



# **Tax Supplements for the 2019 BAR Examination**

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October 2019



## SUMMARY OF TAX TABLES AND RATES (AS AMENDED BY R.A. No. 10963<sup>1</sup>)

### INCOME TAX

#### Individual Taxation:

Effective January 1, 2018 until December 31, 2022, the following schedule shall apply to Resident Citizens, Nonresident Citizens, Resident Aliens, and Nonresident Aliens engaged in trade or business within the Philippines:

Not over P250,000	0%
Over P250,000 but not over P400,000	20% of the excess over P250,000
Over P400,000 but not over P800,000	P30,000 + 25% of the excess over P400,000
Over P800,000 but not over P2,000,000	P130,000 + 30% of the excess over P800,000
Over P2,000,000 but not over P8,000,000	P490,000 + 32% of the excess over P2,000,000
Over P8,000,000	P2,410,000 + 35% of the excess over P8,000,000

For Non-Resident Aliens not engaged in trade or business within the Philippines, the rate of income tax shall be twenty-five percent (25%) of Gross Income from income sources in the Philippines.

#### Final Withholding Tax (FWT) on Passive Income:

Type of Income	Tax Rate (Withholding)
Dividends/Interests/Royalties	10%
Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange	15%
Capital Gains From Sale of Real Property	6%

#### Corporate Income Tax:

Regular Corporate Income Tax (RCIT)	30%
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Domestic Corporation	30% of taxable income from all sources
Resident Foreign Corporations	30% of taxable income from Philippine sources
Non-resident Foreign Corporations	30% of gross income from Philippine sources
Minimum Corporate Income Tax (MCIT)	2% of gross income
<ul style="list-style-type: none"> <li>– Applicable beginning on the 4<sup>th</sup> year immediately following the year in which the corporation commenced its business operations, when the MCIT is greater than the RCIT</li> <li>– May be carried forward and credited for the three immediately succeeding taxable years</li> </ul>	

#### FWT for Domestic Corporations:

Type of Income	Tax Rate (Withholding)
Dividends/Interests/Royalties	20%; Provided, however, that interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system (EFCDS) shall be subject to a final income tax at the rate of fifteen percent (15%) of such interest income.
Intercorporate Dividends	Not subject
Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange	15%

#### Transfer Tax:

Type of Tax	Tax Rate
Estate Tax	Six percent (6%) of Net Estate
Donors Tax	Six percent (6%) of the total gifts in excess of two hundred fifty thousand pesos

<sup>1</sup> Source: Tax Reform for Acceleration and Inclusion Act

Type of Tax	Tax Rate
	(P250,000) exempt gift made during the calendar year

### Value-Added Tax (VAT):

Generally, any person who, in the course of trade or business, sells, barter exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the VAT at the rate of twelve percent (12%).

Sale of Goods subject to Zero Percent (0%) Rate
(a) Export Sales. — The term 'export sales' means:  (1) The sale and actual shipment of goods from the Philippines to a foreign country, irrespective of any shipping arrangement that may be agreed upon which may influence or determine the transfer of ownership of the goods so exported and paid for in acceptable foreign currency or its equivalent in goods or services, and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);
(2) Sale and delivery of goods to:  (i) Registered enterprises within a separate customs territory as provided under special laws; and, (ii) Registered enterprises within tourism enterprise zones as declared by the Tourism Infrastructure and Enterprise Zone Authority subject to the provisions under R.A. No. 9593 or The Tourism Act of 2009.
(3) Sale of raw materials or packaging materials to a nonresident buyer for delivery to a resident local export-oriented enterprise to be used in manufacturing, processing, packing or repacking in the Philippines of the said buyer's goods and paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
(4) Sale of raw materials or packaging materials to export-oriented enterprise whose export sales exceed seventy percent (70%) of total annual production;
(5) Those considered export sales under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, and other special laws;
(6) The sale of goods, supplies, equipment and fuel to persons engaged in international shipping or international air transport operations: Provided, that the goods, supplies, equipment and fuel shall be used for international shipping or air transport operations.

Provided, that subparagraphs (3), (4), and (5) above shall be subject to the twelve percent (12%) VAT and

no longer be considered export sales subject to zero percent (0%) VAT rate upon satisfaction of the following conditions:

(1) The successful establishment and implementation of an enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau: Provided, that, to determine the effectivity of item no. 1, all applications filed from January 1, 2018 shall be processed and must be decided within ninety (90) days from the filing of the VAT refund application; and

(2) All pending VAT refund claims as of December 31, 2017 shall be fully paid in cash by December 31, 2019.

Provided, that the Department of Finance shall establish a VAT refund center in the Bureau of Internal Revenue (BIR) and in the Bureau of Customs (BOC) that will handle the processing and granting of cash refunds of creditable input tax.

Sale of Service subject to Zero Percent (0%) Rate
(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
(2) Services other than those mentioned in the preceding paragraph, rendered to a person engaged in business conducted outside the Philippines or to a nonresident person not engaged in business who is outside the Philippines when the services are performed, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP;
(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;
(4) Services rendered to persons engaged in international shipping or international air transport operations, including leases of property for use thereof: Provided, that these services shall be exclusively for international shipping or air transport operations;
(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production;

Sale of Service subject to Zero Percent (0%) Rate
(6) Transport of passengers and cargo by domestic air or sea vessels from the Philippines to a foreign country; and
(7) Sale of power or fuel generated through renewable sources of energy such as, but not limited to, biomass, solar, wind, hydropower, geothermal, ocean energy, and other emerging energy sources using technologies such as fuel cells and hydrogen fuels.
(8) Services rendered to:
(i) Registered enterprises within a separate customs territory as provided under special law; and,
(ii) Registered enterprises within tourism enterprise zones as declared by the TIEZA subject to the provisions under R.A. No. 9593 or The Tourism Act of 2009.

Provided, that subparagraphs (1) and (5) above shall be subject to the twelve percent (12%) VAT and no longer be subject to zero percent (0%) VAT rate upon satisfaction of the following conditions as stated above.

VAT Exempt Transactions
(A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, raw sugar or raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state;
(B) Sale or importation of fertilizers; seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether locally produced or imported, used in the manufacture of finished feeds (except specialty feeds for race horses, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets);
(C) Importation of personal and household effects belonging to the residents of the Philippines returning from abroad and nonresident citizens coming to resettle in the Philippines: Provided, that such goods are exempt

VAT Exempt Transactions
from customs duties under the Tariff and Customs Code of the Philippines;
(D) Importation of professional instruments and implements, tools of trade, occupation or employment, wearing apparel, domestic animals, and personal and household effects belonging to persons coming to settle in the Philippines or Filipinos or their families and descendants who are now residents or citizens of other countries, such parties hereinafter referred to as overseas Filipinos, in quantities and of the class suitable to the profession, rank or position of the persons importing said items, for their own use and not for barter or sale, accompanying such persons, or arriving within a reasonable time
(E) Services subject to percentage tax under Title V;
(F) Services by agricultural contract growers and milling for others of palay into rice, corn into grits and sugar cane into raw sugar;
(G) Medical, dental, hospital and veterinary services except those rendered by professionals;
(H) Educational services rendered by private educational institutions, duly accredited by the Department of Education (DepEd), the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA) and those rendered by government educational institutions;
(I) Services rendered by individuals pursuant to an employer-employee relationship;
(J) Services rendered by regional or area headquarters established in the Philippines by multinational corporations which act as supervisory, communications and coordinating centers for their affiliates, subsidiaries or branches in the Asia-Pacific Region and do not earn or derive income from the Philippines;
(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529;
(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;
(M) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority;
(N) Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development Authority: Provided, that the share capital

VAT Exempt Transactions
contribution of each member does not exceed Fifteen thousand pesos (P15,000) and regardless of the aggregate capital and net surplus ratably distributed among the members;
(O) Export sales by persons who are not VAT-registered;
(P) Sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, or real property utilized for low-cost and socialized housing as defined by R.A. No. 7279, otherwise known as the Urban Development and Housing Act of 1992, and other related laws, residential lot valued at One million five hundred thousand pesos (P1,500,000) and below, house and lot, and other residential dwellings valued at Two million five hundred thousand pesos (P2,500,000) and below: Provided, that beginning January 1, 2021, the VAT exemption shall only apply to sale of real properties not primarily held for sale to customers or held for lease in the ordinary course of trade or business, sale of real property utilized for socialized housing as defined by R.A. No. 7279, sale of house and lot, and other residential dwellings with selling price of not more than Two million pesos (P2,000,000);
(Q) Lease of a residential unit with a monthly rental not exceeding Fifteen thousand pesos (P15,000);
(R) Sale, importation, printing or publication of books and any newspaper, magazine, review or bulletin which appears at regular intervals with fixed prices for subscription and sale and which is not devoted principally to the publication of paid advertisements;
(S) Transport of passengers by international carriers;
(T) Sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations;
(U) Importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations: Provided, that the fuel, goods, and supplies shall be used for international shipping or air transport operations;
(V) Services of bank, non-bank financial intermediaries performing quasi-banking functions, and other non-bank financial intermediaries;
(W) Sale or lease of goods and services to senior citizens and persons with disability, as provided under R.A. Nos. 9994 (Expanded Senior Citizens Act of 2010) and 10754 (An Act Expanding the Benefits and Privileges of Persons with Disability), respectively;
(X) Transfer of property pursuant to Section 40(C)(2) of the NIRC, as amended;

VAT Exempt Transactions
(Y) Association dues, membership fees, and other assessments and charges collected by homeowners associations and condominium corporations;
(Z) Sale of gold to the BSP;
(AA) Sale of drugs and medicines prescribed for diabetes, high cholesterol, and hypertension beginning January 1, 2019;
(BB) Sale or lease of goods or properties or the performance of services other than the transactions mentioned in the preceding paragraphs, the gross annual sales and/or receipts do not exceed the amount of Three million pesos (P3,000,000).

## GENERAL PRINCIPLES

**Q:** What is Taxation and differentiate this from the power of Eminent Domain and Police Power

**A:** It is the power by which the sovereign raises revenue to defray the expenses of the government. It is a way of apportioning the cost of the government among those who in some measure are privileged to enjoy its benefits and must bear its burden. It is described as an inherent power of the sovereign albeit destructive which interferes with the personal and property rights of the people and takes from them a portion of their property for the support of the government<sup>2</sup>.

On the other hand, Police Power is the power of the State to enact laws in relation to persons and property so as to promote public health, public moral, public safety and general welfare of the people. This is the power of the state to regulate to promote the public's general welfare.

Lastly, the power of Eminent Domain is the power of the State or those to whom the power has been delegated to take private property for public use upon paying the owner a just compensation to be ascertained according to law.

**Q:** What are the basic principles of a sound tax system

**A:**

1. **Fiscal Adequacy** – the source of government funds must be sufficient to answer for the needs of the public.
2. **Administrative Feasibility** – tax laws and regulations should be capable for convenient, efficient and just execution and administration.
3. **Theoretical Justice** – taxpayers' burden should be proportionate to the taxpayers' ability to pay

**Q:** Requisites for a valid tax

**A:** The following are the requisites of a valid tax:

1. A forced charge, imposition or contribution which operates ad infinitum or independent of contractual assent;
2. Assessed in accordance with some reasonable rule of apportionment which conforms with the mandate of the constitution to evolve a progressive tax system which must be based on the taxpayer's ability to pay.
3. Imposed by the State within its jurisdiction
4. Levied through the legislative body of the state through laws
5. Levied for a public purpose
6. Personal to the taxpayer
7. Not infringe on the inherent and constitutional limitations of the power of taxation

**Q:** May Congress under the 1987 constitution abolish the power to tax

**A:** No. Congress cannot abolish such power but can only provide guidelines and limitations on the local government's power to tax.

**Q:** Distinguish tax evasion from tax avoidance

**A:** Tax evasion is a scheme used outside of lawful means to escape from one's tax liabilities and, when resorted to, may result to civil and criminal liabilities. Tax avoidance pertains to tax saving measures within the means sanctioned by laws and regulations.

**Q:** May taxes be subject of set off or compensation claims that individuals may have against the government

**A:** No. The government and taxpayers are not mutual debtors and creditors of each other. Also, claim for taxes is not such debt, demand, contract or judgment as is allowed to be set off. Debts are due to the government in its corporate capacity while taxes are due to the government in its sovereign capacity<sup>3</sup>.

<sup>2</sup> Source: Paseo Realty & Development Corporation v. Court of Appeals, G.R. No. 1199286, 31 October 2004

<sup>3</sup> Source: United Airlines Inc. v. Commissioner of Internal Revenue, G.R. No. 178788, 29 September 2010 citing Philex v. Commissioner of Internal Revenue



**Q:** Equitable recoupment

**A:** A common law concept wherein tax refund claims barred by prescription may be set off against a current assessment. This is inapplicable in the Philippines since the tax authorities are particular with prescriptive periods in successfully obtaining a tax refund.

**Q:** Differentiate tax amnesty, tax compromise and tax exemption

**A:** Tax amnesty pertains to a general portion or intentional overlooking by the State of its Authority to impose penalties on persons otherwise guilty of evasion or violation of a tax rule or regulation. It is an absolute waiver by the Government of its right to collect what should have been due. On the other hand, a tax compromise is an agreement whereby the taxpayer offers to pay something less than what is due and the government accepts it as a full settlement of his tax liability.

Tax exemption is a grant of immunity to particular persons or corporations or entities from a particular class from a tax which such persons generally within the same state or taxing district are obliged to pay. These exemptions should be expressly granted. These are not favored and are strictly construed against the taxpayer<sup>4</sup>.

## NATIONAL TAXATION (AS AMENDED BY R.A. No. 10963)

### TAXING AUTHORITY

**Q:** Do the Commissioner of Internal Revenue (CIR)'s rulings / rules have an inherent retroactive application

**A:** No. The NIRC, specifically Section 246 thereof, prohibits retroactive rulings stating that any revocation, modification or reversal of any of the rules and regulations shall not be given retroactive application, if prejudicial to the taxpayers. This rule, however, is subject to three exceptions: (a) If the taxpayer deliberately misstates or omits material facts from his return or any document required by the BIR; (b) If the facts subsequently gathered by the BIR are materially different from the facts on which the ruling is based; or (c) If the taxpayer acted in bad faith<sup>5</sup>.

**Q:** Do Local Government Units have the same taxing power as the National Government

**A:** No. The power to tax is inherent to the State. While municipalities, provinces, cities and barangays are territorial and political subdivisions of the Republic of the Philippines, these jurisdictions, per se, do not necessarily equate to the sovereign. The power of a province to tax is limited to the extent such power is delegated to it by either the Constitution or Statute<sup>6</sup>.

<sup>4</sup> Source: Surigao Consolidated Mining v. Commissioner of Internal Revenue, G.R. No. L-14878, 26 December 1963.

<sup>5</sup> Source: Commissioner of Internal Revenue (CIR) vs. COL Financing Group, Inc., CTA EB Case No. 1187, 30 June 2015

<sup>6</sup> Source: Pelizloy Realty Corporation v. The Province of Benguet, G.R. No. 183137, 10 April 2013

## INCOME TAXATION

### Q: Definition of “**income tax**”

A: Income tax is a direct tax imposed on actual or presumed income – gross or net – realized by a taxpayer during a given taxable year<sup>7</sup>.

### Q: Nature of income tax

A: Income tax is generally regarded as an excise tax, levied upon the right of a person or entity to receive income or profits.

### Q: General principles of income taxation

A: Except when otherwise provided in the NIRC:

1. A citizen of the Philippines residing therein is taxable on all income derived from sources within and without the Philippines;
2. A nonresident citizen is taxable only on income derived from sources within the Philippines;
3. An individual citizen of the Philippines who is working and deriving income from abroad as an overseas contract worker is taxable only on income from sources within the Philippines: Provided, that a seaman who is a citizen of the Philippines and who receives compensation for services rendered abroad as a member of the complement of a vessel engaged exclusively in international trade shall be treated as an overseas contract worker;
4. An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;
5. A domestic corporation is taxable on all income derived from sources within and without the Philippines; and,
6. A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

### Q: Criteria in imposing Philippine income tax

#### A:

1. **Citizenship Principle** – A citizen of the Philippines residing in the Philippines is taxable on all income derived from sources within and without the Philippines while a nonresident citizen is taxable only on income derived from sources within the Philippines;
2. **Residence Principle** – All income derived by persons residing in the Philippines, whether citizens or aliens, whether domestic or foreign corporations, shall be subject to income tax on the income derived from sources within the Philippines.
3. **Source principle** – All income derived from sources within the Philippines shall be subject to income tax.

### Q: Types of Philippine income taxes

#### A:

1. Graduated income tax on individuals
2. Normal corporate income tax on corporations
3. Minimum corporate income tax on corporations
4. Special income tax on certain corporations
5. Capital gains tax on sale or exchange of unlisted shares of stock of a domestic corporation classified as a capital asset
6. Capital gains tax on sale or exchange of real property located in the Philippines and classified as capital asset
7. Final withholding tax on certain passive investment incomes
8. Fringe benefit tax
9. Branch profit remittance tax; and
10. Tax on improperly accumulated earnings.

### Q: Definition of “**taxable period**”

A: “**Taxable period**” means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under the NIRC. It includes, in the case of a return made for a

<sup>7</sup> Source: Abakada Guro Party List vs. Ermita, G.R. Nos. 168056, 168207, 168461, 168463, & 168730, 01 September 2005



fractional part of a year, the period for which such return is made

**Q:** Kind of taxpayers

**A:**

1. **Individual Taxpayers**

a. **Resident citizens** – A citizen of the Philippines residing in the Philippines.

b. **Nonresident citizen** – means:

i. A citizen of the Philippines who establishes to the satisfaction of the Commissioner the fact of his physical presence abroad with a definite intention to reside therein.

ii. A citizen of the Philippines who leaves the Philippines during the taxable year to reside abroad, either as an immigrant or for employment on a permanent basis.

iii. A citizen of the Philippines who works and derives income from abroad and whose employment thereat requires him to be physically present abroad most of the time during the taxable year.

iv. A citizen who has been previously considered as nonresident citizen and who arrives in the Philippines at any time during the taxable year to reside permanently in the Philippines shall likewise be treated as a nonresident citizen for the taxable year in which he arrives in the Philippines with respect to his income derived from sources abroad until the date of his arrival in the Philippines.

v. The taxpayer shall submit proof to the Commissioner to show his intention of leaving the Philippines to reside permanently abroad or to return to and reside in the Philippines as the case may be.

c. **Resident aliens** – individuals whose residence is within the Philippines and who is not a citizen thereof.

d. **Nonresident aliens** – individuals whose residence is not within the Philippines and who is not a citizen thereof.

e. **Minimum Wage Earner** – a worker in the private sector paid the statutory minimum wage, or an employee in the public sector with compensation income of not more than the statutory minimum wage in the non-agricultural sector where he/she is assigned.

2. **Corporations** – include partnerships, no matter how created or organized, joint-stock companies, joint accounts, associations, or insurance companies (does not include general professional partnerships and a joint venture or consortium formed for the purpose of undertaking construction projects or engaging in petroleum, coal, geothermal and other energy operations pursuant to an operating or consortium agreement under a service contract with the Government).

a. **Domestic corporations** – those created or organized in the Philippines or under its laws.

b. **Foreign corporations** – corporations which are not domestic.

i. **Resident foreign corporations** – foreign corporations engaged in trade or business within the Philippines.

ii. **Nonresident foreign corporations** – foreign corporations not engaged in trade or business within the Philippines

3. **General Professional Partnerships (GPP)** – partnerships formed by persons for the sole purpose of exercising their common profession, no part of the income of which is derived from engaging in any trade or business.

4. **Estates and Trusts** – An estate is created by operation of law, when an individual dies, leaving properties to his compulsory or other heirs, while a trust is a legal arrangement whereby the owner of property transfers ownership to a person who is to hold and control the property belonging to the owner's instructions, for the benefit of a designated person.

**Q:** Definition of “income”

**A:** Income is the gain derived from capital, from labor, or from both combined, provided it be understood to include profit gained through a sale or conversion of capital assets<sup>8</sup>.

**Q:** Nature of income

**A:** Income a flow of services rendered by that capital by the payment of money from it or any other benefit rendered by a fund of capital in relation to such fund through a period of time<sup>9</sup>.

**Q:** When is income recognized

**A:** Under the realization principle, revenue is generally recognized when both of the following conditions are met: (1) the earning process is complete or virtually complete; and, (2) an exchange has taken place. This principle requires that revenue must be earned before it is recorded<sup>10</sup>.

**Q:** When is income taxable

**A:** The following requisites must be present: (1) there is income, gain or profit; (2) the income, gain or profit is received or realized during the taxable year; and, (3) The income, gain or profit is not exempt from income tax.

**Q:** What are the tests in determining whether income is earned for tax purposes

**A:**

- **Realization/Severance Test** – There is no taxable income until there is a separation from capital of something of exchangeable value, thereby supplying the realization or transmutation which would result in the receipt of income.
- **Economic Benefit Test** – Any economic benefit to the employee that increases his net worth, whatever may have been the mode by which it is effect, is taxable.

- **Claim of Right Doctrine** – a taxable gain is conditioned upon the presence of a claim of right to the alleged gain and the absence of a definite unconditional obligation to return or repay that which would otherwise constitute a gain.

**Q:** What are tax-free exchanges

**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.

**Exception:** No gain or loss shall be recognized if in pursuance of a plan of merger or consolidation –

1. A corporation, which is a party to a merger or consolidation, exchanges property solely for stock in a corporation, which is a party to the merger or consolidation; or
2. A shareholder exchanges stock in a corporation, which is a party to the merger or consolidation, solely for the stock of another corporation also a party to the merger or consolidation; or
3. A security holder of a corporation, which is a party to the merger or consolidation, exchanges his securities in such corporation, solely for stock or securities in another corporation, a party to the merger or consolidation; or
4. If 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 (4) persons, gains control of said corporation: Provided, that stocks issued for services shall not be considered as issued in return for property.

**Q:** What is the doctrine of situs of taxation

**A:** No state may tax anything not within its jurisdiction without violating the due process clause of the constitution. The taxing power of a state does not extend beyond its territorial limits, but within such

<sup>8</sup> Source: Fisher vs. Trinidad, G.R. No. 17518, 30 October 1922

<sup>9</sup> Source: Madrigal vs. Rafferty, G.R. No. 12287, 07 August 1918

<sup>10</sup> Source: Manila Mandarin Hotels, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 5046, 24 March 1997

limits it may tax persons, property, income, or business<sup>11</sup>.

**Q:** What are the current rules on situs of taxation

**A:** The state may impose taxes on persons subject to the jurisdiction of its sovereignty, and on property located within its territory. The tax laws of a state can have no extraterritorial operation.

Taxpayer	Situs of taxation
Resident citizens	Taxable on income from sources both within and without the Philippines
Domestic corporations	Taxable on income from sources both within and without the Philippines
Non-resident citizens	Taxable on income from sources within the Philippines
Resident/non-resident alien individuals	Taxable on income from sources within the Philippines
Foreign corporations	Taxable on income from sources within the Philippines

Income	Situs of taxation
Interests	Residence of the debtor or obligor
Dividends	If received from a domestic corporation – income within the Philippines  If received from a foreign corporation – income within the Philippines unless less than 50% of the gross income of such foreign corporation for the 3-year period ending with the close of its taxable year preceding the declaration of such dividends was derived from sources within the Philippines
Services	Place of performance of the service
Rentals and Royalties	Location or use of the property or interest in such property
Sale of Real Property	Location of real property
Sale of Personal Property	Place of sale
Gain on sale of shares of stock in a domestic corporation	Income within the Philippines regardless of where the shares are sold

**Q:** Definition of gross income

**A:** Gross income refers to all income derived from whatever source, including, but not limited to, the following items:

1. Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
2. Gross income derived from the conduct of trade or business or the exercise of a profession;
3. Gains derived from dealings in property;
4. Interests;
5. Rents;
6. Royalties;
7. Dividends;
8. Annuities;
9. Prizes and winnings;
10. Pensions; and

<sup>11</sup> Source: Manila Gas Corporation v. Collector of Internal Revenue, G.R. No. 42780, 17 January 1936

11. Partner's distributive share from the net income of the general professional partnership.

**Q:** What is the concept of “**income from whatever source derived**”

**A:** A legislative policy to include all income not expressly exempted within the class of taxable income under our laws<sup>12</sup>.

**Q:** Distinguish gross income vis-à-vis net income vis-à-vis taxable income

**A:** **Gross income** is all income subject to tax. **Net income** refers to gross income less the allowable deductions and exemptions. Taxable income is the pertinent items of gross income specified in the NIRC, less deductions, if any, authorized for such types of income.

**Q:** Definition of “**compensation income**”

**A:** In general, “**compensation**” means all remuneration for services performed by an employee for his employer under an employer-employee relationship, unless specifically excluded by the NIRC. Salaries, wages, emoluments and honoraria, allowances (e.g., transportation, representation, entertainment and the like), commission, fees including director's fees, if the director is, at the same time, an employee of the employer/corporation; taxable bonuses and fringe benefits except those which are subject to the fringe benefits tax; taxable pensions and retirement pay; and other income of a similar nature constitute compensation income.

**Q:** What are **fringe benefits**

**A:** Any good, service or other benefit furnished or granted in cash or in kind by an employer to an individual employee (except rank and file employees) such as, but not limited to, the following:

1. Housing;
2. Expense account;
3. Vehicle of any kind;

4. Household personnel, such as maid, driver and others;
5. Interest on loan at less than market rate to the extent of the difference between the market rate and actual rate granted;
6. Membership fees, dues and other expenses borne by the employer for the employee in social and athletic clubs or other similar organizations;
7. Expenses for foreign travel;
8. Holiday and vacation expenses;
9. Educational assistance to the employee or his dependents; and
10. Life or health insurance and other non-life insurance premiums or similar amounts in excess of what the law allows.

**Q:** What are the **non-taxable fringe benefits**

**A:**

1. Fringe benefits which are authorized and exempted from tax under special laws;
2. Contributions of the employer for the benefit of the employee to retirement, insurance and hospitalization benefit plans;
3. Benefits given to the rank and file employees, whether granted under a collective bargaining agreement or not;
4. Fringe benefits which are required by the nature of or necessary to the trade, business or profession of the employer, or where such fringe benefit is for the convenience and advantage of the employer; and,
5. De minimis benefits.

**Q:** What are **de minimis benefits**

**A:** The term “**de minimis benefits**” which is exempt from the fringe benefit tax shall, in general, be limited to facilities or privileges, furnished or offered by an employer to his employees, provided such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of his employees.

<sup>12</sup> Source: Commissioner of Internal Revenue vs. British Overseas Airways Corp, G.R. Nos. L-65773-74, 30 April 1987

**Q:** What are considered “de minimis” benefits **not** subject to income tax

**A:** The following shall be considered as “de minimis” benefits **not** subject to income tax as well as withholding tax on compensation income of both managerial, and rank and file employees:

1. Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year;
2. Monetized value of vacation and sick leave credits paid to government officials and employees;
3. Medical cash allowance to dependents of employees, not exceeding P1,500 per employee per semester or P250 per month;
4. Rice subsidy of P2,000 or one sack of 50kg. rice per month amounting to not more than P2,000;
5. Uniform and clothing allowance not exceeding P6,000 per annum
6. Actual medical assistance, e.g., medical allowance to cover medical and healthcare needs, annual medical/executive check-up, maternity assistance, and routine consultations, not exceeding P10,000.00 per annum;
7. Laundry allowance not exceeding P300 per month;
8. Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property other than cash or gift certificate, with an annual monetary value not exceeding P10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
9. Gifts given during Christmas and major anniversary celebrations not exceeding P5,000 per employee per annum;
10. Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis;
11. Benefits received by an employee by virtue of a collective bargaining agreement (CBA) and productivity incentive schemes provided that the total annual monetary value received from both CBA and productivity incentive schemes combined do not exceed ten thousand pesos (Php10,000.00) per employee per taxable year.

**Q:** What is **professional income**

**A:** Professional income refers to the fees received by a professional from the practice of his profession, provided that there is no employer-employee relationship between him and his clients.

**Q:** What is **passive investment income**

**A:** Income in which the taxpayer merely waits for the amount to come in. It consists of interest, dividends and royalties and rental income.

**Q:** What are the **exclusions from gross income**

**A:** The following items shall not be included in gross income and shall be exempt from income taxation:

1. Proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured;
2. Amount received by the insured as return of premiums paid by him;
3. Value of property acquired by gift, bequest, devise, or descent;
4. Compensation for injuries or sickness;
5. Income exempt under treaty;
6. Retirement benefits, pensions, gratuities, etc.;
7. Miscellaneous items –
  - a. Income derived by foreign government;
  - b. Income derived by the government or its political subdivisions;
  - c. Prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement;
  - d. Prizes and awards in sports competition;
  - e. 13th month pay and other benefits;
  - f. GSIS, SSS, Medicare and other contributions
  - g. Gains from the sale of bonds, debentures or other certificate of indebtedness;
  - h. Gains from redemption of shares in mutual fund; and
  - i. Income Derived from the Sale of Gold Pursuant to R.A. No. 7076.

**Q:** What is the rationale for exclusions and exemptions

**A:**

1. They represent return of capital or are not income, gain or profit;
2. They are subject to another kind of internal revenue tax;
3. They are income, gain or profit expressly exempt from income tax under the Constitution, tax treaty, NIRC, or a general or special law.

**Q:** Who may avail exclusions

**A:** Generally, all taxpayers may avail of the exclusions unless expressly excluded by the law.

**Q:** Distinguish exclusions and exemptions from deductions and tax credits

**A:** **Exclusions** are items that are not included in the determination of gross income because of the exemption provided for by law or by tax treaties. **Deductions** are the expenses and other allowable deductions as provided for by law which are incurred for engaging in trade or business or exercise of profession. **Tax credits** are amount of tax previously paid by the taxpayer which later on can be claimed as tax credit from the tax liability of the taxpayer.

**Q:** What are the allowable deductions from gross income under the NIRC

**A:** The allowable deductions from gross income are:

1. Expenses
  - a. Ordinary and necessary trade, business or professional expenses
  - b. Expenses allowable to private educational institutions
2. Interests on indebtedness;
3. Taxes in connection with taxpayer's business, trade or profession;
4. Losses;
5. Bad debts;
6. Depreciation;
7. Depletion of oil and gas wells and mines;
8. Charitable and other contributions;
9. Research and development expenditures;
10. Contribution to pension trusts.

**Q:** Treatment of return of capital

**A:** Income tax is levied by law only on income, hence, the amount representing return of capital should be deducted from proceeds from sales and should not be subject to income tax.

**Q:** Distinguish itemized deductions vis-à-vis optional standard deductions

**A:** **Itemized deductions** are the allowable deductions as enumerated under Section 34 of the NIRC.

**Optional Standard Deduction** is the standard deduction in an amount not exceeding 40% of the gross income of individuals, other than nonresident aliens, or corporations in lieu of the deductions enumerated under Subsections A-J of Section 34 of the NIRC.

**Q:** What are the items not deductible in computing net income

**A:** In computing net income, no deduction shall be allowed with respect to:

1. Personal, living or family expenses;
2. Any amount paid out for new buildings or for permanent improvements, or betterments made to increase the value of any property or estate;
3. Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made;
4. Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, individual or corporate, when the taxpayer is directly or indirectly a beneficiary under such policy;
5. Losses from sales or exchanges of property between related parties;
6. Losses from wash sales of stock or securities unless the claim is made by a dealer in stock or securities and with respect to a transaction made in the ordinary course of the business of such dealer;
7. Non-deductible taxes
8. Non-deductible losses
9. Non-deductible interest

**Q:** What is the exemption from payment of CGT from sale of real property

**A:** The sale or disposition of the principal residence may not be subject CGT under the following guidelines:

1. Proceeds are fully utilized in acquiring or constructing a new principal residence;
2. Proceeds are utilized within 18 calendar months from the date of sale or disposition;
3. Historical cost or adjusted basis of the real property sold shall be carried over to the new principal residence;
4. Commissioner shall have been notified by the taxpayer within 30 days from the date of sale of his intention to avail the tax exemption; and,
5. The tax exemption can only be availed of once every 10 years.

**Q:** Differentiate **Capital Asset** and **Ordinary Asset**

**A:** The term 'capital assets' means property held by the taxpayer (whether or not connected with his trade or business), but does not include:

1. 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;
2. Property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business;
3. 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;
4. Real property used in trade or business of the taxpayer.

The statutory definition of capital assets is negative in nature. Thus, if the property or asset is not among the exceptions, it is a capital asset; conversely, assets falling within the exceptions are ordinary assets<sup>13</sup>.

**Q:** Period required to be considered a non-resident alien engaged in trade or business (NRAETB)

**A:** A non-resident alien individual who shall come to

the Philippines and stay therein for an aggregate period of more than one hundred eighty (180) days during any calendar year shall be deemed a non-resident alien doing business in the Philippines.

**Q:** Which sources of income of a NRAETB will be subject to Philippine income tax

**A:** A non-resident alien individual shall be subject to an income tax on taxable income received **from all sources within the Philippines** at the similar rate/schedular rate as an individual citizen and/or resident alien

**Q:** What is the tax rate that will be imposed on the income of a non-resident alien not engaged in trade or business (NRANETB)

**A:** There shall be levied, collected and paid for each taxable year upon the entire income received **from all sources within the Philippines** by every NRANETB a tax equal to 25% of such income.

**Q:** Who are **senior citizens**

**A:** Senior Citizen refers to any Filipino citizen who is a resident of the Philippines, and who is sixty (60) years old or above. It may apply to senior citizens with "dual citizenship" status provided they prove their Filipino citizenship and have at least six (6) months residency in the Philippines.

**Q:** Instances wherein senior citizens are exempted from income tax

1. If the returnable income of a Senior Citizen is in the nature of compensation income but he qualifies as a minimum wage earner under RA No. 9504;
2. If the aggregate amount of gross income earned by the Senior Citizen during the taxable year does not exceed the amount of his personal exemptions (basic and additional).

<sup>13</sup> Source: Marcario Lim Gaw, Jr. v. CIR, G.R. No. 222837, 23 July 2018

**Q:** Instances where the income of minimum wage earners are exempted from income tax

**A:**

1. Payment of income tax on their taxable income;
2. Holiday pay;
3. Overtime pay;
4. Night shift differential pay; and,
5. Hazard pay.

**Q:** Exemptions granted under international agreements

**A:** Resident citizens are taxed on worldwide income, while resident aliens are taxed only on their Philippine-source income. As an exception to the general rule, most international agreements which grant withholding tax immunity to foreign governments / embassies / diplomatic missions and international organizations also provide exemption to their officials and employees who are foreign nationals and/or non-Philippine residents from paying income taxes on their salaries and emoluments.

**Q:** Income tax rate imposed on the income of a **domestic corporation** (DC)

**A:** An income tax of 30% is imposed upon the taxable income from all sources within and without the Philippines.

**Q:** Income tax rate imposed on the income of a **resident foreign corporation** (RFC)

**A:** A corporation organized or existing under the laws of any foreign country, engaged in trade or business within the Philippines, shall be subject to an income tax of 30% of the taxable income derived from all sources within the Philippines.

**Q:** What is the Minimum Corporate Income Tax on DC and RFC

**A:** A minimum corporate income tax of 2% of the gross income is imposed beginning on the fourth taxable year immediately following the year in which such corporation commence its business operations, when the minimum income tax is greater than the Income Tax.

**Q:** What is the tax on **Branch Profit Remittances** imposed on a RFC

**A:** Any profit remitted by a branch to its head office shall be subject to a tax of 15% which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof.

**Q: Tax Arbitrage Rule**

**A:** Taxpayer's otherwise allowable deduction for interest expense shall be reduced by 33% of the interest income that was subjected to final tax for as long as the interest is not expressly disallowed by law to be deducted from the taxpayer's gross income.

**Q: Tax Benefit Rule**

**A:** Recovery of bad debts previously allowed as deduction in the preceding years shall be included as part of the gross income in the year of recovery to the extent of the income tax benefit of said deduction.

**Q: Optional Standard Deduction (OSD)**

**A:** Unless the taxpayer signifies in his return his intention to elect the optional standard deduction, he shall be considered as having availed himself of the itemized deductions. Such election when made in the return shall be irrevocable for the taxable year for which the return is made:

That a general professional partnership and the partners comprising such partnership may avail of the optional standard deduction only once, either by the general professional partnership or the partners comprising the partnership.

**Q:** Proprietary Education Institution and Non-Profit Hospital

**A:** Proprietary educational institutions and hospitals which are nonprofit shall pay a tax of ten percent (10%) on their taxable income except certain passive income.

However, if the gross income from unrelated trade, business or other activity exceeds fifty percent (50%) of the total gross income derived by such educational





institutions or hospitals from all sources, it shall be subject to 30% income tax imposed on the entire taxable income.

The term unrelated trade, business or other activity means any trade, business or other activity, the conduct of which is not substantially related to the exercise or performance by such educational institution or hospital of its primary purpose or function.

**Q:** Income of Government-owned or Controlled Corporations (GOCCs), Agencies or Instrumentalities subject to Income Tax

**A:** Existing special or general laws to the contrary notwithstanding, all corporations, agencies, or instrumentalities owned or controlled by the Government shall pay such rate of tax upon their taxable income as are imposed upon corporations or associations engaged in a similar business, industry, or activity.

**Q:** What are the exempt GOCCs, Agencies and Instrumentalities

**A:** (1) Government Service Insurance System (GSIS); (2) Social Security System (SSS); (3) Philippine Health Insurance Corporation (PHIC); and, (4) Local water districts.

**Q:** Define **Gross Philippine Billings** (GPB) regarding International Carriers

**A:** GPB refers to the amount of gross revenue derived from carriage of persons, excess baggage, cargo and mail originating from the Philippines in a continuous and uninterrupted flight, irrespective of the place of sale or issue and the place of payment of the ticket or passage document.

Tickets revalidated, exchanged and/or indorsed to another international airline form part of the GBP if the passenger boards a plane in a port or point in the Philippines. Further, in cases for a flight which originates from the Philippines, but transshipment of passenger takes place at any port outside the Philippines on another airline, only the aliquot portion

of the cost of the ticket corresponding to the leg flown from the Philippines to the point of transshipment shall form part of GPB.

On the other hand, for purposes of International Shipping, GPB means gross revenue whether for passenger, cargo or mail originating from the Philippines up to final destination, regardless of the place of sale or payments of the passage or freight documents.

**Q:** Tax on **International Carriers**

**A:** General Rule: International carriers doing business in the Philippines shall pay a tax of two and one-half percent (2 ½%) on its GBP.

Exemption: International carriers doing business in the Philippines may avail of a preferential rate or exemption from the tax herein imposed on their gross revenue derived from the carriage of persons and their excess baggage on the basis of an applicable tax treaty or international agreement to which the Philippines is a signatory or on the basis of reciprocity such that an international carrier, whose home country grants income tax exemption to Philippine carriers, shall likewise be exempt from the tax imposed under this provision.

**Q:** Tax on **Offshore Banking Units** (OBUs)

**A:** General Rule: No. Income derived by OBUs authorized by the BSP, from foreign currency transactions with non-residents, other OBUs and local commercial banks (including branches of foreign banks that may be authorized by the BSP to transact business with offshore banking units) shall be exempt from all taxes.

Exemption: Net income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board which shall be subject to the regular income tax payable by banks.

**Regional or area headquarters / Regional Operating Headquarters**

**Q:** Definition

**A:** **Regional or area headquarters** shall mean a branch established in the Philippines by multinational companies and which headquarters do not earn or derive income from the Philippines and which act as supervisory, communications and coordinating center for their affiliates, subsidiaries, or branches in the Asia-Pacific Region and other foreign markets.

**Regional operating headquarters** shall mean a branch established in the Philippines by multinational companies which are engaged in any of the following services: general administration and planning; business planning and coordination; sourcing and procurement of raw materials and components; corporate finance advisory services; marketing control and sales promotion; training and personnel management; logistic services; research and development services and product development; technical support and maintenance; data processing and communication; and business development.

**Q:** Tax on income of Regional or area headquarters/Regional Operating Headquarters

**A:** **Regional or area headquarters** shall not be subject to income tax

**Regional operating headquarters** shall pay a tax of ten percent (10%) of their taxable income.

### **Improperly Accumulated Earnings Tax (IAET)**

**Q:** When is IAET applicable

**A:** the ten percent (10%) IAET applies to a corporation which is formed or availed of for the purpose of avoiding the imposition of income tax on the income received by shareholders of the corporation, by permitting its earnings or profits to accumulate, instead of being divided or distributed to the shareholders

**Q:** Exemptions from the coverage of IAET

**A:** (1) Publicly-held corporations; (2) banks and other nonbank financial intermediaries; and, (3) insurance companies.

### **Corporations exempted from income tax**

**Q:** Enumeration of the exempted corporations

**A:**

1. Labor, agricultural or horticultural organization not organized principally for profit;
2. Mutual savings bank not having a capital stock represented by shares, and cooperative bank without capital stock organized and operated for mutual purposes and without profit;
3. A beneficiary society, order or association, operating for the exclusive benefit of the members such as a fraternal organization operating under the lodge system, or a mutual aid association or a nonstock corporation organized by employees providing for the payment of life, sickness, accident, or other benefits exclusively to the members of such society, order, or association, or nonstock corporation or their dependents;
4. Cemetery company owned and operated exclusively for the benefit of its members;
5. Nonstock corporation or association organized and operated exclusively for religious, charitable, scientific, athletic, or cultural purposes, or for the rehabilitation of veterans, no part of its net income or asset shall belong to or inure to the benefit of any member, organizer, officer or any specific person;
6. Business league, chamber of commerce, or board of trade, not organized for profit and no part of the net income of which inures to the benefit of any private stockholder or individual;
7. Civic league or organization not organized for profit but operated exclusively for the promotion of social welfare;
8. A nonstock and nonprofit educational institution;
9. Government educational institution;
10. Farmers' or other mutual typhoon or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues, and fees collected from members for the sole purpose of meeting its expenses; and
11. Farmers', fruit growers', or like association organized and operated as a sales agent for the

purpose of marketing the products of its members and turning back to them the proceeds of sales, less the necessary selling expenses on the basis of the quantity of produce finished by them.

Notwithstanding the above, the income of whatever kind and character of the foregoing organizations from any of their properties, real or personal, or from any of their activities conducted for profit regardless of the disposition made of such income, shall be subject to tax.

**Q:** Tests used to determine the entitlement of tax exemption

**A:** **Organizational Test** – the corporation or association’s constructive documents must show that its primary purpose/s of incorporation fall under Section 30 of the NIRC

**Operational Test** – the regular activities of the corporation or association be exclusively devoted to the accomplishment of the purposes specified in Section 30 of the NIRC. A corporation fails to meet this test if the corporation has no activities conducted in furtherance of the purpose for which it was organized, or if a substantial part of its operations constitutes “activities conducted for profit”.

### Filing of returns and payment

**Q:** Individuals required to file an Income Tax Return (ITR)

**A:** (1) Every Filipino citizen residing in the Philippines; (2) Every Filipino citizen residing outside the Philippines, on his income from sources within the Philippines; and, (3) Every alien residing in the Philippines, on income derived from sources within the Philippines; and profession in the Philippines.

**Q:** When to file ITR

**A:**

1. The ITR shall be filed on or before the fifteenth (15th) day of April of each year covering income for the preceding taxable year.
2. For individuals subject to tax on capital gains, they

shall file their returns from the sale or exchange of shares of stock not traded thru a local stock exchange within thirty (30) days after each transaction and a final consolidated return on or before April 15 of each year covering all stock transactions of the preceding taxable year.

3. For the sale or disposition of real property the return must be filed within thirty (30) days following each sale or other disposition.

**Q:** Filing period for corporate taxpayers

**A:** The corporate quarterly declaration shall be filed within sixty (60) days following the close of each of the first three (3) quarters of the taxable year. The final adjustment return shall be filed on or before the fifteenth (15th) day of April, or on or before the fifteenth (15th) day of the fourth (4th) month following the close of the fiscal year, as the case may be.

**Q:** Substituted Filing

**A:** Substituted Filing is when the employer’s annual return (BIR Form 1604CF) may be considered as the “substitute” Income Tax Return (ITR) of employee inasmuch as the information provided in his income tax return (BIR Form 1700) would exactly be the same information contained in the employer’s annual return. Individual taxpayers receiving purely compensation income, regardless of amount, from only one employer in the Philippines for the calendar year, the income tax of which has been withheld correctly by the said employer shall not be required to file an annual income tax return. The certificate of withholding filed by the respective employers, duly stamped ‘received’ by the BIR, shall be tantamount to the substituted filing of income tax returns by said employees.

**Q:** Liability for failure to file a return

**A:** Any person required to pay any tax, make a return, keep any record, or supply correct and accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply such correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other

penalties provided by law, upon conviction thereof, be punished by a fine of not less than P10,000 and suffer imprisonment of not less than 1 year but not more than 10 years.

## **Withholding Tax**

**Q:** Nature of withholding tax

**A:** Withholding tax is a method of collecting income tax in advance from the taxable income of the recipient of income. Thus, if the income of the recipient is exempt from income tax, no withholding of tax is required to be made by the payor of such income, which is constituted as a withholding agent.

**Q:** Final withholding tax

**A:** Under the final withholding tax system the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income.

The finality of the withholding tax is limited only to the payee's income tax liability on the particular income. It does not extend to the payee's other tax liability on said income, such as when the said income is further subject to a percentage tax. For example, if a bank receives income subject to final withholding tax, the same shall be subject to a percentage tax. Final withholding taxes are considered as full and final payment of the income tax due, and thus, are not subject to any adjustments.

**Q:** Creditable withholding tax

**A:** Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due of the payee on said income.

**Q:** Duties of a withholding agent

**A:** The responsibility for the collection of the tax as well as the payment thereof is concentrated upon the person over whom the Government has jurisdiction.

Thus, the withholding agent is constituted the agent of both the Government and the taxpayer. With respect to the collection and/or withholding of the tax, he is the Government's agent. Regarding the filing of the necessary income tax return and the payment of the tax to the Government, he is the agent of the taxpayer.

The withholding agent is no ordinary government agent especially because he is held personally liable for the tax he is duty bound to withhold; whereas the Commissioner and his deputies are not made liable by law.

The right of a withholding agent to claim a refund of erroneously or illegally withheld taxes comes with the responsibility to return the same to the principal taxpayer<sup>14</sup>.

## **TRANSFER TAXES**

**Q:** Basic definition

**A:** **Estate tax** – tax on the right to transmit property at death and on certain transfers by the decedent during his lifetime which are made by the law the equivalent of testamentary dispositions.

An excise tax on the right of transmitting property at the time of death and of the privilege that a person is given in controlling to a certain extent the disposition of his property to take effect upon his death.

**Donor's tax** – An excise tax imposed on the privilege to transfer property by way of gift inter vivos based on a pure act of liberality without any or less than adequate consideration and without any legal compulsion to give.

### **Estate tax**

**Q:** Classification of a **decedent**

**A:** Estate Tax applies only to individuals. The decedent may be classified into: (1) Citizen (Resident or Non-resident); (2) Resident alien; or, (3) Non-resident alien.

<sup>14</sup> Source: Commissioner of Internal Revenue vs. Smart Communication, Inc., G.R. Nos. 179045-46, 25 August 2010

**Q:** Concept of **residence**

**A:** For purposes of estate taxation, residence refers to domicile – the permanent home or the place to which whenever absent, one intends to return (animus revertendi), and depends on facts and circumstances, in the sense that they disclose intent. It is therefore, not necessarily the actual place of residence.

**Q:** Rule of **reciprocity**

**A:** There is reciprocity if the foreign country of which the decedent was a citizen and resident at the time of his death: (a) did not impose a transfer tax of any character, in respect of intangible personal property of citizens of the Philippines not residing in that foreign country; or, (b) allowed a similar exemption from transfer tax in respect of intangible personal property owned by citizens of the Philippines not residing in that country.

If there is reciprocity, the intangible personal property of an NRA shall not be included in his gross estate. If there is no reciprocity, such intangible personal property will be included.

**Q:** Items to be included in the gross estate

**A:**

1. Property owned by the decedent actually and physically present in his estate at the time of his death;
2. Decedent's interest;
3. Properties not physically in the estate:
  - Transfers in contemplation of death;
  - Transfers with retention or reservation of certain rights;
  - Revocable transfers;
  - Property passing under general power of appointment;
  - Transfers for insufficient consideration;
  - Proceeds of life insurance;
  - Claims against insolvent persons; and,
  - Capital of the surviving spouse.

**Q:** Deductions from gross estate

**A: Citizen or resident**

1. Standard deduction equivalent to ₱5,000,000;
2. Claims against the estate;
3. Claims against insolvent persons;
4. Unpaid mortgages;
5. Property previously taxed;
6. Transfers for public use;
7. Family home equivalent to ₱10,000,000;
8. Amount received by heirs under RA No. 4917 (Retirement benefits of private firm employees).

**Non-resident**

1. Standard deduction equivalent to ₱500,000.00
2. Proportionate amount for claims against the estate; claims against insolvent persons; or, unpaid mortgages which the value of such part bears to the value of the entire gross estate wherever situated;
3. Property previously taxed; and,
4. Transfers for public use;

**Q:** Estate tax return

**A:** The filing of estate tax returns shall be within one (1) year from the date of the decedent's death with the rate of six percent (6%) of the net estate. In case the available cash of the estate is insufficient to pay the total estate tax due, payment by installment shall be allowed within two (2) years from the statutory date of payment, without civil penalty and interest.

If a bank has knowledge of the death of a person, who maintained a bank deposit account alone, or jointly with another, it shall allow any withdrawal from the said deposit account, subject to final withholding tax of six percent (6%).

Estate tax returns showing a gross value exceeding ₱5,000,000.00 shall be supported by a statement duly certified by a certified public accountant.

Filing of a notice of death is no longer required as introduced under the TRAIN law.



## Donor's tax

**Q:** Taxable base

**A:** Net gifts (i.e. net economic benefit from the transfer) that accrues to the donee at the time of donation

If gift is real property – it shall be valued at the fair market value (FMV) of the property at the time of donation. The appraised FMV of the property shall be whichever is higher between the zonal value or the FMV in the latest schedule of values fixed by the provincial and city assessor.

If gift is Personal Property - FMV of the property at the time of donation.

**Q:** Tax rate

**A:** Donor's tax is fixed at six percent (6%) based on annual total gifts in excess of ₱250,000.00, regardless of whether the donee is a stranger or not.

**Q:** Exemption from donor's tax

**A:**

1. 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;
2. Gifts in favor of an educational and/or charitable, religious, cultural, or social welfare corporation, institution, accredited non-government organization or philanthropic organization, or research institution (not more than 30% of said gifts shall be used for administration purposes);
3. Athlete's prize and awards;
4. Encumbrances on the property donated if assumed by the donee in the deed of donation;
5. Donations made to entities exempted under special laws

The exemption of dowries (gifts made on account of marriage) was removed under the TRAIN law.

## VALUE ADDED TAX

**Q:** Who are liable for VAT

**A:** Any person who, in the course of trade or business: (a) sells, barter, exchanges, or leases goods or properties; (b) renders services; and, (c) imports goods.

**Q:** In the course of trade or business

**A:** It means the regular conduct or pursuit of a commercial or economic activity, including transactions incidental thereto, by any persons regardless of whether or not the person engaged therein is a non-stock, non-profit private organization, or government entity.

**Q:** Elements of a VAT-taxable transaction

**A:** For a transaction to be vatable: (1) there must be sale, barter, or lease in the Philippines in the course of trade or business or in the furtherance of profession; and, (2) the subject matter must be taxable goods, properties or services

**Q: Destination Principle**

**A:** Under the Destination Principle, goods and services are taxed only in the country where they are consumed. Thus, exports are zero-rated, while imports are taxed<sup>15</sup>.

**Q: Cross-Border Doctrine**

**A:** Under the Cross-Border Doctrine, no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority. Hence, actual export of goods and services from the Philippines to a foreign country must be free of VAT; while, those destined for use or consumption within the Philippines shall be imposed VAT<sup>16</sup>.

**Q:** How is VAT imposed on transfer of goods by tax exempt persons to non-exempt entities

**A:** In the case of tax-free importation of goods into the Philippines by persons, entities or agencies exempt from tax where such goods are subsequently sold, transferred or exchanged in the Philippines to non-exempt persons or entities, the purchasers, transferees or recipients shall be considered the importers thereof, who shall be liable for any internal revenue tax on such importation. The tax due on such importation shall constitute a lien on the goods superior to all charges or liens on the goods, irrespective of the possessor thereof.

**Q: Transactions deemed sale**

**A:** The following are transactions deemed sale subject to VAT:

1. Transfer, use or consumption not in the course of business of goods or properties originally intended for sale or for use in the course of business;
2. Distribution or transfer to:
  - (a) Shareholders or investors as share in the profits of the VAT-registered persons; or,
  - (b) Creditors in payment of debt.
3. Consignment of goods if actual sale is not made within sixty (60) days following the date such goods were consigned; and,
4. Retirement from or cessation of business, with respect to inventories of taxable goods existing as of such retirement or cessation.

**Zero-rated and effectively zero-rated sales of goods and/or properties**

**Q:** What are **Zero-Rated Sales**

**A:** A zero-rated sale of goods or properties by a VAT-registered person is a taxable transaction for VAT purposes, although the VAT rate is zero percent (0%). However, the input tax on purchases of goods, properties or services, related to such zero-rated sale, shall be available as tax credit or refund.

**Q:** What are Foreign **Currency Denominated Sales**

**A:** Foreign Currency Denominated Sales are sales to non-residents of goods assembled or manufactured in the Philippines for delivery to a resident in the

<sup>15</sup> Source: CIR v. American Express, G.R. No. 152609, 29 June 2005

<sup>16</sup> Source: Toshiba v CIR, G.R. No. 157594, 02 March 2010

Philippines, paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the BSP.

## Input and Output Tax

**Q:** Definition

**A: Input Tax** is the VAT due from or paid for by a VAT-registered person in the course of his trade or business on importation of goods or local purchase of goods or services, including lease or use of property, from a VAT-registered person.

**Output Tax** is the VAT due on the sale or lease of taxable goods or properties or services by any person registered or required to register under the NIRC.

## Tax Refund or Tax Credit

**Q:** What is the **San Roque Doctrine**

**A:** Under this Doctrine, BIR Ruling No. DA-489-03, which states that a taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review, constitutes as an exception to the mandatory and jurisdictional nature of the 120+30-day period provided in *Aichi*. Thus, a judicial claim for refund filed before the lapse of the 120-day period is deemed to have been timely filed if the filing occurred within the **window period** from 10 December 2003, upon the issuance of BIR Ruling No. DA-489-03 up to 6 October 2010, or the date of promulgation of *Aichi*.

- *Note: For reference purposes, amendments introduced by the TRAIN law and as implemented by RMC No. 47-2019 would make the San Roque and Aichi rulings inapplicable moving forward.*

**Q:** What is the **enhanced VAT refund system**

**A:** This is a provision under Section 30 of the TRAIN law which provides for the successful establishment and implementation of enhanced VAT refund system that grants refunds of creditable input tax within ninety (90) days from the filing of the VAT refund application with the Bureau.

## Filing of returns and payment

**Q:** When are VAT returns filed/paid

**A: In General.** - Every person liable to pay the VAT shall file a quarterly return of the amount of his gross sales or receipts within twenty-five (25) days following the close of each taxable quarter prescribed for each taxpayer: Provided, however, that VAT-registered persons shall pay the VAT on a monthly basis.

Any person, whose registration has been cancelled in accordance with Section 236, shall file a return and pay the tax due thereon within twenty-five (25) days from the date of cancellation of registration: Provided, that only one consolidated return shall be filed by the taxpayer for his principal place of business or head office and all branches.

The return shall be filed with and the tax paid to an authorized agent bank, revenue collection officer or duly authorized city or municipal Treasurer in the Philippines located within the revenue district where the taxpayer is registered or required to register.

## TAX REMEDIES UNDER THE NIRC

### General concepts

**Q:** What is a tax assessment

**A:** The term assessment refers to the determination of amounts due from a person obligated to make payments. In the context of national internal revenue collection, it refers to the determination of the taxes due from a taxpayer.

It is an official action of an administrative officer in determining the amount of tax due from a taxpayer, or it may be a notice to the effect that the amount therein stated is due from a taxpayer as a tax, with a demand for payment of the tax or any deficiency stated therein.

**Q:** What is a **deficiency tax assessment**

**A:** It is a deficiency tax liability that is determined after a tax audit and examination.



**Q:** What is a **jeopardy assessment**

**A:** A jeopardy assessment is a tax assessment made by an authorized Revenue Officer (RO) without the benefit of complete or partial audit. The assessment is done because of a belief that the determination and collection of a deficiency tax will be jeopardized by delay caused by the taxpayer's failure to: (a) comply with audit and investigation requirements to present his books of accounts and/or pertinent records; (b) substantiate all or any of the deductions, exemptions or credits claimed in his return. A jeopardy assessment is valid.

**Q:** What is a **protested assessment**

**A:** It is an assessment where a taxpayer questions the findings in an assessment and asks the collector to reconsider or cancel the same because he believes that he is not liable thereof.

**Q:** What are the powers of the Commissioner of Internal Revenue (CIR) in the assessment of taxes

**A:** The Commissioner or his duly authorized representatives are authorized to use the following powers to make assessments and prescribe additional requirements in tax administration:

1. Examination of returns and determination of the tax due;
2. Assess the proper tax based on the best evidence obtainable;
3. Conduct inventory-taking, surveillance and prescribe presumptive gross sales and receipts;
4. Issue jeopardy assessments and terminate the taxable period;
5. Prescribe real property values;
6. Inquire into bank deposit accounts;
7. Accredite and register tax agents;
8. Prescribe additional procedural or documentary requirements.

**Q:** What is the **best evidence obtainable rule**

**A:** The law authorizes the Commissioner to assess taxes on the basis of the best evidence obtainable in the following cases: (1) If a person fails to file a return

or other document at the time prescribed by law; or, (2) If taxpayer willfully or otherwise files a false or fraudulent return or other document.

**Q:** What are the methods to constructively determine a taxpayer's income

**A:** Some of the methods used by the BIR to determine a taxpayer's income constructively: (1) Net worth method; (2) Cash expenditure method; (3) Percentage method; (4) Bank deposit method; (5) Unit and value method; (6) Third party information or access to records method; and, (7) Surveillance and assessments method.

**Q:** What are the **requisites for a valid tax assessment**

**A:**

1. Letter of Authority issued to the Revenue Officers authorizing them to conduct an assessment and audit of taxpayer's books and other relevant documents;
2. Conduct of Notice for Informal Conference;
3. Issuance of the Preliminary Assessment Notice (PAN) by the authorized Revenue District Officer;
4. Issuance of the Formal Letter of Demand and Final Assessment Notice (FLD/FAN) by the Commissioner or his duly authorized representative;
5. The Letter of Demand calling for the payment of the deficiency tax. The letter shall state the facts, law, rules and regulations or jurisprudence on which the assessment is based.

Tax Assessments made by the BIR shall be prima facie presumed correct and made in good faith. The taxpayer has the burden of proof of showing the incorrectness of such assessment<sup>17</sup>.

An assessment is deemed made and the period to collect the assessed tax begins to run on the date the Final Assessment Notice and Formal Letters of Demand (FAN/FLD) had been released, mailed or sent to the taxpayer<sup>18</sup>.

<sup>17</sup> Source: CIR v. Traders Royal Bank, GR No. L-167134, 18 March 2015

<sup>18</sup> Source: CIR v. GJM Phils. MFG., Inc., GR No. 202695, 29 February 2016

## Tax delinquency VIS-À-VIS Tax deficiency

**Q:** What is a **tax deficiency**

**A:** It pertains to the amount of tax short of the full tax due that should be paid to the government.

**Q:** What is a **tax delinquency**

**A:** A tax delinquency arises upon the failure of the taxpayer to pay the tax due as demanded by the CIR in a formal letter of demand issued after an assessment and audit. It is only upon such failure that a taxpayer is considered delinquent, and thus, should be liable for delinquency interest.

## Prescriptive period

**Q:** When shall the prescriptive period for the assessment run

**A:** Internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, that in a case where a return is filed beyond the period prescribed by law, the three (3) year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

**Q:** Are there exceptions to the 3-year prescriptive period

**A:** Yes. Where a false or fraudulent return with intention to evade taxes, the prescriptive period shall be within ten (10) years from date of discovery of the falsity of the fraud; or, where there is a failure to file a return, at any time within ten (10) years after the discovery of the omission of the return

## False returns vs. fraudulent returns vs. non-filing of returns

**Q:** Definition

**A:** **False returns** implies deviation from the truth, whether intentional or not<sup>19</sup>.

**Fraudulent returns** mean that there is an intention or deceitful entry with intent to evade the taxes due.

**Non-filing of returns** pertains to situations where the taxpayer did not file a return which is required to be filed with the BIR.

**Q:** Grounds for the suspension of running of the statute of limitations in case of assessments

**A:** The running of the statute of limitations on the making of assessment shall be suspended in following circumstances:

1. For the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter;
2. When the taxpayer requests for a reinvestigation which is granted by the Commissioner;
3. When the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected; except if the taxpayer informs the Commissioner of any change in address;
4. When the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member or his household with sufficient discretion, and no property could be located; and,
5. When the taxpayer is out of the Philippines.

**Q:** Can the taxpayer agree to extend the prescriptive period of the assessment

**A:** Yes. The taxpayer may, through a **Waiver of the Statute of Limitations**, filed and executed in

<sup>19</sup> Source: CIR v. Philippine Daily Inquirer, Inc. GR No. 213943. 22 March 2017

accordance with existing rules and regulations, extend the prescriptive period for the assessment.

**Q:** Requisites of a valid waiver

**A:** The waiver must comply with the following conditions:

1. The waiver shall be executed before the expiration of the period to assess or to collect taxes. The date of execution must be specifically indicated in the waiver;
2. The waiver shall 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;
3. The expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription should be indicated.

### **Civil Penalties, Additions to tax**

**Q:** What are the increments imposed by the NIRC

**A:** Interest; Surcharge; and, Compromise Penalty

**Q:** What are the interests allowed to be imposed by law on the tax deficiencies

**A:** In general, there shall be assessed and collected on any unpaid amount of tax, interest at the rate of double the legal interest rate for loans or forbearance of any money in the absence of an express stipulation as set by the BSP from the date prescribed for payment until the amount is fully paid: Provided, That in no case shall the deficiency and the delinquency interest prescribed under Subsections (B) and (C) hereof, be imposed simultaneously.

It must be noted that prior to the amendment of RA No. 10963, the interest imposed is twenty percent (20%) and may be imposed simultaneously with the delinquency interest as penalty.

1. Deficiency Interest – Any deficiency in the tax due shall be subject to the interest prescribed in Subsection (A) hereof. The rate shall be double the legal interest rate or at twelve percent (12%)

starting 1 January 2018. The interest shall be imposed on any deficiency in the tax due.

2. Delinquency Interest – In case of failure to pay:
  - a. The amount of the tax due on any return required to be filed, or
  - b. The amount of the tax due for which no return is required, or
  - c. A deficiency tax, or any surcharge or interest thereon on the date appearing in the notice and demand of the Commissioner.
3. Interest on Extended Payment – Imposed when the taxpayer has opted to pay by installment but fails to pay the tax or any installment on the date prescribed for payment and also in cases where the Commissioner has authorized the extension of the time for the payment of the tax.

**Q:** What is surcharge

**A:** In addition to the tax required to be paid, the penalty of surcharge shall be imposed in the following instances:

Twenty-five percent (25%) of the amount due:

1. Failure to file any return and pay the tax due thereon as required under the provisions of the NIRC or rules and regulations on the date prescribed; or
2. Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
3. Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
4. Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of the NIRC or rules or regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

Fifty percent (50%) of the amount due:

1. There is willful neglect to file the return within the period prescribed by the NIRC; or
2. Willful filing of a false or fraudulent return.

Note that substantial underdeclaration of taxable sales or income or substantial overstatement of deductions shall constitute prima facie evidence of a false or fraudulent return. Failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return and a claim of deductions in an amount exceeding thirty percent (30%) of the actual deductions shall render the taxpayer liable for substantial under declaration of sales, receipts, or income or for overstatement of deductions.

**Q:** What is a **compromise penalty**

**A:** These are amounts collected by the BIR in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and the Commissioner<sup>20</sup>.

**Q:** Remedy of the Government when the taxpayer fails to comply with the payment of the Compromise Penalty

**A:** File a criminal action for the tax violation. This is because the nature of the compromise penalty is neither a tax nor an administrative penalty for tax delinquency<sup>21</sup>.

**Assessment Process and Reglementary Period**

Stage	Discussion
1. Letter of Authority (LOA)	The letter of authority refers to the letter informing a taxpayer that a certain revenue officer is authorized to examine the books of accounts and other accounting records.  It must be served within thirty (30) days from the date of issuance.
2. Notice of Informal	The Notice of Informal Conference will be issued if

<sup>20</sup> Source: Classic Fine Foods Phils. v. CIR, CTA Case No. 7363, 09 June 2010

<sup>21</sup> Source: CIR v. Philippine Daily Inquirer, CTA EB Case No. 905, 24 November 2013

Stage	Discussion
Conference (NIC) <sup>22</sup>	the taxpayer is not amenable with the submitted report of investigation of the Revenue Officer concerned. The Informal Conference shall be in no case extend beyond thirty (30) days from the receipt of the notice of informal conference.  On the event that that the taxpayer is still liable for the deficiency and the taxpayer is not amenable, the case will be endorsed within seven (7) days from the conclusion of the Informal Conference to the Assessment Division of the Revenue Regional Office or to the Commissioner or his duly authorized representative for issuance of a deficiency tax assessment.
3. Preliminary Assessment Notice (PAN)	The PAN will be issued any time prior to expiration of period to assess. The taxpayer has a non-extendable period of 15 days from receipt of the PAN.  A PAN shall not be required in the following cases: i. When the finding is the result of a mathematical error; ii. When excise tax due on excisable articles has not been paid; iii. When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent;

<sup>22</sup>Source: RR No. 07-2018, dated 31 January 2018.

Stage	Discussion
	<p>iv. When an article locally purchased or imported by exempt person has been sold, traded, or transferred to non-exempt persons;</p> <p>v. When a taxpayer who opted to claim for a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount against the estimated tax liabilities for the taxable quarter/s of the succeeding taxable year.</p>
4. Reply / Position paper against the PAN	Within fifteen (15) days from receipt by the taxpayer of the PAN
5. Formal Letter of Demand (FLD) and Final Assessment Notice (FAN)	<p>If the taxpayer fails to timely reply to the PAN, the FAN will be issued within a short period after the end of the 15 day period.</p> <p>If the taxpayer replies to the PAN (and disagrees with the findings of the BIR), the FAN will be issued within 15 days after the receipt by the BIR of the taxpayer's reply (to the PAN)<sup>23</sup></p>
6. Protest against the FLD/FAN (includes either a request for reconsideration OR a request	<p>Within thirty (30) days from receipt of the FLD and FAN.</p> <p>Otherwise the deficiency tax assessments become final and executory (collectible)</p>

<sup>23</sup>Regardless whether or not the taxpayer replies to the PAN, the BIR will issue a FAN (Section 3.1.1, RR No. 12-99, as amended).

<sup>24</sup>The taxpayer cannot exercise both options e.g., to request for both a reconsideration and a reinvestigation (Section 3.1.4, RR No. 12-99, as amended).

Stage	Discussion
for reinvestigation) <sup>24</sup>	
7. Submission by taxpayer of all relevant supporting documents <sup>25</sup>	<p>Within sixty (60) days from the date of actual filing of the protest against the FAN.</p> <p>The assessment shall become final by operation of law and the taxpayer shall be barred from disputing the correctness of the issued assessment by introduction of newly discovered or additional evidence because the taxpayer is deemed to have lost the chance to present this evidence.</p>
8. Decision by the BIR on the protest to the FLD/FAN (final decision on disputed assessment or FDDA)	<p>Within one hundred eighty (180) days from submission of the last supporting document (reinvestigation) or from the filing of the protest (reconsideration)</p>
	<ul style="list-style-type: none"> <li>• If the protest to the FAN is denied by the BIR within the 180 day period, the taxpayer has the mutually exclusive option to either: <ul style="list-style-type: none"> <li>a. Appeal (Petition for Review) the denial by the BIR to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of the denial by the taxpayer; or</li> <li>b. Appeal (request for reconsideration) the denial by the BIR to the CIR. No submission of documents is allowed in filing a request for reconsideration; only a position paper will be allowed to be filed.</li> </ul> </li> </ul>

<sup>25</sup>The submission of supporting documents is only allowed in cases of a request for reinvestigation (Section 3.1.4, RR No. 12-99, as amended).

Stage	Discussion
	<ul style="list-style-type: none"> <li>• If the protest is not acted on (no decision) by the BIR by the end of 180 day period, the taxpayer has the mutually exclusive option to either:               <ul style="list-style-type: none"> <li>a. Appeal (Petition for Review) the inaction of the BIR to the CTA within 30 days from the expiry of the 180 day period; or</li> <li>b. Wait for the decision of the BIR (allowed even beyond the 180 day period).</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>• If the protest is denied by the BIR after the expiry of the 180 days, the taxpayer has the same options as provided in numbers 7a above.</li> </ul>
9.	If a request for reconsideration (request) of the FDDA is filed with the CIR, the following rules apply:
	<ul style="list-style-type: none"> <li>• If the request of the FDDA is denied by the CIR within 180 days from the date of filing of the request, the taxpayer should appeal the denial issued by the CIR to the CTA within 30 days from the receipt of the denial.</li> <li>• If the request is not acted on (no decision) by the CIR by the end of 180 days, the taxpayer has the mutually exclusive option to either:               <ul style="list-style-type: none"> <li>a. Appeal (Petition for Review) the inaction of the CIR to the CTA within 30 days from the expiry of the 180 day period; or</li> <li>b. Wait for the decision of the CIR (allowed even beyond the 180 day period).</li> </ul> </li> </ul>
10.	If the request is denied (final) by the CIR even beyond the 180 day period, the taxpayer has 30 days from the receipt of the denial by the CIR to appeal (Petition for Review) the final decision of the CIR to the CTA.

## Collection

**Q:** How does the BIR collect the deficiency and/or delinquency taxes due a taxpayer

**A:** Any internal revenue tax which has been assessed within the period of limitation as prescribed may be collected by distraint or levy or by a proceeding in court. Deficiency taxes can be collected also through administrative and/or judicial remedies.

**Q:** What is the prescriptive period for the collection of taxes

**A:** As a general rule, the prescriptive period to collect the taxes due is five (5) years from the date of assessment.

The exceptions are:

1. Where a false or fraudulent return with intent to evade taxes was filed, within ten (10) years from the discovery without need for prior assessment;
2. Where there is failure or omission to file a return, within ten (10) years from the discovery without need for assessment;
3. When there is a valid waiver executed by and between the taxpayer and the authorized officer.

## TAXPAYERS REMEDIES

### Protesting an assessment

**Q:** Period for the taxpayer to file protest

**A:** Within thirty (30) days from date of receipt of the Formal Letter of Demand/Final Assessment Notice

**Q:** Written requests that taxpayer may file in a protest

**A: Request for reconsideration** – refers to a plea of re-evaluation of an assessment on the basis of existing records without need of additional evidence and it may involve both a question of fact or of law or both.

**Request for reinvestigation** – refers to a plea of re-evaluation of an assessment on the basis of newly discovered or additional evidence that a taxpayer intends to present in the reinvestigation and it may also involve a question of fact or of law or both.

**Q:** Modes of service of an assessment

**A:** The assessment notice shall be served to the taxpayer either through: (1) personal service; (2) either by substituted service or by mail in case personal service is not possible.

**Personal service** – the assessment notice shall be served to the taxpayer by personally delivering a copy of the assessment notice at his registered or known address or wherever he may be found. A known address shall mean a place other than the registered address where business activities of the party are conducted or his place of residence.

**Substituted service** – shall be done as follows:

1. The assessment notice may be left at the party's registered address, with his clerk or with a person having charge thereof.
2. If the known address is a place where business activities of the party are conducted, the notice may be left with his clerk or with a person having charge thereof.
3. If the known address is the place of residence, substituted service can be made by leaving the copy with a person of legal age residing therein.
4. If no person is found in the party's registered or known address, the Revenue Officers (ROs) concerned shall bring a barangay official and two (2) disinterested witnesses to the address so that they may personally observe and attest to such absence. The assessment notice shall be given to said barangay official. Such facts shall be contained in the bottom portion of the assessment notice, as well as the names, official positions and signatures of the witnesses.
5. Should the party be found at his registered or known address or any other place but refuses to receive the assessment notice, the ROs concerned shall bring a barangay official and two (2) disinterested witnesses in the presence of the party so that they may personally observe and attest to such act of refusal. The assessment notice shall be given to said barangay official. Such facts shall be contained in the bottom portion of the assessment notice, as well as the names, official positions and signatures of the witnesses.

"Disinterested witnesses" refers to persons of legal age other than employees of the BIR.

**Service by mail** – shall be done by sending a copy of the assessment notice through:

1. Registered mail with an instruction to the Postmaster to return the mail to the sender after ten (10) days, if undelivered; or
2. Reputable professional courier service; or
3. Ordinary mail, if no registry or reputable courier is available in the locality of the taxpayer.

**Q:** What are the grounds for an assessment to become final, executory and demandable

**A:** An assessment shall become final, executory and demandable due to, among others, the following grounds:

1. Failure of the taxpayer to file a valid protest within thirty (30) days from receipt of the FLD/FAN;
2. Failure of the taxpayer to submit all relevant documents in support of his protest by way of request for reinvestigation within sixty (60) days from the date of filing thereof;
3. Failure of the taxpayer to appeal to the CIR or the CTA within thirty (30) days from date of receipt of the FDDA issued by the CIR's duly authorized representative;
4. Failure of the taxpayer to appeal to the CTA within thirty (30) days from date of receipt of the FDDA issued by the CIR;
5. Failure of the taxpayer to timely file a motion for reconsideration or new trial before the CTA Division or failure to appeal to the CTA En Banc and Supreme Court based on existing Rules of Procedure; or
6. Failure of the taxpayer to receive any assessment notices because it was served in the address indicated in the BIR's registration database and the taxpayer transferred to a new address or closed/ceased operations without updating and transferring its BIR registration or cancelling its BIR registration as the case may be, through the accomplishment and filing of BIR Form No. 1905 — Application for Registration Information Update, as prescribed by pertinent issuance and/or amendments thereto.

**Q:** What are the relevant supporting documents that the taxpayer shall submit in case of requests for reinvestigation and the period of submitting of the said documents

**A:** The term "relevant supporting documents" refer to those documents necessary to support the legal and factual bases in disputing a tax assessment as determined by the taxpayer. The sixty (60)-day period for the submission of all relevant supporting documents shall not apply to requests for reconsideration. For requests for reinvestigation, the taxpayer shall submit all relevant supporting documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final.

**Q:** Effect of failure to file protest

**A:** If the taxpayer fails to file a valid protest against the FLD/FAN within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable. No request for reconsideration or reinvestigation shall be granted on tax assessments that have already become final, executory and demandable.

### **Compromise and abatement of taxes**

**Q:** Compromise of taxes

**A:** Applicable when there is: (1) a reasonable doubt as to the validity of the claim against the taxpayer exists; or, (2) the financial position of the taxpayer demonstrates a clear inability to pay the assessed tax.

**Q:** Abatement or cancellation of a tax liability

**A:** Applicable when: (1) the tax or any portion thereof appears to be unjustly or excessively assessed; or (2) the administration and collection costs involved do not justify the collection of the amount due. All criminal violations may be compromised except those already filed in court, or those involving fraud.

### **Recovery of tax erroneously or illegally collected**

**Q:** What the requirements for recovery of tax erroneously or illegally collected

**A:** The requirements for refund claims are as follows:

1. A written claim for refund or tax credit must be filed by the taxpayer with the Commissioner;
2. The claim for refund must be a categorical demand for reimbursement;
3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court within two (2) years from date of payment of the tax or penalty regardless of any supervening cause.

To successfully claim refund for creditable withholding tax, a taxpayer must do two things: (a) declare the income payments it received as part of its gross income and (b) establish the fact of withholding.

**Q:** May a taxpayer seek refund after the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years

**A:** No, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.



## LOCAL GOVERNMENT TAXATION

**Q:** Fundamental principles which shall govern the exercise of the taxing and other revenue raising powers of a local government unit (LGU)<sup>26</sup>:

**A:**

1. Taxation shall be uniform in each LGU;
2. Taxes, fees, charges and other impositions shall:
  - a) be equitable and based as far as practicable on the taxpayer's ability to pay;
  - b) be levied and collected only for public purposes;
  - c) not be unjust, excessive, oppressive, or confiscatory;
  - d) not be contrary to law, public policy, national economic policy, or in the restraint of trade;
3. The collection of local taxes, fees, charges and other impositions shall in no case be left to any private person;
4. The revenue collected shall inure solely to the benefit of, and be subject to the disposition by, the LGU levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,
5. Each LGU shall, as far as practicable, evolve a progressive system of taxation.

**Q:** Taxing powers of a LGU

**A:** Pursuant to the Local Government Code, a LGU shall exercise the power to create its own sources of revenue and to levy taxes, fees and charges consistent with the basic policy of local autonomy. Necessarily, this includes the authority to issue local tax ordinances, prescribe exemptions and penalties.

A LGU may exercise this power to tax through a local sanggunian and an appropriate and duly approved ordinance.

For penalties, surcharge may not exceed twenty five percent (25%) of the amount of taxes, fees and charges due and unpaid, Interest may not exceed two percent (2%) per month of the above unpaid items until full

payment which in no case shall exceed thirty six (36) months.

Adjustments to the local tax rates can be made not oftener than every five (5) years but in no case shall adjustments exceed ten percent (10%).

A LGU can only exercise the power on any base or subject not otherwise taxed under the NIRC, as amended. Provided that such taxes shall not be unjust, excessive, oppressive, confiscatory or contrary to national policy.

**Q:** Scope of taxing power

**A:**

LGU	Scope
Provinces	Limited only to: (1) Transfer of Real Property Ownership; (2) Business of Printing and Publication; (3) Franchise Tax; (4) Tax on Sand, Gravel and Other Quarry Resources; (5) Professional Tax; (6) Amusement Tax; and, (7) Annual Fixed Tax for every delivery truck or van
Municipality	May levy taxes, fees and charges not otherwise levied by provinces.
City	May levy taxes, fees and charges which the province or municipality may impose
Barangay	Limited only to: (1) Taxes on stores or retailers; (2) Service fees or charges; (3) Barangay clearance; and, (4) Other fees and charges

**Q:** Specific taxing power of LGUs

**A:**

Power	Specific LGU
Tax on transfer of real property ownership	Province, City
Tax on business of printing and publication	Province, City
Franchise tax	Province, City
Tax on sand, gravel and other quarry services	Province, City

<sup>26</sup> Source: Section 130, Local Government Code

Power	Specific LGU
Professional tax	Province, City
Amusement tax	Province, City
Tax for every delivery truck or van	Province, City
Tax on businesses	City, Municipality
Fees and charges for regulation and licensing of business and occupation	City, Municipality
Fees and charges for sealing and licensing of weights and measures	City, Municipality
Fishery rentals, fees and charges	City, Municipality
Community tax	City, Municipality
Tax on gross sales or receipts of small-scale stores	Barangay
Service fees on the use of barangay-owned properties	Barangay
Barangay clearance	Barangay
Other fees and charges	Barangay
Service fees and charges	Province, City, Municipality, Barangay
Public utility charges	Province, City, Municipality, Barangay
Toll fees or charges	Province, City, Municipality, Barangay
Real Property Tax	Province, City, Municipality

**Q:** Procedure for approval and effectivity of tax ordinances

**A:**

1. Prior conducted public hearings
2. Enactment of ordinance and revenue measures
3. Publication in newspaper of local circulation in full for three (3) consecutive days within ten (10) days from approval / enactment of all tax ordinances. Provided, that if there are no newspapers of local circulation, the same may be posted in at least two (2) conspicuous and publicly available space
4. Any question on constitutionality or legality may be raised on appeal to the Secretary of Justice

within thirty (30) days from effectivity of the tax ordinance

5. Any question must be resolved by the Secretary of Justice within sixty (60) days from receipt of the appeal. The appeal will not suspend the effectivity of the ordinance pending decision of the Secretary of Justice
6. The question may be raised to a court of competent jurisdiction within thirty (30) days after receipt of the decision or after the lapse of the 60-day period without any action from the Secretary of Justice

**Q:** Common limitations on the taxing power of LGUs

**A:** Unless otherwise provided, taxing power of LGUs shall not extend to the levy of the following:

1. Income tax, except when levied on banks and other financial institutions;
2. Documentary stamp tax;
3. Taxes on estates, inheritance, gifts, legacies and other acquisitions mortis causa, except as otherwise provided herein;
4. Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;
5. Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;
6. Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;
7. Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;
8. Excise taxes on articles enumerated under the national Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

9. Percentage or VAT on sales, barter or exchanges or similar transactions on goods or services except as otherwise provided herein;
10. Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;
11. Taxes on premiums paid by way of reinsurance or retrocession;
12. Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;
13. Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;
14. Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and R.A. Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and,
15. Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

**Q:** Periods of assessment and collection of taxes

**A:**

1. **Period and manner of payment** – unless otherwise provided, the tax period of all local taxes shall be the calendar year. Such taxes may be paid in quarterly installments.
2. **Accrual of tax** – unless otherwise provided, accrual shall be on the first day of January of each year. However, new taxes, fees or charges, or any changes in the rates thereof, shall accrue on the first (1st) day of the quarter next following the effectivity of the ordinance imposing such new levies or rates.
3. **Time of payment** – Unless otherwise provided, all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. For a justifiable reason or cause, time of payment may be extended without surcharges or penalties for a period up to but not exceeding six (6) months.

4. **Penalties** – surcharge not exceeding twenty-five (25%) of the amount of taxes, fees or charges not paid on time and an interest at the rate not exceeding two percent (2%) per month of the unpaid taxes, fees or charges including surcharges, until such amount is fully paid but in no case shall the total thirty-six (36%) months.
5. **Authority of treasurer in collection and inspection of books** – all local taxes, fees, and charges shall be collected by the provincial, city, municipal, or barangay treasurer, or their duly authorized deputies. The provincial, city or municipal treasurer may designate the barangay treasurer as his deputy to collect local taxes, fees, or charges.

The provincial, city, municipal or barangay treasurer may, by himself or through any of his deputies duly authorized in writing, examine the books, accounts, and other pertinent records of any person, partnership, corporation, or association subject to local taxes, fees and charges in order to ascertain, assess, and collect the correct amount of the tax, fee, or charge. Such examination shall be made during regular business hours, only once for every tax period, and shall be certified to by the examining official. Such certificate shall be made of record in the books of accounts of the taxpayer examined.

In case the examination herein authorized is made by a duly authorized deputy, the written authority of the deputy concerned shall specifically state the name, address, and business of the taxpayer whose books, accounts, and pertinent records are to be examined, the date and place of such examination and the procedure to be followed in conducting the same.

**Q:** Taxpayer's Remedies

**A:**

#### 1. **Period to Assess and Collect local taxes**

Local taxes, fees, or charges shall be assessed within five (5) years from the date they became due. No action for the collection, whether administrative or judicial, shall be instituted after the expiration of such period.

In case of fraud or intent to evade the payment of taxes, fees or charges, the same may be assessed within ten (10) years from discovery of the fraud or intent to evade payment.

Local, taxes, fees or charges may be collected within five (5) years from the date of assessment by administrative or judicial action. No such action shall be instituted after the expiration of said period.

The running of the periods of prescription provided in the preceding paragraphs shall be suspended for the time during which: (1) the treasurer is legally prevented from making the assessment of collection; (2) the taxpayer requests for a reinvestigation and executes a waiver in writing before expiration of the period within which to assess or collect; and, (3) the taxpayer is out of the country or otherwise cannot be located.

**No assessment, no collection** – no action for collection of the tax shall be instituted after the expiration of five (5) years without such assessment having been made.

## 2. Protest of Assessment

- **Notice of Assessment** – issued when the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid. It will state the nature of the tax, fee or charge; the amount of deficiency; and, the surcharges, interests and other penalties.
- **Written Protest** – filed within sixty (60) days from the receipt of the notice of assessment and filed with the local treasurer. Without a protest, the assessment shall become final and executory.
- **Evaluation and decision** – the local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment.

If the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer.

- **Appeal** – taxpayer has thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60) day period to appeal with the court of competent jurisdiction.

Payment under protest is not necessary.

## 3. Claim for Refund of Tax Credit for erroneously or illegally collected tax, fee or charge

In order to be entitled to a refund or credit, the following procedural requirements must concur:

- Must file a written claim for refund or credit with the local treasurer – no case or proceeding shall be maintained in any court for the recovery of any tax, fee or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer.
- The case or proceeding for refund has to be filed within two (2) years from the date of payment of the tax, fee or charge or from the date the taxpayer is entitled to a refund or credit. No case or proceeding shall be entertained in any court after the expiration of two (2) years

**Q:** Remedies available to the LGUs for collection of revenues

### **A:**

#### 1. Lien

Local taxes, fees, charges and other revenues constitute a lien, superior to all liens, charges or encumbrances in favor of any person, enforceable by appropriate administrative or judicial action, not only upon any property or rights therein which may be subject to the lien but also upon property used in business, occupation, practice of profession or calling, or exercise of privilege with respect to which the lien is imposed. The lien may only be extinguished upon full payment of the delinquent local taxes fees and charges including related surcharges and interest.

## 2. Civil remedies

- By administrative action thru distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in or rights to real property
- By judicial action

Either of these remedies or all may be pursued concurrently or simultaneously at the discretion of the local government unit concerned.

**Q:** Process for the distraint of personal property

**A:**

1. **Seizure** - Upon failure of the person owing any local tax, fee, or charge to pay the same at the time required, the local treasurer or his deputy may, upon written notice, seize or confiscate any personal property belonging to that person or any personal property subject to the lien in sufficient quantity to satisfy the outstanding tax, fee, or charge, together with any increment thereto incident to delinquency and the expenses of seizure.

In such case, a duly authenticated certificate showing the fact of delinquency and the amounts of the tax, fee, or charge and penalty due shall be issued and will serve as sufficient warrant for the distraint of personal property, subject to the taxpayer's right to claim exemption under the provisions of existing laws.

2. **Accounting of distrained goods** – The officer executing the distraint shall make or cause to be made an account of the goods, chattels or effects distrained, a copy of which signed by himself shall be left either with the owner or person from whose possession the goods, chattels or effects are taken, or at the dwelling or place or business of that person and with someone of suitable age and discretion, to which list shall be added a

statement of the sum demanded and a note of the time and place of sale.

3. **Publication** - The officer shall cause a notification to be exhibited in not less than three (3) public and conspicuous places in the territory of the LGU where the distraint is made, specifying the time and place of sale, and the articles distrained. The time of sale shall not be less than twenty (20) days after the notice and the publication or posting of the notice. One place for the posting of the notice shall be at the office of the chief executive of the local government unit in which the property is distrained.
4. **Release of distrained property upon payment prior to sale** - If at any time prior to the consummation of the sale, all the proper charges are paid to the officer conducting the sale, the goods or effects distrained shall be restored to the owner.
5. **Procedure of sale** - At the time and place fixed in the notice, the officer conducting the sale shall sell the goods or effects at public auction to the highest bidder for cash. Within five (5) days after the sale, the local treasurer shall make a report of the proceedings in writing to the local chief executive concerned.

Should the property distrained be not disposed of within one hundred and twenty (120) days from the date of distraint, the same shall be considered as sold to the LGU. Based on the amount made thereon, the tax delinquencies shall either be cancelled or reduced.

6. **Disposition of proceeds** - The proceeds of the sale shall be applied to satisfy the tax, including the surcharges, interest, and other penalties incident to delinquency, and the expenses of the distraint and sale. The balance over and above what is required to pay the entire claim shall be returned to the owner of the property sold. The expenses chargeable upon the seizure and sale shall embrace only the actual expenses of seizure and preservation of the property pending the sale, and no charge shall be imposed for the services of

the local officer or his deputy. Where the proceeds of the sale are insufficient to satisfy the claim, other property may, in like manner, be distrained until the full amount due, including all expenses, is collected.

**Q:** Process for the levy of real property

**A:** After expiration of the time required to pay the delinquent tax, fee, or charge, real property may be levied on before, simultaneously, or after the distraint of personal property belonging to the delinquent taxpayer.

To this end, a duly authenticated certificate showing the name of the taxpayer, the amount of the delinquency due and the property upon which levy is being made shall be prepared.

At the same time, written notice of the levy shall be mailed to or served upon: (1) the assessor and the local Register of Deeds where the property is located who shall annotate the levy on the tax declaration and certificate of title of the property, respectively; and, (2) the delinquent taxpayer or to his agent or the manager of the business in respect to which the liability arose (if taxpayer absent from the Philippines), or if there be none, to the occupant of the property in question.

In case the levy on real property is not issued before or simultaneously with the warrant of distraint on personal property, and the personal property of the taxpayer is not sufficient to satisfy the delinquency, proceedings for the levy on real property shall be made within thirty (30) days after execution of the distraint.

A report on any levy shall, within ten (10) days after receipt of the warrant, be submitted by the levying officer.

During the public sale and if there is no bidder or if the highest bid is for an amount insufficient to pay the taxes, fees, charges, surcharges, interests or penalties, the LGU may purchase the real property for itself. The local treasurer who conducted the sale and purchased the property on behalf of the LGU concerned to satisfy the claim shall within two (2) days thereafter make a report of his proceedings.

Within one (1) year from the date of such forfeiture, the taxpayer or any of his representative, may redeem the property by paying to the local treasurer the full amount of the taxes, fees, charges, and related surcharges, interests, or penalties, and the costs of sale. If the property is not redeemed as provided herein, the ownership thereof shall be fully vested to the LGU after the lapse of one (1) year.

**Q:** Process of administrative action

**A:** by filing either a distraint on the personal property or levy of real property belonging to the taxpayer.

The remedies of distraint and levy may be repeated, if necessary, until the full amount due including all expenses is collected.

**Q:** Process of judicial action

**A:** The LGU concerned may enforce the collection of delinquent taxes, fees, charges or other revenues by civil action in any court of competent jurisdiction within five (5) years from the date taxes, fees, charges or charges become due. The local government files an ordinary suit for the collection of sum of money before the MTC, RTC or CA Division depending upon the jurisdictional amount.

**Q:** Personal Property exempt from Distraint or Levy

- A:**
- Tools and implements necessarily used by the delinquent taxpayer in his trade or employment;
  - One (1) horse, cow, carabao, or other beast of burden, such as the delinquent taxpayer may select, and necessarily used by him in his ordinary occupation;
  - His necessary clothing, and that of all his family;
  - Household furniture and utensils necessary for housekeeping and used for that purpose by the delinquent taxpayer, such as he may select, of a value not exceeding Ten thousand pesos (P10,000.00);
  - Provisions, including crops, actually provided for individual or family use sufficient for four (4) months;

- The professional libraries of doctors, engineers, lawyers and judges;
- One fishing boat and net, not exceeding the total value of Ten thousand pesos (P10,000.00), by the lawful use of which a fisherman earns his livelihood; and
- Any material or article forming part of a house or improvement of any real property.

## REAL PROPERTY TAXATION

### Q: Fundamental principles

A: The appraisal, assessment, levy and collection of real property tax shall be guided by the following fundamental principles:

- Real property shall be appraised at its current and fair market value;
- Real property shall be classified for assessment purposes on the basis of its actual use;
- Real property shall be assessed on the basis of a uniform classification within each local government unit;
- The appraisal, assessment, levy and collection of real property tax shall not be let to any private person; and,
- The appraisal and assessment of real property shall be equitable.

### Q: Nature of real property tax

A: Real property tax is a

- direct tax
- indivisible single obligation
- ad valorem tax based on the assessed value of the property
- local tax
- imposed on the actual use of property, regardless of where located, whoever owns, and whoever uses it.
- progressive or proportionate in character depending, to a certain extent, on the use and value of the property

### Q: Exemption from real property tax

A: Exemption is limited only to the following:

1. Real property owned by the government except when the beneficial use thereof has been granted to a taxable person;
2. Charitable institutions, churches, personages or convents appurtenant thereto, mosques, non-profit or religious cemeteries and all lands, buildings and improvements actually, directly and exclusively used for religious, charitable or educational purposes;
3. Machineries and equipment that are actually, directly and exclusively used by local water utilities and GOCC,,s engaged in the supply and distribution of water and/or electric power;
4. Real property owned by duly registered cooperatives as provided for in RA 6938; and,
5. Machinery and equipment used for pollution control and environmental protection.

### Q: Collection of real property tax

A:

1. **Accrual** – real property tax for any year shall accrue on the first day of January and from that date shall constitute as lien on the property which shall be superior to any other lien, mortgage, or encumbrance of any kind whatsoever, and shall be extinguished only upon the payment of the delinquent tax.
2. **Collecting authority** -- collection of real property tax and enforcement of the remedies shall be the responsibility of the city or municipal treasurer concerned.

The city or municipal treasurer may deputize the barangay treasurer to collect all taxes on real property located in the barangay provided:

- the barangay treasurer is properly bonded for the purpose
- the premium on the bond shall be paid by the city or municipal government concerned

3. **Duty of assessor to furnish local treasurer with assessment rolls** – the provincial, city or

municipal assessor shall prepare and submit to the treasurer of the local government unit, on or before the thirty-first (31st) day of December each year, an assessment roll containing a list of all persons whose real properties have been newly assessed or reassessed and the values of such properties

4. **Period to collect** – collection may be made within five (5) years from the date the taxes become due.

Except in case of fraud or intent to evade payment of the tax, action for collection of the same may be made within ten (10) years from the discovery of such fraud or intent to evade payment.

The period of prescription within which to collect shall be suspended for the time during which: (1) the local treasurer is legally prevented from collecting the tax; (2) the owner of the property or the person having legal interest therein requests for reinvestigation and executes a waiver in writing before the expiration of the period within which to collect; and, (3) the owner of the property or the person having legal interest therein is out of the country or otherwise cannot be located.

5. **Remedies of LGUs for collection of real property tax**

- Issuance of Notice of Delinquency
- Local Government's Lien
- Levy and resale of real property. Levy may be repeated if necessary until the full amount due, including all expenses, is collected

**Q:** Taxpayer's remedies to contest real property tax

**A:**

1. **Filing of protest with the local treasurer**

No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest". The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or

municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

The tax or a portion thereof paid under protest, shall be held in trust by the treasurer concerned.

In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant or applied as tax credit against his existing or future tax liability.

In the event that the protest is denied or upon the lapse of the sixty (60) day period prescribed in subparagraph, the taxpayer may avail of other remedies – appeal to the Local Board of Assessment Appeals (LBAA).

Payment under process is necessary – the protest may only be filed within thirty (30) days from the payment of the tax. Thereafter, the words "paid under protest" shall be annotated on the tax receipt.

Protest is not a requirement in order that a taxpayer, who paid under a mistaken belief that it is required by law, may claim for refund.

2. **Contesting an assessment of value of real property by an appeal to the LBAA**

Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the provincial or city LBAA by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

The Board shall decide the appeal within one hundred twenty (120) days from the date of receipt of such appeal. The Board, after hearing, shall render its decision based on substantial evidence or such relevant evidence on record as a reasonable mind might accept as adequate to support the conclusion.



The secretary of the Board shall furnish the owner of the property or the person having legal interest therein and the provincial or city assessor with a copy of the decision of the Board. In case the provincial or city assessor concurs in the revision or the assessment, it shall be his duty to notify the owner of the property or the person having legal interest therein of such fact using the form prescribed for the purpose.

### 3. Appeal to the Central Board of Assessment Appeals (CBAA)

The owner of the property or the person having legal interest therein or the assessor who is not satisfied with the decision of the Board, may, within thirty (30) days after receipt of the decision of said Board, appeal to the CBAA, as herein provided. The decision of the CBAA shall be final and executory.

### 4. Appeal to the CTA

Appeal to CTA En Banc must be made within thirty (30) days from receipt of decision of the CBAA through a special civil action for certiorari.

For acts of administrative agencies exercising quasi-judicial functions, courts have the underlying power to scrutinize questions of law and jurisdiction.

### 5. Appeal to the SC

Appeal to the SC shall be taken within fifteen (15) days from notice of the decision of the CTA En Banc through a petition for review.

**Q:** Process for repayment of excessive tax collection

**A:** When an assessment of real property tax is found to be illegal or erroneous and the tax is accordingly reduced or adjusted, the taxpayer may file a written claim for refund or credit for taxes and interests with the provincial or city treasurer within two (2) years from the date the taxpayer is entitled to such reduction or adjustment.

The provincial or city treasurer shall decide the claim for tax refund or credit within sixty (60) days from

receipt thereof. In case the claim for tax refund or credit is denied, the taxpayer may avail of the remedies as provided.

## JUDICIAL REMEDIES

### Court of Tax Appeals

**Q:** Jurisdiction of the Court of Tax Appeals<sup>27</sup>

**A:** Exclusive Appellate Jurisdiction over civil tax cases

Court	Instance/s	Nature of tax case
CTA En Banc	Decisions of the RTC in the exercise of their appellate jurisdiction	Local tax cases  Collection cases involving claims with a principal amount of <b>less than Php1 Million</b> for taxes and fees, exclusive of charges and other applicable penalties  Criminal offenses arising from violations of the NIRC or CMTA or any other laws administered by the BIR or the BOC where the principal amount of taxes and fees, exclusive of charges and other applicable penalties is <b>less than Php1 Million.</b>
	Decisions of the CTA division in the exercise of its original jurisdiction	Collection cases involving claims with a principal amount of <b>Php1 Million or more</b> for taxes and fees, exclusive of charges and other applicable penalties
	Decisions of the Central Board of Assessment Appeals in the exercise of its	Assessment and taxation of real property as decided by the Provincial or City Board of Assessment Appeals

<sup>27</sup> Source: Revised Rules of the Court of Tax Appeals

Court	Instance/s	Nature of tax case
	appellate jurisdiction	
CTA Division	Decisions of <b>or</b> Inaction by the Commissioner of Internal Revenue	Disputed assessments, refunds of internal revenue taxes and penalties in relation thereto.  Also includes other matters arising out of the NIRC and other laws administered by the BIR. These necessarily include RRs, RMOs and RMCs.
	Decisions of the Commissioner of Customs	In cases involving liability for customs duties, fees and other charges (seizures, detention) and penalties in relation thereto  Other matters arising out of the CMTA and other laws that are administered by the BOC
	Decisions of the Secretary of Finance	On customs cases elevated for automatic review when position of the COC is adverse to the Government
	Decisions of the Secretary of Trade and Industry	On cases involving non-agricultural products or articles
	Decisions of the Secretary of Agriculture	On cases involving agricultural products or articles
	Decision of the RTC in the exercise of original jurisdiction	On local tax cases

Jurisdiction over criminal tax cases

Court	Instance/s	Nature of tax case
CTA En Banc	Exclusive original jurisdiction	NONE

Court	Instance/s	Nature of tax case
CTA Division	Exclusive appellate jurisdiction	Decisions, resolutions or orders on motions for reconsideration or new trial of the CTA division in the exercise of its exclusive original and appellate jurisdiction  Decisions, resolutions or orders of the RTC in the exercise of their appellate jurisdiction
	Exclusive original jurisdiction	Criminal offenses for violations of the NIRC or CMTA and other laws as administered by the BIR or BOC where the principal amount of taxes and fees, exclusive of charges and penalties claimed is <b>PHP1 Million or more</b>
CTA Division	Exclusive appellate jurisdiction	Appeals from judgments, resolutions or orders of the RTC in the exercise of their original jurisdiction for violations of the NIRC or CMTA and other laws as administered by the BIR or BOC where the principal amount of taxes and fees, exclusive of charges and penalties claimed is <b>less than PHP1 Million</b> or when there is <b>no specific amount claimed</b>
		Criminal offenses over petitions for review of decisions by the RTC in the exercise of their appellate jurisdiction over tax cases originally decided by MTCs or MCTCs.
RTC	Exclusive original jurisdiction	Criminal offenses for violations of the NIRC or CMTA and other laws as administered by the BIR or BOC where the principal amount of taxes and fees, exclusive of charges and penalties claimed is <b>less than PHP1 Million</b> or when

Court	Instance/s	Nature of tax case
		there is <b><u>no specific amount claimed</u></b>

## Procedures

### Filing of Action for collection of taxes

**Q:** How does the Government enforce the collection of internal revenue taxes

**A:** By initiating either a civil action or a criminal action. For a civil action, suit for collection of a sum of money is filed with the proper court. For a criminal action, suit for collection can be made in cases of: (1) attempt to evade or defeat tax; (2) failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess taxes withheld on compensation.

For criminal tax cases, judgment not only imposes penalty but shall also order the payment of taxes subject of the criminal case as finally decided by the Commissioner of Internal Revenue<sup>28</sup>

**Q:** How does the Government enforce the collection of local taxes

**A:** By initiating a civil action with a court of competent jurisdiction

**Q:** Prescriptive period to enforce collection of local taxes

**A:** Collection shall prescribe within five (5) years from the date of assessment. Assessment of local tax shall prescribe within five (5) years from the taxes becoming due or ten (10) years from the date of discovery in case of fraud or intent to evade payment

**Q:** Grounds for the suspension of the running of the prescriptive period

**A:** (1) the local treasurer is legally prevented from the assessment or collection of tax; (2) taxpayer requests for reinvestigation and executes a waiver of the statute of limitations; and, (3) taxpayer is out of the country

**Q:** Remedies to enforce collection of delinquent taxes, fees, charges and other revenues

**A:** (1) Filing of appropriate court action (MTC, RTC, CTA); (2) Filing of action for declaratory relief; (3) Filing for injunction with the CTA

### Civil cases

**Q:** Who may appeal, mode of appeal and effect of appeal with the CTA division

**A:** A party adversely affected by a decision, ruling or the inaction of any of the following may file an appeal: (1) CIR on disputed assessments or claims for refund of internal revenue taxes; (2) COC; (3) Secretary of Finance; (4) Secretary of Trade and Industry; (5) Secretary of Agriculture; and, (6) RTC in the exercise of its original jurisdiction

Appeal may be made by filing a petition for review (Rule 42) within thirty (30) days after receipt of the decision/ruling or from expiration of the period fixed by law for the CIR to act on the disputed assessment. In the case of inaction, filing must be made within the two (2) year prescriptive period for payment or collection of taxes.

No appeal shall suspend the payment, levy, distraint, or sale of any property. However, motion to suspend collection of tax may be filed either together with the petition for review or in a separate motion.

**Q:** Is the remedy of injunction available to restrain collection.

**A:** No. Except in the following situations when: (1) collection of tax may prejudice the interest of the government or the taxpayer; (2) taxpayer is willing to deposit the amount claimed or to file a surety bond for no more than double the amount to be fixed by the court.

<sup>28</sup> Source: Section 205, of the NIRC, as amended



**Q:** Requisites for collection of tax

**A:** When collection may prejudice / jeopardize the interests of the government and the taxpayer or when taxpayer is willing to deposit the amount claimed or to file a surety bond for no more than double the amount to be fixed by the court – taxpayer’s motion for suspension must be verified and must state clearly and distinctly the facts and the grounds relied upon

When there is an appeal to the CTA division of a CIR decision – appeal must not be frivolous or dilatory

**Q:** Prescriptive period for appeal

**A:** Thirty (30) days. Non-extendible.

**Q:** Prescriptive period for appeal to the CTA En Banc of the decision of the CTA division

**A:** Fifteen (15) days from receipt of the CTA decision / ruling on the MR or MNT.

Appeal is to be made by filing a petition for review (Rule 43). in the case of an appeal of a CTA decision, it must be shown that the taxpayer sought prior reconsideration or new trial of the decision with the concerned CTA division.

**Q:** Prescriptive period for appeal to the CTA En Banc of the decision of the CBAA or RTC exercising its appellate jurisdiction

**A:** Thirty (30) days from receipt of the decision or ruling of the CBAA or RTC

**Q:** Prescriptive period for appeal to the SC

**A:** Fifteen (15) days from receipt of the decision or ruling of the CTA En Banc

Appeal is to be made by filing a petition for review on certiorari (Rule 45). If there is a pending motion for reconsideration or new trial, the period shall run from the receipt of the denial of the motion. However, appeal may be made pending the decision on the MR/MNT. Such appeal will effectively abandon the MR/MNT.

## Criminal cases

**Q:** Institution of criminal action

**A:** The criminal action and the corresponding civil action is deemed as jointly instituted. The filing of a criminal action will necessarily carry the filing of the civil action. The filing of a criminal action shall interrupt the running of the prescriptive period.

No right to reserve the filing of a separate civil action is allowed or recognized.

**Q:** Appeal and period to appeal

**A:** Office of the Solicitor General (OSG) shall represent the government in all criminal cases. Legal officers of the BIR or BOC may be deputized to appear on behalf of the OSG. Provided, however, that said legal officers shall remain under the direct control and supervision of the OSG at all times.

**Q:** Prescriptive period for appeal to the SC

**A:** Fifteen (15) days from receipt of the decision or ruling of the CTA En Banc

Appeal is to be made by filing a petition for review on certiorari (Rule 45). If there is a pending motion for reconsideration or new trial, the period shall run from the receipt of the denial of the motion. However, appeal may be made pending the decision on the MR/MNT. Such appeal will effectively abandon the MR/MNT.

## Run After Tax Evaders

**Q:** What are the conditions to qualify under the Run After Tax Evaders (RATE) Program

**A:** To qualify under the RATE Program, a case must conform to the following conditions:

- Cases representing violations under any of the following: Sec. 254 (Attempt to evade or defeat tax); or, Sec. 255 (Failure to file return, supply correct and accurate information, pay tax, withhold and remit tax and refund excess taxes withheld on compensation); or Sec. 257 (Making



false entries, records report or using falsified or fake accountable forms); or, Sec. 258 (Unlawful pursuit of business); or any including One-Time Transactions, etc.

- High-profile Taxpayers or taxpayers well-known within the community, industry or sector to which the taxpayers belong; and
- Estimated basic tax deficiency is at least One Million Pesos (P1,000,000.00) per year and tax type, but priority should be given to tax cases where the aggregate basic tax deficiencies for all tax types per year is Fifty Million Pesos (P50,000,000.00) or more.

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Atty. Benjamin B. Aban

### **Tax Principles and Remedies**

Justice Japar B. Dimaampao

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