



Republic of the Philippines
Supreme Court
Manila

2019 BAR EXAMINATIONS
TAXATION LAW

NOVEMBER 10, 2019

2:00 P.M. – 6:00 P.M.

INSTRUCTIONS

1. This Questionnaire contains TEN (10) pages including this page. Check the number of pages and their proper sequencing. You may write notes on this Questionnaire.
2. This Questionnaire is divided into two (2) parts: Part I and Part II. Write your answers to the questions in **Part I** (consisting of problem sets labelled **A.1. to A.10.**) in **Booklet I** and the answers to questions in **Part II** (consisting of problem sets labelled **B.11. to B.20.**) in **Booklet II**. **Answers written in the wrong booklet shall not be given any credit.**
3. Read each question carefully and note the points allocated for each question. In your answers, follow the sequence and the numbering system used in the Questionnaire. Answer each numbered question on a separate page; an answer to a sub-question under the same number set may be written continuously on the same page and succeeding pages until completed.
4. Your answers should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at sound and logical conclusions. Always support your answers with the pertinent laws, rules, and/or jurisprudence. A mere “yes” or “no” answer without any corresponding explanation or discussion may not be given full credit.
5. Marking of your booklets with your name or other identifying signs or symbols extraneous to the subject matter of the questions may be considered as cheating, and may disqualify you for the whole examinations.

YOU CAN BRING HOME THE QUESTIONNAIRE.


JUSTICE ESTELA M. PERLAS-BERNABE
Chairperson
2019 Bar Examinations

PART I

Note: As stated in the Instructions, **Part I** covers problem sets labelled **A.1. to A.10.** All answers to these questions should be written in **Booklet I.**

A.1.

On October 5, 2016, the Bureau of Internal Revenue (BIR) sent KLM Corp. a Final Assessment Notice (FAN), stating that after its audit pursuant to a Letter of Authority duly issued therefor, KLM Corp. had deficiency value-added and withholding taxes. Subsequently, a warrant of distraint and/or levy was issued against KLM Corp. KLM Corp. opposed the actions of the BIR on the ground that it was not accorded due process because it did not even receive a Preliminary Assessment Notice (PAN) after the BIR's investigation, which the BIR admitted.

- (a) Distinguish a PAN from a FAN. (2%)**
- (b) Are the deficiency tax assessment and warrant of distraint and/or levy issued against KLM Corp. valid? Explain. (3%)**

A.2.

For purposes of value-added tax, define, explain or distinguish the following terms:

- (a) Input tax and output tax (3%)**
- (b) Zero-rated and effectively zero-rated transactions (3%)**
- (c) Destination principle (2%)**

A.3.

All the homeowners belonging to ABC Village Homeowners' Association elected a new set of members of the Board of Trustees for the Association effective January 2019. The first thing that the Board looked into is the need to increase the prevailing association dues. Mr. X, one of the trustees, proposed an increase of 100% to account for the payment of the 12% value-added tax (VAT) on the association dues which were being collected for services allegedly rendered "in the course of trade or business" by ABC Village Homeowners' Association.

- (a) What constitutes transactions done "in the course of trade or business" for purposes of applying VAT? (2%)**
- (b) Is Mr. X correct in stating that the association dues are subject to VAT? Explain. (3%)**

A.4.

Due to rising liquidity problems and pressure from its concerned suppliers, P Corp. instituted a flash auction sale of its shares of stock. P Corp. was then able to sell its treasury shares to Z, Inc., an unrelated corporation, for ₱1,000,000.00, which was only a little below the valuation of P Corp.'s shares based on its latest audited financial statements. In connection therewith, P Corp. sought a Bureau of Internal Revenue ruling to confirm that, notwithstanding the price difference between the selling price of the shares and their book value, the said transaction falls under one of the recognized exemptions to donor's tax under the Tax Code.

(a) Cite the instances under the Tax Code where gifts made are exempt from donor's tax. (3%)

(b) Does the above transaction fall under any of the exemptions? Explain. (2%)

A.5.

A, a resident Filipino citizen, died in December 2018. A's only assets consist of a house and lot in Alabang, where his heirs currently reside, as well as a house in Los Angeles, California, USA. In computing A's taxable net estate, his heirs only deducted: 1. ₱10,000,000.00 constituting the value of their house in Alabang as their family home; and 2. ₱200,000.00 in funeral expenses because no other expenses could be substantiated.

(a) Are both deductions claimed by A's heirs correct? Explain. (2%)

(b) May a standard deduction be claimed by A's heirs? If so, how much and what proof needs to be presented for the same to be validly made? (2%)

(c) In determining the gross estate of A, should the heirs include A's house in Los Angeles, California, USA? Explain. (2%)

A.6.

XYZ Air, a 100% foreign-owned airline company based and registered in Netherlands, is engaged in the international airline business and is a member signatory of the International Air Transport Association. Its commercial airplanes neither operate within the Philippine territory nor are its service passengers embarking from Philippine airports. Nevertheless, XYZ Air is able to sell its airplane tickets in the Philippines through ABC Agency, its general agent in the Philippines. As XYZ Air's ticket sales, sold through ABC Agency for the year 2013, amounted to ₱5,000,000.00, the Bureau of Internal Revenue (BIR) assessed

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XYZ Air deficiency income taxes on the ground that the income from the said sales constituted income derived from sources within the Philippines.

Aggrieved, XYZ Air filed a protest, arguing that, as a non-resident foreign corporation, it should only be taxed for income derived from sources within the Philippines. However, since it only serviced passengers outside the Philippine territory, the situs of the income from its ticket sales should be considered outside the Philippines. Hence, no income tax should be imposed on the same.

Is XYZ Air's protest meritorious? Explain. (5%)

A.7.

Differentiate tax exclusions from tax deductions. (3%)

A.8.

B transferred his ownership over a 1,000-square meter commercial land and three-door apartment to ABC Corp., a family corporation of which B is a stockholder. The transfer was in exchange of 10,000 shares of stock of ABC Corp. As a result, B acquired 51% ownership of ABC Corp., with all the shares of stock having the right to vote. B paid no tax on the exchange, maintaining that it is a tax avoidance scheme allowed under the law. The Bureau of Internal Revenue, on the other hand, insisted that B's alleged scheme amounted to tax evasion.

Should B pay taxes on the exchange? Explain. (3%)

A.9.

GHI, Inc. is a corporation authorized to engage in the business of manufacturing ultra-high density microprocessor unit packages. After its registration on July 5, 2005, GHI, Inc. constructed buildings and purchased machineries and equipment. As of December 31, 2005, the total cost of the machineries and equipment amounted to ₱250,000,000.00. However, GHI, Inc. failed to commence operations. Its factory was temporarily closed effective September 15, 2010. On October 1, 2010, it sold its machineries and equipment to JKL Integrated for ₱300,000,000.00. Thereafter, GHI, Inc. was dissolved on November 30, 2010.

(a) Is the sale of the machineries and equipment to JKL Integrated subject to normal corporate income tax or capital gains tax? Explain. (3%)

(b) Distinguish an ordinary asset from a capital asset. (2%)

A.10.

In 2018, City X amended its Revenue Code to include a new provision imposing a tax on every sale of merchandise by a wholesaler based on the total selling price of the goods, inclusive of value-added taxes (VAT). ABC Corp., a wholesaler operating within City X, challenged the new provision based on the following contentions: 1. the new provision is a form of prohibited double taxation because it essentially amounts to City X imposing VAT which was already being levied by the national government; and 2. since the tax being imposed is akin to VAT, it is beyond the power of City X to levy the same.

Rule on each of ABC Corp.'s contentions. (5%)

- END OF PART I -

Note: This marks the end of Part I. The forthcoming problem sets will fall under Part II and the answers therefor should be written in Booklet II.



PART II

Note: As stated in the Instructions, **Part II** covers problem sets labelled **B.11.** to **B.20.** All answers to these questions should be written in **Booklet II.**

B.11.

Mr. D, a Filipino amateur boxer, joined an Olympic qualifying tournament held in Las Vegas, USA, where he won the gold medal. Pleased with Mr. D's accomplishment, the Philippine Government, through the Philippine Olympic Committee, awarded him a cash prize amounting to ₱1,000,000.00. Upon receipt of the funds, he went to a casino in Pasay City and won the ₱30,000,000.00 jackpot in the slot machine. The next day, he went to a nearby Lotto outlet and bought a Lotto ticket which won him a cash prize of ₱5,000.00.

**Which of the above sums of money is/are subject to income tax?
Explain. (5%)**

B.12.

JKL-Philippines is a domestic corporation affiliated with JKL-Japan, a Japan-based information technology company with affiliates across the world. Mr. F is a Filipino engineer employed by JKL-Philippines. In 2018, Mr. F was sent to the Tokyo branch of JKL-Japan based on a contract entered into between the two (2) companies. Under the said contract, Mr. F would be compensated by JKL-Philippines for the months spent in the Philippines, and by JKL-Japan for months spent in Japan. For the entirety of 2018, Mr. F spent ten (10) months in the Tokyo branch.

On the other hand, Mr. J, a Japanese engineer employed by JKL-Japan, was sent to Manila to work with JKL-Philippines as a technical consultant. Based on the contract between the two (2) companies, Mr. J's annual compensation would still be paid by JKL-Japan. However, he would be paid additional compensation by JKL-Philippines for the months spent working as a consultant. For 2018, Mr. J stayed in the Philippines for five (5) months.

In 2019, the Bureau of Internal Revenue (BIR) assessed JKL-Philippines for deficiency withholding taxes for both Mr. F and Mr. J for the year 2018. As to Mr. F, the BIR argued that he is a resident citizen; hence, his income tax should be based on his worldwide income. As to Mr. J, the BIR argued that he is a resident alien; hence, his income tax should be based on his income from sources within the Philippines at the schedular rate under Section 24 (A) (2) of the Tax Code, as amended by Republic Act No. 10963, or the "Tax Reform for Acceleration and Inclusion" Law.

(a) Is the BIR correct in basing its income tax assessment on Mr. F's worldwide income? Explain. (3%)

(b) Is the BIR correct in basing its income tax assessment on Mr. J's income within the Philippines at the schedular rate? Explain. (3%)

B.13.

As a way to augment the income of the employees of DEF, Inc., a private corporation, the management decided to grant a special stipend of ₱50,000.00 for the first vacation leave that any employee takes during a given calendar year. In addition, the senior engineers were also given housing inside the factory compound for the purpose of ensuring that there are available engineers within the premises every time there is a breakdown in the factory machineries and equipment.

(a) Is the special stipend part of the taxable income of the employees receiving the same? If so, what tax is applicable and what is the tax rate? Explain. (3%)

(b) Is the cash equivalent value of the housing facilities received by the senior engineers subject to fringe benefits tax? Explain. (3%)

B.14.

City R owns a piece of land which it leased to V Corp. In turn, V Corp. constructed a public market thereon and leased the stalls to vendors and small storeowners. The City Assessor then issued a notice of assessment against V Corp. for the payment of real property taxes (RPT) accruing on the public market building, as well as on the land where said market stands.

Is the City Assessor correct in including the land in its assessment of RPT against V Corp., even if the same is owned by City R? Explain. (3%)

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B.15.

Mr. C is employed as a Chief Executive Officer of MNO Company, receiving an annual compensation of ₱10,000,000.00, while Mr. S is a security guard in the same company earning an annual compensation of ₱200,000.00. Both of them source their income only from their employment with MNO Company.

- (a) At the end of the year, is Mr. C personally required to file an annual income tax return? Explain. (2.5%)**
- (b) How about Mr. S? Is he personally required to file an annual income tax return? Explain. (2.5%)**

B.16.

- (a) Differentiate between a calendar year and a fiscal year. (2.5%)**
- (b) When is the deadline for the filing of a corporation's final adjustment return for a calendar year? How about for a fiscal year? (2.5%)**

B.17.

XYZ Corp. is listed as a top 20,000 Philippine corporation by the Bureau of Internal Revenue. It secured a loan from ABC Bank with a 6% per annum interest. All interest payments made by XYZ Corp. to ABC Bank is subject to a 2% creditable withholding tax. At the same time, XYZ Corp. has a trust deposit with ABC Bank in the amount of ₱100,000,000.00, which earns 2% interest per annum, but is subject to a 20% final withholding tax on the interest income received by XYZ Corp.

- (a) Who are the withholding agents in the case of: 1. the 20% final withholding tax; and 2. the 2% creditable withholding tax? Explain. (2.5%)**
- (b) When is the deadline for filing a judicial claim for refund for any excess or erroneous taxes paid in the case of: 1. the 20% final withholding tax; and 2. the 2% creditable withholding tax? (2.5%)**

B.18.

After a Bureau of Internal Revenue (BIR) audit, T Corp., a domestic corporation engaged in buying and selling of scrap metals, was found to have deficiency income tax of ₱25,000,000.00, including interests and penalties, for the year 2012. For 2012, T Corp. filed its income tax return (ITR) on April 15, 2013 because it used the calendar year for its accounting. The BIR sent the Preliminary Assessment Notice (PAN) on December 23, 2015, and eventually, the Final Assessment Notice (FAN) on April 11, 2016, which were received by T Corp. on the same dates that they were sent. Upon receipt of the FAN, T Corp. filed its protest letter on June 25, 2016.

Thereafter, and without action from the Commissioner of Internal Revenue (CIR), T Corp. filed a petition for review before the Court of Tax Appeals, alleging that the assessment has prescribed. For its part, the CIR moved to dismiss the case, pointing out that the assessment had already become final because the protest was filed beyond the allowable period.

- (a) Is T Corp.'s contention regarding the prescription of the assessment meritorious? Explain. (2.5%)**
- (b) Should the CIR's motion to dismiss be granted? Explain. (2.5%)**

B.19.

On May 10, 2011, the final withholding tax for certain income payments to W Corp. was withheld and remitted to the Bureau of Internal Revenue (BIR), and the corresponding return therefor was concomitantly filed on the same date. Upon discovering that the amount withheld was excessive, W Corp. filed with the BIR a claim for refund for erroneously withheld and collected final withholding income tax on May 3, 2013. A week after, and without waiting for any decision from the Commissioner of Internal Revenue (CIR), W Corp. filed a petition for review before the Court of Tax Appeals (CTA) to make sure that the petition was filed within the two (2)-year period for claiming refunds.

In resisting the claim, the BIR contended that the claim must be dismissed by the CTA on the ground of non-exhaustion of administrative remedies because it did not give the CIR the opportunity to act on the claim of refund.

- (a) Is the BIR's contention meritorious? Explain. (2.5%)**
- (b) Assuming that the claim for refund filed by W Corp. is for excess and/or unutilized input VAT for the second quarter of 2011, and for which the return was timely filed on July 25, 2011, would your answer be the same? Explain. (2.5%)**

B.20.

ABC, Inc. owns a 950-square meter commercial lot in Quezon City. It received a notice of assessment from the City Assessor, subjecting the property to real property taxes (RPT). Believing that the assessment was erroneous, ABC, Inc. filed a protest with the City Treasurer. However, for failure to pay the RPT, the City Treasurer dismissed the protest.

(a) Was the City Treasurer correct in dismissing ABC, Inc.'s protest? Explain. (2.5%)

(b) Assuming that ABC, Inc. decides to appeal the dismissal, where should the appeal be filed? (2.5%)

- END OF PART II -
Nothing follows