

**COVERAGE**  
**LAW ON TAXATION**  
**2015 BAR EXAMINATIONS**

**I. General Principles of Taxation**

- A. Definition and concept of taxation
- B. Nature of taxation
- C. Characteristics of taxation
- D. Power of taxation compared with other powers
  - 1. Police power
  - 2. Power of eminent domain
- E. Purpose of taxation
  - 1. Revenue-raising
  - 2. Non-revenue/special or regulatory
- F. Principles of sound tax system
  - 1. Fiscal adequacy
  - 2. Administrative feasibility
  - 3. Theoretical justice
- G. Theory and basis of taxation
  - 1. Lifeblood theory
  - 2. Necessity theory
  - 3. Benefits-protection theory (Symbiotic relationship)
  - 4. Jurisdiction over subject and objects
- H. Doctrines in taxation
  - 1. Prospectivity of tax laws
  - 2. Imprescriptibility
  - 3. Double taxation
    - a) Strict sense
    - b) Broad sense
    - c) Constitutionality of double taxation
    - d) Modes of eliminating double taxation
  - 4. Escape from taxation
    - a) Shifting of tax burden
      - (i) Ways of shifting the tax burden
      - (ii) Taxes that can be shifted
      - (iii) Meaning of impact and incidence of taxation
    - b) Tax avoidance
    - c) Tax evasion

5. Exemption from taxation
  - a) Meaning of exemption from taxation
  - b) Nature of tax exemption
  - c) Kinds of tax exemption
    - (i) Express
    - (ii) Implied
    - (iii) Contractual
  - d) Rationale/grounds for exemption
  - e) Revocation of tax exemption
6. Compensation and set-off
7. Compromise
8. Tax amnesty
  - a) Definition
  - b) Distinguished from tax exemption
9. Construction and interpretation of:
  - a) Tax laws
    - (i) General rule
    - (ii) Exception
  - b) Tax exemption and exclusion
    - (i) General rule
    - (ii) Exception
  - c) Tax rules and regulations
    - (i) General rule only
  - d) Penal provisions of tax laws
  - e) Non-retroactive application to taxpayers
    - (i) Exceptions
- I. Scope and limitation of taxation
  1. Inherent limitations
    - a) Public purpose
    - b) Inherently legislative
      - (i) General rule
      - (ii) Exceptions
        - (a) Delegation to local governments
        - (b) Delegation to the President
        - (c) Delegation to administrative agencies
    - c) Territorial
      - (i) Situs of taxation
        - (a) Meaning
        - (b) Situs of income tax
          - (1) From sources within the Philippines

- (2) From sources without the Philippines
      - (3) Income partly within and partly without the Philippines
    - (c) Situs of property taxes
      - (1) Taxes on real property
      - (2) Taxes on personal property
    - (d) Situs of excise tax
      - (1) Estate tax
      - (2) Donor's tax
    - (e) Situs of business tax
      - (1) Sale of real property
      - (2) Sale of personal property
      - (3) Value-Added Tax (VAT)
  - d) International comity
  - e) Exemption of government entities, agencies, and instrumentalities
2. Constitutional limitations
- a) Provisions directly affecting taxation
    - (i) Prohibition against imprisonment for non-payment of poll tax
    - (ii) Uniformity and equality of taxation
    - (iii) Grant by Congress of authority to the president to impose tariff rates
    - (iv) Prohibition against taxation of religious, charitable entities, and educational entities
    - (v) Prohibition against taxation of non-stock, non-profit institutions
    - (vi) Majority vote of Congress for grant of tax exemption
    - (vii) Prohibition on use of tax levied for special purpose
    - (viii) President's veto power on appropriation, revenue, tariff bills
    - (ix) Non-impairment of jurisdiction of the Supreme Court
    - (x) Grant of power to the local government units to create its own sources of revenue
    - (xi) Flexible tariff clause
    - (xii) Exemption from real property taxes
    - (xiii) No appropriation or use of public money for religious purposes
  - b) Provisions indirectly affecting taxation
    - (i) Due process
    - (ii) Equal protection
    - (iii) Religious freedom
    - (iv) Non-impairment of obligations of contracts
- J. Stages of taxation
- 1. Levy
  - 2. Assessment and collection
  - 3. Payment

4. Refund
- K. Definition, nature, and characteristics of taxes
- L. Requisites of a valid tax
- M. Tax as distinguished from other forms of exactions
  1. Tariff
  2. Toll
  3. License fee
  4. Special assessment
  5. Debt
- N. Kinds of taxes
  1. As to object
    - a) Personal, capitation, or poll tax
    - b) Property tax
    - c) Privilege tax
  2. As to burden or incidence
    - a) Direct
    - b) Indirect
  3. As to tax rates
    - a) Specific
    - b) *Ad valorem*
    - c) Mixed
  4. As to purposes
    - a) General or fiscal
    - b) Special, regulatory, or sumptuary
  5. As to scope or authority to impose
    - a) National – internal revenue taxes
    - b) Local – real property tax, municipal tax
  6. As to graduation
    - a) Progressive
    - b) Regressive
    - c) Proportionate

## **II. National Internal Revenue Code (NIRC) of 1997, as amended**

- A. Income taxation
  1. Income tax systems
    - a) Global tax system
    - b) Schedular tax system
    - c) Semi-schedular or semi-global tax system
  2. Features of the Philippine income tax law

- a) Direct tax
  - b) Progressive
  - c) Comprehensive
  - d) Semi-schedular or semi-global tax system
3. Criteria in imposing Philippine income tax
- a) Citizenship principle
  - b) Residence principle
  - c) Source principle
4. Types of Philippine income tax
5. Taxable period
- a) Calendar period
  - b) Fiscal period
  - c) Short period
6. Kinds of taxpayers
- a) Individual taxpayers
    - (i) Citizens
      - (a) Resident citizens
      - (b) Non-resident citizens
    - (ii) Aliens
      - (a) Resident aliens
      - (b) Non-resident aliens
        - (1) Engaged in trade or business
        - (2) Not engaged in trade or business
    - (iii) Special class of individual employees
      - (a) Minimum wage earner
  - b) Corporations
    - (i) Domestic corporations
    - (ii) Foreign corporations
      - (a) Resident foreign corporations
      - (b) Non-resident foreign corporations
    - (iii) Joint venture and consortium
  - c) Partnerships
  - d) General professional partnerships
  - e) Estates and trusts
  - f) Co-ownerships
7. Income taxation
- a) Definition
  - b) Nature
  - c) General principles

## 8. Income

- a) Definition
- b) Nature
- c) When income is taxable
  - (i) Existence of income
  - (ii) Realization of income
    - (a) Tests of realization
    - (b) Actual *vis-à-vis* constructive receipt
  - (iii) Recognition of income
  - (iv) Methods of accounting
    - (a) Cash method *vis-à-vis* accrual method
    - (b) Installment payment *vis-à-vis* deferred payment *vis-à-vis* percentage completion (in long-term contracts)
- d) Tests in determining whether income is earned for tax purposes
  - (i) Realization test
  - (ii) Claim of right doctrine or doctrine of ownership, command, or control
  - (iii) Economic benefit test, doctrine of proprietary interest
  - (iv) Severance test
  - (v) All events test

## 9. Gross income

- a) Definition
- b) Concept of income from whatever source derived
- c) Gross income *vis-à-vis* net income *vis-à-vis* taxable income
- d) Classification of income as to source
  - (i) Gross income and taxable income from sources within the Philippines
  - (ii) Gross income and taxable income from sources without the Philippines
  - (iii) Income partly within or partly without the Philippines
- e) Sources of income subject to tax
  - (i) Compensation income
  - (ii) Fringe benefits
    - (a) Special treatment of fringe benefits
    - (b) Definition
    - (c) Taxable and non-taxable fringe benefits
  - (iii) Professional income
  - (iv) Income from business
  - (v) Income from dealings in property
    - (a) Types of properties
      - (1) Ordinary assets
      - (2) Capital assets
    - (b) Types of gains from dealings in property

- (1) Ordinary income *vis-à-vis* capital gain
  - (2) Actual gain *vis-à-vis* presumed gain
  - (3) Long term capital gain *vis-à-vis* short-term capital gain
  - (4) Net capital gain, net capital loss
  - (5) Computation of the amount of gain or loss
  - (6) Income tax treatment of capital loss
    - (a) Capital loss limitation rule (applicable to both corporations and individuals)
    - (b) Net loss carry-over rule (applicable only to individuals)
  - (7) Dealings in real property situated in the Philippines
  - (8) Dealings in shares of stock of Philippine corporations
    - (a) Shares listed and traded in the stock exchange
    - (b) Shares not listed and traded in the stock exchange
  - (9) Sale of principal residence
- (vi) Passive investment income
- (a) Interest income
  - (b) Dividend income
    - (1) Cash dividend
    - (2) Stock dividend
    - (3) Property dividend
    - (4) Liquidating dividend
  - (c) Royalty income
  - (d) Rental income
    - (1) Lease of personal property
    - (2) Lease of real property
    - (3) Tax treatment of
      - (a) Leasehold improvements by lessee
      - (b) VAT added to rental/paid by the lessee
      - (c) Advance rental/long term lease
- (vii) Annuities, proceeds from life insurance or other types of insurance
- (viii) Prizes and awards
- (ix) Pensions, retirement benefit, or separation pay
- (x) Income from any source whatever
- (a) Forgiveness of indebtedness
  - (b) Recovery of accounts previously written-off – when taxable/when not taxable
  - (c) Receipt of tax refunds or credit
  - (d) Income from any source whatever
  - (e) Source rules in determining income from within and without
    - (1) Interests

- (2) Dividends
- (3) Services
- (4) Rentals
- (5) Royalties
- (6) Sale of real property
- (7) Sale of personal property
- (8) Shares of stock of domestic corporation
- (f) Situs of income taxation (see page 2 under inherent limitations, territorial)
- (g) Exclusions from gross income
  - (1) Rationale for the exclusions
  - (2) Taxpayers who may avail of the exclusions
  - (3) Exclusions distinguished from deductions and tax credit
  - (4) Under the Constitution
    - (a) Income derived by the government or its political subdivisions from the exercise of any essential governmental function
  - (5) Under the Tax Code
    - (a) Proceeds of life insurance policies
    - (b) Return of premium paid
    - (c) Amounts received under life insurance, endowment or annuity contracts
    - (d) Value of property acquired by gift, bequest, devise or descent
    - (e) Amount received through accident or health insurance
    - (f) Income exempt under tax treaty
    - (g) Retirement benefits, pensions, gratuities, etc.
    - (h) Winnings, prizes, and awards, including those in sports competition
  - (6) Under special laws
    - (a) Personal Equity and Retirement Account
- (h) Deductions from gross income
  - (1) General rules
    - (a) Deductions must be paid or incurred in connection with the taxpayer's trade, business or profession
    - (b) Deductions must be supported by adequate receipts or invoices (except standard deduction)
    - (c) Additional requirement relating to withholding
  - (2) Return of capital (cost of sales or services)



- (a) Sale of inventory of goods by manufacturers and dealers of properties
- (b) Sale of stock in trade by a real estate dealer and dealer in securities
- (c) Sale of services
- (3) Itemized deductions
  - (a) Expenses
    - (1) Requisites for deductibility
      - (a) Nature: ordinary and necessary
      - (b) Paid and incurred during taxable year
    - (2) Salaries, wages and other forms of compensation for personal services actually rendered, including the grossed-up monetary value of the fringe benefit subjected to fringe benefit tax which tax should have been paid
    - (3) Travelling/transportation expenses
    - (4) Cost of materials
    - (5) Rentals and/or other payments for use or possession of property
    - (6) Repairs and maintenance
    - (7) Expenses under lease agreements
    - (8) Expenses for professionals
    - (9) Entertainment/Representation expenses
    - (10) Political campaign expenses
    - (11) Training expenses
  - (b) Interest
    - (1) Requisites for deductibility
    - (2) Non-deductible interest expense
    - (3) Interest subject to special rules
      - (a) Interest paid in advance
      - (b) Interest periodically amortized
      - (c) Interest expense incurred to acquire property for use in trade/business/profession
      - (d) Reduction of interest expense/interest arbitrage
  - (c) Taxes
    - (1) Requisites for deductibility
    - (2) Non-deductible taxes
    - (3) Treatments of surcharges/interests/fines for delinquency
    - (4) Treatment of special assessment
    - (5) Tax credit *vis-à-vis* deduction

- (d) Losses
    - (1) Requisites for deductibility
    - (2) Other types of losses
      - (a) Capital losses
      - (b) Securities becoming worthless
      - (c) Losses on wash sales of stocks or securities
      - (d) Wagering losses
      - (e) Net Operating Loss Carry-Over (NOLCO)
  - (e) Bad debts
    - (1) Requisites for deductibility
    - (2) Effect of recovery of bad debts
  - (f) Depreciation
    - (1) Requisites for deductibility
    - (2) Methods of computing depreciation allowance
      - (a) Straight-line method
      - (b) Declining-balance method
      - (c) Sum-of-the-years-digit method
  - (g) Charitable and other contributions
    - (1) Requisites for deductibility
    - (2) Amount that may be deducted
  - (h) Contributions to pension trusts
    - (1) Requisites for deductibility
  - (i) Deductions under special laws
- (4) Optional standard deduction
    - (a) Individuals, except non-resident aliens
    - (b) Corporations, except non-resident foreign corporations
    - (c) Partnerships
  - (5) Personal and additional exemption (R.A. No. 9504, Minimum Wage Earner Law)
    - (a) Basic personal exemptions
    - (b) Additional exemptions for taxpayer with dependents
    - (c) Status-at-the-end-of-the-year rule
    - (d) Exemptions claimed by non-resident aliens
  - (6) Items not deductible
    - (a) General rules
    - (b) Personal, living or family expenses
    - (c) Amount paid for new buildings or for permanent improvements (capital expenditures)
    - (d) Amount expended in restoring property (major repairs)

- (e) Premiums paid on life insurance policy covering life or any other officer or employee financially interested
  - (f) Interest expense, bad debts, and losses from sales of property between related parties
  - (g) Losses from sales or exchange of property
  - (h) Non-deductible interest
  - (i) Non-deductible taxes
  - (j) Non-deductible losses
  - (k) Losses from wash sales of stock or securities
- (7) Exempt corporations
- (a) Propriety educational institutions and hospitals
  - (b) Government-owned or controlled corporations
  - (c) Others
10. Taxation of resident citizens, non-resident citizens, and resident aliens
- a) General rule that resident citizens are taxable on income from all sources within and without the Philippines
    - (i) Non-resident citizens
  - b) Taxation on compensation income
    - (i) Inclusions
      - (a) Monetary compensation
        - (1) Regular salary/wage
        - (2) Separation pay/retirement benefit not otherwise exempt
        - (3) Bonuses, 13<sup>th</sup> month pay, and other benefits not exempt
        - (4) Director's fees
      - (b) Non-monetary compensation
        - (1) Fringe benefit not subject to tax
    - (ii) Exclusions
      - (a) Fringe benefit subject to tax
      - (b) *De minimis* benefits
      - (c) 13<sup>th</sup> month pay and other benefits, and payments specifically excluded from taxable compensation income
    - (iii) Deductions
      - (a) Personal exemptions and additional exemptions
      - (b) Health and hospitalization insurance
      - (c) Taxation of compensation income of a minimum wage earner
        - (1) Definition of statutory minimum wage
        - (2) Definition of minimum wage earner
        - (3) Income also subject to tax exemption: holiday pay, overtime pay, night-shift differential, and hazard pay
  - c) Taxation of business income/income from practice of profession

- d) Taxation of passive income
    - (i) Passive income subject to final tax
      - (a) Interest income
        - (i) Treatment of income from long-term deposits
      - (b) Royalties
      - (c) Dividends from domestic corporations
      - (d) Prizes and other winnings
    - (ii) Passive income not subject to final tax
  - e) Taxation of capital gains
    - (i) Income from sale of shares of stock of a Philippine corporation
      - (a) Shares traded and listed in the stock exchange
      - (b) Shares not listed and traded in the stock exchange
    - (ii) Income from the sale of real property situated in the Philippines
    - (iii) Income from the sale, exchange, or other disposition of other capital assets
11. Taxation of non-resident aliens engaged in trade or business
- a) General rules
  - b) Cash and/or property dividends
  - c) Capital gains
- Exclude: non-resident aliens not engaged in trade or business**
12. Individual taxpayers exempt from income tax
- a) Senior citizens
  - b) Minimum wage earners
  - c) Exemptions granted under international agreements
13. Taxation of domestic corporations
- a) Tax payable
    - (i) Regular tax
    - (ii) Minimum Corporate Income Tax (MCIT)
      - (a) Imposition of MCIT
      - (b) Carry forward of excess minimum tax
      - (c) Relief from the MCIT under certain conditions
      - (d) Corporations exempt from the MCIT
      - (e) Applicability of the MCIT where a corporation is governed both under the regular tax system and a special income tax system
  - b) Allowable deductions
    - (i) Itemized deductions
    - (ii) Optional standard deduction
  - c) Taxation of passive income
    - (i) Passive income subject to tax

- (a) Interest from deposits and yield, or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties
  - (b) Capital gains from the sale of shares of stock not traded in the stock exchange
  - (c) Income derived under the expanded foreign currency deposit system
  - (d) Inter-corporate dividends
  - (e) Capital gains realized from the sale, exchange, or disposition of lands and/or buildings
  - (ii) Passive income not subject to tax
  - d) Taxation of capital gains
    - (i) Income from sale of shares of stock
    - (ii) Income from the sale of real property situated in the Philippines
    - (iii) Income from the sale, exchange, or other disposition of other capital assets
  - e) Tax on proprietary educational institutions and hospitals
  - f) Tax on government-owned or controlled corporations, agencies or instrumentalities
14. Taxation of resident foreign corporations
- a) General rule
  - b) With respect to their income from sources within the Philippines
  - c) Minimum Corporate Income Tax
  - d) Tax on certain income
    - (i) Interest from deposits and yield, or any other monetary benefit from deposit substitutes, trust funds and similar arrangements and royalties
    - (ii) Income derived under the expanded foreign currency deposit system
    - (iii) Capital gains from sale of shares of stock not traded in the stock exchange
    - (iv) Inter-corporate dividends
- Exclude:**
- (i) International carrier**
  - (ii) Offshore banking units**
  - (iii) Branch profits remittances**
  - (iv) Regional or area headquarters and regional operating headquarters of multinational companies**
15. Taxation of non-resident foreign corporations
- a) General rule
  - b) Tax on certain income
    - (i) Interest on foreign loans
    - (ii) Inter-corporate dividends

- (iii) Capital gains from sale of shares of stock not traded in the stock exchange

**Exclude:**

- (i) Non-resident cinematographic film-owner, lessor or distributor**
- (ii) Non-resident owner or lessor of vessels chartered by Philippine nationals**
- (iii) Non-resident owner or lessor of aircraft machineries and other equipment**

16. Improperly accumulated earnings of corporations
17. Exemption from tax on corporations
18. Taxation of partnerships
19. Taxation of general professional partnerships
20. Withholding tax
  - a) Concept
  - b) Kinds
    - (i) Withholding of final tax on certain incomes
    - (ii) Withholding of creditable tax at source
  - c) Withholding of VAT
  - d) Filing of return and payment of taxes withheld
    - (i) Return and payment in case of government employees
    - (ii) Statements and returns
  - e) Final withholding tax at source
  - f) Creditable withholding tax
    - (i) Expanded withholding tax
    - (ii) Withholding tax on compensation
  - g) Timing of withholding

**B. Estate tax**

1. Basic principles
2. Definition
3. Nature
4. Purpose or object
5. Time and transfer of properties
6. Classification of decedent
7. Gross estate *vis-à-vis* net estate
8. Determination of gross estate and net estate
9. Composition of gross estate
10. Items to be included in gross estate
11. Deductions from estate
12. Exclusions from estate

13. Tax credit for estate taxes paid in a foreign country
14. Exemption of certain acquisitions and transmissions
15. Filing of notice of death
16. Estate tax return

#### C. Donor's tax

1. Basic principles
2. Definition
3. Nature
4. Purpose or object
5. Requisites of valid donation
6. Transfers which may be constituted as donation
  - a) Sale/exchange/transfer of property for insufficient consideration
  - b) Condonation/remission of debt
7. Transfer for less than adequate and full consideration
8. Classification of donor
9. Determination of gross gift
10. Composition of gross gift
11. Valuation of gifts made in property
12. Tax credit for donor's taxes paid in a foreign country
13. Exemptions of gifts from donor's tax
14. Person liable
15. Tax basis

#### D. Value-Added Tax (VAT)

1. Concept
2. Characteristics/Elements of a VAT-Taxable transaction
3. Impact of tax
4. Incidence of tax
5. Tax credit method
6. Destination principle
7. Persons liable
8. VAT on sale of goods or properties
  - a) Requisites of taxability of sale of goods or properties
9. Zero-rated sales of goods or properties, and effectively zero-rated sales of goods or properties
10. Transactions deemed sale
  - a) Transfer, use or consumption not in the course of business of goods/properties originally intended for sale or use in the course of business
  - b) Distribution or transfer to shareholders, investors or creditors

- c) Consignment of goods if actual sale not made within 60 days from date of consignment
  - d) Retirement from or cessation of business with respect to inventories on hand
11. Change or cessation of status as VAT-registered person
- a) Subject to VAT
    - (i) Change of business activity from VAT taxable status to VAT-exempt status
    - (ii) Approval of request for cancellation of a registration due to reversion to exempt status
    - (iii) Approval of request for cancellation of registration due to desire to revert to exempt status after lapse of 3 consecutive years
  - b) Not subject to VAT
    - (i) Change of control of a corporation
    - (ii) Change in the trade or corporate name
    - (iii) Merger or consolidation of corporations
12. VAT on importation of goods
- a) Transfer of goods by tax exempt persons
13. VAT on sale of service and use or lease of properties
- a) Requisites for taxability
14. Zero-rated sale of services
15. VAT exempt transactions
- a) VAT exempt transactions, in general
  - b) Exempt transaction, enumerated
16. Input tax and output tax, defined
17. Sources of input tax
- a) Purchase or importation of goods
  - b) Purchase of real properties for which a VAT has actually been paid
  - c) Purchase of services in which VAT has actually been paid
  - d) Transactions deemed sale
  - e) Presumptive input
  - f) Transitional input
18. Persons who can avail of input tax credit
19. Determination of output/input tax; VAT payable; excess input tax credits
- a) Determination of output tax
  - b) Determination of input tax creditable
  - c) Allocation of input tax on mixed transactions
  - d) Determination of the output tax and VAT payable and computation of VAT payable or excess tax credits
20. Substantiation of input tax credits
21. Refund or tax credit of excess input tax



- a) Who may claim for refund/apply for issuance of tax credit certificate
  - b) Period to file claim/apply for issuance of tax credit certificate
  - c) Manner of giving refund
  - d) Destination principle or cross-border doctrine
22. Invoicing requirements
- a) Invoicing requirements in general
  - b) Invoicing and recording deemed sale transactions
  - c) Consequences of issuing erroneous VAT invoice or VAT official receipt
23. Filing of return and payment
24. Withholding of final VAT on sales to government

#### E. Tax remedies under the NIRC

##### 1. Taxpayer's remedies

###### a) Assessment

- (i) Concept of assessment
  - (a) Requisites for valid assessment
  - (b) Constructive methods of income determination
  - (c) Inventory method for income determination
  - (d) Jeopardy assessment
  - (e) Tax delinquency and tax deficiency
- (ii) Power of the Commissioner to make assessments and prescribe additional requirements for tax administration and enforcement
  - (a) Power of the Commissioner to obtain information, and to summon/examine, and take testimony of persons
- (iii) When assessment is made
  - (a) Prescriptive period for assessment
    - (1) False, fraudulent, and non-filing of returns
  - (b) Suspension of running of statute of limitations
- (iv) General provisions on additions to the tax
  - (a) Civil penalties
  - (b) Interest
  - (c) Compromise penalties
- (v) Assessment process
  - (a) Tax audit
  - (b) Notice of informal conference
  - (c) Issuance of preliminary assessment notice
  - (d) Notice of informal conference
  - (e) Issuance of preliminary assessment notice
  - (f) Exceptions to issuance of preliminary assessment notice
  - (g) Reply to preliminary assessment notice

- (h) Issuance of formal letter of demand and assessment notice/final assessment notice
    - (i) Disputed assessment
    - (j) Administrative decision on a disputed assessment
  - (vi) Protesting assessment
    - (a) Protest of assessment by taxpayer
      - (1) Protested assessment
      - (2) When to file a protest
      - (3) Forms of protest
      - (4) Content and validity of protest
    - (b) Submission of documents within 60 days from filing of protest
    - (c) Effect of failure to protest
    - (d) Period provided for the protest to be acted upon
  - (vii) Rendition of decision by Commissioner
    - (a) Denial of protest
      - (1) Commissioner's actions equivalent to denial of protest
        - (a) Filing of criminal action against taxpayer
        - (b) Issuing a warrant of distraint and levy
      - (2) Inaction by Commissioner
    - (viii) Remedies of taxpayer to action by Commissioner
      - (a) In case of denial of protest
      - (b) In case of inaction by Commissioner within 180 days from submission of documents
      - (c) Effect of failure to appeal
- b) Collection
  - (i) Requisites
  - (ii) Prescriptive periods
  - (iii) Distraint of personal property including garnishment
    - (a) Summary remedy of distraint of personal property
      - (1) Purchase by the government at sale upon distraint
      - (2) Report of sale to the Bureau of Internal Revenue (BIR)
      - (3) Constructive distraint to protect the interest of the government
  - (iv) Summary remedy of levy on real property
    - (a) Advertisement and sale
    - (b) Redemption of property sold
    - (c) Final deed of purchaser
  - (v) Forfeiture to government for want of bidder
    - (a) Remedy of enforcement of forfeitures
      - (1) Action to contest forfeiture of chattel
    - (b) Resale of real estate taken for taxes

- (c) When property to be sold or destroyed
      - (d) Disposition of funds recovered in legal proceedings or obtained from forfeiture
    - (vi) Further distraint or levy
    - (vii) Tax lien
    - (viii) Compromise
      - (a) Authority of the Commissioner to compromise and abate taxes
    - (ix) Civil and criminal actions
      - (a) Suit to recover tax based on false or fraudulent returns
  - c) Refund
    - (i) Grounds and requisites for refund
    - (ii) Requirements for refund as laid down by cases
      - (a) Necessity of written claim for refund
      - (b) Claim containing a categorical demand for reimbursement
      - (c) Filing of administrative claim for refund and the suit/proceeding before the CTA within 2 years from date of payment regardless of any supervening cause
    - (iii) Legal basis of tax refunds
    - (iv) Statutory basis for tax refund under the tax code
      - (a) Scope of claims for refund
      - (b) Necessity of proof for claim or refund
      - (c) Burden of proof for claim of refund
      - (d) Nature of erroneously-paid tax/illegally assessed collected
      - (e) Tax refund *vis-à-vis* tax credit
      - (f) Essential requisites for claim of refund
    - (v) Who may claim/apply for tax refund/tax credit
      - (a) Taxpayer/withholding agents of non-resident foreign corporation
    - (vi) Prescriptive period for recovery of tax erroneously or illegally collected
    - (vii) Other consideration affecting tax refunds
2. Government remedies
  - a) Administrative remedies
    - (i) Tax lien
    - (ii) Levy and sale of real property
    - (iii) Forfeiture of real property to the government for want of bidder
    - (iv) Further distraint and levy
    - (v) Suspension of business operation
    - (vi) Non-availability of injunction to restrain collection of tax
  - b) Judicial remedies
3. Statutory offenses and penalties
  - a) Civil penalties

- (i) Surcharge
  - (ii) Interest
    - (a) In general
    - (b) Deficiency interest
    - (c) Delinquency interest
    - (d) Interest on extended payment
  - 4. Compromise and abatement of taxes
    - a) Compromise
    - b) Abatement
- F. Organization and Function of the Bureau of Internal Revenue
- 1. Rule-making authority of the Secretary of Finance
    - a) Authority of Secretary of Finance to promulgate rules and regulations
    - b) Specific provisions to be contained in rules and regulations
    - c) Non-retroactivity of rulings
  - 2. Power of the Commissioner to suspend the business operation of a taxpayer

### **III. Local Government Code of 1991, as amended**

- A. Local government taxation
- 1. Fundamental principles
  - 2. Nature and source of taxing power
    - a) Grant of local taxing power under the local government code
    - b) Authority to prescribe penalties for tax violations
    - c) Authority to grant local tax exemptions
    - d) Withdrawal of exemptions
    - e) Authority to adjust local tax rates
    - f) Residual taxing power of local governments
    - g) Authority to issue local tax ordinances
  - 3. Local taxing authority
    - a) Power to create revenues exercised through Local Government Units
    - b) Procedure for approval and effectivity of tax ordinances
  - 4. Scope of taxing power
  - 5. Specific taxing power of Local Government Units
    - a) Taxing powers of provinces
      - (i) Tax on transfer of real property ownership
      - (ii) Tax on business of printing and publication
      - (iii) Franchise tax
      - (iv) Tax on sand, gravel and other quarry services
      - (v) Professional tax

- (vi) Amusement tax
      - (vii) Tax on delivery truck/van
    - b) Taxing powers of cities
    - c) Taxing powers of municipalities
      - (i) Tax on various types of businesses
      - (ii) Ceiling on business tax impossible on municipalities within Metro Manila
      - (iii) Tax on retirement on business
      - (iv) Rules on payment of business tax
      - (v) Fees and charges for regulation & licensing
      - (vi) Situs of tax collected
    - d) Taxing powers of barangays
    - e) Common revenue raising powers
      - (i) Service fees and charges
      - (ii) Public utility charges
      - (iii) Toll fees or charges
    - f) Community tax
  - 6. Common limitations on the taxing powers of LGUs
  - 7. Collection of business tax
    - a) Tax period and manner of payment
    - b) Accrual of tax
    - c) Time of payment
    - d) Penalties on unpaid taxes, fees or charges
    - e) Authority of treasurer in collection and inspection of books
  - 8. Taxpayer's remedies
    - a) Periods of assessment and collection of local taxes, fees or charges
    - b) Protest of assessment
    - c) Claim for refund of tax credit for erroneously or illegally collected tax, fee or charge
  - 9. Civil remedies by the LGU for collection of revenues
    - a) Local government's lien for delinquent taxes, fees or charges
    - b) Civil remedies, in general
      - (i) Administrative action
      - (ii) Judicial action
- B. Real property taxation
- 1. Fundamental principles
  - 2. Nature of real property tax
  - 3. Imposition of real property tax
    - a) Power to levy real property tax
    - b) Exemption from real property tax

4. Appraisal and assessment of real property tax
  - a) Rule on appraisal of real property at fair market value
  - b) Declaration of real property
  - c) Listing of real property in assessment rolls
  - d) Preparation of schedules of fair market value
    - (i) Authority of assessor to take evidence
    - (ii) Amendment of schedule of fair market value
  - e) Classes of real property
  - f) Actual use of property as basis of assessment
  - g) Assessment of real property
    - (i) Assessment levels
    - (ii) General revisions of assessments and property classification
    - (iii) Date of effectivity of assessment or reassessment
    - (iv) Assessment of property subject to back taxes
    - (v) Notification of new or revised assessment
  - h) Appraisal and assessment of machinery
5. Collection of real property tax
  - a) Date of accrual of real property tax and special levies
  - b) Collection of tax
    - (i) Collecting authority
    - (ii) Duty of assessor to furnish local treasurer with assessment rolls
    - (iii) Notice of time for collection of tax
  - c) Periods within which to collect real property tax
  - d) Special rules on payment
    - (i) Payment of real property tax in installments
    - (ii) Interests on unpaid real property tax
    - (iii) Condonation of real property tax
  - e) Remedies of LGUs for collection of real property tax
    - (i) Issuance of notice of delinquency for real property tax payment
    - (ii) Local government's lien
    - (iii) Remedies in general
    - (iv) Resale of real estate taken for taxes, fees or charges
    - (v) Further levy until full payment of amount due
6. Refund or credit of real property tax
  - a) Payment under protest
  - b) Repayment of excessive collections
7. Taxpayer's remedies
  - a) Contesting an assessment of value of real property
    - (i) Appeal to the Local Board of Assessment Appeals
    - (ii) Appeal to the Central Board of Assessment Appeals

- (iii) Effect of payment of tax
- b. Payment of real property tax under protest
  - (i) File protest with local treasurer
  - (ii) Appeal to the Local Board of Assessment Appeals
  - (iii) Appeal to the Central Board of Assessment Appeals
  - (iv) Appeal to the CTA
  - (v) Appeal to the Supreme Court

#### **IV. Tariff and Customs Code of 1978, as amended**

- A. Tariff and duties, defined
- B. General rule: all imported articles are subject to duty.
  - 1. Importation by the government taxable
- C. Purpose for imposition
- D. Flexible tariff clause
- E. Requirements of importation
  - 1. Beginning and ending of importation
  - 2. Obligations of importer
    - a) Cargo manifest
    - b) Import entry
    - c) Declaration of correct weight or value
    - d) Liability for payment of duties
    - e) Liquidation of duties
    - f) Keeping of records
- F. Importation in violation of tax credit certificate
  - 1. Smuggling
  - 2. Other fraudulent practices
- G. Classification of goods
  - 1. Taxable importation
  - 2. Prohibited importation
  - 3. Conditionally-free importation
- H. Classification of duties
  - 1. Ordinary/regular duties

- a) *Ad valorem*; methods of valuation
    - (i) Transaction value
    - (ii) Transaction value of identical goods
    - (iii) Transaction value of similar goods
    - (iv) Deductive value
    - (v) Computed value
    - (vi) Fallback value
  - b) Specific
2. Special duties
- a) Dumping duties
  - b) Countervailing duties
  - c) Marking duties
  - d) Retaliatory/discriminatory duties
  - e) Safeguard

#### I. Remedies

- 1. Government
  - a) Administrative/extrajudicial
    - (i) Search, seizure, forfeiture, arrest
  - b) Judicial
    - (i) Rules on appeal including jurisdiction
- 2. Taxpayer
  - a) Protest
  - b) Abandonment
  - c) Abatement and refund

### **V. Judicial Remedies (R.A. No. 1125, as amended, and the Revised Rules of the Court of Tax Appeals)**

- A. Jurisdiction of the Court of Tax Appeals
  - 1. Exclusive appellate jurisdiction over civil tax cases
    - a) Cases within the jurisdiction of the court *en banc*
    - b) Cases within the jurisdiction of the court in divisions
  - 2. Criminal cases
    - a) Exclusive original jurisdiction
    - b) Exclusive appellate jurisdiction in criminal cases
- B. Judicial procedures
  - 1. Judicial action for collection of taxes
    - a) Internal revenue taxes



- b) Local taxes
    - (i) Prescriptive period
  - 2. Civil cases
    - a) Who may appeal, mode of appeal, effect of appeal
      - (i) Suspension of collection of tax
        - a) Injunction not available to restrain collection
      - (ii) Taking of evidence
      - (iii) Motion for reconsideration or new trial
    - b) Appeal to the CTA, *en banc*
    - c) Petition for review on *certiorari* to the Supreme Court
  - 3. Criminal cases
    - a) Institution and prosecution of criminal actions
      - (i) Institution of civil action in criminal action
    - b) Appeal and period to appeal
      - (i) Solicitor General as counsel for the people and government officials sued in their official capacity
    - c) Petition for review on *certiorari* to the Supreme Court
- C. Taxpayer's suit impugning the validity of tax measures or acts of taxing authorities
- 1. Taxpayer's suit, defined
  - 2. Distinguished from citizen's suit
  - 3. Requisites for challenging the constitutionality of a tax measure or act of taxing authority
    - a) Concept of *locus standi* as applied in taxation
    - b) Doctrine of transcendental importance
    - c) Ripeness for judicial determination

**IMPORTANT NOTES:**

1. This listing of covered topics is not intended and should not be used by the law schools as a course outline. This was drawn up for the limited purpose of ensuring that Bar candidates are guided on the coverage of the 2015 Bar Examinations.
2. All Supreme Court decisions - pertinent to a given Bar subject and its listed topics, and promulgated up to **March 31, 2015** - are examinable materials within the coverage of the 2015 Bar Examinations.