

## **2018 BAR EXAMINATIONS**

### **TAXATION LAW**

#### **I. GENERAL PRINCIPLES OF TAXATION**

- A. Definition, Concept and Purpose of Taxation
- B. Nature and Characteristics of Taxation
- C. Power of Taxation as distinguished from Police Power and Power of Eminent Domain
- D. Theory and Basis of Taxation
- E. Principles of a Sound Tax System
- F. Scope and Limitations of Taxation
  - 1. Inherent limitations
  - 2. Constitutional limitations
- G. Situs of Taxation
- H. Stages or Aspects of Taxation
- I. Definition, Nature and Characteristics of Taxes
- J. Requisites of a Valid Tax
- K. Tax as distinguished from other forms of exactions
- L. Kinds of Taxes
- M. Sources of Tax Laws
- N. Construction and Interpretation of
  - 1. Tax Laws
  - 2. Tax Exemptions and Exclusions
  - 3. Tax Rules and Regulations
  - 4. Penal provisions of Tax Laws
  - 5. Non-retroactive application to Taxpayers
- O. Doctrines in Taxation
  - 1. Prospectivity of Tax Laws
  - 2. Imprescriptibility of Taxes
  - 3. Double Taxation
  - 4. Power to Tax involves Power to Destroy
  - 5. Escape from Taxation
    - a) Shifting of Tax Burden
    - b) Tax Avoidance
    - c) Tax Evasion

6. Exemption from Taxation
7. Doctrine of Equitable Recoupment
8. Compensation and Set-off
9. Compromise and Tax Amnesty
10. Taxpayer's Suit
  - a) Nature and Concept
  - b) As distinguished from a citizen's suit
  - c) Requisites of a taxpayer's suit challenging the constitutionality of a tax measure or act of a taxing authority; concept of *locus standi*, doctrine of transcendental importance and ripeness for judicial determination

**II. NATIONAL TAXATION (NATIONAL INTERNAL REVENUE CODE OF 1997, as amended. EXCLUDE amendments introduced by R.A. No. 10963 or the Tax Reform for Acceleration and Inclusion Law)**

- A. Organization and Functions of the Bureau of Internal Revenue
  1. Rule-making authority of the Secretary of Finance
    - a) Authority of the Secretary of Finance to promulgate rules and regulations
    - b) Specific provisions to be contained in rules and regulations
  2. Jurisdiction, Power and Functions of the Commissioner of Internal Revenue
    - a) Powers and duties of the Bureau of Internal Revenue
    - b) Power of the Commissioner to interpret tax laws and to decide tax cases
    - c) Non-retroactivity of rulings
- B. Income Tax
  1. Definition, Nature and General Principles
    - a) Income Tax systems – Global, Schedular and Semi-schedular or Semi-Global Taxpayer's income
    - b) Features of the Philippine Income Tax Law
    - c) Criteria in imposing Philippine income tax
    - d) Types of Philippine income taxes
    - e) Taxable period
    - f) Kinds of taxpayers

## 2. Income Tax

- a) Definition, Nature and General principles
- b) Income
  - (1) Definition and nature
  - (2) When income is taxable
    - i. Existence of income
    - ii. Realization of income
    - iii. Recognition of income
    - iv. Cash method of accounting versus Accrual method of accounting
  - (3) 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
- c) Classification of income
- d) Situs of Income Taxation

## 3. 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) Sources of income subject to tax
- e) Classification of income subject to tax
  - (1) Compensation income
  - (2) Fringe benefits
  - (3) Professional income
  - (4) Income from business
  - (5) Income from dealings in property
  - (6) Passive investment income
  - (7) Annuities, proceeds from life insurance or other types of insurance
  - (8) Prizes and awards

- (9) Pensions, retirement benefit or separation pay
- (10) Income from any source whatever
- f) Exclusions from gross income
  - (1) Rationale for the exclusions
  - (2) Taxpayers who may avail of the exclusions
  - (3) Exclusions distinguished from deductions and tax credits
  - (4) Exclusions under the Constitution
  - (5) Exclusions under the Tax Code
  - (6) Exclusions under special laws
- 4. Deductions from Gross Income
  - a) General rules
  - b) Return of capital
  - c) Itemized deductions
  - d) Optional Standard Deduction
  - e) Personal and Additional Exemptions
  - f) Items not deductible
- 5. Income Tax on Individuals
  - a) Income Tax on Resident Citizens, Non-resident Citizens and Resident Aliens
    - (1) Coverage – Income from all sources within and without the Philippines; exceptions
    - (2) Taxation on compensation income
      - (i) Inclusions – monetary and non-monetary compensation
      - (ii) Exclusions – Fringe benefits subject to tax; *De Minimis* benefits; 13<sup>th</sup> month pay and other benefits and payments specifically excluded from taxable compensation income
      - (iii) Deductions – Personal and additional exemptions; Health and hospitalization insurance
    - (3) Taxation of business income/income from practice of profession
    - (4) Taxation of Passive Income
    - (5) Taxation of Capital Gains
  - b) Income Tax on Non-Resident Aliens Engaged in

Trade or Business

- c) Income Tax on Non-Resident Aliens Not Engaged in Trade or Business
- d) Individual Taxpayers Exempt from Income Tax
  - (1) Senior citizens
  - (2) Minimum wage earners
  - (3) Exemptions granted under international agreements

6. Income Tax on Corporations

- a) Income Tax on Domestic Corporations and Resident Foreign Corporations
  - (1) Regular tax
  - (2) Minimum Corporate Income Tax (MCIT)
  - (3) Branch Profit Remittance Tax
  - (4) Allowable deductions
    - (i) Itemized deductions
    - (ii) Optional Standard Deductions
  - (5) Taxation of Passive Income
  - (6) Taxation of Capital Gains
- b) Income Tax on Non-Resident Foreign Corporations
- c) Income Tax on Special Corporations
  - (1) Domestic Corporations
    - (i) Proprietary educational institutions and hospitals
    - (ii) Non-profit hospitals
    - (iii) Government-owned or controlled corporations, agencies or instrumentalities
    - (iv) Depository banks (foreign currency deposit units)
  - (2) Resident Foreign Corporations
    - (i) International carriers doing business in the Philippines
    - (ii) Off-shore banking units
    - (iii) Resident depository banks (foreign currency deposit units)
    - (iv) Regional or Area Headquarters and Regional Operating Headquarters of Multinational Companies

- (3) Improperly Accumulated Earnings Tax (IAET)
  - (4) Exemptions from Tax on Corporations
  - (5) Tax on other Business Entities: General Partnerships, General Professional Partnerships, Co-ownerships, Joint Ventures and Consortia
7. Filing of Returns and Payment of Income Tax
- a) Definition of a Tax Return and Information Return
  - b) Period within which to file Income Tax Return of Individuals and Corporations
  - c) Persons liable to file Income Tax Returns
    - (1) Individual taxpayers
      - (i) General rule and exceptions
      - (ii) Substituted filing
    - (2) Corporate taxpayers
  - d) Where to file Income Tax Returns
  - e) Penalties for Non-filing of Returns
8. Withholding of taxes
- a) Concept of withholding taxes
  - b) Kinds of Withholding Taxes
- C. Transfer Taxes
1. Estate Tax
- a) Basic principles, concept, and definition
  - b) Nature, purpose, and object
  - c) Time and transfer of properties
  - d) Classification of decedent
  - e) Gross estate and net estate
  - f) Determination of gross and net estate
  - g) Items to be included in the gross estate
  - h) Deductions and exclusions from estate
  - i) Tax credit for estate taxes paid to a foreign country
  - j) Exemption of certain acquisitions and transmissions
  - k) Filing of notice of death
  - l) Estate tax return
2. Donor's Tax
- a) Basic principles, concept and definition

- b) Nature, purpose and object
- c) Time and transfer of properties
- d) Requisites of a valid donation
- e) Transfers which may be constituted as donation
  - (1) sale/exchange/transfer of property for insufficient consideration
  - (2) condonation/remission of debt
  - (3) transfer for less than adequate and full consideration
- f) Classification of donor
- g) Determination of gross gift
- h) Composition of gross gift
- i) Valuation of gifts made in property
- j) Tax credit for donor's taxes paid to a foreign country
- k) Exemption of gifts from donor's tax
- l) Persons liable
- m) Tax basis

D. Value-Added Tax (VAT)

1. Concept, characteristics/elements of VAT-taxable transactions
2. Impact and incidence of tax
3. Tax credit method
4. Destination Principle / Cross Border Doctrine
5. Persons liable
6. Imposition of VAT
  - a) On sale of goods or properties
  - b) On importation of goods
    - (1) Transfer of goods by tax exempt persons
  - c) On services
7. 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 is not made within 60 days from date of consignment

- d) Retirement from or cessation of business with respect to inventories on hand
- 8. Change or cessation of status as VAT-registered person
  - a) Subject to VAT
    - (1) Change of business activity from VAT taxable status to VAT-exempt status
    - (2) Approval of request for cancellation of a registration due to reversion to exempt status
    - (3) 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
    - (1) Change of control of a corporation
    - (2) Change in the trade or corporate name
    - (3) Merger or consolidation of corporations
- 9. Zero-rated and effectively zero-rated sales of goods or properties
- 10. VAT-exempt transactions
  - a) VAT exempt transactions; in general; enumeration
- 11. Input and Output tax
  - a) Definition
  - b) Sources of input tax
    - (1) Purchase or importation of goods
    - (2) Purchase of real properties for which VAT has actually been paid
    - (3) Purchase of services for which VAT has actually been paid
    - (4) Transactions deemed sale
    - (5) Presumptive input
    - (6) Transitional input
  - c) Persons who can avail of input tax credits
  - d) Determination of output/input tax; VAT payable; excess input tax credits
    - (1) Determination of output tax
    - (2) Determination of creditable input tax
    - (3) Allocation of input tax on mixed transactions
    - (4) Determination of the output tax and VAT payable and computation of VAT payable or



excess tax credits

- e) Substantiation of input tax credits

12. Refund or tax credit of excess input tax

- a) Who may claim for refund/apply for issuance of tax credit certificates
- b) Period to file claim/apply for the issuances of tax credit certificates
- c) Manner of giving refunds
- d) Destination principle/Cross-border doctrine

13. Invoicing Requirements

- a) In general
- b) In “deemed sale” transactions
- c) Consequences of issuing erroneous VAT invoice or VAT official receipt

14. Filing of returns and payment

15. Withholding of final VAT on sales to government

E. Percentage Taxes (concept and nature only)

F. Excise Tax (concept and nature only)

G. Documentary Stamp Taxes (concept and nature only)

H. Tax Remedies under the NIRC

1. General Concepts

- a) Assessment
  - (1) Definition and requisites of a valid assessment
- b) Tax delinquency as distinguished from Tax deficiency
- c) Jeopardy assessment
- d) Prescriptive period for assessment
  - (1) General rule
  - (2) False or fraudulent returns and non-filing of returns
  - (3) Suspension of the running of statute of limitations

2. Civil penalties, additions to the tax

- a) Delinquency interest and deficiency interest
- b) Surcharge
- c) Compromise penalty

3. Assessment process and reglementary periods

- a) Letter of Authority and Tax Audit
  - b) Notice of Informal Conference
  - c) Issuance of Preliminary Assessment Notice; general rule and exceptions
  - d) Issuance of Formal Letter of Demand and Final Assessment Notice
  - e) Disputed Assessment
4. Collection
- a) Requisites
  - b) Prescriptive periods; suspension of running of statute of limitations
- I. Taxpayer's remedies
1. Protesting an assessment
- a) Protested assessment
  - b) Period to file protest
  - c) Form, content, and validity of protest
  - d) Submission of supporting documents
  - e) Effect of failure to file protest
  - f) Decision of the Commissioner on the protest filed
    - (1) Period to act upon or decide on protest filed
    - (2) Remedies of the taxpayer in case the Commissioner denies the protest or fails to act on the protest
    - (3) Effect of failure to appeal
2. Compromise and abatement of taxes
3. Recovery of Tax Erroneously or Illegally Collected
- a) Tax refund as distinguished from Tax credit
  - b) Grounds, requisites and period for filing a claim for refund or issuance of a tax credit certificate
  - c) Statutory basis and proof of claim for refund or tax credit
  - d) Proper party to file claim for refund or tax credit
- J. Government remedies
1. Administrative remedies
- a) Tax lien
  - b) Distrain and levy
  - c) Forfeiture of real property

- d) Suspension of business operation
- e) Non-availability of injunction to restrain collection of tax

2. Judicial remedies – civil or criminal action

**III. LOCAL TAXATION [LOCAL GOVERNMENT CODE (LGC) 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 LGC
  - 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 (LGUs)
  - b) Procedure for approval and effectivity of tax ordinances
4. Scope of taxing power
5. Specific taxing power of LGUs
6. Taxing powers of provinces (Exclude: Rates)
  - a) Tax on transfer of real property ownership
  - b) Tax on business of printing and publication
  - c) Franchise tax
  - d) Tax on sand, gravel and other quarry services
  - e) Professional tax
  - f) Amusement tax
  - g) Tax on delivery truck/van
7. Taxing powers of cities (Exclude: Rates)
8. Taxing powers of municipalities (Exclude: Rates)
  - a) Tax on various types of businesses
  - b) Ceiling on business taxes imposable by LGUs within

Metro Manila

- c) Tax on retirement of business
- d) Rules on payment of business taxes
- e) Fees and charges for regulation & licensing
- f) Situs of tax collected

9. Taxing powers of barangays (Exclude: Rates)

10. Common revenue raising powers

- a) Service fees and charges
- b) Public utility charges
- c) Toll fees or charges

11. Community tax

12. Common limitations on the taxing powers of LGUs

13. Collection of business taxes

- 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

14. 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

15. Civil remedies by the LGUs for collection of revenues

- a) Local government's lien for delinquent taxes, fees or charges
- b) Civil remedies, in general
  - (1) Administrative action
  - (2) Judicial action

B. Real property taxation

- 1. Fundamental principles
- 2. Nature of real property tax
- 3. Imposition of real property taxes
  - a) Power to levy real property taxes

- b) Exemption from real property taxes
- 4. Appraisal and assessment of real property tax
  - a) Rule on appraisal of real property tax at fair market value
  - b) Declaration of real property
  - c) Listing of real property in assessment rolls
  - d) Preparation of schedules of fair market values
    - (1) Authority of assessor to take evidence
    - (2) Amendment of schedule of fair market values
  - e) Classes of real property
  - f) Actual use of property as basis of assessment
  - g) Assessment of property
    - (1) General revisions of assessments and property classifications
    - (2) Date of effectivity of assessment or reassessment
  - h) Assessment of property subject to back taxes
  - i) Notification of new or revised assessments
- C. Collection of real property tax
  - 1. Date of accrual of real property taxes and special levies
  - 2. Collection of taxes
    - a) Collecting authority
    - b) Duty of assessor to furnish local treasurer with assessment rolls
    - c) Notice of time for collection of taxes
  - 3. Periods within which to collect real property taxes
  - 4. Special rules on payment
    - a) Payment of real property taxes in installments
    - b) Interests on unpaid real property taxes
    - c) Condonation of real property taxes
  - 5. Remedies of LGUs for collection of real property taxes
    - a) Issuance of notice of delinquency for real property tax payment
    - b) Local government's lien
    - c) Remedies in general
    - d) Resale of real estate taken for taxes, fees or charges

- e) Further levy until full payment of amount due
- D. Refund or credit of real property taxes
  - 1. Payment under protest
  - 2. Repayment of excessive collections
- E. Taxpayer's remedies
  - 1. Contesting an assessment of value of real property
    - a) Appeal to the Local Board of Assessment Appeals (LBAA)
    - b) Appeal to the Central Board of Assessment Appeals (CBAA)
    - c) Effect of payment of tax
- F. Payment of real property tax under protest
  - 1. File protest with local treasurer
  - 2. Appeal to the LBAA
  - 3. Appeal to the CBAA
  - 4. Appeal to the Court of Tax Appeals (CTA)
  - 5. Appeal to the Supreme Court (SC)

**IV. TARIFF AND CUSTOMS CODE OF THE PHILIPPINES (P.D. No. 1464), as amended by the CUSTOMS MODERNIZATION AND TARIFF ACT (Republic Act No. 10863, which took effect on June 16, 2016)**

- A. Tariff and duties
  - 1. Definitions
  - 2. Purpose for Imposition
  - 3. Kinds or Classification of Duties
    - a) Ordinary/regular duties
      - (1) *Ad valorem* (Exclude: Methods of Valuation)
      - (2) Specific
    - b) Special duties
      - (1) Dumping duties
      - (2) Countervailing duties
      - (3) Marking duties
      - (4) Retaliatory/discriminatory duties
      - (5) Safeguard Measures
  - 4. Flexible tariff clause

B. Accrual and Payment of Tax and Duties

1. General Rule: Except as otherwise provided, all goods imported into the Philippines shall be subject to duty upon importation, including goods previously exported from the Philippines.
  - a) Taxable Importations
  - b) Prohibited Importations
  - c) *De Minimis* Importations (Small Value Importations)
  - d) Conditionally-Free and Duty-Exempt Importations
    - (1) Returning residents
    - (2) Conditions for exemption from tax and duties
    - (3) *Balikbayan* boxes
2. Goods Declaration
  - a) Formal entry distinguished from Informal entry
  - b) Filing of Goods Declaration
  - c) Assessment and Payment of Duties and Taxes, Interest and Surcharge
  - d) Provisional Goods Declarations
  - e) Relief Consignments
  - f) Misdeclaration, Misclassification, and Undervaluation in Goods Declarations
    - (1) Definition and distinction
    - (2) Imposition of Surcharges

C. Unlawful Importation or Exportation (Exclude: Penalties)

1. Technical smuggling and Outright smuggling
2. Other fraudulent practices

D. Remedies

1. Government
  - a) Administrative/extrajudicial
    - (1) Search, seizure, forfeiture, arrest
    - (2) Authority of the Commissioner to make compromise
  - b) Judicial
    - (1) 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 (CTA)]**

**A. Jurisdiction of the CTA**

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
    - (1) Prescriptive period
2. Civil cases
  - a) Who may appeal, mode of appeal, effect of appeal
    - (1) Suspension of collection of tax
    - (2) Injunction not available to restrain collection
    - (3) Taking of evidence
    - (4) Motion for reconsideration or new trial
  - b) Appeal to the CTA, *en banc*
  - c) Petition for review on *certiorari* to the SC
3. Criminal cases
  - a) Institution and prosecution of criminal actions
    - (1) Institution of civil action in criminal action
  - b) Appeal and period to appeal
    - (1) Solicitor General as counsel for the people and government officials sued in their official capacity
  - c) Petition for review on *certiorari* to the SC

**IMPORTANT NOTES:**



- The listing of covered topics is not intended and should not be used by law schools as a course outline. This listing has been drawn up for the limited purpose of ensuring that the Bar candidates are guided on the coverage of the 2018 Bar Examinations.
- All laws, rules, issuances, and jurisprudence pertinent to every subject and its listed topics as of June 30, 2017 are examinable materials within the coverage of the 2018 Bar Examinations.
- Principles of law are not covered by the cut-off period stated herein.

