as deductions from the gross estate of a citizen or resident alien for the purpose of imposing estate tax:

Claims against the estate (2%) (2015 Bar Question)

SUGGESTED ANSWERS:

In order that claims against the estate may be allowed as deductions from the gross estate of a citizen or resident alien for purposes of imposing the estate tax, the law requires that at the time the indebtedness was incurred, the debt instrument was duly notarized. In addition, if the loan was contracted within three (3) years before the death of the decedent, the executor or administrator shall submit a statement showing the disposition of the proceeds of the loan (Sec. 86(a)(1)(c), NIRC).

118. In the settlement of the estate of Mr. Barbera who died intestate, his wife renounced her inheritance and her share of the conjugal property in favor of their children. The BIR determined that there was a taxable gift and thus assessed Mrs. Barbera as a donor.

Was the BIR correct? (7%) (2013 Bar Question)

SUGGESTED ANSWER:

The BIR is correct that there was a taxable gift but only insofar as the renunciation of the share of the wife in the conjugal property is concerned. This is a transfer of property without any consideration which takes effect during the lifetime of the transferor/wife and thus qualifies as a taxable gift. (RR No. 2-2003).

But the renunciation of the wife's share in the inheritance during the settlement of the estate is not a taxable gift considering that the property is automatically transferred to the other heirs by operation of law due to her repudiation of her inheritance. (BIR Ruling DA No. 333-07).

119. In 1999, Xavier purchased from his friend, Yuri, a painting for P500,000.00. The fair market value (FMV) of the painting at the time of the purchase was P1-million. Yuri paid all the corresponding taxes on the transaction. In 2001, Xavier died. In his last will and testament, Xavier bequeathed the painting, already worth P1.5- million, to his only son, Zandro. The will also granted Zandro the power to appoint his wife, Wilma, as successor to the painting in the event of Zandro's death. Zandro died in 2007, and Wilma succeeded to the property.

Should the painting be included in the gross estate of Zandro in 2007 and thus, be subject to estate tax? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No. The transmission from the first heir, legatee or donee in favor of another beneficiary, in accordance with the desire of the predecessor is an exempt transfer (Section 87, NIRC), Zandro has no control over the disposition of the property at the time of his death; hence, the estate tax which imposed the privilege of transmitting properties upon his death will not apply.

ALTERNATIVE ANSWER:

No. The property passes from Zandro to Wilma by virtue of the special power of appointment granted by Xavier. The law includes as part of the gross estate of the decedent a property passing under general (not special) power of appointment. The grantee of the power to appoint, Zandro, has no control over the disposition of the property because it is the desire of the grantor of the power that the property will go to a specific person. This being so, the painting should not be included in the gross estate of Zandro, hence, it is not subject to estate tax (Section 85(D), NIRC).

120. While driving his car to Baquio last month, Pedro Asuncion, together with his wife Assunta, and only son Jaime, met an accident that caused the instantaneous death of Jaime. The following day, Assunta also died in the hospital. The spouses and their son had the following assets and liabilities at the time of death :

Assunta	Jaime	
Exclusive	Conjugal	Exclusive
Cash		P10,000,000.00 P1,200,00.00
Cars		P2,000,000.00 500,000.00
Land		P5,000,000.00 2,000,000.00
Residential House		4,000,000.00
Mortgage Payable		2,500,000.00
Funeral Expenses		300,000.00

A) Is the Estate of Jaime Asuncion liable for estate tax? Explain. (4%) (2008 Bar Question)

SUGGESTED ANSWER:

A) No. The estate comprised of properties of only P1.2 million is not liable to any estate tax. The estate is entitled to a standard deduction of P1 million deductible from the gross estate without the benefit of substantiation, thereby placing the net estate at only P200,000. Under the graduated tax rates of the estate tax, a net estate of P200,000 is exempt. (Section 86(A)(5) and Section 84, NIRC)

B) Is vanishing deduction applicable to the Estate of Assunta Asuncion? Explain (4%) (2008 Bar Question)

SUGGESTED ANSWER:

B) Yes. The cash amount of P1.2 million transferred to his parents by his death is a property previously taxed on so far as that proportion attributable to his mother who died a day later is concerned. An estate tax is considered to have been paid in the previous estate of a return was filed even if there was no tax due in that return. The filing of a return is a means employed for the payment of the tax under the pay-as-you-file system. Considering that all the legal requirements of vanishing deduction are present, the estate of Assunta can validly claim the same. (Section 86, NIRC). (BAR 2008)

121. Don Sebastian, single but head of the family, Filipino, and resident of Pasig City, died intestate on November 15, 2009.

He left the following properties and interests:

House and lot (family home) in Pasig	P800,000
Vacation house and lot in Florida, USA	1,500,000
Agricultural land in Naic, Cavite which he inherited from his father	2,000,000
Car which is being used by his brother in Cavite	500,000
Proceeds of life insurance where he named his estate as irrevocable beneficiary	1,000,000
Household furniture and appliances	1,000,000
Claims against a cousin who has assets of liabilities of P100,000	P10,000 and 100,000
Shares of stock in ABC Corp, a domestic enterprise	100,000

The expenses and charges on the estate are as follows:

Funeral Expenses	P250,000
Legal fees for the settlement of the estate	500,000
Medical expenses of last illness	600,000
Claims against the estate	300,000

The compulsory heirs of Don Sebastian approach you and seek your assistance in the settlement of his estate for which they have agreed to the above-stated professional fees. Specifically, they request you to explain and discuss with them the following questions. You oblige:

- A) What are the properties and interests that should be included in the computation of the gross estate of the decedent? Explain. (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

All the properties and interests enumerated in the problem should be included in the gross estate of the decedent. The composition of the gross estate of the decedent who is a citizen of the Philippines includes all properties, real or personal, tangible or intangible, wherever situated and to the extent of the interest that he has thereon at the time of his death (Sec. 85, NIRC).

- B) What is the net taxable estate of the decedent? Explain. (2.5%) (2010 Bar Question)

SUGGESTED ANSWER:

The net taxable estate of the decedent is Php 3.7M. Under the TRAIN Law, funeral, judicial and medical expenses are no longer allowed. However, since Don Sebastian died in 2009 before TRAIN was enacted, his estate is still subject to pre-TRAIN tax laws. Hence, from the gross estate of Php 7.0M, the following deductions are allowed: (1) Funeral expenses of Php 200K which is the maximum allowed by law, (2) legal fees amounting to Php 500K; (3) medical expenses not to exceed Php 500K incurred one year prior to death and substantiated with receipts; (4) claims against the estate of Php 300K; (5) family home equivalent to its FMV (not to exceed Php 1.0M) of Php 800K and (6) standard deduction of Php 1.0M or a total allowable deduction of Php 3.3M. The claim against the cousin amounting to Php 100K although includible in the gross estate cannot be claimed as a deduction because the debtor is not yet declared insolvent. Likewise, the inherited property cannot give rise to a vanishing deduction for want of sufficient factual basis.

- C) When is the due date for filing and payment of the applicable tax return and tax? Are these dates extendible? If so, under what conditions or requirements? (2.5%) (2010 Bar Question)**

SUGGESTED ANSWER:

The tax return and the payment of the estate tax are both due within 1 year (TRAIN) from death. The filing of the return is extendible for a maximum period of 30 days under meritorious cases as maybe determined by the CIR. Whereas, the payment of the estate tax may also be extended when the CIR finds that the payment thereof would impose undue hardship upon the estate or any of the heirs. The period of extension to pay shall not exceed 5 years from death if the estate is settled through the courts or shall not exceed 2 years from death if settled extra-judicially. The CIR may require the executor or administrator or the beneficiary to furnish a bond in an amount not more than double the amount of the estate tax due. (Sec. 91, NIRC)

- D) If X, one of the compulsory heirs, renounces his share in the inheritance in favor of the other co-heirs, is there any tax implication of X's renunciation? What about the other coheirs? (2.5%) (2010 Bar Question)**

SUGGESTED ANSWER:

If the renunciation is a general renunciation (in favor of co-heirs in accordance with their respective interest in the inheritance), the law on accretion applies and the property waived is considered to pass through the other co-heirs by inheritance; hence, it has no tax implication. There is no donation of property because the property had never become the property of the donor. Such being the case, the renunciation is not subject to donor's tax. If it is not a general renunciation in favor of the other co-heirs, the heir renouncing his right is considered to have made a donation and the renunciation is subject to donor's tax. In both cases, however, the renunciation has no tax implication to the other co-heirs (BIR Ruling No. Da-(DT-039) 396-09, dated July 23, 2009).

a. Basic principles, concept, and definition

- 122. Don Fortunato, a widower, died in May, 2011. In his will, he left his estate of P100 million to his four children. He named his compadre, Don Eпитacio, to be the administrator of the estate. When the BIR sent a demand letter to Don Eпитacio for the payment of the estate tax, he refused to pay claiming that he did not benefit from the estate, he not being an heir. Forthwith, he resigned as administrator. As a result of the resignation, who may be held liable for the payment of the estate tax? (2011 Bar Question)**

- A) Don Eпитacio since the tax became due prior to his resignation.
- B) The eldest child who would be reimbursed by the others.
- C) All the four children, the tax to be divided equally among them.
- D) The person designated by the will as the one liable.

SUGGESTED ANSWER: C

b. Classification of decedent

c. Determination of gross and net estate

- 123. Tong Siok, a Chinese billionaire and a Canadian resident, died and left assets in China valued at P80 billion and in the Philippines assets valued at P20 billion. For Philippine estate tax purposes the allowable deductions for expenses, losses, indebtedness, and taxes, property previously taxed,**

transfers for public use, and the share of his surviving spouse in their conjugal partnership amounted to P15 billion. Tong's gross estate for Philippine estate tax purposes is: (2011 Bar Question)

- A) P20 billion.
- B) P5 billion.
- C) P100 billion.
- D) P85 billion.

SUGGESTED ANSWER: A

124. Jose Cerna, Filipino citizen, married to Maria Cerna, died in a vehicular accident in NLEX on July 10, 2007. The spouses owned, among others, a 100-hectare agricultural land in Sta. Rosa, Laguna with current fair market value of P20 million, which was subject matter of a Joint Venture Agreement about to be implemented with Star Land Corporation (SLC), a well-known real estate development company. He bought the said real property for P2 million fifty years ago. On January 5, 2008, the administrator of the estate and SLC jointly announced their big plans to start conversion and development of the agricultural lands in Sta. Rosa, Laguna, into first-class residential and commercial centers. As a result, the prices of real properties in the locality have doubled. The administrator of the Estate of Jose Cernan filed the estate tax return on January 9, 2008, by including in the gross estate the real property at P2 million. After 9 months, the BIR issued deficiency estate tax assessment, by valuing the real property at P40 million.

- A) Is the BIR correct in valuing the real property at P40 million? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

No. The value of the property for the estate tax purposes shall be the fair market value thereof at the time of death. (Section 88(B), NIRC)

- B) If you disagree, what is the correct value to be used for state tax purposes? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

The correct value to use for estate tax purposes is P20 million which is the current fair market value of the property at the time of the decedent's death. (Section 88(B), NIRC) (BAR 2008)

125. Mr. X, a Filipino residing in Alabama, U.S.A., died on January 2, 2013 after undergoing a major heart surgery. He left behind to his wife and two (2) kids several properties, to wit: (4%)

- (1) Family home in Makati City;
- (2) Condominium unit in Las Piñas City;
- (3) Proceeds of health insurance from Take Care, a health maintenance organization in the Philippines; and
- (4) Land in Alabama, U.S.A.

The following expenses were paid:

- (1) Funeral expenses;
- (2) Medical expenses; and
- (3) Judicial expenses in the testate proceedings.

What are the items that must be considered as part of the gross estate income of Mr. X? (2014 Bar Question)

SUGGESTED ANSWER:

Family home in Makati City, Condominium unit in Las Piñas City.

d. Deductions and exclusions from estate

126. Antonia Santos, 30 years old, gainfully employed, is the sister of Edgardo Santos. She died in an airplane crash. Edgardo is a lawyer and he negotiated with the airline company and insurance company and they were able to agree total settlement of P10 Million. This is what Antonia would have earned as somebody who was gainfully employed. Edgardo was her only heir.

Is the P10 Million subject to estate tax? Reason briefly.

Should Edgardo report the P10 Million as his income being Antonia's only heir? Reason briefly. (2007 Bar Question)

SUGGESTED ANSWER:

No. The estate tax is a tax on the privilege enjoyed by an individual in controlling the disposition of her properties to take effect upon her death. The P10M is not a property existing as of the time of the decedent's death; hence, it cannot be said that she exercised control over its disposition. Since the privilege to transmit the property is not exercised by the decedent, the estate tax cannot be imposed thereon. (*Definition of Estate Tax p.184, Vitug, Compendium of Tax Law and Jurisprudence, Third Revised Edition*).

127. Which among the following reduces the gross estate (not the net estate) of a citizen of the Philippines for purposes of estate taxation? (2011 Bar Question)

- A) Transfers for public use
- B) Property previously taxed
- C) Standard deduction of P1 million
- D) Capital of the surviving spouse

SUGGESTED ANSWER: D

128. Mr. X, a Filipino residing in Alabama, U.S.A., died on January 2, 2013 after undergoing a major heart surgery. He left behind to his wife and two (2) kids several properties, to wit: (4%)

- (1) Family home in Makati City;
- (2) Condominium unit in Las Piñas City;
- (3) Proceeds of health insurance from Take Care, a health maintenance organization in the Philippines; and
- (4) Land in Alabama, U.S.A.

The following expenses were paid:

- (1) Funeral expenses;
- (2) Medical expenses; and
- (3) Judicial expenses in the testate proceedings.

What are the items that may be considered as deductions from the gross estate? (2014 Bar Question)

SUGGESTED ANSWER :

(B) All those expenses are no longer allowed under TRAIN.

- 129. During his lifetime, Mr. Sakitin obtained a loan amounting to P10 million from Bangko Uno for the purchase of a parcel of land located in Makati City, using such property as collateral for the loan. The loan was evidenced by a duly notarized promissory note. Subsequently, Mr. Sakitin died. At the time of his death, the unpaid balance of the loan amounted to P2 million. The heirs of Mr. Sakitin deducted the amount of P2 million from the gross estate, as part of the "Claims against the Estate." Such deduction was disallowed by the Bureau of Internal Revenue (BIR) Examiner, claiming that the mortgaged property was not included in the computation of the gross estate. Do you agree with the BIR? Explain. (4%) (2014 Bar Question)**

SUGGESTED ANSWER:

Yes. Unpaid mortgages upon, or any indebtedness with respect to property are deductible from the gross estate only if the value of the decedent's interest in said property, undiminished by such mortgage or indebtedness, is included in the gross estate (Section 86(A)(1)(e)). In the instant case, the interest of the decedent in the property purchased from the loan where the said property was used as the collateral, was not included in the gross estate. Accordingly, the unpaid balance of the loan at the time of Mr. Sakitin's death is not deductible as "Claims against the Estate".

Medical expenses no longer allowed.

- 130. May a vanishing deduction be allowed in either or both of the estates? Explain. (3%) (2009 Bar Question)**

SUGGESTED ANSWER:

Vanishing deduction shall be allowed to the estate of Xavier but only to the extent of Ya of the property which is the portion acquired by gift (Section 100, NIRC), The donation took place within 5 years (1999 to 2001) from the death of Xavier; hence, there is a vanishing deduction. However, Zandro's estate will not be entitled to claim vanishing deduction because, first and foremost, the property previously taxed is not includable in his gross estate and second, even if it is includable, the present decedent died more than 5 years from the death of the previous decedent, and that a vanishing deduction is already claimed by the previous estate involving the same property.

- 131. State the conditions for allowing the following as deductions from the gross estate of a citizen or resident alien for the purpose of imposing estate tax: (2015 Bar Question)**

Medical expenses (2%)

SUGGESTED ANSWER:

The conditions for the allowance of medical expenses as deductions from the gross estate of a citizen or resident alien are: (1) The medical expenses must have been incurred within one (1) year before the death of the decedent; (2) That the medical expenses are duly substantiated with receipts; and (3) The total amount thereof, whether paid or unpaid, does not exceed P500,000.00 (Sec. 86A(6), NIRC).

e. Exemption of certain acquisitions and transmissions

f. Period for filing estate tax returns

- 132. Gerardo died on July 31, 2011. His estate tax return should be filed within: (2011 Bar Question)**

- A) six months from filing of the notice of death.
- B) sixty days from the appointment of an administrator.
- C) six months from the time he died on July 31, 2011.
- D) sixty days from the time he died on July 31, 2011.

SUGGESTED ANSWER: C

2. Donor's tax

133. The spouses Helena and Federico wanted to donate a parcel of land to their son Dondon who is getting married in December, 2011. The parcel of land has a zonal valuation of P420,000.00. What is the most efficient mode of donating the property? (2011 Bar Question)

- A) The spouses should first donate in 2011 a portion of the property valued at P20,000.00 then spread the P400,000.00 equally for 2012, 2013, 2014 and 2015.
- B) Spread the donation over a period of 5 years by the spouses donating P100,000.00 each year from 2011 to 2015.
- C) The spouses should each donate a P110,000.00 portion of the value of the property in 2011 then each should donate P100,000.00 in 2012.
- D) The spouses should each donate a P100,000.00 portion of the value of the property in 2011, and another P100,000.00 each in 2012. Then, in 2013, Helena should donate the remaining P20,000.00.

SUGGESTED ANSWER: C

134. Mr. Agustin, 75 years old and suffering from an incurable disease, decided to sell for valuable and sufficient consideration a house and lot to his son. He died one year later.

In the settlement of Mr. Agustin's estate, the BIR argued that the house and lot were transferred in contemplation of death and should therefore form part of the gross estate for estate tax purposes.

Is the BIR correct? (7%) (2013 Bar Question)

SUGGESTED ANSWER:

No. The house and lot were not transferred in contemplation of death therefore, these properties should not form part of the decedent's gross estate. To qualify as a transfer in contemplation of death, the transfer must be either without consideration or for insufficient consideration. Since the house and lot were sold for valuable and sufficient consideration, there is no transfer in contemplation of death for estate tax purposes. (Section 85(B), NIRC).

135. The spouses Jun and Elvira Sandoval purchased a piece of land for P5,000,000 and included their two (2) minor children as co-purchasers in the Deed of Absolute Sale. The Commissioner of Internal Revenue (CIR) ruled that there was an implied donation and assessed donors' taxes against the spouses.

Rule on the CIR's action. (1%) (2013 Bar Question)

- A) The CIR is wrong; a donation must be express.
- B) The CIR is wrong; financial capacity is not a requirement for a valid sale.
- C) The CIR is correct; the amount involved is huge and ultimately ends up with the children.
- D) The CIR is correct; there was animus donandi since the children had no financial capacity to be co-purchasers.

SUGGESTED ANSWER:

(D) The CIR is correct; there was animus donandi since the children had no financial capacity to be co-purchasers (*Spouses Evono v. Department of Finance*, et. al., CTA EB Case No. 705, June 4, 2012).

136. Miguel, a citizen and resident of Mexico, donated US\$1,000.00 worth of stocks in Barack Motors Corporation, a Mexican company, to his legitimate son, Miguelito, who is residing in the Philippines and about to be married to a Filipino girlfriend. Mexico does not impose any transfer tax of whatever nature on all gratuitous transfers of property.

Is Miguel entitled to the rule of reciprocity in order to be exempt from the Philippine donor's tax? Why or why not? (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No. The donation is not subject to the Philippine donor's tax because the donor is a non-resident alien and the property donated is a property not situated in the Philippines. The rule of reciprocity applies only if the property transferred by a non-resident alien is an intangible personal property situated in the Philippines. This is designed to reciprocate the exemption from donor's tax granted by a foreign country to Filipinos who are not residing thereat. (Section 104, NIRC).

137. Spouses Jose San Pedro and Clara San Pedro, both Filipino citizens, are the owners of a residential house and lot in Quezon City. After the recent wedding of their son, Mario, to Maria, the spouses donated said real property to them. At the time of donation, the real property has a fair market value of P2 million.

A) Are Mario and Maria subject to income tax the value of the real property donated to them? Explain. (4%) (2008 Bar Question)

SUGGESTED ANSWER:

No. The value of a property acquired by gift is an exclusion from gross income. (Section 32(B)(3), NIRC).

B) Are Jose and Clara subject to donor's tax? If so, how much is the taxable gift of each spouse and what rate shall be applied to the gift? Explain. (4%) (2008 Bar Question)

SUGGESTED ANSWER:

Yes. Jose and Clara are subject to donor's tax. Since the real property is either conjugal or absolute community property, each spouse is deemed to have made separate donation of one-half of the value of the property (*Tang Ho v. Board of Tax Appeals*, 97 Phil. 899 [1955]).

138. Mr. L owned several parcels of land and he donated a parcel each to his two children. Mr. L acquired both parcels of land in 1975 for P200,000.00. At the time of donation, the fair market value of the two parcels of land, as determined by the CIR, was P2,300,000.00; while the fair market value of the same properties as shown in the schedule of values prepared by the City Assessors was P2,500,000.00. What is the proper valuation of Mr. L's gifts to his children for the purpose of computing donor's tax? (3%) (2015 Bar Question)

SUGGESTED ANSWER:

The valuation of Mr. L's gift to his children is the fair market value (FMV) of the property at the time of donation. The FMV is the higher of the FMV as determined by the Commissioner or the FMV as shown in the schedule of values fixed by the provincial and city assessors. In this case, for the purpose of computing donor's tax, the proper valuation is the value prepared by the City Assessors amounting to P2,500,000.00 because it is higher than the FMV determined by the CIR (Sec. 102 in relation to Sec. 88(B), NIRC).

a. Basic principles, concept, and definition

139. CMI School, Inc., a non-stock, non-profit corporation, donated its three parcels of idle land situated in the Municipality of Cuyapo, Nueva Ecija to SLC University, another non-stock, non-profit corporation, in recognition of the latter's contribution to and participation in the spiritual and educational development of the former.

A) Is CMI School, Inc., liable for the payment of donor's tax? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

No. Gifts made by a resident in favor of an educational corporation or institution shall be exempt from donor's tax [Section 101(A)(3), 1997 NIRC, as amended]. Considering that SLC University is a non-stock, non-profit corporation, and the property donated was made by a resident, then, such exemption under the law applies to the present case.

B) If SLC University later sells the three parcels of idle land to Puregold Supermarket, Inc., a stock corporation, will SLC University be liable for capital gains tax? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

Yes. The gain presumed to have been realized on the sale, exchange or disposition of lands and/or buildings which are not actually used in the business of a corporation and are treated as capital assets shall be subject to capital gains tax [Section 27(D)(5), 1997 NIRC, as amended]. Likewise, Section 30 of the NIRC subjects to income tax (capital gains tax) all income from properties, real or personal, or from any activity conducted for profit, irrespective of the disposition of the income, by all tax exempt corporations.

C) If SLC University donates the three parcels of idle land in favor of the Municipality of Cuyapo, Nueva Ecija, will SLC University be liable for donor's tax? Explain your answer. (2.5%) (2017 Bar Question)

SUGGESTED ANSWER:

No. Gifts made by a resident to any political subdivision of the National Government shall be exempt from donor's tax [Section 101(A)(2), 1997 NIRC, as amended].

b. Requisites of a valid donation

140. In 2011, Solar Computer Corporation (Solar) purchased a proprietary membership share covered by Membership Certificate No. 8 from the Mabuhay Golf Club, Inc.. for P500,000.00. On December 27, 2012, it transferred the same to David, its American consultant, to enable him to avail of the facilities of the Club. David executed a Deed of Declaration of Trust and Assignment of Shares wherein he acknowledged the absolute ownership of Solar over the share; that the

assignment was without any consideration; and that the share was placed in his name because the Club required it to be done. In 2013, the value of the share increased to P800,000.00

Is the said assignment a “gift” and, therefore, subject to gift tax? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

No. The transfer is not a taxable donation because there is no divestment of ownership by the transferor. The purpose of the transfer is simply to allow David to avail of the facilities of the Club. The execution of a “Deed of Declaration of Trust and Assignment of Shares” where the absolute ownership by Solar of the share is acknowledged would show that there is no relinquishment of ownership by Solar. The transfer being merely a transfer in form but not in substance, the same is not subject to gift tax.

c. Transfers which may be constituted as donation

141. Mr. De Sarapen is a candidate in the upcoming Senatorial elections. Mr. De Almacen, believing in the sincerity and ability of Mr. De Sarapen to introduce much needed reforms in the country, contributed P500,000.00 in cash to the campaign chest of Mr. De Sarapen. In addition, Mr. De Almacen purchased tarpaulins, t-shirts, umbrellas, caps and other campaign materials that he also donated to Mr. De Sarapen for use in his campaign. Is the contribution of cash and campaign materials subject to donor’s tax? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

The Tax Code provides that any contribution in cash or in kind to any candidate, political party or coalition of parties for campaign purposes shall be governed by the Election Code (Section 99(C), NIRC). On the other hand, the Omnibus Election provides, that any provision of the law to the contrary notwithstanding, any contribution in cash or in kind to any candidate or political party or coalition of parties for campaign purposes, duly reported to the Commission shall not be subject to any payment of gift tax (Section 13, RA 7166). Hence, the contributions will be exempt from donor’s tax if they are duly reported to the Commission. Otherwise, the contributions will be subject to donor’s tax.

1. Transfer of property for insufficient consideration

142. ABC Corporation sold a real property in Malolos, Bulacan to XYZ Corporation. The property has been classified as residential and with a zonal valuation of P1,000 per square meter. The capital gains tax was paid based on the zonal value. The Revenue District Officer (RDO), however, refused to issue the Certificate Authorizing Registration for the reason that based on his ocular inspection the property should have a higher zonal valuation determined by the Commissioner of Internal Revenue because the area is already a commercial area. Accordingly, the RDO wanted to make a recomputation of the taxes due by using the fair market value appearing in a nearby bank’s valuation list which is practically double the existing zonal value. The RDO also wanted to assess a donor’s tax on the difference between the selling price based on the zonal value and the fair market value appearing in a nearby bank’s valuation list.

Should the difference in the supposed taxable value be legally subject to donor’s tax? Reason briefly. (2007 Bar Question)

SUGGESTED ANSWER:

No. The difference in the supposed taxable value cannot be legally subject to the donor's tax, because the use of a fair market value other than that prescribed by the Tax Code is not allowed for computing any internal revenue tax. (Section 6(E), NIRC).

ALTERNATIVE ANSWER:

The difference in value is not subject to donor's tax, because the sale is not for an insufficient consideration. A deemed gift subject to tax arises only if a tax is avoided as a result of selling a property at a price lower than its fair market value. In a sale subject to the 6% capital gains tax, the tax is always based on the gross selling price or fair market value, whichever is higher, and therefore, the seller cannot avoid any tax by selling his property below its fair market value. This means that the deemed gift provision provided for under the Tax Code will not apply to a sale of real property subject to the 6% capital gains tax. (Section 100, NIRC).

2. Condonation/remission of debt

3. Bona fide arms-length transfers

d. Determination of gross gift

e. Exemption of gifts from donor's tax

143. A non-stock, non-profit school always had cash flow problems, resulting in failure to recruit well-trained administrative personnel to effectively manage the school. In 2010, Don Leon donated P100 million pesos to the school, provided the money shall be used solely for paying the salaries, wages, and benefits of administrative personnel. The donation represents less than 10% of Don Leon's taxable income for the year. Is he subject to donor's taxes? (2011 Bar Question)

- A) No, since the donation is actually, directly, and exclusively used for educational purposes.
- B) Yes, because the donation is to be wholly used for administration purposes.
- C) Yes, since he did not obtain the requisite NGO certification before he made the donation.
- D) No, because the donation does not exceed 10% of his taxable income for 2010.

SUGGESTED ANSWER: B

144. (20) Exempted from donor's taxation are gifts made: (2011 Bar Question)

- A) for the use of the barangay.
- B) in consideration of marriage.
- C) to a school which is a stock corporation.
- D) to a for-profit government corporation.

SUGGESTED ANSWER: A

145. Celia donated P110,000.00 to her friend Victoria who was getting married. Celia gave no other gift during the calendar year. What is the donor's tax implication on Celia's donation? (2011 Bar Question)

- A) The P100,000.00 portion of the donation is exempt since given in consideration of marriage.
- B) A P10,000.00 portion of the donation is exempt being a donation in consideration of marriage.
- C) Celia shall pay a 30% donor's tax on the P110,000.00 donation.
- D) The P100,000.00 portion of the donation is exempt under the rate schedule for donor's tax.

SUGGESTED ANSWER: C

146. Levox Corporation wanted to donate P5 million as prize money for the world professional billiard championship to be held in the Philippines. Since the Billiard Sports Confederation of the Philippines does not recognize the event, it was held under the auspices of the International Professional Billiards Association, Inc. Is Levox subject to the donor's tax on its donation? (2011 Bar Question)

- A) No, so long as the donated money goes directly to the winners and not through the association.
- B) Yes, since the national sports association for billiards does not sanction the event.
- C) No, because it is donated as prize for an international competition under the billiards association.
- D) Yes, but only that part that exceeds the first P100,000.00 of total Levox donations for the calendar year.

SUGGESTED ANSWER: B

D. Value-Added Tax (VAT)

147. Which statement is FALSE under the VAT law? (2012 Bar Question)

- A) A VAT-registered person will be subject to VAT for his taxable transactions, regardless of his gross sales or receipts;
- B) A person engaged in trade or business selling taxable goods or services must register as a VAT person, when his gross sales or receipts for the year 2011 exceed P3 Million;
- C) A person who issued a VAT-registered invoice or receipt for a VAT-exempt transaction is liable to the 12% VAT as a penalty for the wrong issuance thereof;
- D) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received.

SUGGESTED ANSWER:

D) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received Section 236(G)(1)(b), NIRC.

148. In June 2013, DDD Corp., a domestic corporation engaged in the business of leasing real properties in the Philippines, entered into a lease agreement of a residential house and lot with EEE, Inc., a non-resident foreign corporation. The residential house and lot will be used by officials of EEE, Inc. during the visit to the Philippines. The lease agreement was signed by representatives from DDD Corp. and EEE, Inc. in Singapore. DDD Corp did not subject the said lease to VAT believing that it was not a domestic service contract.

Was DDD Corp. correct? Explain. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

DDD Corp. is not correct. Lease of properties shall be subject to VAT irrespective of the place where the contract of lease was executed if the property is leased or used in the Philippines (Sec. 108(A), NIRC).

149. Emiliano Paupahan is engaged in the business of leasing out several residential apartment units he owns. The monthly rental for each unit ranges from P8,000.00 to P10,000.00. His gross rental income for one year is P1,650,000.00. He consults you on whether it is necessary for him to register as a VAT taxpayer. What legal advice will you give him, and why? (4%) (2009 Bar Question)

SUGGESTED ANSWER:

I will advise Emiliano that he is not required to register as a VAT taxpayer. His transactions of leasing residential units for an amount not exceeding P10,000.00 per unit per month are exempt from VAT irrespective of the aggregate amount of rentals received annually (Section 109(1)(b), NIRC).

1. Concept and elements of VATable transactions

150. Which of the following transactions is subject to Value-Added Tax (VAT)? (1%) (2014 Bar Question)

- A) Sale of shares of stock-listed and traded through the local stock exchange
- B) Importation of personal and household effects belonging to residents of the Philippines returning from abroad subject to custom duties under the Tariff and Customs Code
- C) Services rendered by individuals pursuant to an employer-employee relationship
- D) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority

SUGGESTED ANSWERS:

(B) Importation of personal and household effects belonging to residents of the Philippines returning from abroad subject to custom duties under the Tariff and Customs Code (exempt from VAT only if exempt from customs duties, Section 109(1)(C), NIRC).

[Condo Assoc Dues no longer subject to VAT under TRAIN]

151. The Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 65-2012 imposing Value-Added Tax (VAT) on association dues and membership fees collected by condominium corporations from its member condominium-unit owners. The RMC's validity is challenged before the Supreme Court (SC) by the condominium corporations.

The Solicitor General, counsel for BIR, claims that association dues, membership fees, and other assessment/charges collected by a condominium corporation are subject to VAT since they constitute income payments or compensation for the beneficial services it provides to its members and tenants.

On the other hand, the lawyer of the condominium corporations argues that such dues and fees are merely held in trust by the condominium corporations exclusively for their members and used solely for administrative expenses in implementing the condominium corporations' purposes. Accordingly, the condominium corporations do not actually render services for a fee subject to VAT.

Whose argument is correct? Decide. (5%)

SUGGESTED ANSWER 1:

The lawyer of the condominium corporations is correct. The association dues, membership fees, and other assessments/charges do not constitute income payments because they were collected for the benefit of the unit owners and the condominium corporation is not created as a business entity. The collection is the money of the unit owners pooled together and will be spent exclusively for the purpose of maintaining and preserving the building and its premises which they themselves own and possess (*First e-Bank Tower Condominium Corp., v. BIR*, Special Civil Action No. 12-1236, RTC Br. 146, Makati City).

SUGGESTED ANSWER 2:

In the case of *Office Metro Philippines, Inc. (formerly Regus Centres, Inc.) v. Commissioner of Internal Revenue* (CTA Case No. 8382), the Court only dealt with the EWT issue as the VAT issue was not raised. However, the CTA held that in the payment of association dues to a condominium corporation, these dues are merely held in trust and used solely for administrative expenses from which does not realize any gain or profit. The BIR, on the other hand, views these payments as income or compensation for beneficial services.

However, a perusal of Section 105 shows that transactions in the course of a trade or business (sells, barter, exchanges, leases goods or properties, renders services, imports goods) are those subject to VAT. In the case of a condominium corporation, the function of the entity is merely for administrative purposes and not a trade or business. Thus, payments in the form of association dues should not be subjected to VAT.

152. On September 17, 2015, Data Realty, Inc., a real-estate corporation duly organized and existing under Philippine law, sold to Jenny Vera a condominium unit at Freedom Residences in Malabon City with an area of 32.31 square meters for a contract price of P4,213,000. The condominium unit had a zonal value amounting to P2,877,000 and fair market value amounting to P550,000.

A) Is the transaction subject to value-added tax and documentary stamp tax? Explain your answer. (3%)

SUGGESTED ANSWER:

Yes. As to the VAT liability, sale of real properties held primarily for sale to customer or held for lease in the ordinary course of trade or business is subject to VAT [Section 106 (A)(1)(a), 1997 NIRC, as amended]; further, the contract price, which is the highest compared to the zonal value and the fair market value, is beyond the transactional threshold amount for residential dwellings thereby making the sale transaction VATable. As to the DST liability, all deeds of sale and conveyances of real property are likewise subject to DST [Section 196, 1997 NIRC, as amended].

B) Would your answer be the same if the property was sold by a bank in a foreclosure sale? Explain your answer. (3%)

SUGGESTED ANSWER:

No, the sale made by the bank is exempt from VAT. Banks are exempt from VAT because they are subject to percentage tax under Title V of the NIRC [Section 109 in relation to Section 121 of 1997 NIRC, as amended]. The sale, however, will still be subject to DST because conveyances of real property are generally subject to DST [Section 196, NIRC].

153. Melissa inherited from her father a 300-square-meter lot. At the time of her father's death on March 14, 1995, the property was valued at P720,000.00. On February 28, 1996, to defray the cost of the medical expenses of her sick son, she sold the lot for P600,000.00, on cash basis. The prevailing market value of the property at the time of the sale was P3,000.00 per square meter.

Is Melissa liable to pay Value Added Tax (VAT) on the sale of the property? If so, how much and why? If not, why not? (4%) (2019 Bar Question)

SUGGESTED ANSWER:

No, Melissa is not liable to pay the VAT because she is not in the real estate business. A sale, of real property not in the course of trade or business is not subject to VAT (Section 105 and Section 109(1)(P), NIRC).

- 154. Greenhills Condominium Corporation incorporated in 2001 is a non-stock, non profit association of unit owner in Greenhills Tower, San Juan City. To be able to reduce the association dues being collected from the unit owners, the Board of Directors of the corporation agreed to lease part of the ground floor of the condominium building to DEF Saving Bank for P120,000 a month or P1.44 million for the year, starting January 2007.**

Is the non-stock, non-profit association liable for value added tax in 2007? If your answer is in the negative, is it liable for another kind of business tax? (4%)

SUGGESTED ANSWER:

No. Since the association's annual gross receipts do not exceed P3 million, it is exempt from the VAT. (Section 109(V), NIRC). It is, however, liable to the 3% percentage tax which is the imposed on persons exempt from value-added tax on account of failure to reach the P3 million threshold. (Section 116, NIRC) (BAR 2008)

- 155. Are the following transactions subject to VAT? If yes, what is the applicable rate for each transaction. State the relevant authority/ies for your answer.**

- A) Construction by XYZ Construction Co. of concrete barriers for the Asian Development Bank in Ortigas Center to prevent car bombs from ramming the ADB gates along ADB Avenue in Mandaluyong City. (3%)**

SUGGESTED ANSWER:

The transaction is subject to VAT at the rate of zero percent (0%). ADB is exempt from direct and indirect taxes under a special law, thereby making the sale of services to it by a VAT-registered construction company, effectively zero-rated (Sec. 108(B)(3), NIRC). (BAR 2010)

- B) Center operated by a domestic enterprise in Makati that handles exclusively the reservations of a hotel chain which are all located in North America. The services are paid for in US\$ and duly accounted for with the Bangko Sentral ng Pilipinas. (3%)**

SUGGESTED ANSWER:

The sale of services is subject to VAT at zero percent (0%). Zero-rated sale of services includes services rendered to a person engaged in business outside the Philippines and the consideration is paid in acceptable foreign currency duly accounted for by the Bangko Sentral ng Pilipinas (Sec. 108(B)(2), NIRC). (BAR 2010)

- C) Sale of orchids by a flower shop which raises its flowers in Tagaytay.**

SUGGESTED ANSWER:

The sale of orchids is subject to VAT at 12%. This is a sale of agricultural non-food product in its original state which is no longer one of the exempt transactions. [Sec. 109, NIRC, as amended by RA No. 9337]. (BAR 2010)

- 156. Masarap Kumain, Inc. (MKI) is a Value-Added Tax (VAT)-registered company which has been engaged in the catering business for the past 10 years. It has invested a substantial portion of its capital on flat wares, table linens, plates, chairs, catering equipment, and delivery vans. MKI sold its first delivery van, already 10 years old and idle, to Magpapala Gravel and Sand Corp. (MGSC), a corporation engaged in the business of buying and selling gravel and sand. The selling price of the delivery van was way below its acquisition cost. Is the sale of the delivery van by MKI to MGSC subject to VAT? (4%) (BAR 2014)**

SUGGESTED ANSWER

Yes, the sale of the delivery van is subject to VAT being a transaction incidental to the catering business which is a VAT-registered activity of MKI. Transactions that are undertaken incidental to the pursuit of a commercial or economic activity are considered as entered into in the course of trade or business (Section 105, NIRC). A sale of a fully depreciated vehicle that has been used in business is subject to VAT as an incidental transaction, although such sale may be considered isolated (*Mindanao II Geothermal Partnership v. CIR*, G.R. No. 193301; G.R. No. 194637, March 11, 2013).

2. **Impact and incidence of tax**
3. **Destination Principle; Cross-Border Doctrine**
4. **Imposition of VAT on transfer of goods by tax exempt persons**
5. **Transactions deemed sale subject to VAT**
6. **Zero-rated and effectively zero-rated sales of goods or properties**

157. SMZ, Inc., is a VAT-registered enterprise engaged in the general construction business. HP International contracts the services of SMZ, Inc. to construct HP International's factory building located in the Laguna Techno Park, a special economic zone. HP International is registered with the Philippine Economic Zone Authority (PEZA) as an ecozone export enterprise, and, as such, enjoys income tax holiday pursuant to the Special Economic Zone Act of 1995.

SMZ, Inc., files an application with the Bureau of Internal Revenue (BIR) for the VAT zero-rating of its sale of services to HP International. However, the BIR denies SMZ, Inc.'s application on the ground that HP International already enjoys income tax holiday.

Is the BIR correct in denying SMZ, Inc.'s application? Explain your answer. (6%)

SUGGESTED ANSWER:

No. All sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ecozone enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration [*Coral Bay Nickel Corporation v. CIR*, G.R. No. 190506 (2016)], citing *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, G.R. No. 150154, (2005)].

Moreover, under Section 108 (B)(3), of the 1997 NIRC as amended, services rendered to persons or entities whose exemption under special laws *effectively* subjects the supply of such services to zero percent (0%) rate are considered zero-rated. Considering the law does not provide for any additional qualification or disqualification, the BIR cannot deny the application on the ground that HP International already enjoys income tax holiday.

An administrative agency may not enlarge, alter or restrict a provision of law. It cannot add to the requirements provided by law. To do so constitutes lawmaking, which is generally reserved for Congress [*Soriano v. SOF, et al.*, G.R. No. 184450, 184508, 184538, 185234 (2017)]. (BAR 2017)

ALTERNATIVE ANSWER:

The BIR is wrong. Under *Sec 108(B)(3) of the NIRC*, the sale is effectively zero-rated and there is no need to file an application for zero-rating with the BIR. The BIR in pointing out that HP International enjoys income tax holiday is of no moment, because a sale of services to an ecozone enterprise by a supplier from the customs territory is considered as an effectively zero-rated sale of service in view of the exemption enjoyed by the Peza enterprise from indirect taxes. (BAR 2017)

- 158. XYZ Law Offices, a law partnership in the Philippines and a VAT registered taxpayer, received a query by e-mail from Gainsburg Corporation, a corporation organized under the laws of Delaware, but the e-mail came from California where Gainsburg has an office. Gainsburg has no office in the Philippines and does no business in the Philippines.**

XYZ Law Offices rendered its opinion on the query and billed Gainsburg US\$1,000 for the opinion. Gainsburg remitted its payment through Citibank which converted the remitted US\$1,000 to pesos and deposited the converted amount in the XYZ Law Offices account.

What are the tax implications of the payment to XYZ Law Offices in terms of VAT and income taxes? (7%)

SUGGESTED ANSWER:

The payment to XYZ Law Offices by Gainsburg Corporation is subject to VAT and income tax in the Philippines.

For VAT purposes, the transaction is a zero-rated sale of services where the output tax is zero percent and XYZ is entitled to claim as refund or tax credit certificate the input taxes attributable to the zero-rated sale. The services were rendered to a nonresident person, engaged in business outside the Philippines, which services are paid for in foreign currency inwardly remitted through the banking system, thereby making the sale of services subject to tax at zero-rate. (Section 108(B)(2), NIRC).

For income tax purposes, the compensation for services is part of the gross income of the law partnership. From its total gross income derived within and without, it has to compute its net income in the same manner as a corporation. The net income of the partnership whether distributed or not will be declared by the partners as part of their gross income who are to pay the income tax thereon in their individual capacity. (Section 26, NIRC). (BAR 2013)

- 159. Under the VAT system, there is no cascading because the tax itself is not again being taxed. However, in determining the tax base on sale of taxable goods under the VAT system: (BAR 2012)**

- A) The professional tax paid by the professional is included in gross receipts;**
- B) The other percentage tax (e.g., gross receipts tax) paid by the taxpayer is included in gross selling price;**
- C) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price;**
- D) The documentary stamp tax paid by the taxpayer is included in the gross selling price or gross receipts.**

SUGGESTED ANSWER:

C) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price Section 106, NIRC; RR No. 16-2005.

- 160. Explain the procedure for claiming refunds or tax credits of input Value Added Tax (VAT) for zero-rated or effectively zero-rated sale. under Sec. 112 of the National Internal Revenue Code (NIRC) from the filing of an application with the CIR up to the CTA. (2.5%) (BAR 2016)**

SUGGESTED ANSWER

In order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The claim for refund must be filed with the Commissioner within 2 years counted from the last day of the quarter when the zero. rated sale was made (Sec. 112, NIRC);
2. The claim for refund must be accompanied by a statement under oath that all documents to support the claim has been submitted at the time of filing of the claim for refund (RMC 54-14);
3. The Commissioner must decide on the claim within 90 days from date of filing and the adverse decision is appealable to the CTA within 30 days from receipt (Sec. 112, NIRC; *CIR v. Aichi Forging of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422);
4. If no decision is made within the 90-day period, there is a deemed denial or adverse decision which is appealable to the CTA within 30 days from the lapse of the 120-day period (Sec. 112, NIRC; Sec. 7(a)(1) of RA 1125, as amended by RA 9282).

7. VAT-exempt transactions

161. Except for one transaction, the rest are exempt from value added tax. Which one is VAT taxable? (BAR 2012)

- A) Sales of chicken by a restaurant owner who did not register as a VAT person and whose gross annual sales is P1.2 Million;
- B) Sales of copra by a copra dealer to a coconut oil manufacturer who did not register as a VAT person and whose gross annual sales is P5 Million;
- C) Gross receipts of CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession;
- D) Sales of a book store during the year amounted to P10 Million; it did not register as a VAT person with the BIR.

SUGGESTED ANSWER:

C) Gross receipts of CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession Section 108, NIRC.

162. A lessor or real property is exempt from value added tax in one of the transactions below. Which one is it?

- A) Lessor leases commercial stalls located in the Greenhills Commercial Center to VAT-registered sellers of cell phones; lessor's gross rental during the year amounted to P12 Million;
- B) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million;
- C) Lessor leases commercial stalls at P10,000.00 per stall per month and residential units at P15,000.00 per unit per month; his gross rental income during the year amounted to P3 Million;
- D) Lessor leases two (2) residential houses and lots at P50,000.00 per month per unit, but he registered as a VAT person.

SUGGESTED ANSWER:

B) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million Section 109(Q), NIRC. (BAR 2012)

163. IBP Bank extended loans to debtors during the year, with real properties of the debtors being used as collateral to secure the loans. When the debtors failed to pay the unpaid principal and interests after several demand letters, the bank foreclosed the same and entered into contracts of lease with tenants. The bank is subject to the tax as follows: (BAR 2012)

- A) 12% VAT on the rental income, but exempt from the 7% gross receipts tax;
- B) 7% gross receipts tax on the rental income, but exempt from VAT;
- C) Liable to both the 12% VAT and 7% gross receipts tax;
- D) Exempt from both the 12% VAT and 7% gross receipts tax.

SUGGESTED ANSWER:

B) 7% gross receipts tax on the rental income, but exempt from VAT Section 121, NIRC.

164. Which transaction below is subject to VAT? (BAR 2012)

- A) Sale of vegetables by a farmer in Baguio City to a vegetable dealer;
- B) Sale of vegetables by a vegetable dealer in Baguio City to another vegetable dealer in Quezon City;
- C) Sale of vegetables by the QC vegetable dealer to a restaurant in Manila;
- D) Sale of vegetables by the restaurant operator to its customers.

SUGGESTED ANSWER:

D) Sale of vegetables by the restaurant operator to its customers Section 109, NIRC.

165. Which importation in 2011 is subject to VAT? (BAR 2012)

- A) Importation of fuels by a person engaged in international shipping worth P20 Million;
- B) Importation of raw, unprocessed, refrigerated Kobe beef from Japan by a beef dealer for sale to hotels in Makati City with a fair market value of P10 Million;
- C) Importation of wines by a wine dealer with a fair market value of P2 million for sale to hotels in Makati City;
- D) Importation of books worth P5 Million and school supplies worth P1.2 million.

SUGGESTED ANSWER:

C) Importation of wines by a wine dealer with a fair market value of P2 million for sale to hotels in Makati City Sections 107 & 109, NIRC. (BAR 2012)

[Note: d) may also be a correct choice because only importation of books is exempt from VAT. The importation of school supplies is not exempt.]

166. Pursuant to Sec. 11 of the "Host Agreement between the United Nations and the Philippine government, it was provided that the World Health Organization (WHO), "its assets, income and other properties shall be: exempt from all direct and indirect taxes." Precision Construction Corporation (PCC) was hired to construct the WHO Medical Center in Manila. Upon completion of the building, the BIR assessed a 12% VAT on the gross receipts of PCC derived from the construction of the WHO building. The BIR contends that the 12% VAT is not a direct nor an indirect tax on the WHO but a tax that is primarily due from the contractor and is therefore not

covered by the Host Agreement. The WHO argues that the VAT is deemed an indirect tax as PCC can shift the tax burden to it.

Is the BIR correct? Explain. (5%)

SUGGESTED ANSWER:

The immunity of WHO from indirect taxes extends to the contractor by treating the sale of service as effectively zero-rated when the law provided that, “services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such service to zero percent (0%) rate” (Section 108(B) 3, NIRC). Accordingly, the BIR is wrong in assessing the 12% VAT from the contractor, Precision Construction Corporation. (BAR 2016)

167. Which statement is correct? A bar review center owned and operated by lawyers is:

- A) Exempt from VAT, regardless of its gross receipts during the year because it is an educational center;
- B) Exempt from VAT, provided that its annual gross receipts do not exceed P3 Million in 2011;
- C) Subject to VAT, regardless of its gross receipts during the year;
- D) Subject to VAT, if it is duly accredited by TESDA.

SUGGESTED ANSWER:

B) Exempt from VAT, provided that its annual gross receipts do not exceed P1.5 Million in 2011 Section 109(V), NIRC. (BAR 2012)

8. Input and output tax

168. Input tax is available to a VAT-registered buyer, provided that:

- A) The seller is a VAT-registered person;
- B) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component;
- C) The goods or service is subject to or exempt from VAT, but the sale is covered by a VAT invoice or receipt issued by VAT-registered person;
- D) The name and TIN of the buyer is not stated or shown in the VAT invoice or receipt

Which statement shown above is NOT correct?

SUGGESTED ANSWER:

B) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component Section 113(B), NIRC. (BAR 2012)

169. Claim for tax credit or refund of excess input tax is available only to:

- A) A VAT-registered person whose sales are made to embassies of foreign governments and United Nations agencies located in the Philippines without the BIR approval of the application for zero-rating;
- B) Any person who has excess input tax arising from local purchases of taxable goods and services;

- C) A VAT-registered person whose sales are made to clients in the Philippines;
- D) A VAT-registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts.

SUGGESTED ANSWER:

D) A VAT-registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts. *KepcoPhils. Corp. v. CIR*, G.R. No. 179961, January 31, 2011. (BAR 2012)

170. For 2012, input tax is not available as a credit against the output tax of the buyer of taxable goods or services during the quarter, if: (BAR 2012)

- A) The VAT invoice or receipt of the seller is registered with the BIR;
- B) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein;
- C) The VAT invoice or receipt is issued in the name of the VAT-registered buyer and his TIN is shown in said invoice or receipt;
- D) The VAT invoice or receipt issued by the seller shows the Taxpayer Identification Number plus the word "VAT" or "VAT registered person".

SUGGESTED ANSWER:

B) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein Section 113, NIRC.

9. Tax refund or tax credit

171. For calendar year 2011, FFF, Inc., a VAT-registered corporation, reported unutilized excess input VAT in the amount of P1,000,000.00 attributable to its zero-rated sales. Hoping to impress his boss, Mr. G, the accountant of FFF, Inc., filed with the Bureau of Internal Revenue (BIR) on January 31, 2013 a claim for tax refund/credit of the P1,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011. Not having received any communication from the BIR, Mr. G. filed a Petition for Review with the CTA on March 15, 2013, praying for the tax refund/credit of the P1,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011.

Discuss the proper procedure and applicable time periods for administrative and judicial claims for refund/credit of unutilized excess input VAT. (4%)

SUGGESTED ANSWER:

The administrative claim must be filed the Commissioner of Internal Revenue (CIR) within the two years from the close of the taxable quarter when the zero-rated sales were made. The CIR has 90 days from the date of submission of complete documents in support of the claim to decide. If the CIR decides within the 90-day period or the 90-day period expires without the CIR rendering a decision, the taxpayer has 30 days to file a petition for review with the CTA reckoned from the receipt of adverse decision or from the lapse of the 120-day period.

As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. As an exception to the general rule, premature filing is allowed only if filed between December 10, 2003 and October 5, 2010, when BIR Ruling No. DA-489-03 was still in force prior to the reversal of the aforesaid ruling by the CTA

in the Aichi case on October 6, 2010 (*CIR v. Mindanao II Geothermal Partnership*, 713 SCRA 645 [2014]). (BAR 2015)

172. MMM, Inc., a domestic telecommunications company, handles incoming telecommunications services for non-resident foreign companies by relaying international calls within the Philippines. To broaden the coverage of its telecommunications services throughout the country, MMM, Inc. entered into various interconnection agreements with local carriers. The non-resident foreign corporations pay MMM, Inc. in US dollars inwardly remitted through Philippine banks, in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas.

MMM, Inc. filed its Quarterly VAT Returns for 2000. Subsequently, MMM, Inc. timely filed with the BIR an administrative claim for the refund of the amount of P6,321,486.50, representing excess input VAT attributable to its effectively zero-rated sales in 2000. The BIR ruled to deny the claim for refund of MMM, Inc. because the VAT official receipts submitted by MMM, Inc. to substantiate said claim did not bear the words “zero-rated” as required under Section 4.108-1 of Revenue Regulations (RR) No. 7-95. On appeal, the CTA division and the CTA en banc affirmed the BIR ruling.

MMM, Inc. appealed to the Supreme Court arguing that the NIRC itself did not provide for such a requirement. RR No. 7-95 should not prevail over a taxpayer’s substantive right to claim tax refund or credit.

A) Rule on the appeal of MMM, Inc. (3%)

SUGGESTED ANSWERS:

The appeal of MMM, Inc. must be denied. MMM, Inc.’s position that the requirements under RR No. 7-95 should not prevail over a taxpayer’s substantive right to claim tax refund or credit is unmeritorious. The Secretary of Finance has the authority to promulgate the necessary rules and regulations for the effective enforcement of the provisions of the NIRC. Such rules and regulations are given weight and respect by the courts in view of the rule-making authority given to those who formulate them and their specific expertise in their respective fields.

An applicant for a claim for tax refund or tax credit must not only prove entitlement to the claim, but also compliance with all the documentary and evidentiary requirements. Consequently, the CTA and the CTA en banc correctly ruled that the failure to indicate the words “zero-rated” on the invoices and receipts issued by a taxpayer would result in the denial of the claim for refund or tax credit (*Eastern Telecommunications Philippines, Inc. v. CIR*, 2015).

B) Will your answer in (a) be any different if MMM, Inc. was claiming refund of excess input VAT attributable to its effectively zero-rated sales in 2012? (2%)

SUGGESTED ANSWERS:

No, my answer will not be different if the claim for refund is for effectively zero-rated sales in 2012. The requirement to print the word “zero-rated” is no longer by mere regulations but is now clearly provided by law as follows – “If the sale is subject to zero percent (0%) value-added tax, the term “zero-rated sale” shall be written or printed prominently on the invoice or receipt. Failure to comply with this invoicing requirement is fatal to a claim for refund of input taxes attributable to the zero-rated sale (Sec. 113(B)(2)(c), NIRC).

Moreover, as recently ruled by the Supreme Court, the subsequent incorporation of Sec. 4.108-1 of RR 7-95 in Sec. 113 of the NIRC as introduced in R.A. 9337, actually confirmed the validity of the imprinting

requirement on VAT invoices or official receipts—a case falling under the principle of legislative approval of administrative interpretation by reenactment (*Northern Mindanao Power Corp. v. CIR*, 2015). (2015 BAR)

173. Explain the procedure for claiming refunds or tax credits of input Value Added Tax (VAT) for zero-rated or effectively zero-rated sales under Sec. 112 of the National Internal Revenue Code (NIRC) from the filing of an application with the CIR up to the CTA. (2.5%)

SUGGESTED ANSWER

In order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The claim for refund must be filed with the Commissioner within 2 years counted from the last day of the quarter when the zero-rated sale was made (Sec. 112, NIRC);
2. The claim for refund must be accompanied by a statement under oath that all documents to support the claim has been submitted at the time of filing of the claim for refund (RMC 54-14);
3. The Commissioner must decide on the claim within 120 days from date of filing and the adverse decision is appealable to the CTA within 30 days from receipt (Sec. 112, NIRC; *CIR v. Aichi Forging of Asia, Inc.*, 632 SCRA 422 [2010]).
4. If no decision is made within the 120-day period, there is a deemed denial or adverse decision which is appealable to the CTA within 30 days from the lapse of the 120-day period (Sec. 112, NIRC; Sec. 7(a)(1), RA 1125 as amended by RA 9282);

174. Gangwam Corporation (GC) filed its quarterly tax returns for the calendar year 2012 as follows:

First quarter - April 25, 2012
Second quarter - July 23, 2012
Third quarter - October 25, 2012
Fourth quarter - January 27, 2013

On December 22, 2013, GC filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund of its unutilized input Value-Added Tax (VAT) for the calendar year 2012. After several months of inaction by the BIR on its claim for refund, GC decided to elevate its claim directly to the Court of Tax Appeals (CTA) on April 22, 2014.

In due time, the CTA denied the tax refund relative to the input VAT of GC for the first quarter of 2012, reasoning that the claim was filed beyond the two-year period prescribed under Section 112(A) of the National Internal Revenue Code (NIRC).

- A) Is the CTA correct? (3%)
- B) Assuming that GC filed its claim before the CTA on February 22, 2014, would your answer be the same? (3%)

SUGGESTED ANSWER

- A) No. CTA is not correct. The two-year period to file a claim for refund refers to the administrative claim and does not refer to period within which to elevate the claim to the CTA. The filing of the administrative claim for refund was timely done because it is made within two years from the end of the quarter when the zero-rated transaction took place (Section 112(A), NIRC). When GC decided to elevate its claim to the CTA on April 22, 2014, it was after the lapse of 120 days from the filing of the claim for refund with the BIR, hence, the appeal is seasonably filed. The rule on VAT refunds is two years to file the claim with the BIR, plus 120 days for the Commissioner to act and inaction after 120 days is a deemed adverse decision on the claim, appealable to the CTA within 30 days from the lapse of the 120-day period (*CIR v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, Oct. 6, 2010; *CIR v. San Roque*, G.R. No. 187485 [Feb. 12, 2013]).

- B) Yes. The two-year prescriptive period to file a claim for refund refers to the administrative claim with the BIR and not to the period to elevate the claim to the CTA. Hence, the CTA cannot deny the refund for reasons that the first quarter claim was filed beyond the two-year period prescribed by law. However, when the claim is made before the CTA on February 24, there is definitely no appealable decision as yet because the 120-day period for the Commissioner to act on the claim for refund has not yet lapsed. Hence, the act of the taxpayer in elevating the claim to the CTA is premature and the CTA has no jurisdiction to rule thereon (*CIR v. Aichi Forging Company of Asia, Inc.*, G.R. No. 184823, Oct. 6, 2010; *CIR v. San Roque*, G.R. No. 187485 [Feb. 12, 2013]).

a. *San Roque doctrine*

175. On March 30, 2016, XL Co. filed an administrative claim for refund of unutilized input VAT for taxable year 2014, together with supporting documents. XL Co. claimed that its sale of generated power and delivery of electric capacity was VAT zero-rated. Due to the inaction of the Commissioner of Internal Revenue (CIR), XL Co. filed with the Court of Tax Appeals (CTA) the following judicial claims for refund.

<u>Period Covered</u>	<u>Date Filed</u>
1st Quarter of 2014	March 31, 2016
2nd Quarter of 2014	June 30, 2016
3rd and 4th quarter of 2014	August 12, 2016

Is XL Co.'s claim for VAT refund timely filed? Explain your answer. (5%) (BAR 2017)

SUGGESTED ANSWER:

As regards the claims for VAT refund which are administrative in nature, all have been timely filed. The law requires that the administrative claim should be filed within two years from the end of the quarter when the sale was made [*Sec. 112(A), NIRC*]; hence, the filing of the administrative claim for refund on March 30, 2016 covering the four quarters of 2014, complies with the period prescribed by law.

The same is not true, however, as to the judicial claims. Only the judicial claim filed on August 12, 2016 is timely filed. As provided by Section 112(C), 1997 NIRC, as amended, one of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Strict compliance with the 90+30 day periods is, thus, necessary for such claim to prosper [*CIR v. San Roque Power Corporation*, G.R. No. 187485, 196113 and 197156 (2013)].

The Commissioner has been granted by law 90 days within which to decide the taxpayer's claim. Then, if the Commissioner does not act on the taxpayer's claim within the 90-day period, the taxpayer may appeal to the CTA within 30 days from the expiration of the 90-day period. Applying this to the present case, the 120th day from the filing of the administrative claim fell on July 28, 2016. XL Co. may file the judicial claim from July 29, 2016 to August 27, 2016; thus, only the judicial claim filed on August 12, 2016 has been timely filed.

b. Enhanced VAT refund system

10. Filing of returns and payment

176. Ka Pedring Matibag, a sole proprietor, buys and sells "kumot at kulambo" both of which are subject to value-added tax. Since he is using the calendar year as his taxable year, his taxable

quarters end on the last day of March, June, September, and December. When should Ka Pedring file the VAT quarterly return for his gross sales or receipts for the period of June 1 to September 30? (BAR 2011)

- A) Within 25 days from September 30
- B) Within 45 days from September 30
- C) Within 15 days from September 30
- D) Within 30 days from September 30

SUGGESTED ANSWER: A

177. An importer of flowers from abroad in 2011:

- A) Is liable for VAT, if it registers as a VAT person;
- B) Is exempt from VAT, because the goods are treated as agricultural products;
- C) Is exempt from VAT, provided that his total importation of flowers does not exceed P1.5 Million;
- D) Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million.

SUGGESTED ANSWER:

D) Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million. The importation is subject to VAT, separately from the VAT on domestic sale of goods and properties. Section 107, NIRC. (BAR 2012)

178. Amor Powers, Inc. (API) is a domestic corporation registered with the BIR as a value-added taxpayer. API incurred excess input VAT in the amount of P500,000,000.00 on August 3, 2008. Hence, it filed with the BIR an administrative claim for the refund or credit of these input taxes on August 15, 2010. Without waiting for the CIR to act on its claim, API filed a Petition for Review with the CTA on September 15, 2010 before the lapse of two years after the close of the taxable quarter concerned.

In its Comment on the Petition, the CIR argues that API's Petition should be dismissed as it was filed before the lapse of the 120-day period given to the CIR by Sec. 112(D) of the NIRC, which became effective on January 1, 1998. For the CIR, the 120-day period is mandatory and jurisdictional so that any suit filed before its expiration is premature and, therefore, dismissible. API, on the other hand, invokes BIR Ruling No. DA-489-03 issued by the CIR on December 10, 2003 in answer to a query posed by the Department of Finance regarding the propriety of the actions taken by Lazi Bay Resources Development, Inc., which filed an administrative claim for refund with the CIR and, before the lapse of the 120-day period from its filing, filed a judicial claim with the CTA. BIR Ruling No. DA-489-03 stated that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA.

Will API's Petition for Review prosper? Decide with reasons. (5%)

SUGGESTED ANSWER:

Yes. The petition for review filed by API falls within the exemption from the mandatory 120 + 30-day requirement in pursuing a judicial remedy for a claim of refund of input taxes attributable to zero-rated sales. All claims for refund filed between October 6, 2003 when BIR Ruling No. DA-489-03 was issued until the promulgation of the decision by the Supreme Court ruling on the period by which a taxpayer may pursue a judicial remedy for a claim for refund, must follow the period prescribed in the BIR Ruling (*CIR v. Aichi Forging of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422). (BAR 2012)

E. Tax remedies under the NIRC

179. The Tax Code allows an individual taxpayer to pay in two equal installments, the first installment to be paid at the time the return is filed, and the second on or before July 15 of the same year, if his tax due exceeds P2,000.

SUGGESTED ANSWER:

TRUE. [Sec. 56(A)(2), NIRC.] (BAR 2010)

1. General concepts

180. Distinguish *compromise* from *abatement* of taxes. (3%)

SUGGESTED ANSWER:

A compromise of tax is a remedy which is available when there is a reasonable doubt as to the validity of the claim against the taxpayer exists, or when the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

Abatement of tax, on the other hand, is available as a remedy when the tax or any portion thereof appears to be unjustly or excessively assessed, or when the administration and collection costs involved do not justify the collection of the amount due [Section 204, NIRC]. (BAR 2017)

a. Requisites of a valid assessment

181. Which among the following circumstances negates the prima facie presumption of correctness of a BIR assessment? (2011 Bar Question)

- A) The BIR assessment was seasonably protested within 30 days from receipt.
- B) No preliminary assessment notice was issued prior to the assessment notice.
- C) Proof that the assessment is utterly without foundation, arbitrary, and capricious.
- D) The BIR did not include a formal letter of demand to pay the alleged deficiency.

SUGGESTED ANSWER: C

b. Tax delinquency vs. tax deficiency

c. Prescriptive period for assessment

182. Mia, a compensation income earner, filed her income tax return for the taxable year 2007 on March 30, 2008. On May 20, 2011, Mia received an assessment notice and letter of demand covering the taxable year 2007 but the postmark on the envelope shows April 10, 2011. Her return is not a false and fraudulent return. Can Mia raise the defense of prescription? (2011 Bar Question)

- A) No. The 3 year prescriptive period started to run on April 15, 2008, hence, it has not yet expired on April 10, 2011.
- B) Yes. The 3 year prescriptive period started to run on April 15, 2008, hence, it had already expired by May 20, 2011.
- C) No. The prescriptive period started to run on March 30, 2008, hence, the 3 year period expired on April 10, 2011.
- D) Yes. Since the 3-year prescriptive period started to run on March 30, 2008, it already expired by May 20, 2011.

SUGGESTED ANSWER: A

1. False returns vs. fraudulent returns vs. non-filing of returns

183. There is prima facie evidence of a false or fraudulent return where the: (2011 Bar Question)

- A) tax return was amended after a notice of assessment was issued.
- B) tax return was filed beyond the reglementary period.
- C) taxpayer changed his address without notifying the BIR.
- D) deductions claimed exceed by 30% the actual deductions.

SUGGESTED ANSWER: D

2. Suspension of the running of statute of limitations

184. Globesmart Services, Inc. received a final assessment notice with formal letter of demand from the BIR for deficiency income tax, value-added tax and withholding tax for the taxable year 2016 amounting to P48 million. Globesmart Services, Inc., filed a protest against the assessment, but the Commissioner of Internal Revenue denied the protest. Hence, Globesmart Services, Inc. filed a petition for review in the CTA with an urgent motion to suspend the collection of tax.

After hearing, the CTA Division issued a resolution granting the motion to suspend but required Globesmart Services, Inc., to post a surety bond equivalent to the deficiency assessment within 15 days from notice of the resolution. Globesmart Services, Inc. moved for the partial reconsideration of the resolution and for the reduction of the bond to an amount it could obtain. The CTA division issued another resolution reducing the amount of the surety bond to P24 million. The latter amount was still more than the net worth of Globesmart Services, Inc., as reported in its audited financial statements.

A) May the collection of taxes be suspended? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

Yes. As provided by RA No. 1125, as amended by RA No. 9282, that when in the opinion of the Court the collection by the aforementioned government agencies may jeopardize the interest of the Government and/or the taxpayer, the Court at any stage of the proceeding may suspend the collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

B) Is the CTA Division justified in requiring Globesmart Services, Inc., to post a surety bond as a condition for the suspension of the deficiency tax collection? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

No. The Supreme Court in the Tridharma Case cited the case of Pacquiao v. Court of Tax Appeals [G.R. No. 213394, 2016] where it ruled that the CTA should first conduct a preliminary hearing for the proper determination of the necessity of a surety bond or the reduction thereof. In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State to tax and its right to prosecute perceived transgressors of the law, on one side, and the constitutional rights of petitioners to due process of law and the equal protection of the laws, on the other. In this case, the CTA failed to consider that the amount of the surety bond that it is asking Globesmart Services, Inc. to pay is more than its net worth. It is, thus, necessary for the CTA to first conduct a preliminary hearing to give the taxpayer an opportunity to prove its inability to come up with such amount.

2. Civil penalties

a. New rule on delinquency interest and deficiency interest

b. Surcharge

c. Compromise penalty

185. Jeopardy assessment is a valid ground to compromise a tax liability. (2011 Bar Question)

- A) involving deficiency income taxes only, but not for other taxes.
- B) because of doubt as to the validity of the assessment.
- C) if the compromise amount does not exceed 10% of the basic tax.
- D) only when there is an approval of the National Evaluation Board.

SUGGESTED ANSWER: B

186. Anion, Inc. received a notice of assessment and a letter from the BIR demanding the payment of P3 million pesos in deficiency income taxes for the taxable year 2008. The financial statements of the company show that it has been suffering financial reverses from the year 2009 up to the present. Its asset position shows that it could pay only P500,000.00 which it offered as a compromise to the BIR. Which among the following may the BIR require to enable it to enter into a compromise with Anion, Inc.? (2011 Bar Question)

- A) Anion must show it has faithfully paid taxes before 2009.
- B) Anion must promise to pay its deficiency when financially able.
- C) Anion must waive its right to the secrecy of its bank deposits.
- D) Anion must immediately deposit the P500,000.00 with the BIR.

SUGGESTED ANSWER: C

3. Assessment process and reglementary periods

187. (68) What should the BIR do when the prescriptive period for the assessment of a tax deficiency is about to prescribe but the taxpayer has not yet complied with the BIR requirements for the production of books of accounts and other records to substantiate the claimed deductions, exemptions or credits? (2011 Bar Question)

- A) Call the taxpayer to a conference to explain the delay.
- B) Immediately conduct an investigation of the taxpayer's activities.
- C) Issue a jeopardy assessment coupled with a letter of demand.
- D) Issue a notice of constructive distraint to protect government interest.

SUGGESTED ANSWER: C

a. Letter of Authority

b. Notice of Informal Conference

c. Issuance of Preliminary Assessment Notice

188. On July 31, 2011, Esperanza received a preliminary assessment notice from the BIR demanding that she pays P180,000.00 deficiency income taxes on her 2009 income. How many days from July 31, 2011 should Esperanza respond to the notice? (2011 Bar Question)

- A) 180 days.
- B) 30 days.
- C) 60 days.
- D) 15 days.

SUGGESTED ANSWER: D

189. When is a pre-assessment notice required under the following cases? (1%) (2014 Bar Question)

- A) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return.
- B) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent.
- C) When the excise tax due on excisable articles has been paid.
- D) When an article locally purchased or imported by an exempt person, such as, but not limited to vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

SUGGESTED ANSWER:

A. When the excise tax due on excisable articles has been paid. (*Section 228, NIRC*)

190. On March 10, 2010, Continental, Inc. received a preliminary assessment notice (PAN) dated March 1, 2010 issued by the Commissioner of Internal Revenue (CIR) for deficiency income tax for its taxable year 2008. It failed to protest the PAN.

The CIR thereupon issued a final assessment notice (FAN) with letter of demand on April 30, 2010. The FAN was received by the corporation on May 10, 2010, following which or on May 25, 2010, it filed its protest against it.

The CIR denied the protest on the ground that the assessment had already become final and executory, the corporation having failed to protest the PAN. Is the CIR correct? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

The issuance of preliminary assessment notice (PAN) does not give rise to the right of the taxpayer to protest. What can be protested by a taxpayer is the final assessment notice (FAN) or that assessment issued following the PAN. Since the FAN was timely protested, within 30 days from receipt thereof, the assessment did not become final and executory. (Sec. 228, NIRC; RR. No. 12-99).

191. A final assessment notice was issued by the BIR on June 13, 2000, and received by the taxpayer on June 15, 2000. The taxpayer protested the assessment on July 31, 2000. The protest was initially given due course, but was eventually denied by the Commissioner of Internal Revenue in a decision dated June 15, 2005. The taxpayer then filed a petition for review with the Court of Tax Appeals (CTA), but the CTA dismissed the same.

Is the CTA correct in dismissing the petition for review? Explain your answer. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes. The protest was filed out of time, hence the CTA does not acquire jurisdiction over the matter (*CIR v. Atlas Mining and Development Corp.* [2000]).

d. Issuance of Formal Letter of Demand/ Final Assessment Notice**e. Disputed assessment**

192. On April 15, 2011, the Commissioner of Internal Revenue mailed by registered mail the final assessment notice and the demand letter covering the calendar year 2007 with the QC Post Office. Which statement is correct? (2012 Bar Question)

- A) The assessment notice is void because it was mailed beyond the prescriptive period;
- B) The assessment notice is void because it was not received by the taxpayer within the three-year period from the date of filing of the tax return;
- C) The assessment notice is void if the taxpayer can show that the same was received only after one (1) month from date of mailing;
- D) The assessment notice is valid even if the taxpayer received the same after the three-year period from the date of filing of the tax return.

SUGGESTED ANSWER:

D) The assessment notice is valid even if the taxpayer received the same after the three-year period from the date of filing of the tax return. Section 203, NIRC; *BPI v. CIR*, G.R. No. 139736, October 17, 2005.

193. A preliminary Assessment Notice (PAN) is NOT required to be issued by the BIR before issuing a Final Assessment Notice (FAN) on one of the following cases: (2012 Bar Question)

- A) When a taxpayer does not pay the 2010 deficiency income tax liability on or before July 15 of the year;
- B) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return;
- C) When a discrepancy has been determined between the value added tax paid and the amount due for the year;
- D) When the amount of discrepancy shown in the Letter Notice is not paid within thirty (30) days from date of receipt.

SUGGESTED ANSWER:

B) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return. Section 228, NIRC.

194. The requisites for a valid waiver of the three-year (3-year) prescriptive period for the BIR to assess taxes due in the taxable year are prescribed by Revenue Memorandum Order No. 20-90:

- 1) The waiver must be in the proper form prescribed by RMO 20-90.
- 2) The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
- 3) The waiver should be duly notarized.
- 4) The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5) Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6) The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.

After being assessed by the BIR with alleged deficiency income taxes, VVV Corporation (VVV) through Enrique, its President, executed a waiver of the prescriptive period. The waiver was signed by Revenue District Officer (RDO) Alfredo. However, the waiver did not state the date of execution by the taxpayer and date of acceptance by the BIR. Enrique was also not furnished a copy of the waiver by the BIR.

VVV claims that the waiver is void due to non-compliance with RMO 20-90. Hence, the period for assessment had already prescribed. Moreover, since the assessment involves P2 million, the waiver should have been signed by the CIR and instead of a mere RDO. On the other hand, the BIR contends that the requirements of RMO No. 20-90 are merely directory; that the execution of the waiver by VVV was a enunciation of its right to invoke prescription and that the government cannot be estopped by the mistakes committed by its revenue officers. Is VVV liable? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER

No. A waiver executed beyond the prescriptive period is ineffective (*CIR v. The Stanley Works Sales (Phils), Inc.*, G.R. No. 187589, December 3, 2014, 743 SCRA 642).

The waiver was executed after VVV Corporation (VVV) was assessed for deficiency income taxes obviously to justify the assessment made after prescription had set in. This is the reason why VVV is invoking prescription due to the alleged invalidity of the waiver for failure to comply with the requisites set forth under RMO 20-90.

4. Collection

195. On March 30, 2005 Miguel Foods, Inc. received a notice of assessment and a letter of demand on its April 15, 2002 final adjustment return from the BIR. Miguel Foods then filed a request for reinvestigation together with the requisite supporting documents on April 25, 2005. On June 2, 2005, the BIR issued a final assessment reducing the amount of the tax demanded. Since Miguel Foods was satisfied with the reduction, it did not do anything anymore. On April 15, 2010 the BIR garnished the corporation's bank deposits to answer for the tax liability. Was the BIR action proper? (2011 Bar Question)

- A) Yes. The BIR has 5 years from the filing of the protest within which to collect.
- B) Yes. The BIR has 5 years from the issuance of the final assessment within which to collect.
- C) No. The taxpayer did not apply for a compromise.
- D) No. Without the taxpayer's prior authority, the BIR action violated the Bank Deposit Secrecy Law.

SUGGESTED ANSWER: B

An individual taxpayer can adopt either the calendar or fiscal period for purposes of filing his income tax return. (2010 Bar Question)

SUGGESTED ANSWER:

TRUE. [Sec. 43, NIRC]

The taxable income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer, but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner clearly reflects the income.

a. Requisites**b. Prescriptive periods**

196. Ka Tato owns a parcel of land in San Jose, Batangas declared for real property taxation, as agricultural. In 1990, he used the land for a poultry feed processing plant but continued to declare the property as agricultural. In March 2011, the local tax assessor discovered Ka Tato's change of use of his land and informed the local treasurer who demanded payment of deficiency real property taxes from 1990 to 2011. Has the action prescribed? (2011 Bar Question)

- A) No, the deficiency taxes may be collected within five years from when they fell due.
- B) No. The deficiency taxes for the period 1990 up to 2011 may still be collected within 10 years from March 2011.
- C) Yes. More than 10 years had lapsed for the period 1990 up to 2000, hence the right to collect the deficiency taxes has prescribed.
- D) Yes. More than 5 years had lapsed for the collection of the deficiency taxes for the period 1990 up to 2005.

SUGGESTED ANSWER: B

197. What is the effect of the execution by a taxpayer of a "waiver of the statute of limitations" on his defense of prescription? (2%) (2010 Bar Question)

SUGGESTED ANSWER:

The waiver of the statute of limitation executed by a taxpayer is not a waiver of the right to invoke the defense of prescription. The waiver of the statute of limitation is merely an agreement in writing between the taxpayer and the BIR that the period to assess and collect taxes due is extended to a date certain. If prescription has already set in at the time of the execution of the waiver is invalid, the taxpayer can still raise prescription as a defense (*Phil. Journalists Inc., v. CIR*, GR No. 162852, Dec. 16, 2004).

F. Taxpayer's remedies

198. Atty. Gambino is a partner in a general professional partnership. The partnership computes its gross revenues, claims deductions allowed under the Tax Code, and distributes the net income to the partners, including Atty. Gambino, in accordance with its articles of partnership.

In filing his own income tax return, Atty. Gambino claimed deductions that the partnership did not claim, such as purchase of law books, entertainment expenses, car insurance and car depreciation. The BIR disallowed the deductions.

Was the BIR correct? (6%) (2013 Bar Question)

SUGGESTED ANSWER:

No. The BIR is wrong in disallowing the deductions claimed by Atty. Gambino. It appears that the general professional partnership (GPP) claimed itemized deductions from its gross revenues in arriving at its distributable net income. The share of a partner in the net income of the GPP must be reported by him as part of his gross income from practice of profession and he is allowed to claim further deductions which are reasonable, ordinary and necessary in the practice of profession and were not claimed by the partnership in computing its net income. (Section 26, NIRC; RR No. 16-2008; 2-2010).

ALTERNATIVE ANSWER:

The BIR is wrong in disallowing the deductions because if the partnership claims itemized deductions, the partner can further claim deductions from his share in the net income of the partnership provided these are ordinary, necessary, reasonable, duly substantiated and not yet claimed by the partnership in computing its distributable net income. Consonant with these requirements of deductibility, the purchase of law books can be considered as a capital outlay, hence not deductible outright but subject to depreciation. Insofar as entertainment expenses are concerned only an amount not exceeding 1% of gross income shall be allowed. For the car insurance and car depreciation, they are allowed as deductions but only to the extent that the car is used in the practice of profession. (Section 26, NIRC; RR No. 16-2008; RR No. 2-2010; Sec. 34(A) as implemented by RR No. 10-2002).

199. Taxpayer A was required by the BIR to sign and submit a waiver of the statute of limitations on the assessment period, to give the BIR more time to complete its investigation. The BIR accepted the waiver but failed to indicate the date of its acceptance.

What is the legal status of the waiver? (1%) (2013 Bar Question)

- A) The waiver is valid because the date of acceptance is immaterial and unimportant.
- B) The waiver is invalid; the taxpayer cannot be required to waive the statute of limitations.
- C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period.
- D) The waiver is valid, having been accepted by the BIR.

SUGGESTED ANSWER:

(C) The waiver is invalid; the date of acceptance is crucial in counting the start of the period of suspension of the prescriptive period (*Commissioner v. Kudos Metal Corp.*, G.R. No. 178087, May 5, 2010).

200. Taxpayer Andy received on January 3, 2010 a preliminary assessment notice (PAN) from the BIR, stating that he had fifteen (15) days from its receipt to comment or to file a protest. Eight (8) days later (or on January 11, 2010), before he could comment or file a protest, Andy received the final assessment notice (FAN).

Decide on the validity of the FAN. (1%) (2013 Bar Question)

- A) The FAN is invalid; Andy was not given the chance to respond to the PAN, in violation of his due process rights.
- B) The FAN is invalid for being premature.
- C) The FAN is valid since it was issued before the right to assess prescribed.
- D) The FAN is valid. There is no legal requirement that the FAN should await the protest to the PAN because protest to the PAN is not mandatory.

SUGGESTED ANSWER:

(A) The FAN is invalid; Andy was not given the chance to respond to the PAN, in violation of his due process rights (Section 228, NIRC; RR No. 12-99).

201. A false return and a fraudulent return are one and the same. (2009 Bar Question)

SUGGESTED ANSWER:

False. There is a difference between a false return and a fraudulent return. The first merely implies a deviation from the truth or fact whether intentional or not, whereas the second is intentional and deceitful with the aim of evading the correct tax due (*Aznar v. Commissioner*, GR No. L-20569, August 23, 1974, 58 SCRA S19[1974]).

202. A final assessment notice was issued by the BIR on June 13, 2000, and received by the taxpayer on June 15, 2000. The taxpayer protested the assessment on July 31, 2000. The protest was initially given due course, but was eventually denied by the Commissioner of Internal Revenue in a decision dated June 15, 2005. The taxpayer then filed a petition for review with the Court of Tax Appeals (CTA), but the CTA dismissed the same.

Does the Court of Appeals have the power to review compromise agreements forged by the Commissioner of Internal Revenue and a taxpayer? Explain. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

No, for either of two reasons (1) In instances in which the Commissioner of Internal Revenue is vested with authority to compromise, such authority should be exercised in accordance with the Commissioner's discretion, and courts have no power, as a general rule, to compel him to exercise such discretion one way or another. (*Koppel Phils., Inc. v. CIR*, 87 Phil. 351 [1950]ft, (2) If the Commissioner abuses his discretion by not following the parameters set by law, the CTA, not the Court of Appeals, may correct such abuse if the matter is appealed to it. In case of arbitrary or capricious exercise by the Commissioner of the power to compromise, the compromise can be attacked and reversed through the judicial process. It must be noted however, that a compromise is considered as other matters arising under the NIRC which vests the CTA with jurisdiction, and since the decision of the CTA is appealable to the Supreme Court, the Court of Appeals is devoid of any power of review a compromise settlement forged by the Commissioner (PNOCV. Savellano, G.R. No. 109976, April 26, 2005; RA No. 9282 on jurisdiction of the CTA).

[Note: It is respectfully requested that if the examinee gives any one of the two reasons presented above, the answer should be given full credit.]

203. DEF Corporation is wholly owned subsidiary of DEF, Inc., California, USA. Starting December 15, 2004, DEF Corporation paid annual royalties to DEF, Inc., for the use of the latter's software, for which the former, as with holding agent of the government, withheld and remitted to the BIR the 15% final tax based on the gross royalty payments. The withholding tax return was filed and tax remitted to the BIR on January 10 of the following year. On April 10, 2007 DEF Corporation filed written claim for tax credit with the BIR, arising from erroneously paid income taxes covering the years 2004 and 2005. The following day, DEF Corporation filed a petition for review with the court of Tax Appeals involving the tax credit claim for 2004 and 2005.

A) As a BIR lawyer handling the case, would you raise the defense of prescription in your answer to the claim for tax credit? Explain. (4%) (2008 Bar Question)

SUGGESTED ANSWER:

Yes. The tax credit for the 2004 erroneously paid income tax was filed out of time because the claim was only filed after more than two years had elapsed from the payment thereof. (Section 204 © and 229, NIRC)

- B) Can the BIR lawyer raise the defense that DEF Corporation is not the proper party to file such claim for tax credit? Explain. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

No. The withholding agent who is mandated by law to withhold and remit the tax on the income of a non-resident in the Philippines becomes directly liable for the payment of the tax. Therefore, it is the proper party to file a claim for refund in case of over-withholding. (*Commissioner v. Wander Philippines, Inc.*, 160 SCRA 573 [1988]).

- 204. Madam X owns real property in Caloocan City. On July 1, 2014, she received a notice of assessment from the City Assessor, informing her of a deficiency tax on her property. She wants to contest the assessment. (4%)**

- A) What are the administrative remedies available to Madam X in order to contest the assessment and their respective prescriptive periods? (2014 Bar Question)**

SUGGESTED ANSWER:

The administrative remedies available to Madam X to contest the assessment and their respective prescriptive periods are as follows:

1. Pay the deficiency real property tax under protest (Section 252, LGC);
2. File the protest with local treasurer – The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt (Section 252, LGC);
3. Appeal to the LBAA – If protest is denied or upon the lapse of the 60-day period for the treasurer to decide, the taxpayer may appeal to the LBAA within 60 days and the case decided within 120 days Section 226 & 229, LGC);
4. Appeal to the CBAA – If not satisfied with the decision of the LBAA, appeal to the CBAA within 30 days from receipt of a copy of the decision (Section 229(c), LGC) .

- B) May Madam X refuse to pay the deficiency tax assessment during the pendency of her appeal? (2014 Bar Question)**

SUGGESTED ANSWER:

No. The payment of the deficiency tax is a condition before she can protest the deficiency assessment. It is the decision on the protest or inaction thereon that gives her the right to appeal. This means that she cannot refuse to pay the deficiency tax assessment during the pendency of the appeal because it is the payment itself which gives rise to the remedy. The law provides that no protest (which is the beginning of the disputation process) shall be entertained unless the taxpayer first pays the tax. (Section 252, LGC).

1. Protesting an assessment

- 205. Mr. Tiaga has been a law-abiding citizen diligently paying his income taxes. On May 5, 2014, he was surprised to receive an assessment notice from the Bureau of Internal Revenue (BIR) informing him of a deficiency tax assessment as a result of a mathematical error in the computation of his income tax, as appearing on the face of his income tax return for the year 2011, which he filed on April 15, 2012. Mr. Tiaga believes that there was no such error in the computation of his income tax for the year 2011. Based on the assessment received by Mr. Tiaga, may he already file a protest thereon? (4%) (2014 Bar Question)**

SUGGESTED ANSWER :

Yes. Mr. Tiaga may consider the assessment notice as a final assessment notice and his right to protest within 30 days from receipt may now be exercised by him. When the finding of a deficiency tax is the result of mathematical error in the computation of the tax appearing on the face of the return, a pre-assessment notice shall not be required hence, the assessment notice is a final assessment notice (Section 228, NIRC; RR No. 18-2013).

- 206. After examining the books and records of EDS Corporation, the 2004 final assessment notice, showing basic tax of P1,000,000 deficiency interest of P400,000 and due date for payment of April 30, 2007, but without the demand letter, was mailed and released by the BIR on April 15, 2007. The registered letter, containing the tax assessment, was received by the EDS Corporation on April 25, 2007**

A) a) What is an assessment notice? What are the requisites of a valid assessment? Explain (3%) (2008 Bar Question)

SUGGESTED ANSWER:

An assessment notice is a formal notice to the taxpayer stating that the amount thereon is due as a tax and containing a demand for the payment thereof. (*Alhambra Cigar and Cigarette Mfg. Co. v. Collector*, 105 PR 1337 [1959]; *CIR v. Pascor Realty and Development Corp.*, 309 SCRA 402 [1999]). To be valid, the taxpayer must be informed in writing of the law and the facts on which the assessment is made. (Section 228, NIRC).

ANOTHER SUGGESTED ANSWER:

An assessment is a written notice and demand made by the Bureau on the taxpayer for the settlement of a tax liability that is due, definitely set and fixed therein. The requisites of a valid assessment are:

1. It must be made within the prescriptive period to assess; (Section 203, NIRC)
2. There must be a preliminary assessment previously issued, except in those instances allowed by law; Section 228, NIRC)
3. The taxpayer must be informed in writing about the law and facts on which the assessment is based; Section 228, NIRC)
4. It must be served upon the taxpayer or any of his authorized representatives. (*Estate of Juliana Diez vda. De Gabriel v. CIR*, 421 SCRA 266 [2004]).

B) As tax lawyer of EDS Corporation, what legal defense(s) would you raised against the assessment? Explain. (3%). (2008 Bar Question)

SUGGESTED ANSWER:

I will question the validity of the assessment because of the failure to send the demand letter which contains a statement of the law and the facts upon which the assessment is based. If an assessment notice is sent without informing the taxpayer in writing about the law and facts on which the assessment is made, the assessment is void. (Section 228, NIRC; *Azcuna T. Reyes v. CIR*, 480 SCRA 382 [2006])

- 207. Pedro Manalo, A Filipino citizen residing in Makati City, owns a vacation house and lot in San Francisco, California, U.S.A, which he acquired in 2000 for P15 million. On January 10, 2006 he sold said real property to Juan Mayaman, another Filipino citizen residing in Quezon City, for P20 million. On February 9, 2006 Manalo filed the capital gains tax return and paid P1.2 million representing 6% capital gain tax. Since Manalo did not derive any ordinary income, no income tax return was filed by him for 2006. After the tax audit conducted in 2007, the BIR officer assessed Manalo for deficiency income tax computed as follows: P5 million (P20 million less P 15 million) x 35% = P1.75 million, without the capital gains tax paid being allowed as tax credit. Manalo**

consulted a real estate broker who said that the P1.2 million capital gains tax should be credited from P1.75 million deficiency income tax.

A) Is the BIR officer's tax assessment correct? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

The BIR officer's tax assessment is wrong for two reasons. First, the rate of income tax used is the corporate income tax although the taxpayer is an individual. Second, the computation of the gain recognized from the sale did not consider the holding period of the asset. The capital asset having been for more than twelve months, only 50% of the gain is recognized. (Section 39(B), NIRC).

B) If you were hired by Manalo as his tax consultant, what advice would you give him to protect his interest? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

I will advise him to ask for the issuance of the final assessment notice and request for the crediting of the capital gains tax paid against the income tax due. The taxpayer should explain that the capital gains tax was paid in good faith because the property sold is a capital asset, and considering that was paid is also an income tax it should be credited on grounds of equity against the income tax assessment. Once the final assessment is made, I will advise him to protest it within thirty days from receipt, invoking the holding period and the wrong rate used.

208. On March 27, 2012, the Bureau of Internal Revenue (BIR) issued a notice of assessment against Blue Water Industries Inc. (BWI), a domestic corporation, informing the latter of its alleged deficiency corporate income tax for the year 2009. On April 20, 2012, BWI filed a letter protest before the BIR contesting said assessment and demanding that the same be cancelled or set aside.

However, on May 19, 2013, that is, after more than a year from the filing of the letter protest, the BIR informed BWI that the latter's letter protest was denied on the ground that the assessment had already become final, executory and demandable. The BIR reasoned that its failure to decide the case within 180 days from filing of the letter protest should have prompted BWI to seek recourse before the Court of Tax Appeals (CTA) by filing a petition for review within thirty (30) days after the expiration of the 180-day period as mandated by the provisions of the last paragraph of Section 228 of the National Internal Revenue Code (NIRC). Accordingly, BWI's failure to file a petition for review before the CTA rendered the assessment final, executory and demandable. Is the contention of the BIR correct? Explain. (5%) (2014 Bar Question)

SUGGESTED ANSWER:

No, the contention of BIR is not correct. The right of BWI to consider the inaction of the Commissioner on the protest within 180 days as an appealable decision is only optional and will not make the assessment final, executory and demandable (Section 228, NIRC; *Lascona Land Co., Inc. v. CIR*, 667 SCRA 455 [March 5, 2012]).

a. Period to file protest

b. Submission of supporting documents

c. Effect of failure to file protest

209. What is the effect on the tax liability of a taxpayer who does not protest an assessment for deficiency taxes? (2011 Bar Question)
- A) The taxpayer may appeal his liability to the CTA since the assessment is a final decision of the Commissioner on the matter.
 - B) The BIR could already enforce the collection of the taxpayer's liability if it could secure authority from the CTA.
 - C) The taxpayer's liability becomes fixed and subject to collection as the assessment becomes final and collectible.
 - D) The taxpayer's liability remains suspended for 180 days from the expiration of the period to protest.

SUGGESTED ANSWER: C

210. No action shall be taken by the BIR on the taxpayer's disputed issues until the taxpayer has paid the deficiency taxes: (2011 Bar Question)
- A) when the assessment was issued against a false and fraudulent return.
 - B) if there was a failure to pay the deficiency tax within 60 days from BIR demand.
 - C) if the Regional Trial Court issues a writ of preliminary injunction to enjoin the BIR.
 - D) attributable to the undisputed issues in the assessment notice.

SUGGESTED ANSWER: D

d. Decision of the Commissioner on the protest filed

1. Period to act upon or decide on protest filed

211. On January 27, 2017, Ramon, the comptroller of Vantage Point, Inc., executed a document entitled "Waiver of the Statute of Limitations" in connection with the BIR's investigation of the tax liabilities of the company for the year 2012. However, the Board of Directors of Vantage Point, Inc., did not adopt a board resolution authorizing Ramon to execute the waiver.

On October 14, 2017, Vantage Point, Inc., received a preliminary assessment notice from the BIR indicating its deficiency withholding taxes for the year 2012. Vantage Point, Inc., filed its protest. On October 30, 2017, the BIR issued a formal letter of demand and final assessment notice. Vantage Point, Inc., again filed a protest. The Commissioner of Internal Revenue denied the protests and directed the collection of the assessed deficiency taxes.

Accordingly, Vantage Point, Inc., filed a petition for review in the CTA to seek the cancellation and withdrawal of the assessment on the ground of prescription.

- A) What constitutes a valid waiver of the statute of limitations for the assessment and collection of taxes? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

Generally, a valid waiver of the statute of limitations for the assessment and collection of taxes must be executed by the taxpayer and accepted by the BIR prior to the expiration of the period which it seeks to extend. The same must also be executed by the taxpayer or his duly authorized representative, or in the case of a corporation, it must be signed by any of its responsible officers [*CIR v. Kudos Metal Corporation, G.R. No. 178087 (2010)*]. Such requirements must be met considering that a waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed [*Philippine Journalists, Inc. v. CIR, G.R. No. 162852 (2004)*].

- B) Has the right of the Government to assess and collect deficiency taxes from Vantage Point, Inc. for the year 2012 prescribed? Explain your answer. (3%) (2017 Bar Question)**

SUGGESTED ANSWER:

Yes, the final assessment was issued beyond the three-year prescriptive period to make an assessment [Section 203, 1997 NIRC, as amended]. The Waiver did not extend the three-year prescriptive period, since it was executed after the expiration of such period.

2. Remedies of the taxpayer in case the Commissioner denies the protest or fails to act on the protest

212. Spanflex Int'l Inc. received a notice of assessment from the BIR. It seasonably filed a protest with all the necessary supporting documents but the BIR failed to act on the protest. Thirty days from the lapse of 180 days from the filing of its protest, Spanflex still has not elevated the matter to the CTA. What remedy, if any, can Spanflex take? (2011 Bar Question)

- A) It may file a motion to admit appeal if it could prove that its failure to appeal was due to the negligence of counsel.
- B) It may no longer appeal since there is no BIR decision from which it could appeal.
- C) It may wait for the final decision of the BIR on his protest and appeal it to the CTA within 30 days from receipt of such decision.
- D) None. Its right to appeal to the CTA has prescribed.

SUGGESTED ANSWER: C

213. The taxpayer seasonably filed his protest together with all the supporting documents. It is already July 31, 2011, or 180 days from submission of the protest but the BIR Commissioner has not yet decided his protest. Desirous of an early resolution of his protested assessment, the taxpayer should file his appeal to the Court of Tax Appeals not later than: (2011 Bar Question)

- A) August 31, 2011.
- B) August 30, 2011.
- C) August 15, 2011.
- D) August 1, 2011.

SUGGESTED ANSWER: B

3. Effect of failure to appeal

214. The taxpayer received an assessment notice on April 15, 2011 and filed its request for reinvestigation against the assessment on April 30, 2011. Additional documentary evidence in support of its protest was submitted by it on June 30, 2011. If no denial of the protest was received by the taxpayer, when is the last day for the filing of its appeal to the CTA? (2013 Bar Question)

- A) November 30, 2011;
- B) December 30, 2011;
- C) January 30, 2012;
- D) February 28, 2012.

SUGGESTED ANSWER:

C) January 30, 2012 Section 228, NIRC.

215. Using the same facts in the immediately preceding number, but assuming that the final decision on the disputed assessment was received by the taxpayer on July 30, 2011, when is the last day for filing of the appeal to the CTA? (2012 Bar Question)

- A) August 30, 2011;
- B) September 30, 2011;
- C) December 30, 2011;
- D) January 30, 2012.

SUGGESTED ANSWER:

A) August 30, 2011; Section 228, NIRC (nearest answer but not correct answer)

[Note: The period to appeal is within 30 days from receipt of the final decision by the Commissioner. The decision was received on July 30, 2011 so the last day to perfect an appeal with the CTA is August 29, 2011. It is thus clear that the question did not provide for the CORRECT answer. Hence, it should be treated as a bonus question.]

2. Compromise and abatement of taxes

216. Which statement below on compromise of tax liability is correct? (2012 Bar Question)

- A) Compromise of a tax liability is available only at the administrative level;
- B) Compromise of a tax liability is available only before trial at the CTA;
- C) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained;
- D) Compromise of a tax liability is still available even after the court decision has become final and executory.

SUGGESTED ANSWER:

C) Compromise of a tax liability is available even during appeal, provided that prior leave of court is obtained RR 30-2002.

217. When the financial position of the taxpayer demonstrates a clear inability to pay the tax, the Commissioner of Internal Revenue may validly compromise the tax liability. (2009 Bar Question)

SUGGESTED ANSWER:

True. Financial incapacity is a ground allowed by law in order that the Commissioner of Internal Revenue may compromise a tax liability (Section 204, NIRC)

3. Recovery of tax erroneously or illegally collected

218. The prescriptive period to file a criminal action is: (2012 Bar Question)

- A) Ten (10) years from the date of discovery of the commission of fraud or nonfiling of tax return;
- B) Five (5) years from the date of issuance of the final assessment notice;
- C) Three (3) years from the filing of the annual tax return;
- D) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

SUGGESTED ANSWER:

D) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. Section 281, NIRC.

219.X Corporation had excess income tax payment for the year 2008, which it chose to carry over in 2009. In filing its 2009 corporate income tax return, it signified its intention (by checking the small box "refund" at the bottom of the return) to get a refund of the overpaid amount in 2008. Can the refund be allowed or not, and if disallowed, does X Corporation lose the claimed amount? (2012 Bar Question)

- A) X Corporation may not get the refund because the decision to carry over in 2008 was irrevocable for that year, and it may not change that decision in succeeding years;
- B) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carry over of excess income tax payments;
- C) X Corporation may get the refund, provided that it will no longer carry over such amount or utilize the same against its income tax liability in the future;
- D) X Corporation may file instead a claim of tax credit, in lieu of refund.

SUGGESTED ANSWER:

B) X Corporation may not get the refund in 2009, but the amount being claimed as refund may be utilized in succeeding years until fully exhausted because there is no prescriptive period for carry over of excess income tax payments ;

Section 76, NIRC. ; or

The carry-over of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded. (*Belle Corp. v. CIR*, G.R. No. 181298, January 10, 2011)

Taxing power of local government units shall NOT extend to the following taxes, except one: (2012 Bar Question)

- a) Income tax on banks and other financial institutions;
- b) Taxes of any kind on the national government, its agencies and instrumentalities, and local government units;
- c) Taxes on agricultural and aquatic products when sold by the marginal farmers or fishermen; d) Excise taxes on articles enumerated under the National Internal Revenue Code.

SUGGESTED ANSWER:

A) Income tax on banks and other financial institutions Section 186, RA 7160

a. Grounds, requisites, and period for filing a claim for refund or issuance of a tax credit certificate

220. Vanderful, Inc.'s income tax return for taxable year 2015 showed an overpayment due to excess creditable withholding taxes in the amount of P750,000. The company opted to carry over the excess income tax credits as tax credit against its quarterly income tax liabilities for the next succeeding years. For taxable year 2016, the company's income tax return showed an overpayment due to excess creditable withholding taxes in the amount of P1,100,000, which included the carry-over from year 2015 in the amount of P750,000 because its operations resulted in a net loss hence,

there was no application for any tax liability. This time, the company opted and marked the box “To be refunded” in respect of the total amount of P1,100,000.

Vanderful, Inc. now files in the BIR a claim for refund of unutilized overpayments of P1,100,000. Is the claim meritorious? (4%) (2017 Bar Question)

SUGGESTED ANSWER:

No, but only to the extent of the amount of P750,000.00 which was carried over from year 2015. Section 76 of the NIRC of 1997 clearly states: Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor. Section 76 expressly states that the option shall be considered irrevocable for that taxable period referring to the period comprising the succeeding taxable years. Section 76 further states that no application for cash refund or issuance of a tax credit certificate shall be allowed therefore referring to that taxable period comprising the succeeding taxable years [*Asianworld Properties Philippine Corporation v. CIR, G.R. No. 171766 (2010)*].

b. Proper party to file claim for refund or tax credit

221. International Technologies, Inc. (ITI) filed a claim for refund for unutilized input VAT with the Court of Tax Appeals (CTA). In the course of the trial, ITI engaged the services of an independent Certified Public Accountant (CPA) who examined the voluminous invoices and receipts of ITI. ITI offered in evidence only the summary prepared by the CPA, without the invoices and the receipts, and then submitted the case for decision.

Can the CTA grant ITI's claim for refund based only on the CPA's summary? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

No. The summary prepared by the CPA does not prove anything unless the documents which were the basis of the summary are submitted to the CTA and adduced in evidence. The invoices and receipts must be presented because they are the only real and direct evidence that would enable the Court to determine with particular certainty the basis of the refund (*CIR v. Rio Tuba Nickel Mining Corp., 207SCRA S49[1992]*).

222. A taxpayer received an assessment notice from the BIR on February 3, 2009. The following day, he filed a protest, in the form of a request for reinvestigation, against the assessment and submitted all relevant documents in support of the protest. On September 11, 2009, the taxpayer, apprehensive because he had not yet received notice of a decision by the Commissioner on his protest, sought your advice.

What remedy or remedies are available to the taxpayer? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

The remedy of a taxpayer is to avail of either of two options:

1. File a petition for review with the CTA within 30 days after the expiration of the 180- day period from submission of all relevant documents; or
2. Await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after receipt of a copy of such decision.

These options are mutually exclusive such that resort to one bars the application of the other (*RCBC v. OR, 522SCRA 144(2007)*).

- 223. Explain the procedure for claiming refunds or tax credits of input Value Added Tax (VAT) for zero-rated or effectively zero-rated sale. under Sec. 112 of the National Internal Revenue Code (NIRC) from the filing of an application with the CIR up to the CTA. (2.5%) (2016 Bar Question)**

SUGGESTED ANSWER:

In order to be entitled to a refund/tax credit of excess input VAT attributable to zero-rated or effectively zero-rated sales, the following requisites must be complied with:

1. The claim for refund must be filed with the Commissioner within 2 years counted from the last day of the quarter when the zero. rated sale was made (Sec. 112, NIRC);
2. The claim for refund must be accompanied by a statement under oath that all documents to support the claim has been submitted at the time of filing of the claim for refund (RMC 54-14);
3. The Commissioner must decide on the claim within 90 days from date of filing and the adverse decision is appealable to the CTA within 30 days from receipt (Sec. 112, NIRC; *CIR v. Aichi Forging of Asia, Inc.*, G.R. No. 184823, October 6, 2010, 632 SCRA 422);
4. If no decision is made within the 90-day period, there is a deemed denial or adverse decision which is appealable to the CTA within 30 days from the lapse of the 120-day period (Sec. 112, NIRC; Sec. 7(a)(1) of RA 1125, as amended by RA 9282).

- 224. Explain the procedure for claiming refunds of tax erroneously or illegally collected under Sec. 229 of the NIRC from the filing of the claim for refunds with the CIR up to the CTA. (2.5%) (2016 Bar Question)**

SUGGESTED ANSWER:

The procedure for claiming refunds of tax erroneously or illegally collected are the following:

1. A written claim for refund must be filed with the Commissioner within two years from date of payment of the tax (Sec. 204, NIRC);
2. A decision of the Commissioner denying the claim, is appealable to the CTA within 30 days from receipt thereof or within two years from date of payment, whichever comes first (Sec. 229, NIRC; Sec. 7(a)(1), RA 1125 as amended by RA 9282);
3. If no decision is made by the Commissioner, the aggrieved taxpayer must consider the inaction as a denial and appeal to the CTA must be filed before the lapse of two years counted from date of payment (Sec. 229, NIRC).

- 225. Soaring Eagle paid its excise tax liabilities with Tax Credit Certificates (TCCs) which it purchased through the One Stop Shop Inter-Agency Tax Credit Center (Center) of the Department of Finance. The Center is a composite body of the DOF, BIR, BOC and the BOI. The TCCs were accepted by the BIR as payments. A year after, the BIR demanded the payment of alleged deficiency excise taxes on the ground that Soaring Eagle is not a qualified transferee of the TCCs it purchased from other BOI-registered companies. The BIR argued that the TCCs are subject to post-audit as a suspensive condition. On the other hand, Soaring Eagle countered that it is a buyer in good faith and for value who merely relied on the Center's representation of the genuineness and validity of the TCCs. If it is ordered to pay the deficiency, Soaring Eagle claims the same is confiscatory and a violation of due process. Is the assessment against Soaring Eagle valid? Explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

No. The assessment is invalid because the TCC's used by Soaring Eagle are valid and effective. A TCC is an undertaking by the government through the BIR or DOF, acknowledging that a taxpayer is entitled to a certain amount of tax credit from either an overpayment of income taxes, a direct benefit granted by law or other sources and instances granted by law such as on specific unused input taxes and excise taxes on

certain goods. As such, tax credit is transferable in accordance with pertinent laws, rules, and regulations (*Pilipinas Shell Petroleum Corp. v. Commissioner of Internal Revenue*, G.R. No. 172598, December 21, 2007, 541 SCRA 316).

G. Government remedies

226. On August 31, 2014, Haelton Corporation (HC), thru its authorized representative Ms. Pares, sold a 16-storey commercial building known as Haeltown Building to Mr. Belly for P100 million. Mr. Belly, in turn, sold the same property on the same day to Bell Gates, Inc. (BGI) for P200 million. These two (2) transactions were evidenced by two (2) separate Deeds of Absolute Sale notarized on the same day by the same notary public.

Investigations by the Bureau of Internal Revenue (BIR) showed that:

- (1) the Deed of Absolute Sale between Mr. Belly and BGI was notarized ahead of the sale between HC and Mr. Belly;
- (2) as early as May 17, 2014, HC received P40 million from BGI, and not from Mr. Belly;
- (3) the said payment of P40 million was recorded by BGI in its books as of June 30, 2014 as investment in Haeltown Building; and
- (4) the substantial portion of P40 million was withdrawn by Ms. Pares through the declaration of cash dividends to all its stockholders.

Based on the foregoing, the BIR sent Haeltown Corporation a Notice of Assessment for deficiency income tax arising from an alleged simulated sale of the aforesaid commercial building to escape the higher corporate income tax rate of thirty percent (30%). What is the liability of Haeltown Corporation, if any? (4%) (2015 Bar Question)

SUGGESTED ANSWER:

Haelton Corporation is liable for the deficiency income tax as a result of tax evasion. The purpose of selling first the property to Mr. Belly is to create a tax shelter. He never controlled the property and did not enjoy the normal benefits and burdens of ownership. The sale to him was merely a tax ploy, a sham, and without business purpose and economic substance. The intermediary transaction, which was prompted more on the mitigation of tax liabilities than for legitimate business purpose constitutes one of tax evasion. However, being a corporation, Haelton can only be liable for civil fraud which is a civil liability rather than a criminal fraud which can only be committed by natural persons. (*CIR v. Benigno Toda, Jr.*, 438 SCRA 290 [Sept. 14, 2004]).

227. In 2010, pursuant to a Letter of Authority (LA) issued by the Regional Director, Mr. Abcede was assessed deficiency income taxes by the BIR for the year 2009. He paid the deficiency. In 2011, Mr. Abcede received another LA for the same year 2009, this time from the National Investigation Division, on the ground that Mr. Abcede's 2009 return was fraudulent.

Mr. Abcede contested the LA on the ground that he can only be investigated once in a taxable year. Decide. (7%) (2013 Bar Question)

SUGGESTED ANSWER:

The contention of Mr. Abcede is not tenable. While the general rule is to the effect that for income tax purposes, a taxpayer must be subject to examination and inspection by internal revenue officers only once in a taxable year, this will not apply if there is fraud, irregularity or mistakes as determined by the Commissioner. In the instant case, what triggered the second examination is the findings by the BIR that Mr. Abcede's 2009 return was fraudulent, accordingly, the examination is legally justified. (Section 235, NIRC).

228. Mr. Alvarez is in the retail business. He received a deficiency tax assessment from the BIR containing only the computation of the deficiency tax and the penalties, without any explanation of the factual and legal bases for the assessment.

Is the assessment valid? (1%) (2013 Bar Question)

- A) The assessment is valid; all that Mr. Alvarez has to know is the amount of the tax.
- B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based.
- C) The assessment is valid but Mr. Alvarez can still contest it.
- D) The assessment is invalid because Mr. Alvarez has no way to determine if the computation is erroneous. •

SUGGESTED ANSWER:

(B) The assessment is invalid; the law requires a statement of the facts and the law upon which the assessment is based (Section 228, NIRC, *Azucena Reyes v. Commissioner*).

229. You are the retained tax counsel of ABC Corp. Your client informed you that they have been directly approached with a proposal by a BIR insider (i.e., a middle rank BIR official) on the tax matter they have referred to you for handling.

The BIR insider's proposal is to settle the matter by significantly reducing the assessment, but he will get 50% of the savings arising from the reduced assessment.

What tax, criminal and ethical considerations will you take into account in giving your advice? Explain the relevance of each of these considerations. (9%) (2013 Bar Question)

SUGGESTED ANSWER:

I will advise my client not to accept the settlement proposal but instead pay the entire amount of tax that is legally due to the government.

On the tax aspect, I will tell my client that a proposed assessment covering deficiency taxes which are legally due must be fully paid to exonerate the taxpayer from further tax liabilities. The unwarranted reduction of the proposed assessment into half and the payment thereof will not close the case but can be re-opened anytime within ten years from discovery so as to collect the correct amount of taxes from ABC Corp.

The act of deliberately paying an amount of tax that is less than what is known by my client to be legally due through a cause of action that is unlawful is considered as tax evasion. I will advise my client that conniving with a BIR insider to reduce the proposed assessment for a fee is unlawful which can expose the officers of the corporation to criminal liability. Likewise, the payment to be made to the BIR official of 50% of the savings constitutes direct bribery punishable under the Revised Penal Code. Insofar as the BIR officer is concerned he will also be a principal to direct bribery and to the criminal violations penalized under Section 269 of the Tax Code.

On ethical grounds, agreeing to the settlement scheme being proposed by the BIR insider is agreeing to the perpetration of a dishonest act. Since taxation is symbiotic relationship, fair dealing on both sides is of paramount importance. I will remind my client that taxpayers owe honesty to government just as government owes fairness to taxpayers. (*CIR v. Tokyo Shipping Co., Ltd.*, G.R. No. 68252, May 26, 1996).

230. Mr. A was preparing his income tax return and had some doubt on whether a commission he earned should be declared for the current year or for the succeeding year. He sought the opinion of his lawyer who advised him to report the commission in the succeeding year. He heeded his lawyer's advice and reported the commission in the succeeding year. The lawyer's advice turned out to be wrong; in Mr. A's petition against the BIR assessment, the court ruled against Mr. A.

Is Mr. A guilty of fraud? (1%) (2013 Bar Question)

- A) Mr. A is not guilty of fraud as he simply followed the advice of his lawyer.
- B) Mr. A is guilty of fraud; he deliberately did not report the commission in the current year when he should have done so.
- C) Mr. A's lawyer should pay the tax for giving the wrong advice.
- D) Mr. A is guilty for failing to consult his accountant.

SUGGESTED ANSWER:

(A) Mr. A is not guilty of fraud as he simply followed the advice of his lawyer (*CIR v. CA*, G.R. No. 119322, June 4, 1996).

231. The BIR, through the Commissioner, instituted a system requiring taxpayers to submit to the BIR a summary list of their sales and purchases during the year, indicating the name of the seller or the buyer and the amount. Based on these lists, the BIR discovered that in 2004 ABC Corp. purchased from XYZ Corp. goods worth P5,000,000. XYZ Corp. did not declare these for income tax purposes as its reported gross sales for 2004 was only P1,000,000.

Which of the following defenses may XYZ Corp. interpose in an assessment against it by the BIR? (1%) (2013 Bar Question)

- A) The BIR has no authority to obtain third party information to assess taxpayers.
- B) The third party information is inadmissible as hearsay evidence.
- C) The system of requiring taxpayers to submit third party information is illegal for violating the right to privacy.
- D) None of the above.

SUGGESTED ANSWER:

(D) None of the above (Sections 5 & 6, NIRC).

232. Based on the Affidavit of the Commissioner of Internal Revenue (CIR), an Information for failure to file income tax return under Section 255 of the National Internal Revenue Code (NIRC) was filed by the Department of Justice (DOJ) with the Manila Regional Trial Court (RTC) against XX, a Manila resident.

XX moved to quash the Information on the ground that the RTC has no jurisdiction in view of the absence of a formal deficiency tax assessment issued by the CIR.

Is a prior assessment necessary before an Information for violation of Section 255 of the NIRC could be filed in court? Explain. (4%) (2010 Bar Question)

SUGGESTED ANSWER:

No. In the case of failure to file a return, a proceeding in court for the collection of the tax may be filed without an assessment. (Sec. 222(a), NIRC). The tax can be collected by filing a criminal action with the RTC because a criminal action is a mode of collecting the tax liability. (Sec. 205, NIRC). Besides, the

Commissioner is empowered to prepare a return on the basis of his own knowledge, and upon such information as he can obtain from testimony or otherwise, which shall be prima facie correct and sufficient for legal purposes (Sec. 6(B), NIRC; The issuance of a formal deficiency tax assessment, therefore is not required.

233. Which court has jurisdiction to determine if the warrant of distraint and levy issued by the BIR is valid and to rule if the waiver of the Statute of Limitations was validly effected? (2012 BAR)
- A) City Courts;
 - B) Regional Trial Court;
 - C) Court of Tax Appeals;
 - D) Court of Appeals.

SUGGESTED ANSWER:

C) Court of Tax Appeals Section 7, RA 9282.

1. Kinds

234. The BIR could not avail itself of the remedy of levy and distraint to implement, through collection, an assessment that has become final, executory, and demandable where: (2011 Bar Question)
- A) the subject of the assessment is an income tax.
 - B) the amount of the tax involved does not exceed P100.00.
 - C) the corporate taxpayer has no other uncollected tax liability.
 - D) the taxpayer is an individual compensation income earner.

SUGGESTED ANSWER: B

235. When a BIR decision affirming an assessment is appealed to the CTA, the BIR's power to garnish the taxpayer's bank deposits: (2011 Bar Question)
- A) is suspended to await the finality of such decision.
 - B) is suspended given that the CTA can reverse BIR decisions when prejudicial to the taxpayer.
 - C) is not suspended because only final decisions of the BIR are subject to appeal.
 - D) is not suspended since the continued existence of government depends on tax revenues.

SUGGESTED ANSWER: D

236. In "Operation Kandado," the BIR temporarily closed business establishments, including New Dynasty Corporation that failed to comply with VAT regulations. New Dynasty contends that it should not be temporarily closed since it has a valid and existing VAT registration, it faithfully issued VAT receipts, and filed the proper VAT returns. The contention may be rejected if the BIR investigation reveals that
- A) the taxpayer has not been regularly filing its income tax returns for the past 4 years.
 - B) the taxpayer deliberately filed a false and fraudulent return with deliberate intention to evade taxes.
 - C) the taxpayer used falsified documents to support its application for refund of taxes.
 - D) there was an understatement of taxable sales or receipts by 30% or more for the taxable quarter.

SUGGESTED ANSWER: D

2. Judicial remedies

- 237. How are retiring businesses taxed under the Local Government Code? (2%) (2012 Bar Question)**

SUGGESTED ANSWER:

Retiring business under the LGC are taxed on their gross sales or gross receipts in the current year and not on the preceding year. If the tax paid in the current year is less than the tax due on gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired (Sec. 145, LGC).

III. LOCAL TAXATION (Local Government Code of 1991 [RA 7160], as amended)

A. Local government taxation

1. Fundamental principles

- 1. What is the nature of the taxing power of the provinces, municipalities and cities? How will the local government units be able to exercise their taxing powers? (2007 Bar Question)**

SUGGESTED ANSWER:

The taxing power of the provinces, municipalities and cities is directly conferred by the Constitution by giving them the authority to create their own sources of revenue. The local government units do not exercise the power to tax as an inherent power or by a valid delegation of the power by Congress, but pursuant to a direct authority conferred by the Constitution. (*Mactan Cebu International Airport Authority v. Marcos*, 261 SCRA 667 [1996]; *NPC v. City of Cabanatuan*, 401 SCRA 259 [2003]).

The local government units exercise the power to tax by levying taxes, fees and charges consistent with the basic policy of local autonomy, and to assess and collect all these taxes, fees and charges which will exclusively accrue to them. The local government units are authorized to pass tax ordinances (levy) and to pursue actions for the assessment and collection of the taxes imposed in said ordinances. (Section 129, and 132, Local Government Code).

- 2. May the bank deposits – peso and foreign currency of the an individual taxpayer be disclosed by a commercial bank to the Commissioner of Internal Revenue, in connection with a tax investigation being conducted by revenue officials, without violating the relevant bank secrecy laws? Explain your answer. (2012 Bar Question)**

SUGGESTED ANSWER:

No. As a general rule, bank deposits of an individual taxpayer may not be disclosed by a commercial bank to the Commissioner. As exceptions, the Commissioner is authorized to inquire into the bank deposits of:

1. A decedent to determine his gross estate;
2. Any taxpayer who has filed an application for compromise of his tax liability by reason of financial incapacity to pay his tax liability.

- 3. In 2011, the Commissioner of the U.S. Internal Revenue Service (IRS) requested in writing the Commissioner of Internal Revenue to get the information from a bank in the Philippines, regarding the deposits of a U.S. Citizen residing in the Philippines, who is under examination by the officials of the US IRS, pursuant to the US-Philippine Tax Treaty and other existing laws.**

Should the BIR Commissioner agree to obtain such information from the bank and provide the same to the IRS? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

YES. The Commissioner should agree to the request pursuant to the principle of international comity. The Commissioner of Internal Revenue has the authority to inquire into bank deposits accounts and related information held by financial institutions of a specific taxpayer subject of a request for the supply of tax information from a foreign tax authority pursuant to an international convention or agreement to which the Philippines is a signatory or party of (Sec. 3, RA 10021).

- 4. Is the bank secrecy law in the Philippines violated when the BIR issues a Warrant of Garnishment directed against a domestic bank, requiring it not to allow any withdrawal from any existing bank deposit of the delinquent taxpayer mentioned in the Warrant and to freeze the same until the tax delinquency of said taxpayer is settled with the BIR? Explain your answer. (2012 Bar Question)**

SUGGESTED ANSWER:

NO. Garnishment is an administrative remedy allowed by law to enforce a tax liability. Bank accounts shall be garnished by serving a warrant of garnishment upon the taxpayer and upon the president, manager, treasurer or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turnover to the Commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the Government (Sec. 208, NIRC).

- 5. In the examination conducted by the revenue officials against the corporate taxpayer in 2010, the BIR issued a final assessment notice and demand letter which states: "It is requested that the above deficiency tax be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision based on investigation. If you disagree, you may appeal this final decision within thirty (30) days from receipt hereof, otherwise said deficiency tax assessment shall become final, executory and demandable." The assessment was immediately appealed by the taxpayer to the Court of Tax Appeals, without filing its protest against the assessment and without a denial thereof by the BIR. If you were the judge, would you deny the petition for review filed by the taxpayer and consider the case as prematurely filed? Explain your answer. (2012 Bar Question)**

SUGGESTED ANSWER:

NO, the Petition for Review should not be denied. The case is an exception to the rule on exhaustion of administrative remedies. The BIR is estopped from claiming that the filing of the Petition for Review is premature because the taxpayer failed to exhaust all administrative remedies. The statement of the BIR in its Final Assessment Notice and Demand Letter led the taxpayer to conclude that only a final judicial ruling in his favor would be accepted by the BIR. The taxpayer cannot be blamed for not filing a protest against the Formal Letter of Demand with Assessment Notices since the language used and the tenor of the demand letter indicate that it is the final decision of the respondent on the matter. The CIR should indicate, in a clear and unequivocal language, whether his action on a disputed assessment constitutes his final determination thereon in order for the taxpayer concerned to determine when his or her right to appeal to the tax court accrues. Although there was no direct reference for the taxpayer to bring the matter directly to the CTA, it cannot be denied that the word "appeal" under prevailing tax laws refers to the filing of a Petition for Review with the CTA (*Allied Bank v. CIR*, G.R. No. 175097, Feb. 5, 2010).

2. Specific taxing powers of Local Government Units (exclude rates)

6. Prior to the enactment of the Local Government Code, consumer's cooperatives registered under the Cooperative Development Act enjoyed exemption from all taxes imposed by a local government. With the Local Government Code's withdrawal of exemptions, could these cooperatives continue to enjoy such exemption? (2011 Bar Question)
- A) Yes, because the Local Government Code, a general law, could not amend a special law such as the Cooperative Development Act.
 - B) No, Congress has not by the majority vote of all its members granted exemption to consumers' cooperatives.
 - C) No, the exemption has been withdrawn to level the playing field for all taxpayers and preserve the LGUs' financial position.
 - D) Yes, their exemption is specifically mentioned among those not withdrawn by the Local Government Code.

SUGGESTED ANSWER: D

7. What is the tax base for the imposition by the province of professional taxes? (2012 Bar Question)
- A) That which Congress determined.
 - B) The pertinent provision of the local Government Code.
 - C) The reasonable classification made by the provincial sanggunian.
 - D) That which the Dept. of Interior and Local Government determined.

SUGGESTED ANSWER: B

8. After the province has constructed a barangay road, the Sangguniang Panglalawigan may impose a special levy upon the lands specifically benefitted by the road up to an amount not to exceed: (2012 Bar Question)
- A) 60% of the actual cost of the road without giving any portion to the barangay.
 - B) 100% of the actual project cost without giving any portion to the barangay.
 - C) 100% of the actual project cost, keeping 60% for the province and giving 40% to the barangay.
 - D) 60% of the actual cost, dividing the same between the province and the barangay.

SUGGESTED ANSWER: A

9. BATAS Law is a general professional partnership operating in the City of Valenzuela. It regularly pays value-added tax on its services. All its lawyers have individually paid the required professional tax for the year 2017. However, as a condition for the renewal of its business permit for the year 2017, the City Treasurer of Valenzuela assessed BATAS Law for the payment of percentage business tax on its gross receipts for the year 2016 in accordance with the Revenue Tax Code of Valenzuela.

Is BATAS Law liable to pay the assessed percentage business tax? Explain your answer. (3%) (2017 Bar Question)

SUGGESTED ANSWER:

No. Section 133 (i) of the Local Government Code provides that the exercise of the taxing powers of local government units such as the City of Valenzuela shall not extend to the levy of "percentage or value-added tax

(VAT) on sales, barter or exchanges or similar transactions on goods or services” except as otherwise provided in the LGC; therefore, BATAS Law may not be assessed with and required to pay percentage business tax.

10. Pheleco is a power generation and distribution company operating mainly from the City of Taguig. It owns electric poles which it also rents out to other companies that use poles such as telephone and cable companies. Taguig passed an ordinance imposing a fee equivalent to 1% of the annual rental for these poles. Pheleco questioned 'the legality of the ordinance on the ground that it imposes an income tax which local government units (LGUs) are prohibited from imposing.

Rule on the validity of the ordinance. (1%) (2013 Bar Question)

- A) (A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.
- B) (B) The ordinance is valid as a legitimate exercise of police power to regulate electric poles.
- C) (C) The ordinance is void; 1% of annual rental is excessive and oppressive.
- D) (D) The ordinance is valid; an LGU may impose a tax on income.

SUGGESTED ANSWER:

(B) The ordinance is valid as a legitimate exercise of police power to regulate electric poles (Section 129, RA No. 7160).

11. The Local Government Code took effect on January 1, 1992.

PLDT's legislative franchise was granted sometime before 1992. Its franchise provides that PLDT will only pay 3% franchise tax in lieu of all taxes. The legislative franchises of Smart and Globe Telecoms were granted in 1998. Their legislative franchises state that they will pay only 5% franchise tax in lieu of all taxes.

The Province of Zamboanga del Norte passed an ordinance in 1997 that imposes a local franchise tax on all telecommunication companies operating within the province. The tax is 50% of 1% of the gross annual receipts of the preceding calendar year based on the incoming receipts, or receipts realized, within its territorial jurisdiction.

Is the ordinance valid? Are PLDT, Smart and Globe liable to pay franchise taxes? Reason briefly. (2007 Bar Question)

SUGGESTED ANSWER:

The ordinance is valid. The Local Government Code explicitly authorizes provincial governments, notwithstanding any law or other special law, to impose a tax on business enjoying a franchise at the rate of 50% of 1% based on the gross annual receipts during the preceding year within the province. (Section 137, LGC).

PLDT is liable to the franchise tax levied by the province of Zamboanga del Norte. The tax exemption privileges on franchises granted before the passage of the Local Government Code are effectively repealed by the latter law. (*PLDT v. City of Davao*, 363 SCRA 522 12001J).

Smart and Globe, however, are not liable to the franchise tax imposed under the provincial ordinance. The legislative franchises of Smart and Globe were granted in 1998, long after the Local Government Code took effect. Congress is deemed to have been aware of the provisions of the earlier law. When it granted the exemption. Accordingly, the latest will of the legislature to grant tax exemption must be respected.

12. **ABC Corporation is registered as a holding company and has an office in the City of Makati. It has no actual business operations. It invested in another company and its earnings are limited to dividends from this investment, interests on its bank deposits, and foreign exchange gains from its foreign currency account. The City of Makati assessed ABC Corporation as a contractor or one that sells services for a fee. Is the City of Makati correct? (2013 Bar Question)**

SUGGESTED ANSWER:

No. The corporation cannot be considered as a contractor, because it does not render services for others for a fee. A contractor is one whose activity consists essentially in the sale of all kinds of services for a fee, regardless of whether or not the performance of the service calls for the exercise or use of the physical or mental faculties of such contractor or its employees. To be considered as a contractor, the corporation must derive income from doing active business of selling services and not from deriving purely passive income. Accordingly, a mere holding company cannot be assessed by the City of Makati as a contractor. (Section 131(h), LGC). (2013 Bar Question)

13. **In 2014, M City approved an ordinance levying customs duties and fees on goods coming into the territorial jurisdiction of the city. Said city ordinance was duly published on February 15, 2014 with effectivity date on March 1, 2014.**

Is there a ground for opposing said ordinance? (2%) (2015 Bar Question)

SUGGESTED ANSWERS:

Yes, on the ground that the ordinance is ultra vires. The taxing powers of local government units, such as M City, cannot extend to the levy of taxes, fees and charges already imposed by the national government, and this includes, among others, the levy of customs duties under the Tariff and Customs Code (Sec. 133(e), Local Government Code).

14. **The Sangguniang Bayan of the Municipality of Sampaloc, Quezon, passed an ordinance imposing a storage fee of ten centavos (PO. 10) for every 100 kilos of copra deposited in any bodega within the Municipality's jurisdiction. The Metropolitan Manufacturing Corporation (MMC), with principal office in Makati, is engaged in the manufacture of soap, edible oil, margarine, and other coconut oil-based products. It has a warehouse in Sampaloc, Quezon, used as storage space for the copra purchased in Sampaloc and nearby towns before the same is shipped to Makati. MMC goes to court to challenge the validity of the ordinance, demanding the refund of the storage fees it paid under protest.**

Is the ordinance valid? Explain your answer. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

Yes. The municipality is authorized to impose reasonable fees and charges as a regulatory measure in an amount commensurate with the cost of regulation, inspection and licensing (Section 147, LGC). In the case at bar, the storage of copra in any warehouse within the municipality can be the proper subject of regulation pursuant to the police power granted to municipalities under the Revised Administrative Code or the "general welfare clause". A warehouse used for keeping or storing copra is an establishment likely to endanger the public safety or likely to give rise to conflagration because the oil content of the copra, when ignited, is difficult to put under control by water and the use of chemicals is necessary to put out the fire. It is, thus, reasonable that the Municipality impose storage fees for its own surveillance and lookout (*Procter & Gamble Philippine Manufacturing Corporation v. Municipality of Jagna, Province of Bohol*, 94 SCRA 894 [1979]).

15. What is the basis for the computation of business tax on contractors under the Local Government Code? (2010 Bar Question)

SUGGESTED ANSWER:

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. If the gross receipts amount to more than Php 2.0 Million the business is subject to a percentage tax at the rate of 50% of 1%.

16. How are retiring businesses taxed under the Local Government Code? (2%) (2010 Bar Question)

SUGGESTED ANSWER:

Retiring business under the LGC are taxed on their gross sales or gross receipts in the current year and not on the preceding year. If the tax paid in the current year is less than the tax due on gross sales or receipts of the current year, the difference shall be paid before the business is considered officially retired (Sec. 145, LGC).

17. XYZ Shipping Corporation is a branch of an international shipping line with voyages between Manila and the West Coast of the U.S. The company's vessels load and unload cargoes at the Port of Manila, albeit it does not have a branch or sales office in Manila. All the bills of lading and invoices are issued by the branch office in Makati which is also the company's principal office. The City of Manila enacted an ordinance levying a 2% tax on gross receipts of shipping lines using the Port of Manila.

Can the City Government of Manila legally impose said levy on the corporation? Explain. (2010 Bar Question)

SUGGESTED ANSWER:

No, Manila cannot legally levy the 2% Gross Receipts Tax on thi shipping line because taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, and or water is beyond the taxing powers of the local government units.(Sec. 133(j), LGC)

ALTERNATIVE ANSWER:

No. Since the gross receipts of an international shipping company is subject to tax under the National Internal Revenue Code, the power tax is impliedly withheld from local government units. This is the "rule on preemption or exclusionary rule" which applies unless by express provision of law, LGUs are given the power to tax that field already covered by the taxing power of the National Government (*Victoria's Milling Co., Inc. v. Mun. of Victorias*, L-21183, Sept. 27, 1968; Sec. 133, LGC)

18. What is the basis for the computation of business tax on contractors under the local government code? (2%) (2012 Bar Question)

SUGGESTED ANSWER:

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. However, when the gross receipts amount to P2 million or more, the business tax on contractors is imposed as a percentage tax at the rate of 50% of 1% (Sec. 143(e), LGC).

19. The City of Manila enacted an ordinance, imposing a 5% tax on gross receipts on rentals of space in privately-owned public markets. BAT Corporation questioned the validity of the ordinance, stating that the tax is an income tax, which cannot be imposed by the city government.

Do you agree with the position of BAT Corporation? Explain. (5%) (2008 Bar Question)

SUGGESTED ANSWER:

No. The tax imposed is not an income tax but a license tax or fee for the regulation of the business in which the taxpayers are engaged, that is the leasing of spaces in privately-owned public markets. (*Progressive Development Corporation v. Quezon City*, 172 SCRA 629 [1989]). The income tax imposed under the National Internal Revenue Code which preempts the imposition by the City is one which is imposed on the privilege enjoyed by a taxpayer in earning income and not a tax on business.

3. Common limitations on the taxing powers of LGUs

20. The municipality of San Isidro passed an ordinance imposing a tax on installation managers. At that time, there was only one installation manager in the municipality; thus, only he would be liable for the tax.

Is the law constitutional? (1%) (2013 Bar Question)

- A) It is unconstitutional because it clearly discriminates against this person.
- B) It is unconstitutional for lack of legal basis.
- C) It is constitutional as it applies to all persons in that class.
- D) It is constitutional because the power to tax is the power to destroy.

SUGGESTED ANSWER:

(C) It is constitutional as it applies to all persons in that class (*Shell Co. of P.I. v. Vaño*, 94 Phil. 387).

21. On April 16, 2012, the corporation filed its annual corporate income tax return for 2011, showing an overpayment of income tax of P1 Million which is to be carried over to the succeeding year(s). On May 15, 2012, the corporation sought advice from you and said that it contemplates to file an amended return for 2011, which shows that instead of carryover of the excess income tax payment, the same shall be considered as a claim for tax refund and the small box shown as "refund" in the return will be filled up. Within a year, the corporation will file the formal request for refund for the excess payment.

- A) Will you recommend to the corporation such a course of action and justify that the amended return is the latest official act of the corporation as to how it may treat such overpayment of tax or should you consider the option granted to taxpayers as irrevocable, once previously exercised by it? Explain your answer.

SUGGESTED ANSWER:

NO. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such options shall be considered IRREVOCABLE for the taxable year period and no application for tax refund or issuance of tax credit certificate shall be allowed therefor (Sec. 76, NIRC).

22. Should the petition for review filed with the CTA on the basis of the amended tax return be denied by the BIR and the CTA, could the corporations still carry over such excess payment of income tax

in the succeeding years, considering that there is no prescriptive period provided for in the income tax law with respect to carry over of excess income tax payments? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

YES. The carry-over of excess income tax payments is no longer limited to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded (*Belle Corp. v. CIR*, G.R. No. 181298, Jan. 10, 2011).

23. Explain the following statements:

- A) The acquittal of the taxpayer in a criminal action under the Tax Code does not necessarily result in an exoneration of said taxpayer from his civil liability to pay taxes. (2012 Bar Question)**

SUGGESTED ANSWER:

In taxation, the taxpayer becomes criminally liable because of a civil liability. While he may be acquitted on the criminal case, his acquittal could not operate to discharged him from the duty to pay tax, since that duty is imposed by statute prior to and independent of any attempt on the taxpayer to evade payment. The obligation to pay the tax is not a mere consequence of the felonious acts charged in the information, nor is a mere civil liability derived from crime that would be wiped out by the judicial declaration that the criminal acts charged did not exist (*Castro v. Collector of Internal Revenue*, L-12174, April 26, 1962).

- B) Should the accused be found guilty beyond reasonable doubt for violation of Sec. 255 of the Tax Code for failure to file tax return or to supply correct information, the imposition of the civil liability by the CTA should be automatic and no assessment notice from the BIR is necessary? (2012 Bar Question)**

SUGGESTED ANSWER:

YES. If the failure to file tax return or to supply correct information resulted to unpaid taxes the amount of which is proven during trial, the CTA shall not only impose the criminal penalty but must likewise order the payment of the civil liability (Sec. 205(b), NIRC). As a matter of fact, it is well-recognized that in the case of failure to file a return, a proceeding in court for the collection of the tax may be filed without the need of an assessment (Sec. 222(a), NIRC).

4. Procedure for approval and effectivity of tax ordinances

5. Periods of assessment and collection of local taxes, fees, or charges

24. Which statement on prescriptive periods is true? (2012 Bar Question)

- A) The prescriptive periods to assess taxes in the National Internal Revenue Code and the Local Government Code are the same;**
- B) Local taxes shall be assessed within five (5) years from the date they became due;**
- C) Action for the collection of local taxes may be instituted after the expiration of the period to assess and to collect the tax;**
- D) Local taxes may be assessed within ten (10) years from discovery of the underpayment of tax which does not constitute fraud.**

SUGGESTED ANSWER:

b) Local taxes shall be assessed within five (5) years from the date they became due; Section 194, RA 7160.

25. **MNO Corporation was organized on July 1, 2006, to engage in trading of school supplies, with principal place of business in Cubao, Quezon City. Its book of account and income statement showing gross sales as follows:**

July 1, 2006 to December 31, 2006 P 5,000,000.

January 1, 2007 to June 30, 2007 P 10,000,000.

July 1, 2007 to December 31, 2007 P 15,000,000.

Since MNO Corporation adopted fiscal year ending June 30 as its taxable year for income tax purpose, it paid its 2% business tax for fiscal year ending June 30, 2007 based on gross sales of P15 million. However, the Quezon City Treasurer assessed the corporation for deficiency business tax for 2007 based on gross sales of P25 million alleging that local business taxes shall be computed based on calendar year.

A) Is the position of the city treasurer tenable? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWERS:

Yes. The tax period for local taxes is generally the calendar year. (Section 165, LGC)

B) May the deficiency business tax be paid in installments without surcharge and interest? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWERS:

Yes. Local government units may, through ordinances duly approved, grant reliefs to taxpayers under such terms and conditions as they may deem necessary. Such reliefs may take the form of condonation or extension of time for payment or non-imposition of surcharge or interest. (Section 192, LGC). Accordingly, the deficiency business taxes may be paid in installment without surcharge and interest through the passage of an ordinance for that purpose.

6. Taxpayer's remedies

26. **In 2014, M City approved an ordinance levying customs duties and fees on goods coming into the territorial jurisdiction of the city. Said city ordinance was duly published on February 15, 2014 with effectivity date on March 1, 2014.**

What is the proper procedural remedy and applicable time periods for challenging the ordinance? (4%) (2015 Bar Question)

SUGGESTED ANSWERS:

Any question on the constitutionality or legality of tax ordinances may be raised on appeal within 30 days from the effectivity to the Secretary of Justice. The Secretary of Justice shall render a decision within 60 days from the date of receipt of the appeal. Thereafter, within 30 days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file the appropriate proceedings with the Regional Trial Court (Sec. 187, Local Government Code).

- 27. What is the basis for the computation of business tax on contractors under the local government code? (2%) (2010 Bar Question)**

SUGGESTED ANSWER:

The business tax on contractors is a graduated annual fixed tax based on the gross receipts for the preceding calendar year. However, when the gross receipts amount to P2 million or more, the business tax on contractors is imposed as a percentage tax at the rate of 50% of 1% (Sec. 143(e), LGC).

- 28. On May 15, 2009, La Manga Trading Corporation received a deficiency business tax assessment of P1,500,000.00 from the Pasay City Treasurer. On June 30, 2009, the corporation contested the assessment by filing a written protest with the City Treasurer.**

On October 10, 2009, the corporation received a collection letter from the City Treasurer, drawing it to file on October 25, 2009 an appeal against the assessment before the Pasay Regional Trial Court (RTC).

- A) Was the protest of the corporation filed on time? Explain. (3%) (2010 Bar Question)**

SUGGESTED ANSWER:

The protest was filed on time. The taxpayer has the right to protest an assessment within 60 days from receipt thereof (Sec. 195, LGC). (2010 BAR)

- B) Was the appeal with the Pasay RTC filed on time? Explain. (3%) (2010 Bar Question)**

SUGGESTED ANSWER:

The appeal was not filed on time. When an assessment is protested, the treasurer has 60 days within which to decide, whichever comes first, otherwise the assessment becomes conclusive and unappealable. Since no decision on the protest was made, the taxpayer should have appealed to the RTC within 30 days from the lapse of the period to decide the protest (Sec. 195, LGC).

- 29. The City Government of Manila may NOT impose:**

- A) Basic real property tax at 2% of the assessed value of real property;**
- B) Additional levy on real property for the special education fund at 1% of the assessed value of real property;**
- C) Additional ad valorem tax on idle lands at a rate not exceeding 5% of the assessed value;**
- D) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements. (2012 Bar Question)**

SUGGESTED ANSWER:

d) Special levy on lands within its territory specially benefited by public works projects or improvements funded by it at 80% of the actual cost of the projects or improvements Section 240, RA 7160.

a. Protest of assessment

b. Claim for refund of tax credit for erroneously or illegally collected taxes, fees, or charges

7. Remedies of the LGUs for collection of revenues

a. Administrative action

b. Judicial action

B. Real property taxation

30. For purposes of real property taxes, the tax rates are applied on: (2012 Bar Question)

- A) Zonal values;
- B) Fair market value;
- C) Assessed values;
- D) Reproduction values.

SUGGESTED ANSWER:

C) Assessed values Section 233, RA 7160.

31. One of the local government units below does NOT have the power to impose real property tax: (2012 Bar Question)

- A) Bacoor, Cavite;
- B) Davao City;
- C) Tarlac Province;
- D) Malabon, Metro Manila.

SUGGESTED ANSWER: A

Bacoor, Cavite Section 200, RA 7160. [Note: The answer above is premised on the belief that Bacoor is a municipality and the LGC does not vest municipalities with the power to impose real property taxes, except for municipalities within the Metropolitan Manila area. However, Bacoor is already a city hence, can no longer be a correct choice. Since the question did not provide for the CORRECT answer, it should be treated as a bonus.]

1. Fundamental principles

32. A municipality may levy an annual ad valorem tax on real property such as land, building, machinery, and other improvement only if: (2011 Bar Question)

- A) the real property is within the Metropolitan Manila Area.
- B) the real property is located in the municipality.
- C) the DILG authorizes it to do so.
- D) the power is delegated to it by the province.

SUGGESTED ANSWER: A

33. Republic Power Corporation (RPC) is a government- owned and controlled corporation engaged in the supply, generation and transmission of electric power. In 2005, in order to provide electricity to Southern Tagalog provinces, RPC entered into an agreement with Jethro Energy Corporation (JEC), for the lease of JEC's power barges which shall be berthed at the port of Batangas City. The contract provides that JEC shall own the power barges and the fixtures, fittings, machinery, and equipment therein, all of which JEC shall supply at its own cost, and that JEC shall operate, manage and maintain the power barges for the purpose of converting the fuel of RPC into

electricity. The contract also stipulates that all real estate taxes and assessments, rates and other charges, in respect of the power barges, shall be for the account of RPC.

In 2007, JEC received an assessment of real property taxes on the power barges from the Assessor of Batangas City. JEC sought reconsideration of the assessment on the ground that the power barges are exempt from real estate taxes under Section 234 [c] of R.A. 7160 as they are actually, directly and exclusively used by RPC, a government-owned and controlled corporation. Furthermore, even assuming that the power barges are subject to real property tax, RPC should be held liable therefore, in accordance with the terms of the lease agreement. Is the contention of JEC correct? Explain your answer. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

The contention of JEC is not correct. The owner of the power barges is JEC which is required to operate, manage and maintain the power barges for the purpose the claim that RPC, a government-owned and controlled corporation engaged in the supply, generation and transmission of electric power, is the actual, direct and exclusive user of the barge, hence, does not fall within the purview of the exempting provision of Section 234[c] of R.A. 7160. Likewise, the argument that RPC should be liable to the real property taxes consonant with the contract is devoid of merit. The liability for the payment of the real estate taxes is determined by law and not by the agreement of the parties (*FELS Energy Inc. P. The Province of Batangas*, 516 SCRA 186 [2007]).

34. The appraisal, assessment, levy and collection of real property tax shall be guided by the following principles. Which statement does NOT belong here? (2012 Bar Question)
- A) Real property shall be appraised at its current and fair market value;
 - B) Real property shall be classified for assessment purposes on the basis of its actual use;
 - C) Real property shall be assessed on the basis of a uniform classification within each local political subdivision;
 - D) The appraisal and assessment of real property shall be based on audited financial statements of the owner.

SUGGESTED ANSWER:

D) The appraisal and assessment of real property shall be based on audited financial statements of the owner. Section 198, RA 7160.

35. The BIR issued in 2010 a final assessment notice and demand letter against X Corporation covering deficiency income as for the year 2008 in the amount of P10 Million. X Corporation earlier requested the advice of a lawyer on whether or not it should file a request for reconsideration or a request for reinvestigation. The lawyer said it does not matter whether the protest against the assessment is a request for reconsideration or a request for reinvestigation, because it has same consequences or implications. (2012 Bar Question)
- A) What are the differences between a request for reconsideration and a request for reinvestigation?
 - B) Do you agree with the advice of the lawyer? Explain your answer (2012)

SUGGESTED ANSWER

- A) **Request for Reconsideration** – plea for evaluation of assessment on the basis of existing records without need of presentation of additional evidence. It does not suspend the period to collect the deficiency tax.

Request for Reinvestigation – plea for re-evaluation on the basis of newly discovered evidences which are to be introduced for examination for the first time. It suspends the prescriptive period to collect.

- B) NO, in view of the aforesaid difference between Request for Reconsideration & Request for Reinvestigation.

36. A inherited a two-storey building in Makati from his father, a real estate broker in the 'bOs. A group of Tibetan monks approached A and offered to lease the building in order to use it as a venue for their Buddhist rituals and ceremonies. A accepted the rental of P1 million for the whole year.

The following year, the City Assessor issued an assessment against A for nonpayment of real property taxes.

Is the assessor justified in assessing A's deficiency real property taxes? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

No. The property is exempt from real property tax by virtue of the beneficial use thereof by the Tibetan monks for their religious rituals and ceremonies. A property that is actually, directly and exclusively used for religious purposes is exempt from the real property tax (Sec. 234, LGC; Sec. 28(3), Article IV, Phil. Constitution). The test of exemption from the tax is not ownership but the beneficial use of the property (*City of Baguio v. Busuego*, L-29772, Sept. 18, 1980).

2. Exemption from real property taxes

37. The head priest of the religious sect *Tres Personas Solo Dios*, as the corporation sole, rented out a 5,000 sq. m. lot registered in its name for use as school site of a school organized for profit. The sect used the rentals for the support and upkeep of its priests. The rented lot is
- A) not exempt from real property taxes because the user is organized for profit.
 - B) exempt from real property taxes since it is actually, directly, and exclusively used for religious purposes.
 - C) not exempt from real property taxes since it is the rents, not the land, that is used for religious purposes.
 - D) exempt from real property taxes since it is actually, directly, and exclusively used for educational purposes.

SUGGESTED ANSWER: D

38. Real property owned by the national government is exempt from real property taxation unless the national government
- A) transfers it for the use of a local government unit.
 - B) leases the real property to a business establishment.
 - C) gratuitously allows its use for educational purposes by a school established for profit.
 - D) sells the property to a government-owned non-profit corporation.

SUGGESTED ANSWER: B

39. Mr. Amado leased a piece of land owned by the Municipality of Pinagsabitan and built a warehouse on the property for his business operations. The Municipal Assessor assessed Mr. Amado for real property taxes on the land and the warehouse. Mr. Amado objected to the

assessment, contending that he should not be asked to pay realty taxes on the land since it is municipal property.

Was the assessment proper? (5%) (2013 Bar Question)

SUGGESTED ANSWER:

Yes, the assessment is proper. The land, although owned by the Municipality, is not exempt from real property tax because the beneficial use has been granted to a taxable person. (Section 234(a), LGC).

- 40. LLL is a government instrumentality created by Executive Order to be primarily responsible for integrating and directing all reclamation projects for the National Government. It was not organized as a stock or a non-stock corporation, nor was it intended to operate commercially and compete in the private market.**

By virtue of its mandate, LLL reclaimed several portions of the foreshore and offshore areas of the Manila Bay, some of which were within the territorial jurisdiction of Q City. Certificates of title to the reclaimed properties in Q City were issued in the name of LLL in 2008. In 2014, Q City issued Warrants of Levy on said reclaimed properties of LLL based on the assessment for delinquent property taxes for the years 2010 to 2013.

- A) Are the reclaimed properties registered in the name of LLL subject to real property tax? (4%) (2015 Bar Question)**

SUGGESTED ANSWER:

The reclaimed properties are not subject to real property tax because LLL is a government instrumentality. Under the law, real property owned by the Republic of the Philippines is exempt from real property tax unless the beneficial use thereof has been granted to a taxable person (Sec. 234, Local Government Code). When the title of the real property is transferred to LLL, the Republic remains the owner of the real property. Thus, such arrangement does not result in the loss of the tax exemption. (*Republic of the Philippines, represented by The Philippine Reclamation Authority (PRA) v. City of Paranaque*, 677 SCRA 246 [2012]).

ALTERNATIVE ANSWER:

No. LLL is an instrumentality of the national government which cannot be taxed by local government units. LLL is not a government-owned or controlled corporation taxable for real property taxes (*City of Lapu-Lapu v. PEZA*, G.R. No. 184203, November 26, 2014).

- B) Will your answer be the same in (a) if from 2010 to the present time, LLL is leasing portions of the reclaimed properties for the establishment and use of popular fastfood restaurants J Burgers, G Pizza, and K Chicken? (2%) (2015 Bar Question)**

SUGGESTED ANSWER:

No. As a rule, properties owned by the Republic of the Philippines are exempt from real property tax except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person. When LLL leased out portions of the reclaimed properties to taxable entities, such as the popular fast food restaurants, the reclaimed properties are subject to real property tax (Sec. 234(a), Local Government Code; *GSIS v. City Treasurer and City Assessor of the City of Manila*, 2009).

- 41. The Philippine-British Association, Inc. (Association) is a non-stock non-profit organization which owns the St. Michael's Hospital (Hospital) Sec. 216 in relation to Sec. 215 of the LGC classifies all lands, buildings and other improvements thereon actually, directly, and exclusively**

used for hospitals as “special.” A special classification prescribes a lower assessment than a commercial classification.

Within the premises of the Hospital, the Association constructed the St. Michael’s Medical Arts Center (Center) which will house medical practitioners who will lease the spaces therein for their clinics at prescribed rental rates. The doctors who treat the patients confined in the Hospital are accredited by the Association. The City Assessor classified the Center as “commercial” instead of “special” on the ground that the Hospital owner gets income from the lease of its spaces to doctors who also entertain out-patients. Is the City Assessor correct in classifying the Center as “commercial?” Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

No. The Medical Arts Center is an integral part of the Hospital and should be classified for assessment purposes as “special”. The fact alone that the doctors holding clinics in the Center are those duly accredited by the Association who owns the Hospital, and these doctors are the ones who can treat the Hospital’s patients confined in it, takes away the said Medical Arts Center from being categorized as “commercial” since a tertiary hospital is required by law to have a pool of physicians who comprise the required medical departments in various medical fields (*City Assessors Cebu City v. Association of Benevolas de Cebu, Inc.*, G.R. No. 152904, June 2007, 524 SCRA 128).

42. The Manila International Airport Authority (MIAA) is exempt from real property tax. Which statement below is NOT correct? (2012 Bar Question)
- A) MIAA is not a government-owned or controlled corporation because it is not organized as a stock or non-stock corporation;
 - B) MIAA is a government instrumentality vested with corporate powers and performing essential public services;
 - C) MIAA is not a taxable entity because the real property is owned by the Republic of the Philippines and the beneficial use of such property has not been granted to a private entity;
 - D) MIAA is a government-owned or controlled corporation because it is required to meet the test of economic viability.

SUGGESTED ANSWER:

D) MIAA is a government-owned or controlled corporation because it is required to meet the test of economic viability. *MIAA v. City of Pasay*. G.R. No. 163072, April 2, 2009.

43. Mr. Jose Castillo is a resident Filipino Citizen. He purchased a parcel of land in Makati City in 1970 at a consideration of P1 Million. In 2011, the land, which remained undeveloped and idle, had a fair market value of P20 Million. Mr. Antonio Ayala, another Filipino citizen, is very much interested in the property and he offered to buy the same for P20 Million. The Assessor of Makati City re-assessed in 2011 the property at P10 Million.
- A) When is Mr. Castillo liable for real property tax on the land beginning 2011 or beginning 2012? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

Mr. Castillo shall be liable to the real property tax based on the re-assessment beginning 2012. All re-assessment made after the first day of any year shall take effect on the first day of January of the succeeding year (Sec. 221, LGC).

- B) Is Mr. Castillo liable for income tax in 2011 based on the offer to buy by Mr. Ayala? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

NO. Mr. Castillo is not liable for income tax in 2011 because no income is realized by him during that year. Tax liability for income tax attaches only if there is a gain realized resulting from a closed and complete transaction (*Madrigal v. Rafferty*, G.R. No. L-12287, August 7, 1918).

ALTERNATIVE ANSWER TO B:

He shall be liable to pay 6% capital gains tax (CGT) based on the Gross Selling Price of the Property which is 20 Million plus the GCT assumed by the buyer. He should file the return within 30 days from date of the sale (date of notarization) and shall pay the tax as he files the return (Sec. 24(D), NIRC).

- C) Should Mr. Castillo agree to sell the land to Mr. Ayala in 2012 for P20 Million, subject to the condition as stated in The Deed of Sale that the buyer shall assume the capital gains tax thereon, how much is the income tax due on the transaction and when must the tax return be filed and the tax be paid by the taxpayer? Explain your answer. (2012 Bar Question)**

ALTERNATIVE ANSWER:

The income tax due on the transaction is P1,276,595.74 which is computed as 6% of the Gross Selling Price (GSP). The tax based of the 6% capital gains tax (CGT) is the higher between the GSP and the fair market value (FMV). The GSP is 20 Million plus the CGT to be assumed by the buyer, following the doctrine of constructive receipt of income or a total of P21,276,595.74, which amount is higher than the FMV of P20 Million.

- 44. Mr. Pedro Aguirre, a resident citizen, is working for a large real estate development company in the country and in 2010, he was promoted to Vice-President of the company. With more responsibilities comes higher pay. In 2011, he decided to buy a new car worth P2 Million and he traded-in his old car with a market value of P800,000.00 and paid the difference of P1.2 Million to the car company. The old car, which was bought three (3) years ago by the father of Mr. Pedro Aguirre at price of P700,000.00 was donated by him and registered in the name of his son. The corresponding donor's tax thereon was duly paid by the father. (2012 Bar Question)**

- A) How much is the cost basis of the old car to Mr. Aguirre? Explain your answer. (2012 Bar Question)**

SUGGESTED ANSWER:

P700,000. The basis of the property in the hands of the donee is the carry-over basis (Sec. 40(B)(3), NIRC).

- B) What is the nature of the old car – capital asset or ordinary asset? Explain your answer. (2012 Bar Question)**

SUGGESTED ANSWER:

The old car is a capital asset. It is property held by the taxpayer, but is not stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation; or real property used in trade or business of the taxpayer (Sec. 39, NIRC).

- C) Is Mr. Aguirre liable to pay income tax on the gain from the sale of his old car? Explain your answer. (2012 Bar Question)

SUGGESTED ANSWER:

YES. Capital gain is P100,000. The amount of the taxable gain is subject to the holding period of the asset (Sec. 39, NIRC).

3. Collection of real property tax

a. Date of accrual of real property taxes and special levies

b. Collection of taxes

c. Periods within which to collect real property taxes

4. Taxpayer's remedies

45. Apparently the law does not provide for the refund of real property taxes that have been collected as a result of an erroneous or illegal assessment by the provincial or city assessor. What should be done in such instance to avoid an injustice? (2011 Bar Question)
- A) Question the legality of the no-refund rule before the Supreme Court.
 - B) Enact a new ordinance amending the erroneous or illegal assessment to correct the error.
 - C) Subsequent adjustment in tax computation and the application of the excess payment to future real property tax liabilities.
 - D) Pass a new ordinance providing for the refund of real property taxes that have been erroneously or illegally collected.

SUGGESTED ANSWER: C

a. Contesting an assessment

1. Payment under protest

2. File protest with treasurer

3. Refunds or credits of real property taxes

b. Contesting a valuation of real property

1. Appeal to the Local Board of Assessment Appeals (LBAA)

2. Appeal to the Central Board of Assessment Appeals (CBAA)

3. Effect of payment of tax

46. Where the real property tax assessment is erroneous, the remedy of the property owner is: (2012 Bar Question)
- A) To file a claim for refund in the Court of Tax Appeals if he has paid the tax, within thirty (30) days from date of payment;

- B) To file an appeal with the Provincial Board of Assessment Appeals within thirty (30) days from receipt of the assessment;
- C) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment;
- D) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment and playing the assessed tax under protest.

SUGGESTED ANSWER:

C) To file an appeal with the Provincial Board of Assessment Appeals within sixty (60) days from receipt of the assessment; Section 226, RA 7160.

5. Remedies of LGUs for collection of real property taxes

47. The City of Maharlika passed an ordinance imposing a tax on any sale or transfer of real property located within the city at a rate of fifty percent (50%) of one percent (1%) of the total consideration of the transaction, Jose sold a parcel of land in the city, which he inherited from his deceased parents, and refused to pay the aforesaid tax. He instead filed a case asking that the ordinance be declared null and void since the tax it imposed can only be collected by the national government, as in fact he has paid the Bureau of Internal Revenue (BIR) the required capital gains tax. If you were the City Legal Officer of Maharlika, what defenses would you raise to sustain the validity of the ordinance? (5%) (2016 Bar Question)

SUGGESTED ANSWER:

I would argue that the City is allowed to levy a tax on transfer of real property ownership (Sec. 135, LGC). The capital gains tax which is an income tax collected by the national government is entirely different from the tax on sale or transfer imposed by the ordinance. The tax imposed by the ordinance not being in the nature of an income tax, the imposition of the income tax by the national government will not pre-empt the tax sought to be imposed by the ordinance. I would further argue that the imposition by the national government of a tax will pre-empt Local Government Units (LGU) only if there is no specific provision under the Local Government Code giving said power (*Bulacan v. CA*, G.R. No. 126232, November 1998, 299 SCRA 442)

IV. JUDICIAL REMEDIES (RA 1125, as amended, and the Revised Rules of the Court of Tax Appeals)

A. Court of Tax Appeals (CTA)

1. As a general rule, within what period must a taxpayer elevate to the Court of Tax Appeals a denial of his application for refund of income tax overpayment? (2011 Bar Question)
- A) Within 30 days from receipt of the Commissioner's denial of his application for refund.
 - B) Within 30 days from receipt of the denial which must not exceed 2 years from payment of income tax.
 - C) Within 2 years from payment of the income taxes sought to be refunded.
 - D) Within 30 days from receipt of the denial or within two years from payment.

SUGGESTED ANSWER: B

2. **Judgments, resolutions or orders of the Regional Trial Court in the exercise of its original jurisdiction involving criminal offenses arising from violations of the NIRC are appealable to the CTA, which shall hear the cases en banc. (1%) (2012 Bar Question)**

SUGGESTED ANSWER: False.

3. **For calendar year 2011, FFF, Inc., a VAT-registered corporation, reported unutilized excess input VAT in the amount of P1,000,000.00 attributable to its zero-rated sales. Hoping to impress his boss, Mr. G, the accountant of FFF, Inc., filed with the Bureau of Internal Revenue (BIR) on January 31, 2013 a claim for tax refund/credit of the P1,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011. Not having received any communication from the BIR, Mr. G. filed a Petition for Review with the CTA on March 15, 2013, praying for the tax refund/credit of the P1,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011.**

A) Did the CTA acquire jurisdiction over the Petition of FFF, Inc.? (2%) (2015 Bar Question)

SUGGESTED ANSWER:

The CTA has not acquired jurisdiction over the Petition of FFF, Inc. because the judicial claim has been prematurely filed on March 15, 2013. The Supreme Court ruled that the 30-day period after the expiration of the 120-day period fixed by law for the Commissioner of Internal Revenue to act on the claim for refund is jurisdictional and failure to comply would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain the appeal (*CIR v. Aichi Forging Company of Asia, Inc.* 632 SCRA 422 [2014]).

In this case, Mr. G filed the administrative claim on January 31, 2013. The petition for relief should have been filed on June 30, 2013. Filing the judicial claim on March 15, 2013 is premature, thus the CTA did not acquire jurisdiction.

4. **GGG, Inc. offered to sell through competitive bidding its shares in HHH Corp., equivalent to 40% of the total outstanding capital stock of the latter. JJJ, Inc. acquired the said shares in HHH Corp. as the highest bidder. Before it could secure a certificate authorizing registration/tax clearance for the transfer of the shares of stock to JJJ, Inc., GGG, Inc. had to request a ruling from the BIR confirming that its sale of the said shares was at fair market value and was thus not subject to donor's tax. In BIR Ruling No. 012-14, the CIR held that the selling price for the shares of stock of HHH Corp. was lower than their book value, so the difference between the selling price and the book value of said shares was a taxable donation. GGG, Inc. requested the Secretary of Finance to review BIR Ruling No. 012-14, but the Secretary affirmed said ruling. GGG, Inc. filed with the Court of Appeals a Petition for Review under Rule 43 of the Revised Rules of Court. The Court of Appeals, however, dismissed the Petition for lack of jurisdiction declaring that it is the CTA which has jurisdiction over the issues raised. Before which Court should GGG, Inc. seek recourse from the adverse ruling of the Secretary of Finance in the exercise of the latter's power of review? (3%) (2015 Bar Question)**

SUGGESTED ANSWER:

GGG, Inc., should seek recourse with the Court of Tax Appeals (CTA) which has jurisdiction.

There is no provision in law that expressly provides where exactly the adverse ruling of the Secretary of Finance under Section 4 of the NIRC is appealable. However, RA 1125, as amended, addresses the seeming gap in the law as it vests upon the CTA, albeit impliedly, with jurisdiction over the case as "other matters" arising under the NIRC or other laws administered by the BIR. Furthermore, the Supreme Court held that the jurisdiction to review the rulings of the Secretary of Finance on the issues raised against a ruling of the Commissioner of Internal Revenue, pertains to the Court of Tax Appeals in the exercise of its appellate jurisdiction (*Philamlife v. The Sec. of Finance and CIR*, G.R. No. 210987, November 24, 2014). (2015 BAR)

5. After filing an Information for violation of Section 254 of the National Internal Revenue Code (Attempt to Evade or Defeat Tax) with the CTA, the Public Prosecutor manifested that the People is reserving the right to file the corresponding civil action for the recovery of the civil liability for taxes. As counsel for the accused, comment on the People's manifestation. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

The manifestation is not proper. The criminal action and the corresponding civil action for the recovery of the civil liability for taxes and penalties shall at all times be simultaneously instituted with, and jointly determined in the same proceeding before the CTA. The filing of the criminal action is deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such civil action separately from the criminal action shall be recognized (Sec. 7(b)(1) of Republic Act. No. 9282; *Judy Anne Santos v. People*, 563 SCRA 341 [2008]).

6. Proceedings before the CTA in the exercise of its exclusive original jurisdiction are in the nature of trial de novo. (1%) (2010 Bar Question)

SUGGESTED ANSWER:

True. (*CIR v. Manila Mining Corp.*, G.R. No. 153204, August 31, 2005)

7. What are the conditions that must be complied with before the Court of Tax Appeals may suspend the collection of national internal revenue taxes? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The CTA may suspend the collection of internal revenue taxes if the following conditions are met:

- a) the case is pending appeal with the CTA;
 - b) in the opinion of the Court the collection will jeopardize the interest of the Government and/ or the taxpayer; and
 - c) the taxpayer is willing to deposit in Court the amount being collected or to file a surety bond for not more than double the amount of the tax (Sec. 11, RA 1125, as amended by RA 9282).
8. In accordance with the Local Government Code (LGC), the Sangguniang Panglungsod (SP) of Baguio City enacted Tax Ordinance No. 19, Series of 2014, imposing a P50.00 tax on all the tourists and travellers going to Baguio City. In imposing the local tax, the SP reasoned that the tax collected will be used to maintain the cleanliness of Baguio City and for the beautification of its tourist attractions. (D) is punishable by administrative penalty only.

Claiming the tax to be unjust, Baguio Travellers Association (BTA), an association of travel agencies in Baguio City, filed a petition for declaratory relief before the Regional Trial Court (RTC) because BTA was apprehensive that tourists might cancel their bookings with BTA's member agencies. BTA also prayed for the issuance of a Temporary Restraining Order (TRO) to enjoin Baguio City from enforcing the local tax on their customers and on all tourists going to Baguio City.

The RTC issued a TRO enjoining Baguio City from imposing the local tax. Aggrieved, Baguio City filed a petition for certiorari before the Supreme Court (SC) seeking to set aside the TRO issued by the RTC on the ground that collection of taxes cannot be enjoined. Will the petition prosper? (5%) (2014 Bar Question)

SUGGESTED ANSWER:

Yes. The petition for certiorari will prosper. The RTC has no jurisdiction to entertain any action concerning the validity of a Tax Ordinance and to enjoin the imposition of taxes levied by it. Any question on the legality of the tax ordinance can only be raised on appeal with the Secretary of Justice and the appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and the payment of the tax levied therein (Section 187, LGC).

1. Exclusive original and appellate jurisdiction over civil cases

9. The City of Manila enacted Ordinance No. 55-66 which imposes a municipal occupation tax on persons practicing various professions in the city. Among those subjected to the occupation tax were lawyers. Atty. Mariano Batas, who has a law office in Manila, pays the ordinance-imposed occupation tax under protest. He goes to court to assail the validity of the ordinance for being discriminatory. Decide with reasons. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

The ordinance is valid. The tax imposed by the ordinance is in the nature of a professional tax which is authorized by law to be imposed by cities {Section 151 in relation to Section 139, LGC}. The ordinance is not discriminatory because the City Council has the power to select the subjects of taxation and impose the same tax on those belonging to the same class. The authority given by law to cities is to impose a professional tax only on persons engaged in the practice of their profession requiring government examination and lawyers are included within that class of professionals.

10. Does the Court of Appeals have the power to review compromise agreements forged by the Commissioner of Internal Revenue and a taxpayer? Explain. (5%) (2009 Bar Question)

SUGGESTED ANSWER:

No, for either of two reasons (1) In instances in which the CIR is vested with authority to compromise, such authority should be exercised in accordance with the Commissioner's discretion, and courts have no power, as a general rule, to compel him to exercise such discretion one way or another. (*Koppel Phils., Inc. v. CIR*, 87 Phil. 351 [1950]), (2) If the Commissioner abuses his discretion by not following the parameters set by law, the CTA, not the CA, may correct such abuse if the matter is appealed to it. In case of arbitrary or capricious exercise by the Commissioner of the power to compromise, the compromise can be attacked and reversed through the judicial process.

It must be noted however, that a compromise is considered as other matters arising under the NIRC which vests the CTA with jurisdiction, and since the decision of the CTA is appealable to the Supreme Court, the Court of Appeals is devoid of any power of review a compromise settlement forged by the Commissioner (*PNOC v. Savellano*, G.R. No. 109976, April 26, 2005; RA No. 9282 on jurisdiction of the CTA).

11. What are the conditions that must be complied with before the Court of Tax Appeals may suspend the collection of national internal revenue taxes? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The CTA may suspend the collection of internal revenue taxes if the following conditions are met:

- a) the case is pending appeal with the CTA;
- b) in the opinion of the Court the collection will jeopardize the interest of the Government and/ or the taxpayer; and
- c) the taxpayer is willing to deposit in Court the amount being collected or to file a surety bond for not more than double the amount of the tax (Sec. 11, RA 1125, as amended by RA 9282).

What is the rule on appeal from decisions of the Collector of Customs in protest and seizure cases? When is the decision of the Collector of Customs appealable to the Court of Tax Appeals? Explain.

SUGGESTED ANSWER:

No. Section 7(a) of RA No. 1125, as amended by RA 9282 enumerates the CTA's exclusive appellate jurisdiction to review by appeal certain decisions or inaction but not that of a Secretary of Justice.

Moreover, despite the issue involves the CIR's assessment, however, Section 7(a)(1) of the same law, specifically the phrase "other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue" must be read together with words preceding it, i.e., "decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, x x x", following the statutory construction principle of ejusdem generis [*CIR v. CTA (Second Division) and Petron Corporation*, G.R. No. 207842 (2015)].

- 12. The BIR assessed the Babuyan Water District (BWD) with deficiency income taxes amounting to P8.5 million, inclusive of interest and surcharge. The BWD disputed the assessment, and argued that it was a wholly-owned government entity performing essential government functions. However, the BIR denied the protest.**

The BWD filed a petition for arbitration in the Office of the Secretary of Justice pursuant to Sections 66 to 71, Chapter 14, Book IV of the Administrative Code of 1987 to assail the denial of its protest, and to seek the proper interpretation of Section 32(B)(7)(b) of the Tax Code that excluded from gross income the income derived by the Government or its political subdivisions. The Secretary of Justice rendered a decision declaring the BWD exempt from the payment of income tax.

The Commissioner of Internal Revenue appealed to the CTA on the sole ground that the Secretary of Justice had no jurisdiction to review the assessment of the BIR.

Is the appeal meritorious? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

No. Section 7(a) of RA No. 1125, as amended by RA 9282 enumerates the CTA's exclusive appellate jurisdiction to review by appeal certain decisions or inaction but not that of a Secretary of Justice.

Moreover, despite the issue involves the CIR's assessment, however, Section 7(a)(1) of the same law, specifically the phrase "other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue" must be read together with words preceding it, i.e., "decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, x x x", following the statutory construction principle of ejusdem generis [*CIR v. CTA (Second Division) and Petron Corporation*, G.R. No. 207842 (2015)].

- 13. The City of Liwliwa assessed local business taxes against Talin Company. Claiming that there is double taxation, Talin Company filed a Complaint for Refund or Recovery of Illegally and/or Erroneously-collected Local Business Tax; Prohibition with Prayer to Issue Temporary Restraining Order and Writ of Preliminary Injunction with the Regional Trial Court (RTC). The RTC denied the application for a Writ of Preliminary Injunction. Since its motion for reconsideration was denied, Talin Company filed a special civil action for certiorari with the Court of Appeals (CA). The government lawyer representing the City of Liwliwa prayed for the dismissal of the petition on the ground that the same should have been filed with the Court of Tax Appeals (CTA). Talin Company, through its lawyer, Atty. Frank, countered that the CTA cannot entertain a petition for certiorari since it is not one of its powers and authorities under existing laws and rules.**

Decide. (5%) (2014 Bar Question)**SUGGESTED ANSWER:**

The government lawyer is correct that it is the Court of Tax Appeals that is vested with proper jurisdiction. The law is clear when it said that – “The Court of Tax Appeals shall have exclusive appellate jurisdiction to review by appeal decisions, orders or resolutions of the Regional Trial Courts in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction (Section 7(3), RA 9282). In a recent case decided by the Supreme Court, it was held that the CTA has certiorari powers over the issue of grave abuse of discretion on the part of the RTC in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court, as this is inherent to its exercise of appellate jurisdiction (*City of Manila v. Hon. Caridad H. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014).

2. Exclusive original and appellate jurisdiction over criminal cases

- 14. In criminal cases where the Court of Tax Appeals (CTA) has exclusive original jurisdiction, the right to file a separate civil action for the recovery of taxes may be reserved. (1%) (2010 Bar Question)**

SUGGESTED ANSWER:

False.(Sec. 11, Rule 9, 2005 Rules of the Court of Tax Appeals, as amended)

- 15. Judgments, resolutions or orders of the Regional Trial Court in the exercise of its original jurisdiction involving criminal offenses arising from violations of the NIRC are appealable to the CTA, which shall hear the cases en banc. (1%) (2010 Bar Question)**

SUGGESTED ANSWER:

False.(Sec. 3(b)(2), Rule 4, 2005 Revised Rules of the Court of Tax Appeals)

- 16. State at least five (5) cases under the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA). (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

The following cases are under the exclusive appellate jurisdiction of the Court of Tax Appeals.

a. Exclusive appellate jurisdiction to review by appeal:

1. Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR;
2. Inaction of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the NIRC or other laws administered by the BIR, where the NIRC provides a specific period of action, in which case the inaction shall be deemed a denial;
3. Decisions, orders or resolutions of the RTC in local tax cases originally decided or resolved by them in the exercise of their original or appellate jurisdiction;
4. Decisions of the Commissioner of Customs in cases involving liability of customs duties, fees or other money charges, seizure, detention or release of property affected, fines, forfeitures or other penalties in relation thereto, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs; and

5. Decisions of the Central Board of Assessment Appeals in the exercise of its appellate jurisdiction over cases involving the assessment and taxation of real property originally decided by the provincial or city board of assessment appeals.
6. Decisions of the Secretary of Finance on customs cases elevated to him automatically for review from decisions of the Commissioner of Customs adverse to the Government under Sec. 2315 of the Tariff and Customs Code; and
7. Decisions of the Secretary of Trade and Industry, in the case of nonagricultural product, commodity or article, and the Secretary of Agriculture, in the case of agricultural product, commodity or article, involving dumping and countervailing duties under Sec. 301 and 302. respectively, of the Tariff and Customs Code, and safeguard measures under R.A. No. 8800, where either party may appeal the decision to impose or not impose said duties.
- b. Exclusive appellate jurisdiction in criminal offenses:
 1. Over appeals from the judgments, resolutions or orders of the Regional Trial Courts in tax cases originally decided by them, in their respective territorial jurisdiction; and
 2. Over petitions for review of the judgments, resolutions or orders of the Regional Trial Courts in the exercise of their appellate jurisdiction over tax cases originally decided by the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in their respective jurisdiction.

NOTE: It is recommended that any five (5) of the above-enumerated cases be given credit[.]

B. Procedures

1. Filing of an action for collection of taxes

a. Internal revenue taxes

b. Local taxes

2. Civil cases

a. Who may appeal, mode of appeal, and effect of appeal

b. Suspension of collection of taxes

c. Injunction not available to restrain collection

3. Criminal cases

a. Institution and prosecution of criminal actions

b. Institution of civil action in criminal action

c. Period to appeal

17. Which cases are appealable to the CTA? (2012 Bar Question)

- A) Decisions of the Secretary of Finance in cases involving liability for customs duties, seizure, detention or release of property affected;
- B) Decisions of the Commissioner of Customs in cases involving liability for customs duties, seizure, detention or release of property affected;
- C) Decisions of the Collector of Customs in cases involving liability for customs duties, seizure, detention or release of property affected;

- D) Decisions of the BIR Commissioner in cases involving liability for customs duties, seizure, detention or release of property affected.**

SUGGESTED ANSWER:

B) Decisions of the Commissioner of Customs in cases involving liability for customs duties, seizure, detention or release of property affected Section 7, RA 9282.

18. The prescriptive period to file a criminal action is: (2012 Bar Question)

- A) Ten (10) years from the date of discovery of the commission of fraud or nonfiling of tax return;
- B) Five (5) years from the date of issuance of the final assessment notice;
- C) Three (3) years from the filing of the annual tax return;
- D) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

SUGGESTED ANSWER:

D) Five (5) years from the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment. Section 281, NIRC.

4. Appeal to the CTA en banc

- 19. MSI Corp. imports orange and lemon concentrates as raw materials for the fruit drinks it sells locally. The Bureau of Customs (BOC) imposed a 1% duty rate on the concentrates. Subsequently, the BOC changed its position and held that the concentrates should be taxed at 7% duty rate. MSI disagreed with the ruling and questioned it in the CTA which upheld MSI's position. The Commissioner of Customs appealed to the CTA en banc without filing a motion for reconsideration.**

Resolve the appeal. (1%) (2013 Bar Question)

- A) The appeal should be dismissed because a motion for reconsideration is mandatory.
- B) The appeal should be dismissed for having been filed out of time.
- C) The appeal should be given due course since a motion for reconsideration is a useless exercise.
- D) The appeal should be upheld to be fair to the government which needs taxes.

SUGGESTED ANSWER: A (RA 9282; Rule 8, Revised Rules of the CTA).

- 20. On May 15, 2013, CCC, Inc., received the Final Decision on Disputed Assessment issued by the Commissioner of Internal Revenue (CIR) dismissing the protest of CCC, Inc. and affirming the assessment against said corporation. On June 10, 2013, CCC, Inc., filed a Petition for Review with the Court of Tax Appeals (CTA) in division. On July 31, 2015, CCC, Inc. received a copy of the Decision dated July 22, 2015 of the CTA division dismissing its Petition. CCC, Inc. immediately filed a Petition for Review with the CTA en banc on August 6, 2015. Is the immediate appeal by CCC, Inc. to the CTA en banc of the adverse Decision of the CTA division the proper remedy? (3%) (2015 Bar Question)**

SUGGESTED ANSWER:

No, CCC, Inc. should first file a motion for reconsideration or motion for new trial with the CTA Division. Before the CTA En Banc could take cognizance of the petition for review concerning a case falling under its exclusive appellate jurisdiction, the litigant must sufficiently show that it sought prior reconsideration or moved for a new trial with the concerned CTA division (*Commissioner of Customs v. Marina Sale*, 635 SCRA 606 [2010]; Rule 8, Sec. 1 of the Revised Rules of Court of Tax Appeals).

5. Petition for review on certiorari to the SC

21. Doña Evelina, a rich widow engaged in the business of currency exchange, was assessed a considerable amount of local business taxes by the City Government of Baguio by virtue of Tax Ordinance No. 24. Despite her objections thereto, Doña Evelina paid the taxes. Nevertheless, unsatisfied with said Tax Ordinance, Doña Evelina, through her counsel Atty. ELP, filed a written claim for recovery of said local business taxes and contested the assessment. Her claim was denied, and so Atty. ELP elevated her case to the Regional Trial Court (RTC).

The RTC declared Tax Ordinance No. 24 null and void and without legal effect for having been enacted in violation of the publication requirement of tax ordinances and revenue measures under the Local Government Code (LGC) and on the ground of double taxation. On appeal, the Court of Tax Appeals (CTA) affirmed the decision of the RTC. No motion for reconsideration was filed and the decision became final and executory. (4%)

- A) If you are Atty. ELP, what advice will you give Doña Evelina so that she can recover the subject local business taxes? (2014 Bar Question)

SUGGESTED ANSWER:

The remedy availed of by Dona Evelina to question the validity of the assessment was to file a written claim for recovery which was denied by the city treasurer. It appears that after the denial, the judicial remedies were properly pursued. Since the decision by the CTA had already become final and executory, the counsel should advise Dona Evelina to press for the execution of the judgment. Should the city treasurer refuse to refund the local taxes paid, they should push for the issuance of a writ of execution by the CTA to force the local treasurer to make the refund.

- B) If Doña Evelina eventually recovers the local business taxes, must the same be considered as income taxable by the national government? (2014 Bar Question)

SUGGESTED ANSWER:

Yes, subject to the tax benefit rule. The local business tax paid is a business connected tax hence, deductible from gross income. If at the time of its deduction it resulted to a tax benefit to Dona Evelina, then the recovery will form part of gross income to the extent of the tax benefit on the previous deduction (Section 34(C)(1), NIRC).

FREQUENTLY ASKED TOPICS (2007-2017)

General Principles	Inherent and constitutional limitation of taxation				15
Local Taxation	Local government taxation	Specific taxing powers of Local Government Units (exclude rates)			10
National Taxation	Income Tax	Income	Situs of income taxation		9
National Taxation	Income Tax	Deductions from gross income	Items not deductible		9
National Taxation	Transfer Taxes	Estate tax			9
National Taxation	Value-Added Tax	Concept and elements of VATable transactions			9
National Taxation	Taxpayer's remedies				9
Local Taxation	Real property taxation	Exemption from real property taxes			9
National Taxation	Income Tax	Income tax on individuals	Resident citizens, non-resident citizens, and resident aliens	Capital asset vs. ordinary asset	8
National Taxation	Income Tax	Income tax on individuals			7
Local Taxation	Local government taxation	Fundamental principles			7
General Principles	Power of taxation v. Police power v. Eminent Domain				6
National Taxation	Income Tax	Definition, nature, and general principles	Criteria in imposing Philippine income tax		6
National Taxation	Income Tax	Income tax on individuals	Resident citizens, non-resident citizens, and resident aliens	Inclusions and exclusions for taxation on compensation income	6
National Taxation	Transfer Taxes	Donor's tax			6
Judicial Remedies	A. Court of Tax Appeals (CTA)				6
Judicial Remedies	A. Court of Tax Appeals (CTA)	Exclusive original and appellate jurisdiction over civil cases			6
General Principles	Doctrines in taxation	Double taxation			5
National Taxation	Income Tax	Gross Income	Exclusions and exemptions	Distinguished from deductions and tax credits	5
National Taxation	Income Tax	Income tax on corporations	Income tax on domestic corporations and resident foreign corporations	Minimum Corporate Income Tax	5
National Taxation	Income Tax	Income tax on corporations	Tax on other business entities: general partnerships, general professional partnerships, co-ownerships, joint ventures, and consortia		5
National Taxation	Income Tax	Withholding taxes	Duties of a withholding agent		5
National Taxation	Taxpayer's remedies	Recovery of tax erroneously or illegally collected	Proper party to file claim for refund or tax credit		5
Local Taxation	Local government taxation	Common limitations on the taxing powers of LGUs			5
Local Taxation	Local government taxation	Taxpayer's remedies			5

FREQUENTLY ASKED TOPICS (2007-2017)

Local Taxation	Real property taxation	Fundamental principles			5
General Principles					4
General Principles	Doctrines in taxation	Construction and interpretation of tax laws			4
National Taxation	Taxing authority	Jurisdiction, power, and functions of the CIR	Non-retroactivity of rulings		4
National Taxation	Income Tax	Income tax on individuals	Resident citizens, non-resident citizens, and resident aliens	Taxation of capital gains	4
National Taxation	Transfer Taxes	Estate tax	Determination of gross and net estate		4
National Taxation	Transfer Taxes	Estate tax	Deductions and exclusions from estate		4
National Taxation	Transfer Taxes	Donor's tax	Requisites of a valid donation		4
National Taxation	Value-Added Tax	VAT-exempt transactions			4
National Taxation	Tax remedies under the NIRC	Assessment process and reglementary periods	Issuance of Preliminary Assessment Notice		4
National Taxation	Taxpayer's remedies	Protesting an assessment			4
National Taxation	Taxpayer's remedies	Recovery of tax erroneously or illegally collected	Grounds, requisites, and period for filing a claim for refund or issuance of a tax credit certificate		4
National Taxation	Government remedies	Kinds			4
General Principles	Doctrines in taxation				3
National Taxation	Income Tax	Income tax on corporations	Income tax on special corporations	Proprietary educational institutions and hospitals	3
National Taxation	Income Tax	Income tax on corporations	Improperly Accumulated Earnings Tax (IAET)		3
National Taxation	Value-Added Tax				3
National Taxation	Value-Added Tax	Tax refund or tax credit	San Roque doctrine		3
National Taxation	Tax remedies under the NIRC	Assessment process and reglementary periods	Disputed assessment		3
National Taxation	Government remedies				3
Local Taxation	Local government taxation	Periods of assessment and collection of local taxes, fees, or charges			3
General Principles	Kinds of taxes				2
General Principles	Doctrines in taxation	Exemption from taxation			2
National Taxation	Income Tax	Gross Income	Classification of income subject to tax	Income from business	2
National Taxation	Income Tax	Gross Income	Classification of income subject to tax	Income from dealings in property	2
National Taxation	Income Tax	Gross Income	Exclusions and exemptions	Rationale	2
National Taxation	Income Tax	Deductions from gross income	Concept as return of capital		2
National Taxation	Income Tax	Income tax on individuals	Resident citizens, non-resident citizens, and resident aliens	Taxation of business income/income from practice of profession	2
National Taxation	Income Tax	Income tax on corporations	Income tax on domestic corporations and resident foreign corporations		2
National Taxation	Income Tax	Income tax on corporations	Income tax on domestic corporations and resident foreign corporations	Itemized deductions vs. Optional Standard Deductions	2

FREQUENTLY ASKED TOPICS (2007-2017)

National Taxation	Income Tax	Income tax on corporations	Income tax on non-resident foreign corporations		2
National Taxation	Income Tax	Filing of returns and payment			2
National Taxation	Transfer Taxes	Donor's tax	Transfers which may be constituted as donation	Transfer of property for insufficient consideration	2
National Taxation	Value-Added Tax	Zero-rated and effectively zero-rated sales of goods or properties			2
National Taxation	Tax remedies under the NIRC				2
National Taxation	Tax remedies under the NIRC	General Concepts	Prescriptive period for assessment	False returns v. fraudulent returns v. non-filing of returns	2
National Taxation	Tax remedies under the NIRC	General Concepts	Prescriptive period for assessment	Suspension of the running of statute of limitations	2
National Taxation	Tax remedies under the NIRC	Civil penalties	Compromise penalty		2
National Taxation	Tax remedies under the NIRC	Collection	Prescriptive periods		2
National Taxation	Taxpayer's remedies	Protesting an assessment	Effect of failure to file protest		2
National Taxation	Taxpayer's remedies	Protesting an assessment	Decision of the Commissioner on the protest filed	Period to act upon or decide on protest filed	2
National Taxation	Taxpayer's remedies	Protesting an assessment	Decision of the Commissioner on the protest filed	Remedies of the taxpayer in case the Commissioner denies the protest or fails to act on the protest	2
National Taxation	Taxpayer's remedies	Compromise and abatement of taxes			2
Judicial Remedies	A. Court of Tax Appeals (CTA)	Exclusive original and appellate jurisdiction over criminal cases			2
Judicial Remedies	B. Procedures	Criminal cases	Period to appeal		2
Judicial Remedies	B. Procedures	Appeal to the CTA en banc			2