

2013 BAR EXAMINATIONS**TAXATION****October 13, 2013****2:00 P.M.– 6:00 P.M.****INSTRUCTIONS**

1. This Questionnaire contains THIRTEEN (13) pages including these Instructions pages. Check the number of pages and the page numbers at the upper right hand corner of each page of this Questionnaire and make sure it has the correct number of pages and their proper numbers.

There are TWELVE (12) Essay Questions numbered I to XII, and TWENTY (20) Multiple Choice Questions (*MCQs*) numbered I to XX, to be answered within *four (4) hours*.

The essay portion contains questions that are worth 80% of the whole examination, while the MCQ portion contains questions worth 20%.

2. Read each question very carefully and write your answers in your Bar Examination Notebook *in the same order the questions are posed*. Write your answers only at the *front*, not the back, page of every sheet in your Notebook. Note well the allocated percentage points for each number, question, or sub-question. In your answers, use the numbering system in the questionnaire.

If the sheets provided in your Examination Notebook are not sufficient for your answers, use the back pages of every sheet of your Examination Notebook, starting at the back page of the first sheet and the back of the succeeding sheets thereafter.

3. Answer the Essay questions *legibly, clearly, and concisely*. Start each number on a separate page. An answer to a sub-question under the same number may be written continuously on the same page and the immediately succeeding pages until completed.

Your answer should demonstrate your ability to analyze the facts presented by the question, to select the material from the immaterial facts, and to discern the points upon which the question turns. It should show your knowledge and understanding of the pertinent principles and

theories of law involved and their qualifications and limitations. It should demonstrate your ability to apply the law to the given facts, and to reason logically in a lawyer-like manner to a sound conclusion from the given premises.

A mere “Yes” or “No” answer without any corresponding explanation or discussion will not be given any credit. Thus, always briefly but fully explain your answers although the question does not expressly ask for an explanation. At the same time, remember that a complete explanation does not require that you volunteer information or discuss legal doctrines that are not necessary or pertinent to the solution to the problem. You do not need to re-write or repeat the question in your Notebook.

4. MCQs are to be answered by writing in your Notebook the capital letter (A, B, C, D, or E) corresponding to your chosen answer. *The MCQ answers should begin in the page following the last page of your essay answers.*

There is only one correct answer to every MCQ; choose the BEST answer from among the offered choices. Note that some MCQs may need careful analysis both of the questions and the choices offered.

5. Make sure you do not write *your name* or any *extraneous note/s* or *distinctive marking/s* on your Notebook that can serve as identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner).

Writing, leaving or making any distinguishing or identifying mark in the exam Notebook is considered cheating and can disqualify you for the Bar examinations.

You can use the questionnaire for notes you may wish/need to write during the examination.

HAND IN YOUR NOTEBOOK WITH THIS QUESTIONNAIRE


J. ARTURO D. BRION
Chairman
2013 Bar Examinations

ESSAY QUESTIONS

I.

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%)

II.

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? (6%)

III.

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? (6%)

IV.

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%)

V.

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%)

VI.

On October 15, 2005, ABC Corp. imported 1,000 kilos of steel ingots and paid customs duties and VAT to the Bureau of Customs on the importation. On February 17, 2009, the Bureau of Customs, citing provisions of the Tariff and Customs Code on post-audit, investigated and assessed ABC Corp. for deficiency customs duties and VAT.

Is the Bureau of Customs correct? (7%)

VII.

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%)

VIII.

Mr. Arnado 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. Arnado for real property taxes on the land and the warehouse. Mr. Arnado 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%)

IX.

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%)

X.

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%)

XI.

In 2000, Mr. Belen bought a residential house and lot for P1,000,000. He used the property as his and his family's principal residence. It is now year 2013 and he is thinking of selling the property to buy a new one. He seeks your advice on how much income tax he would pay if he sells the property. The total zonal value of the property is P5,000,000 and the fair market value per the tax declaration is P2,500,000. He intends to sell it for P6,000,000.

What material considerations will you take into account in computing the income tax? Please explain the legal relevance of each of these considerations. (7%)

XII.

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%)

MULTIPLE CHOICE QUESTIONS

I. ABC Corp. was dissolved and liquidating dividends were declared and paid to the stockholders.

What tax consequence follows? (1%)

- (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.

II. 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%)

- (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.

III. 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%)

- (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.

IV. 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%)

- (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

V. 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%)

- (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.
- 

VI. 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%)

- (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.

VII. 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%)

- (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.

VIII. 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%)

- (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.
- 

IX. 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%)

- 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.

X. 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%)

- (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.
- 

XI. 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%)

- (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.

XII. 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%)

- (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.

XIII. 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%)

- (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.

XIV. 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%)

- (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.

XV. 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%)

- (A) The ordinance is void; the fee is based on rental income and is therefore a tax on income.
- (B) The ordinance is valid as a legitimate exercise of police power to regulate electric poles.
- (C) The ordinance is void; 1% of annual rental is excessive and oppressive.
- (D) The ordinance is valid; an LGU may impose a tax on income.

XVI. 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%)

- (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.

XVII. Mr. Mayuga donated his residential house and lot to his son and duly paid the donor's tax. In the Deed of Donation, Mr. Mayuga expressly reserved for himself the usufruct over the property for as long as he lived.

Describe the donated property from the taxation perspective. (1%)

- (A) The property will form part of Mr. Mayuga's gross estate when he dies.
- (B) The property will not form part of Mr. Mayuga's gross estate when he dies because he paid the donor's tax.
- (C) The property will form part of Mr. Mayuga's gross estate because he died soon after the donation.
- (D) The property will not form part of Mr. Mayuga's gross estate because it is no longer his.

XVIII. Mr. Z made an importation which he declared at the Bureau of Customs (BOC) as "Used Truck Replacement Parts". Upon investigation, the container vans contained 15 units of Porsche and Ferrari cars.

Characterize Mr. Z's action. (1%)

- (A) Mr. Z committed smuggling.
- (B) Mr. Z did not commit smuggling because he submitted his shipment to BOC examination.
- (C) Mr. Z only made a misdeclaration, but did not commit smuggling.
- (D) Mr. Z did not commit smuggling because the shipment has not left the customs area.

XIX. 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%)

- (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.

XX. 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%)

- (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.

NOTHING FOLLOWS

0 - 0 - 0