TAXATION LAW BAR EXAMINATION 2019

QUESTIONS

AND

SUGGESTED ANSWERS

A.1.

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

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

SUGGESTED ANSWERS:

(a) A PAN is a communication issued by the Regional Assessment Division, or any other concerned BIR Office, informing a Taxpayer who has been audited of the findings of the Revenue Officer, following the review of these findings. If the Taxpayer disagrees with the findings stated in the PAN, he shall then have fifteen (15) days from his receipt of the PAN to file a written reply contesting the proposed assessment.

A FAN, on the other hand, is a declaration of deficiency taxes issued to a taxpayer who: (1) fails to respond to a PAN within the prescribed period of time, or (2) whose reply to the PAN was found to be without merit. A FAN contains not only a computation of tax liabilities, but also a demand for payment within a prescribed period. The formal letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the law, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and the notice of assessment shall be void. If the Taxpayer disagrees with the findings stated in the FAN, he shall then have thirty (30) days from receipt of FAN to file a protest, either a request for reconsideration or a request for reinvestigation.

(b) No, the deficiency tax assessment and warrant of distraint and/or levy issued against KLM Corp. are not valid because KLM Corp. did not receive a PAN. After the investigation of BIR, if it is determined that there exists sufficient basis to assess the taxpayer for any deficiency tax or taxes, the BIR shall issue to the taxpayer, at least by registered mail, a

PAN for the proposed assessment, showing in detail the facts and the law on which the assessment is based. The taxpayer must be informed of his liability for deficiency taxes through a PAN and the non-service of a PAN is fatal to the validity of the assessment.

A.2.

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

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

SUGGESTED ANSWERS:

(a) Input tax is the VAT that is added to the price on the purchase of goods and services, and on the importation of goods or services; while an Output tax is the VAT that is calculated and charged on the sale of goods and services, and on the lease of property from a VAT-registered person. Input tax may either be a regular 12% input VAT, a 2% transitional input VAT, or a 4% presumptive input VAT; while Output tax may either be a regular 12% VAT or 0% VAT.

(b) Zero-rated transactions generally refer to the export sale of good and supply of services. The tax rate is set at zero. The seller of such transactions charges no output tax, but can claim a refund of or a tax credit certificate for the VAT previously charged by suppliers.

Effectively zero-rated transactions, however, refer to the sale of goods or supply of services to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects such transactions to zero rate. The seller can also claim a refund of a tax credit certificate for the VAT previously charged to customers.

A zero-rated transaction benefits the seller, while an effectively zero-rated transactions benefits the purchaser.

(c) The destination principle provides that the destination of the goods determines taxation or exemption from tax. Export sales of goods are subject to 0% rate (or zero-rated), while importations of goods are subject to the 12% VAT. Exports are zero-rated because the consumption of such goods will be made outside the Philippines, while imports of goods are subject to 12% VAT because they are for consumption within the Philippines.

A.3.

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

(a) What constitutes transactions done "in the course of trade or business" for purposes of applying VAT? (2%)

(b) Is Mr. X correct in stating that the association dues are subject to VAT? Explain. (3%)

SUGGESTED ANSWERS:

(a) Transactions done "in the course of trade or business" refer to the sale, barter, exchange, lease of goods or properties, service by persons, and the importation of goods in the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto.

(b) Yes, Mr. X is correct in stating that the association dues are subject to VAT.

Association dues, membership fees, and other assessments and charges are exempt from VAT but only to the extent of those collected on a purely reimbursement basis by homeowners' associations. In this case, the association dues were being collected for services allegedly rendered "in the course of trade or business". Thus, the association dues collected by ABC Village Homeowners' Association are subject to VAT.

A.4.

Due to rising liquidity problems and pressure from its concerned suppliers, P. Corp. instituted a flash auction sale of its shares of stock. P. Corp. was then able to sell its treasury shares to Z, Inc., an unrelated corporation, for P1, 000, 000.00, which was only a little below the valuation of P Corp.'s shares based on its latest audited financial statements. In connection therewith, P Corp. sought a Bureau of Internal Revenue ruling to confirm that, notwithstanding the price difference between the selling price of the shares and their book value, the said transaction falls under one of the recognized exemptions to donor's tax under the Tax Code.

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

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

SUGGESTED ANSWERS:

(a) The following are the instances where gifts made are exempt from donor's tax:

(i) Gifts made to or for the use of the National Government or any entity created by any of its agencies which is not conducted for profit, or to any political subdivision of the said Government; and,

(ii) Gifts in favor of an educational and/or charitable, religious, cultural or social welfare corporation, institution, accredited nongovernment organization, trust or philanthropic organization or research institution or organization, not more than 30% of said gifts shall be used by such donee for administration purposes.

(b) No, the transaction does not fall under any of the exemption. However, the transaction may still be exempt from donor's tax even when the shares of stock were sold on a selling price that is less than the fair market value of the shares provided that the sale is made in the ordinary course of business, in a transaction which is a bona fide, at arm's length, and free from any donative intent.

A.5.

A, a resident Filipino citizen, died in December 2018. A's only assets consist of a house and lot in Alabang, where his heirs currently reside, as well as a house in Los Angeles, California, USA. In computing A's taxable net estate, his heirs only deducted:

1. **10, 000,000.00 Pesos constituting the value of their house in Alabang as their family home;**
2. **200,000.00 in funeral expenses because no other expenses count be substantiated.**

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

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

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

SUGGESTED ANSWERS:

(a) No, only the amount pertaining to the value of the decedent's family home is deductible from the gross estate, provided that the conditions for the deductibility of a family are complied with. Funeral expenses are not considered deductible items under R. A. No. 10963.

Estate taxation is governed by the statute in force at the time of the death of the decedent. The tax rates and procedures prescribed by R. A. No. 10963, otherwise known as the Tax Reform for Acceleration and Inclusion Law and R.R. No. 12-2018 shall govern the estate of decedent who died on or after the effectivity date of the TRAIN Law which is January 1, 2018. Since the decedent died on December 2018, the operative law in force at this time is the TRAIN Lawn. The said law removed funeral expenses from the list of deductible items for purposes of estate taxation.

The conditions for the deductibility of family home from the gross estate of the decedent are as follows:

i. The family home must be the actual residential home of the decedent and his family at the time of his death, as certified by the barangay captain of the locality where the family home is situated;

ii. The total value of the family home must be included as part of the gross estate of the decedent; and

iii. Allowable deduction must be an amount equivalent to the current fair market value of the decedent's family home as declared or included in the gross estate; or the extent of the decedent's interest (whether conjugal/community, or exclusive property, whichever is lower, but not exceeding 10, 000,000.00 pesos. (R.R. No. 12-2018, Sec 6(7) (7.2)).

Considering that all the said requisites are complied with, the Php 10,000,000.00 pesos, the amount pertaining to the value of the decedent's family home is deductible from the gross estate of A.

(b) Yes, the heirs can claim a standard deduction in the amount of 5,000,000.00.

As provided under R.R. No. 12-2018, the value of the net estate of a citizen or resident alien of the Philippines shall be subject to a standard deduction. A deduction in the amount of five million pesos shall be allowed without need of a substantiation. The full amount of the five million pesos shall be allowed as deduction for the benefit of the decedent (R.R.

No. 12-2018, Sec. 6(1). Since A is a resident filipino citizen, the heirs of the said decedent can claim a standard deduction in the amount of 5,000,000.00.

(c) Yes, for estate tax purposes, the heirs should include the value of the A's house in Los Angeles California, USA.

As provided under the the TRAIN Law and R.R. No. 12-2018, for purposes of computing the estate tax of a resident or a Filipino citizen, all properties, real or personal, tangible or intangible, wherever situated shall be included in determining the gross estate. Since A was a resident Filipino citizen, the properties of A within and outside the Philippines should be included in determining his or her gross estate. Hence, the heirs of A should include A's house in Los Angeles, California, USA in determining the latter's gross estate.

A.6.

XYZ Air, a 100% foreign-owned airline company based and registered in Netherlands, is engaged in the international airline business and is a member signatory of the International Air Transport Association. It's commercial airplanes neither operate within the Philippine territory nor as its service passengers embarking from Philippine airports. Nevertheless, XYZ Air is able to sell its airplane tickets in the Philippines through ABC Agency, it's general agent in the Philippines. As XYZ Air's ticket sales, sold through ABC Agency for the year 2013, amounted to 5,000,000. 00, the Bureau of Internal Revenue (BIR) assessed XYZ Air deficiency income taxes on the ground that the income from the said sales constituted income derived from sources within the Philippines.

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

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

SUGGESTED ANSWER:

No, the protest of XYZ Air is not meritorious.

Under the law, an international air carrier with no landing rights in the Philippines is a resident foreign corporation if its local sales agent sells and issues tickets in its behalf. An offline international carrier selling passage tickets in the Philippines through a local general sales agent, is considered a resident foreign corporation doing business in the Philippines. As such, it is taxable

on income derived from sources within the Philippines and not on Gross Philippine Billings, subject to any applicable tax treaty. (Air Canada vs. Commissioner of Internal Revenue G.R. No. 169507, January 11,2016).

In the case at bar, XYZ Air was able to sell its airplane tickets in the Philippines through ABC Agency, it's general agent in the Philippines. As such, it is taxable on income derived from sources within the Philippines and not on Gross Philippine Billings, subject to any applicable tax treaty.

A7.

Differentiate tax exclusions from tax deductions. (3%)

SUGGESTED ANSWER:

Tax exclusions pertain to the computation of gross Income while tax deductions pertain to computation of net Income. Tax exclusions are something received or earned by the taxpayer which do not form part of gross income while tax deductions are something spent or paid in earning gross income. Lastly, the former is flow of wealth to the taxpayer which are not treated as part of gross income for purposes of computing the taxpayer's taxable income due to the following reasons

a. it is exempted by the fundamental law;
b. b. It is exempted by a statute; and
c. c. It does not fall within the definition of income.

On the other hand, tax deductions are the amounts which the law allows to be subtracted from gross income in order to arrive at net income.

A.8.

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

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

SUGGESTED ANSWER:

No, B should not pay taxes on the said exchange.

As a general rule, upon the sale or exchange of property, the entire amount of the gain or loss, as the case may be, shall be recognized. One of the accepted exceptions to th said rule is when a property is transferred to a corporation by a person in exchange for stock or unit of participation in such a corporation of which as a result of such exchange said person, alone or together with others, not exceeding four persons, gains control of said corporation: provided, that stocks issued for services shall not be considered as issued in return for property (NIRC. Sec. 40 C (6)(c)). Moreover, control, in the said case, means ownership of stocks in a corporation possessing at least (51%) of the total voting power of all classes of stocks entitled to vote.

In the case, B transferred his ownership over a 1,000-square meter commercial land and three-door. As a result, B acquired 51% ownership of ABC Corp., with all the shares of stock having the right to vote.

A.9.

GHI Inc., is a corporation authorized to engage in the business of manufacturing ultra-high density microprocessor unit packages. After its registration on July 5, 2005, GHI, Inc. constructed buildings and purchased machineries and equipment. As of December 31, 2005, the total cost of the machineries and equipment amounted to P250,000,000.00. However, GHI, Inc. failed to commence operations. Its factory was temporarily closed effective Sept 15, 2010. On October 1, 2010, it sold its machineries and equipment to JKL Integrated for P300,000,000.00. Thereafter, GHI, Inc. was dissolved on November 30, 2010.

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

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

SUGGESTED ANSWER:

(a) The sale of machineries and equipment to JKL Integrated is subject to normal corporate income tax. Under Sec. 27 D sub. Par. 5 of the NIRC, a corporation is only subject to capital gains tax for the sale of land and buildings. In this case, GHI Inc., a corporation, sold machineries and equipment. Hence, the sale is subject to normal corporate income tax.

(b) The following are the distinctions between an ordinary asset from a capital asset:

1. As to taxability, an ordinary asset is subject to income tax; whereas, a capital asset is subject to capital gains tax;

2. As to nature, as a rule, an ordinary asset is regularly used in the normal course of trade or business; whereas, a capital asset is an asset not regularly used in the normal course of trade or business

Under Sec. 39 of the NIRC,tThe term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

A.10.

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

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

SUGGESTED ANSWER:

With regard to the first contention, ABC Corp is incorrect. Under the NIRC, direct double taxation exists only when all of the following requisites are present:

The two taxes must be imposed on the same:

1. subject matter,
2. purpose,
3. by the same taxing authority,
4. within the same jurisdiction
5. during the same taxing period;
6. the taxes must be of the same kind or character.

In this case, the taxing authorities are different. Hence, the tax to be imposed by the LGU is not a form of direct double taxation.

With regard to the second contention, ABC Corp is incorrect. Under the LGC, LGU's are empowered to enact ordinances that will aid in their revenue generation, which is consonance with the principle of the fiscal autonomy of LGU's. Although the tax to be imposed is akin to VAT, the LGU may nevertheless impose such local business tax.

B.11.

Mr. D, a Filipino amateur boxer, joined an Olympic qualifying tournament held in Las Vegas, USA, where he won the gold medal. Pleased with Mr. D's accomplishment, the Philippine Government, through the Philippine Olympic Committee, awarded him a cash prize amounting to P1,000,000.00. Upon receipt of the funds, he went to a casino in Pasay City and won the P30,000,000.00 jackpot in the slot machine. The next day, he went to a nearby Lotto outlet and bought a Lotto ticket which won him a cash prize of P5,000.00.

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

SUGGESTED ANSWER:

Mr. D's winnings from the casino in Pasay City, worth P30,000,000.00 is subject to income tax. Under the TRAIN Law, other prizes and winnings in excess of P10,000 shall be subject to a 20% final tax on the entire amount of the winnings. In this case, Mr. D's winnings from the casino in Pasay City are more than P10,000. Hence, it shall be subject to income tax.

With regard to Mr. D's cash prize award after winning in an Olympic qualifying tournament held in Las Vegas, it is not subject to income tax. Under the NIRC, prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the PH or abroad and sanctioned by their national sports associations, which in this case is the Philippine Olympic Committee, shall not be subject to income tax.

With regard to Mr. D's Lotto winnings, it is not subject to income tax. Under the NIRC, any winnings through the PCSO Lotto that are in the amount of P10,000 or less shall be exempt from income tax. In this case, Mr. D won P5,000 thru the PCSO Lotto. Hence, it shall not be subject to income tax.

B.12.

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

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

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

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

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

SUGGESTED ANSWER:

(a) No, the BIR is not correct in basing its income tax assessment on Mr. F's worldwide income. Under the NIRC, non-resident citizens are only taxed for income earned within the Philippines. In this case, the hybrid status of the taxpayer cannot be applied, regardless of his initial 2-month stay in the Philippines and subsequent transfer to Japan. For all intents and purposes, F is considered a non-resident citizen in the year 2018. Hence, the income tax for 2018 should only be assessed on income earned within the Philippines.

(b) No, the BIR is not correct in basing its income tax on Mr. J's income within the Philippines at a schedular rate. Under the NIRC, non-resident aliens not engaged in trade or business are subject to a flat of rate of 25% based on the gross income. The NIRC states that non-resident aliens that have an aggregate number of days staying in the

Philippines less than 180 days, are considered to be not engaged in trade or business. In this case, Mr. J only stayed for five months or 150 days in the Philippines. Hence, he is considered as a NRANETB, and shall be subjected to flat rate of 25% based on gross income earned within the Philippines.

B.13.

As a way to augment the income of the employees of DEF Inc., a private corporation, the management decided to grant a special stipend of P50,000.00 for the first vacation leave that any employee takes during a given calendar year. In addition, the senior engineers were also giving housing inside the factory compound for the purpose of ensuring that there are available engineers within the premises everytime there is a breakdown in the factory machineries and equipment.

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

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

SUGGESTED ANSWER:

(a) Yes, the special stipend is part of the taxable income of the employees since the same may very well be considered income on his part.

(b) No, the cash equivalent value of the housing facilities received by the senior engineers is not subject to fringe benefits tax. The same is exempt from FBT since the housing is located within the Company's premises and is generally for the convenience of the employer.

B.14.

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

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

SUGGESTED ANSWER:

Yes. Under Section 234 of the Local Government Code, real property owned by the Republic of the Philippines or any of its political subdivision is exempt from payment of real property tax except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person or entity.

B.15.

Mr. C is employed as a Chief Executive Officer of MNO Company, receiving an annual compensation of P10,000,000.00 while Mr. S is a security guard in the same company earning an annual compensation of P200,000.00. Both of them source their income only from their employment with MNO Company.

a. At the end of the year, is Mr. C personally required to file an annual income tax return? Explain. (2.5%)

b. How about Mr. S? Is he personally required to file an annual income tax return? Explain. (2.5%)

SUGGESTED ANSWER:

(a) No, individuals receiving purely compensation income from a single employer, which has been correctly withheld are no longer required to file their annual ITR.

(b) No, individuals receiving purely compensation income from a single employer, which has been correctly withheld are no longer required to file their annual ITR.

B.16.

a. Differentiate between a calendar year and a fiscal year. (2.5%)

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

SUGGESTED ANSWER:

(a) Calendar year means an accounting period of twelve months ending on the last day of December. On the other hand, fiscal year means an accounting period of twelve months ending on the last day of any month other than the month of December.

(b) For a calendar year, the final return should be filed on or before the 15th day of April following the close of the taxable year. For a fiscal year, the final return is filed on or before the 15th day of the 4th month following the close of the taxable year.

B.17.

XYZ Corp. is listed as a top 20,000 Philippine corporation by the Bureau of Internal Revenue. It secured a loan from ABC Bank with a 6% per annum interest. All interest payments made by XYZ Corp. to ABC Bank is subject to a 2% creditable withholding tax. At the same time, XYZ Corp. has a trust deposit with ABC Bank in the amount of Php100,000,000.00, which earns a 2% interest per annum, but is subject to a 20% final withholding tax on the interest income received by XYZ Corp.

(a) Who are the withholding agents in the case of: 1. The 20% final withholding tax; and 2. The 2% creditable withholding tax? Explain. (2.5%)

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

SUGGESTED ANSWER:

(a) For the 20% final withholding tax, the withholding agent is ABC Bank being in control of the payment subject to withholding tax. (R.R. 2-98, Sec. 2.57.3). On the other hand, XYZ Corporation is the withholding agent for the 2% creditable withholding tax being the party paying for the interest payments on the loan secured, and being listed as a top 20,000 Philippine Corporation by the BIR. (RR No. 6-2009).

(b) The deadline for filing a judicial claim for refund for any excess or erroneous taxes paid for both the (1) 20% final withholding tax and (2) the 2% creditable withholding tax is two (2) years from the date of payment of the tax. (Section 229, NIRC).

B.18.

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

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

(a) Is T Corp.'s contention regarding the prescription of the assessment meritorious? Explain. (2.5%)

(b) Should the CIR's motion to dismiss be granted? Explain (2.5%)

SUGGESTED ANSWER:

(a) No, T Corp.'s contention regarding prescription of the assessment is not meritorious.

Under Section 203 of the National Internal Revenue Code, as a general rule, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return. The deadline for filing the annual income tax return (ITR) of corporations is the 15th day of the 4th month following the close of the fiscal year.

Here, the 15 day of the 4th month following the close of the fiscal year 2012 of T Corp. is April 15, 2013, which is also the date the ITR of T Corp. was filed. The BIR has until April 15, 2016 to assess for proper taxes. The FAN was sent to and received by T Corp. on April 11, 2016, which is within the prescriptive period.

(b) Yes, the CIR's motion to dismiss should be granted.

The taxpayer or authorized representative or agent has thirty (30) days from date of receipt of the FAN to protest the same. If the taxpayer fails to file a valid protest against the FAN within 30 days, the assessment shall become final executory and demandable. (RR18-13).

Here, T Corp. received the FAN on April 11, 2016. T. Corp has until May 11, 2016 to protest the same. However, T Corp. only filed the protest letter on June 25, 2016.

Thus, the motion to dismiss should be granted.

B.19.

On May 10, 2011, the final withholding tax for certain income payments to W Corp. was withheld and remitted to the Bureau of Internal Revenue (BIR), and the corresponding return therefor was concomitantly filed on the same date. Upon discovering that the amount

withheld was excessive, W Corp. filed with the BIR a claim for refund for erroneously withheld and collected final withholding income tax on May 3, 2013. A week after, and without waiting for any decision from the Commissioner of Internal Revenue (CIR), W Cor. Filed a petition for review before the Court of Tax Appeals (CTA) to make sure that the petition was filed within the two (2)-year period for claiming refunds.

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

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

SUGGESTED ANSWER:

(a) No, the BIR's contention is not meritorious.

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner. However, Section 229 does not imply that the Collector of Internal Revenue (CIR) first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. The claim with the CIR was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow, but the period of two years provided in the last clause shall not be deemed interrupted pending consideration of the claim. (*CBK Power Company vs CIR, G.R. No. 193383-84, January 14, 2014).*

(b) No, the answer will not be the same.

For value-added tax (VAT) refunds, Section 112 of the Tax Code provides that the taxpayer, whose sales are zero-rated or effectively zero-rated, has two years after the close of the taxable quarter when the sales were made, to apply for an administrative claim for refund. Thereafter, the Commissioner of Internal Revenue (CIR) has 120 days from the submission of complete supporting documents to act upon the claim for refund. In case of full or partial denial of the claim or failure of the CIR to act on the application within 120 days, the taxpayer may appeal with the Court of Tax Appeals (CTA) within 30 days from receipt of the decision or upon expiration of the 120-day period.

In the case of CIR vs. Aichi (GR No. 184823 dated October 6, 2010), the Supreme Court (SC) held that the observance of the 120-day period is a mandatory and jurisdictional requisite to the filing of a judicial claim for refund before the CTA. As such, its non-observance would warrant the dismissal of the judicial claim for lack of jurisdiction.

B.20.

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

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

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

SUGGESTED ANSWER:

(a) Yes, the City Treasurer was correct in dismissing ABC Inc.'s protest

Under Section 252 of the Local Government Code, no protest shall be entertained unless the taxpayer first pays the tax, in which the words "paid under protest" shall be annotated on the tax receipts.

Here, ABC Inc. failed to first pay the real property tax assessed by the Quezon City when it filed a protest before the City Treasurer.

(b) Assuming that ABC, Inc. decides to appeal the dismissal, the appeal should be filed with the Local Board of Assessment Appeals (LBAA).

If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner may then appeal or directly file a verified petition with the LBAA within sixty days from denial of the protest or receipt of the notice of assessment, as provided in Section 226 of R.A. No. 7160