

## INSTRUCTIONS

1. This Questionnaire contains eight (8) pages. Check the number of pages and make sure it has the correct number of pages and their proper numbers.

All the items have to be answered within *four (4) hours*. Since there are twenty (20) questions, you have 12 minutes to answer each question, and 6 minutes to answer each sub-question. You may write on the Questionnaire for notes relating to the questions.

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

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

Your answer should demonstrate your ability to analyze the facts, apply the pertinent laws and jurisprudence, and arrive at a sound or logical conclusion. Always support your answer with the pertinent laws, rules, jurisprudence, and the facts.

A mere "Yes" or "No" answer without any corresponding explanation or discussion will not be given full credit. Thus, always *briefly* but fully explain your answers although the question does not expressly ask for an explanation. Do not re-write or repeat the question in your Notebook.

3. Make sure you do not write your *name* or any *extraneous notes* or *distinctive marking/s* on your Notebook that can serve as an identifying mark/s (such as names that are not in the given questions, prayers, or private notes to the Examiner). Writing, leaving, or making any distinguishing or identifying mark in the exam Notebook is considered cheating and can disqualify you.

### **YOU CAN BRING HOME THE QUESTIONNAIRE.**

JUSTICE PRESBITERO J. VELASCO, JR.

Chairman

2016 Bar Examinations

I

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

II

State at least five (5) cases under the exclusive appellate jurisdiction of the Court of Tax Appeals (CTA). (5%)

III

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

#### IV

The City of Maharlika passed an ordinance imposing a tax on any sale or transfer of real property located within the city at a rate of fifty percent (50%) of one percent (1%) of the total consideration of the transaction. Jose sold a parcel of land in the city, which he inherited from his deceased parents, and refused to pay the aforesaid tax. He instead filed a case asking that the ordinance be declared null and void since the tax it imposed can only be collected by the national government, as in fact he has paid the Bureau of Internal Revenue (BIR) the required capital gains tax. If you were the City Legal Officer of Maharlika, what defenses would you raise to sustain the validity of the ordinance? (5%)

#### V

Sure Arrival Airways (SAA) is a foreign corporation, organized under the laws of the Republic of Nigeria. Its commercial airplanes do not operate within Philippine territory, or service passengers embarking from Philippine airports. The firm is represented in the Philippines by its general agent, Narotel.

SAA sells airplane tickets through Narotel, and these tickets are serviced by SAA airplanes outside the Philippines. The total sales of airplane tickets transacted by Narotel for SAA in 2012 amounted to P10,000,000.00. The Commissioner of Internal Revenue (CIR) assessed SAA deficiency income taxes at the rate of 30% on its taxable income, finding that SAA's airline ticket sales constituted income derived from sources within the Philippines.

SAA filed a protest on the ground that the alleged deficiency income taxes should be considered as income derived exclusively from sources outside the Philippines since SAA only serviced passengers outside Philippine territory. It, thus, asserted that the imposition of such income taxes violated the principle of territoriality in taxation.

Is the theory of SAA tenable? Explain. (5%)

#### VI

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

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

## VII

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

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

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

## VIII

In 2011, Solar Computer Corporation (Solar) purchased a proprietary membership share covered by Membership Certificate No. 8 from the Mabuhay Golf Club, Inc. for P500,000.00. On December 27, 2012, it transferred the same to David, its American consultant, to enable him to avail of the facilities of the Club. David executed a Deed of Declaration of Trust and Assignment of Shares wherein he acknowledged the absolute ownership of Solar over the share; that the assignment was without any consideration; and that the share was placed in his name because the Club required it to be done. In 2013, the value of the share increased to P800,000.00.

Is the said assignment a "gift" and, therefore, subject to gift tax? Explain. (5%)

## IX

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

[b] Explain the procedure for claiming refunds of tax erroneously or illegally collected under Sec. 229 of the NIRC from the filing of the claim for refunds with the CIR up to the CTA. (2.5%)

## X

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

[a] What is the effect of converting the 20% discount from a "tax credit" to a "tax deduction"? (2.5%)

[b] If you are the judge, how will you decide the case? Briefly explain your answer. (2.5%)

## XI

Soaring Eagle paid its excise tax liabilities with Tax Credit Certificates (TCCs) which it purchased through the One Stop Shop Inter-Agency Tax Credit Center (Center) of the Department of Finance. The Center is a composite body of the DOF, BIR, BOC and the BOI. The TCCs were accepted by the BIR as payments. A year after, the BIR demanded the payment of alleged deficiency excise taxes on the ground that Soaring Eagle is not a qualified transferee of the TCCs it purchased from other BOI-registered companies. The BIR argued that the TCCs are subject to post-audit as a suspensive condition. On the other hand, Soaring Eagle countered that it is a buyer in good faith and for value who merely relied on the Center's representation of the genuineness and validity of the TCCs. If it is ordered to pay the deficiency, Soaring Eagle claims the same is confiscatory and a violation of due process. Is the assessment against Soaring Eagle valid? Explain. (5%)

## XII

The Philippine-British Association, Inc. (Association) is a non-stock, non-profit organization which owns the St. Michael's Hospital (Hospital). Sec. 216 in relation to Sec. 215 of the LGC classifies all lands, buildings and other improvements thereon actually, directly, and exclusively used for hospitals as "special." A special classification prescribes a lower assessment than a commercial classification.

Within the premises of the Hospital, the Association constructed the St. Michael's Medical Arts Center (Center) which will house medical practitioners who will lease the spaces therein for their clinics at prescribed rental rates. The doctors who treat the patients confined in the Hospital are accredited by the Association.

The City Assessor classified the Center as "commercial" instead of "special" on the ground that the Hospital owner gets income from the lease of its spaces to doctors who also entertain out-patients. Is the City Assessor correct in classifying the Center as "commercial?" Explain. (5%)

## XIII

Pursuant to Sec. 11 of the "Host Agreement" between the United Nations and the Philippine government, it was provided that the World Health Organization (WHO), "its assets, income and other properties shall be : a) exempt from all direct and indirect taxes." Precision Construction Corporation (PCC) was hired to construct the WHO Medical Center in Manila. Upon completion of the building, the BIR assessed a 12% VAT on the gross receipts of PCC derived from the construction of the WHO building. The BIR contends that the 12% VAT is not a direct nor an indirect tax on the WHO but a tax that is primarily due from the contractor and is therefore not covered by the Host Agreement. The WHO argues that the VAT is deemed an indirect tax as PCC can shift the tax burden to it. Is the BIR correct? Explain. (5%)

## XIV

Lucky V Corporation (Lucky) owns a 10-storey building on a 2,000 square meter lot in the City of Makati. It sold the lot and building to Rainier for P80 million. One month after, Rainier sold the lot and building to Healthy Smoke Company (HSC) for P200 million. Lucky filed its annual tax return and declared its gain from the sale of the lot and building in the amount of P750,000.00.

An investigation conducted by the BIR revealed that two months prior to the sale of the properties to Rainier, Lucky received P40 million from HSC and not from Rainier. Said amount of P40 million was debited by HSC and reflected in its trial balance as "other inv. - Lucky Bldg." The month after, another P40 million was reflected in HSC's trial balance as "other inv. - Lucky Bldg." The BIR concluded that

there is tax evasion since the real buyer of the properties of Lucky is HSC and not Rainier. It issued an assessment for deficiency income tax in the amount of P79 million against Lucky. Lucky argues that it resorted to tax avoidance or a tax saving device, which is allowed by the NIRC and BIR rules since it paid the correct taxes based on its sale to Rainier. On the other hand, Rainier and HSC also paid the prescribed taxes arising from the sale by Rainier to HSC. Is the BIR correct in assessing taxes on Lucky? Explain. (5%)

#### XV

Peter is the Vice-President for Sales of Golden Dragon Realty Conglomerate, Inc. (Golden Dragon). A group of five (5) foreign investors visited the country for possible investment in the condominium units and subdivision lots of Golden Dragon. After a tour of the properties for sale, the investors were wined and dined by Peter at the posh Conrad's Hotel at the cost of PI 50,000.00. Afterward, the investors were brought to a party in a videoke club which cost the company P200,000.00 for food and drinks, and the amount of P80,000.00 as tips for business promotion officers. Expenses at Conrad's Hotel and the videoke club were receipted and submitted to support the deduction for representation and entertainment expenses. Decide if all the representation and entertainment expenses claimed by Golden Dragon are deductible. Explain. (5%)

#### XVI

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

In its Comment on the Petition, the CIR argues that API's Petition should be dismissed as it was filed before the lapse of the 120-day period given to the CIR by Sec. 112(D) of the NIRC, which became effective on January 1, 1998. For the CIR, the 120-day period is mandatory and jurisdictional so that any suit filed before its expiration is premature and, therefore, dismissible.

API, on the other hand, invokes BIR Ruling No. DA-489-03 issued by the CIR on December 10, 2003 in answer to a query posed by the Department of Finance regarding the propriety of the actions taken by Lazi Bay Resources Development, Inc., which filed an administrative claim for refund with the CIR and, before the lapse of the 120-day period from its filing, filed a judicial claim with the CTA. BIR Ruling No. DA-489-03 stated that the taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA.

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

#### XVII

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

1. The waiver must be in the proper form prescribed by RMO 20-90.
2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the

authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

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

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

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

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

## XVIII

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

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

## XIX

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

[a] Can the CIR of the Philippines also tax the same shares? Explain. (2.5%)

[b] Explain the concept of double taxation. (2.5%)

XX

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

**-END-**