

Set A

**MULTIPLE CHOICE QUESTIONS (MCQs)
INSTRUCTIONS**

The following questionnaire consists of seventy-five (75) MCQs numbered 1 up to 75 contained in TWENTY TWO (22) pages.

Answer each question on the MCQ Answer Sheet by shading completely the appropriate circle corresponding to the letter you have chosen. (Read the Marking Instruction on the Answer Sheet)

Avoid erasures on the Answer Sheet. If you need to make corrections, erase completely the answer you want to change.

Do not explain your answer in the MCQ portion of the exam. You will not earn credit for that.

Keep the Answer Sheet clean. Do not make unnecessary marks on it. Do not fold, roll, scratch, crumple or tear it.

You may write on the questionnaire and use it as scratch paper but make sure to transfer your Answer Sheet. Provide ample time to transfer the answers if you choose to do this.

Answer first the MCQs completely before going to the essay-type questions.

HAND IN YOUR ANSWER SHEET. THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.

GOODLUCK!!!

MARTIN S. VILLARAMA, JR.

Chairperson

2012 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS TWENTY THREE (23) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

1. Bank A deposit money with Bank B which earns interest that is subjected to the 20% final withholding tax. At the same time, Bank A is subjected to the 5% gross receipts tax on its interest income on loan transactions to customers. Which statement below INCORRECTLY describes the transaction?

- a) There is double taxation because two taxes income tax and gross receipts tax are imposed on the interest incomes described above and double taxation is prohibited under the 1987 Constitution
- b) There is no double taxation because the first tax is income tax, while the second tax is business tax;
- c) There is no double taxation because the income tax is on the interest income of Bank A on its deposits with Bank B (passive income), while the gross receipts tax is on the interest income received by Bank A from loans to its debtor-customers (active income);
- d) Income tax on interest income of deposits of Bank A is a direct tax, while GRT on interest income on loan transaction is an tax.

2. Which of the following statement is NOT correct?

- 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.

3. Which statement below expresses the lifeblood theory?

- 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.

4. Which statement is **WRONG**?

- a) The power of taxation may be exercised by the government, its political subdivisions, and public utilities;
- b) Generally, there is no limit on the amount of tax that may be imposed;
- c) The money contributed as tax becomes part of the public funds;
- d) The power of tax is subject to certain constitutional limitations.

5. The Philippines adopted the semi-global tax system, which means that:

- a) All taxable incomes, regardless of the nature of income, are added together to arrive at gross income, and all allowable deductions are deducted from the gross income to arrive at the taxable income;
- b) All incomes subject to final withholding taxes liable to income tax under the schedular tax system, while all ordinary income as well as income not subject to final withholding tax under the global tax system;
- c) All taxable incomes are subject to final withholding taxes under the schedular tax system;
- d) All taxable incomes from sources within and without the Philippines are liable to income tax.

6. Income from the performance of services is treated as income from within the Philippines, if:

- 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.

7. For income tax purposes, the source of the service income is important for the taxpayer, who is a:

- a) Filipino citizen residing in Makati City;
- b) Non-resident Filipino citizen working residing in London, United Kingdom;
- c) Japanese citizen who is married to a Filipino citizen and residing in their family home located Fort Bonifacio, Taguig City;
- d) Domestic corporation.

8. Interest income of a domestic commercial bank derived from a peso loan to a domestic corporation in 2010 is :

- 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.

9. A resident corporation is one that is:

- 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, Pihlippines.

10. 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:

- 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 of 1% stock transaction tax based on the gross selling price or fair market value, whichever is higher
- d) Exempt from income tax

11. An individual, who is a real estate dealer, sold a residential lot in Quezon City at a gain of P100,000.00 (selling price of P900,000.00 and cost is P800,00.00). The sale is subject to income tax as follows:

- a) 6% capital gains tax on the gain;
- b) 6% capital gains tax on the gross selling price or fair market value, whichever is higher;
- c) Ordinary income tax at the graduated rates of 5% to 32% of net taxable income;
- d) 30% income tax on net taxable income.

12. During the audit conducted by the BIR official, it was found that the rental income claimed by the corporation was not subjected to expanded withholding tax. Accordingly, the claimed rental expense:

- a) Is deductible from the gross income of the corporation, despite non-withholding of income tax by the corporation;
- b) Is deductible from the gross income of the corporation, provided that the 5% expanded withholding tax is paid by the corporation during the audit;
- c) Is not deductible from gross income of the corporation due to non-withholding of tax;
- d) Is deductible, if it can be shown that the lessor has correctly reported the rental income in his tax return.

13. 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.

- a) The sale is exempt from income tax but subject to the 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.

14. The appropriate method of accounting for a contractor on his long-term construction contract (i.e., it takes more than a year to finish) is:

- a) Cash method;
- b) Accrual method;
- c) Installment sale method;
- d) Percentage of completion method.

15. A general professional partnership (GPP) is one:

- 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.

16. The interest expense of a domestic corporation on a bank loan in connection with the purchase of a production equipment:

- 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.

17. The "all events test" refers to:

- 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.

18. All the items below are excluded from gross income, except:

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.

19. Which statement is correct? A non-stock, non-profit charitable association that sells its idle agricultural property is:

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.

20. ABS Corporation is a PEZA-registered export enterprise which manufactures cameras and sells all its finished products abroad. Which statement is NOT correct?

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.

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

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 donors 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 *propter nuptias*.

22. While he was traveling with friends, Mr. Jose Francisco, resident Filipino citizen, died on January 20, 2011 in a California Hospital, USA, leaving personal and real properties with market values as follows: House and Lot in Quezon City P10 Million; Cash in bank in California US\$10,000.00; Citibank in New York US\$5,000.00; Cash in BPI Makati P4 Million; Car in Quezon City P1 Million; Shares of stocks of Apple Corporation, US corporation listed in NY Stock Exchange US\$1 = Php50. His gross estate for the Philippine estate tax purposes shall be:

- a) P13 Million;
- b) P14 Million;
- c) P15 Million;
- d) P16 Million.

23. 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:

- 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 donors 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.

24. 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?

- a) Maria Reyes is subject to donors tax in 2011 because gross gift is P100,000.00;
- b) Maria Reyes is exempt from donors tax in 2011 because gross gift is P100,000.00;
- c) Maria Reyes is exempt from donors tax in 2011 only to the extent of P50,000.00;

d) Maria Reyes is exempt from donors tax in 2011 because the donee is minor.

25. 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

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.

26. Sale of residential house and lot by an official of a domestic corporation to another official in the same corporation for a consideration of P2.5 Million in 2011 is:

a) Exempt from VAT because the gross sales do not exceed P2.5 Million;

b) Exempt from VAT because the property sold is a capital asset, regardless of the gross selling price;

c) Exempt from VAT because the seller is not a person engaged in real estate business;

d) Taxable at 12% VAT output tax on the gross selling price of P2.5 Million.

27. 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.

28. A VAT-registered contractor performed services for his customer in 2010 and billed him P11.2 Million, broken down as follows: P10 Million cost of services, plus P1.2 Million, 12% VAT. Of the contract price of P10 Million, only P8 Million plus VAT thereon was received from the customer in 2010, and the balance of P4 Million plus VAT was received by the contractor in 2011. How much is the taxable gross receipts of the contractor for 2010, for VAT purposes?

a) P10 Million, the total cost of services performed in 2010;

b) P8 Million, the amount received from the customer in 2010;

c) P8 Million plus VAT received from the customer in 2010;

d) P11.2 Million, the total cost of services performed plus 12% VAT.

29. MBM Corporation is the owner-operator of movie houses in Cavite. During the year 2010, it received a total gross receipts of P20 Million from the operation of movies. It did not register as a VAT person. Which statement below is correct?

- a) MBM Corporation is exempt from the 12% VAT, but liable for the 20% amusement tax on admissions under the Local Government Code;
- b) MBM Corporation is both liable for the 12% VAT and 20% amusement tax on admissions;
- c) MBM Corporation is both exempt from the 12% VAT and 20% amusement tax on admissions;
- d) MBM Corporation is liable for the 12% VAT, but exempt from the 20% amusement tax on admissions.

30. A pawnshop shall now be treated, for business tax purposes:

- a) As a lending investor liable to the 12% VAT on its gross receipts from interest income and from gross selling price from sale of unclaimed properties;
- b) Not as a lending investor, but liable to the 5% gross receipts tax imposed on a non-bank financial intermediary under Title VI (Other Percentage Taxes);
- c) As exempt from 12% VAT and 5% gross receipts tax;
- d) As liable to the 12% VAT and 5% gross receipts tax.

31. 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:

- 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.

32. Except for one transaction, the rest are exempt from value added tax. Which one is VAT taxable?

- 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.

33. 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; lessors 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.

34. 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:

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.

35. Which transaction below is subject to VAT?

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.

36. Which importation in 2011 is subject to VAT?

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.

37. 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?

38. 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.

39. A hotel operator that is a VAT-registered person and who leases luxury vehicles to its hotel customers is:

- a) Subject to the 3% common carriers tax and 12% VAT;
- b) Subject to the 3% common carriers tax only;
- c) Subject to the 12% VAT only;
- d) Exempt from both the 3% common carriers tax and 12% VAT.

40. 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 P1.5 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.

41. 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:

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".

42. The public market vendor below, who is not a VAT-registered person is liable to VAT in 2010, if:

a) She sells raw chicken and meats and her gross sales during the year is P2 Million;

b) She sells vegetables and fruits in her stall and her gross sales during the year is P1 Million;

c) She sells canned goods, processed coconut oils, and cut flowers in her stall and her gross sales during the year is P2.5 Million;

d) She sells live fish, shrimps, and crabs and her gross sales during the year is P5 Million.

43. Which statement is FALSE under the VAT law?

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 P1.5 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.

44. The Commissioner of Internal Revenue may NOT inquire into the bank deposits of a taxpayer, except:

a) When the taxpayer files a fraudulent return;

b) When the taxpayer offers to compromise the assessed tax based on erroneous assessment;

c) When the taxpayer offers to compromise the assessed tax based on financial incapacity to pay and he authorizes the Commissioner in writing to look into his bank records;

d) When the taxpayer did not file his income tax return for the year.

45. 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?

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.

46. 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?

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.

47. 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:

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.

48. When a protest against the deficiency income tax assessment was denied by the BIR Regional Director of Quezon City, the appeal to the Court of Tax Appeals must be filed by a taxpayer:

a) If the amount of basic tax assessed is P100,000.00 or more;

b) If the amount of basic tax assessed is P300,000.00 or more;

c) If the amount of basic tax assessed is P500,000.00 or more;

d) If the amount of basic tax assessed is P1 Million or more;

49. 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?

a) November 30, 2011;

b) December 30, 2011;

c) January 30, 2012;

d) February 28, 2012.

50. 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?

a) August 30, 2011;

b) September 30, 2011;

c) December 30, 2011;

d) January 30, 2012.

51. 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?

a) City Courts;

b) Regional Trial Court;

c) Court of Tax Appeals;

d) Court of Appeals.

52. Which statement below on compromise of tax liability is correct?

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.

53. In case of full or partial denial of the written claim for refund or excess input tax directly attributable to zero-rated sales, or the failure on the part of the Commissioner to act on the application within 120 days from the date of submission of complete documents, an appeal must be filed with the CTA:

- a) Within thirty (30) days after filing the administrative claim with the BIR;
- b) Within sixty (60) days after filing the administrative claim with the BIR;
- c) Within one hundred twenty (120) days after filing the administrative claim with the BIR;
- d) Within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the 120-day period.

54. The submission of the required documents within sixty (60) days from the filing of the protest is available only where:

- a) The taxpayer previously filed a Motion for Reconsideration with the BIR official;
- b) The taxpayer previously filed a request for reconsideration with the BIR official;
- c) The taxpayer previously filed a request for reinvestigation with the BIR official;
- d) The taxpayer previously filed an extension to file a protest with the BIR official.

55. The prescriptive period for the collection of the deficiency tax assessment will be tolled:

- a) If the taxpayer files a request for reconsideration with the Asst. Commissioner;
- b) If the taxpayer files a request for reinvestigation that is approved by the Commissioner of Internal Revenue;
- c) If the taxpayer changes his address in the Philippines that is communicated to the BIR official;
- d) If a warrant of levy is served upon the taxpayers real property in Manila.

56. Which statement is correct? The collection of a deficiency tax assessment by distraint and levy:

- a) May be repeated, if necessary, until the full amount due, including all expenses, is collected;
- b) Must be done successively, first by distraint and then by levy;
- c) Automatically covers the bank deposits of a delinquent taxpayer;
- d) May be done only once during the taxable year.

57. The prescriptive period to file a criminal action is:

- a) Ten (10) years from the date of discovery of the commission of fraud or non-filing 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.

58. The accused mere reliance on the representations made by his accountant, with deliberate refusal or avoidance to verify the contents of his tax return and to inquire on its authenticity constitutes:

- a) Simple negligence;
- b) Gross negligence;
- c) Willful blindness;
- d) Excusable negligence.

59. The acquittal of the accused in the criminal action for the failure to file income tax return and failure to supply correct information will have the following consequence:

- a) The CTA will automatically exempt the accused from any civil liability;
- b) The CTA will still hold the taxpayer liable for deficiency income tax liability in all cases, since preponderance of evidence is merely required for tax cases;
- c) The CTA will impose civil or tax liability only if there was a final assessment notice issued by the BIR against the accused in accordance with the prescribed procedures for issuing assessments, which was presented during the trial;
- d) The CTA will impose civil or tax liability, provided that a computation of the tax liability is presented during the trial.

60. 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?

- 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.

61. Which statement is correct?

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.

62. Which of the following statements is NOT a test of a valid ordinance?

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.

63. Taxing power of local government units shall NOT extend to the following taxes, except one:

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.

64. Which statement on prescriptive periods is true?

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.

65. The appraisal, assessment, levy and collection of real property tax shall be guided by the following principles. Which statement does NOT belong here?

- 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.

66. The Manila International Airport Authority (MIAA) is exempt from real property tax. Which statement below is NOT correct?

- 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.

67. For purposes of real property taxes, the tax rates are applied on:

- a) Zonal values;
- b) Fair market value;
- c) Assessed values;
- d) Reproduction values.

68. One of the local government units below does NOT have the power to impose real property tax:

- a) Bacoor, Cavite;
- b) Davao City;
- c) Tarlac Province;
- d) Malabon, Metro Manila.

69. Where the real property tax assessment is erroneous, the remedy of the property owner is:

- 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 paying the assessed tax under protest.

70. 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.

71. Importation of goods is deemed terminated:

- a) When the customs duties are paid, even if the goods remain within the customs premises;
- b) When the goods are released or withdrawn from the customs house upon payment of the customs duties or with legal permit to withdraw;
- c) When the goods enter Philippines territory and remain within the customs house within thirty (30) days from date of entry;
- d) When there is part payment of duties on the imported goods located in the customs area.

72. A protest against an assessment issued by the Collector of Customs for unpaid customs duties on imported goods shall be filed with:

- a) The Commissioner of Customs;
- b) The Regional Trial Court;
- c) The Court of Tax Appeals;
- d) The Collector of Customs.

73. The dutiable value of an imported article subject to an *ad valorem* rate of duty under existing law shall be:

- a) The home consumption value;
- b) The total value;
- c) The total landed cost;
- d) The transaction value.

74. The imported articles shall in any case be subject to the regular physical examination when:

- a) The importer disagrees with the findings as contained in the government surveyors report;
- b) The number, weight and nature of packages indicated in the customs entry declaration and supporting documents differ from that in the manifest;
- c) The container is not leaking or damaged;
- d) The shipment is covered by alert/hold orders issued pursuant to an existing order.

75. Which cases are appealable to the CTA?

- 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.

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO HEAD WATCHER.

**2012 BAR EXAMINATIONS
TAXATION LAW**

14 October 2012

3:30 P.M.-5 P.M.

Set B

**ESSAY TYPE QUESTIONS
INSTRUCTIONS**

The following questionnaire consists of ten (10) questions (numbered I to X) contained in SIX (6) pages.

Begin your answer to each numbered question on a separate page; an answer to a sub-question/s under the same number maybe written continuously on the same page and succeeding pages until completed.

Answer the question directly and concisely. Do not repeat the question. Write legibly.

HAND IN YOUR NOTEBOOK. THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO THE HEAD WATCHER.

GOODLUCK!!!

MARTIN S. VILLARAMA, JR.
Chairperson
2012 Bar Examinations Committee

PLEASE CHECK THAT THIS SET CONTAINS SEVEN (7) PAGES (INCLUDING THIS PAGE).

WARNING: NOT FOR SALE OR UNAUTHORIZED USE

TAXATION LAW

I

Anchor Banking Corporation, which was organized in 2000 and existing under the laws of the Philippines and owned by the Sy Family of Makati City, set up in 2010 a branch office in Shanghai City, China, to take advantage of the presence of many Filipino workers in that area and its booming economy. During the year, the bank ,management decided not to include the P20 Million net income of the Shanghai Branch in the annual Philippine income tax return filed with the BIR, which showed a net taxable income of P30 Million , because the Shanghai Branch is treated as a foreign corporation and is taxed only on income from sources within the Philippines, and since the loan and other business transactions were done in Shanghai, these incomes are not taxable in the Philippines.

a) Is the bank correct in excluding the net income of its Shanghai Branch in the computation of its annual corporate income tax for 2010? Explain your answer. (5%)

b) 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 Section 28 (A)(5) of the 1997 Tax Code? Explain your answer (5%)

II

Foster Corporation (FC) is a Singapore-based foreign corporation engaged in construction and installation projects. In 2010, Global Oil Corporation (GOC), a domestic corpoartion engaged in the

refinery of petroleum products, awarded an anti-pollution project to Foster Corporation, whereby FC shall design, supply machinery and equipment, and install an anti-pollution device for GOCs refinery in the Philippines, provided that the installation part of the project may be sub-contracted to a local construction company. Pursuant to the contract, the design and supply contracts were done in Singapore by FC, while the installation works were sub-contracted by the FC with the Philippine Construction Corporation (PCC), a domestic corporation. The project with a total cost of P100 Million was completed in 2011 at the following cost components: (design P20 Million; machinery and equipment P50 Million; and installation P30 Million). Assume that the project was 40% complete in 2010 and 100% complete in 2011, based on the certificates issued by the certificates issued by the architects and engineers working on the project. GOC paid FC as follows: P60 Million in 2010 and P40 Million in 2011, and FC paid PCC in foreign currency through a Philippine bank as follows: P10 Million in 2010 and P20 Million in 2011.

a) Is FC liable to Philippines income tax, and if so, how much revenue shall be reported by it in 2010 and in 2011? Explain your answer. (5%)

b) Is PCC, which adopted the percentage of completion method of reporting income and expenses, liable to value added tax in 2010 and in 2011. Explain your answer. (5%)

III

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. (2%)

b) Is Mr. Castillo liable for income tax in 2011 based on the offer to buy by Mr. Ayala? Explain your answer. (3%)

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. (5%)

IV

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 donors tax thereon was duly paid by the father.

a) How much is the cost basis of the old car to Mr. Aguirre? Explain your answer (2%)

b) What is the nature of the old car capital asset or ordinary asset? Explain your answer. (3%)

c) Is Mr. Aguirre liable to pay income tax on the gain from the sale of his old car? Explain your answer. (5%)

V

Spouses Pablo Gonzales and Teresita Gonzales, both resident citizens acquire during their marriage a residential house and lot located in Makati City, which is being leased to a tenant for a monthly rental of P100,000.00. Mr. Pablo Gonzales is the President of PG Corporation and he receives P50,000.00 salary per month. The spouses have only one (1) minor child. In late June 2010, he was immediately brought to the hospital because of the heart attack and he was pronounced dead on June 30, 2010. With no liabilities, the estate of the late Pablo Gonzales was settled extra-judicially in early 2011.

a) Is Mr. Pablo Gonzales required to file income tax for 2010? If so, how much income must he declare for the year? How much personal and additional exemption is he entitled to? Explain your answer. (5%)

b) Is Mrs. Teresita Gonzales required to file income tax return for 2010? If so, how much income must she declare for the year? How much personal exemption is she entitled to? Explain your answer. (5%)

c) Is the Estate of the late Pablo Gonzales required to file income tax return for 2010? If so, how much income must it declare for the year? How much personal exemption is it entitled to? Explain your answer. (5%)

VI

The BIR issued in 2010 a final assessment notice and demand letter against X Corporation covering deficiency income tax 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 files against the assessment is a request for reconsideration or a request for reinvestigation, because it has same consequences or implications.

a) What are the differences between a request for reconsideration and a request for reinvestigation? (5%)

b) Do you agree with the advice of the lawyer? Explain your answer (5%)

VII

a) 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. (5%)

b) 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. (5%)

c) 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. (5%)

VIII

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 (5%)

IX

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 carry over 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. (5%)

b) 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 corporation 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. (5%)

X

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. (3%)

b) Should the accused be found guilty beyond reasonable doubt for violation of Section 255 of the

Tax Code for failure to file tax return or to to spply correct information), the imposition of the civil liability by the CTA should be automatic and no assessment notice from the BIR is necessary? (2%)

- NOTHING FOLLOWS -

HAND IN YOUR ANSWER SHEET.

THERE IS NO NEED TO RETURN THIS QUESTIONNAIRE TO HEAD WATCHER.