

2010 – 2015
TAXATION BAR EXAM QUESTIONS
ON
VALUE-ADDED TAX

An importer of flowers from abroad in 2011: (2012 Bar Question)

a) Is liable for VAT, if it registers as a VAT person;

- b) Is exempt from VAT, because the goods are treated as agricultural products;
- c) Is exempt from VAT, provided that his total importation of flowers does not exceed P1.5 Million;
- d) Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million.

SUGGESTED ANSWER:

- d)** Is liable for VAT, despite the fact that it did not register as a VAT person and its total annual sales of flowers do not exceed P1.5 Million

Section 107, NIRC.

MBM Corporation is the owner-operator of movie houses in Cavite. During the year 2010, it received a total gross receipts of P20 Million from the operation of movies. It did not register as a VAT person. Which statement below is correct? (2012 Bar Question)

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

SUGGESTED ANSWER:

- a)** MBM Corporation is exempt from the 12% VAT, but liable for the 20% amusement tax on admissions under the Local Government Code

CIR v. SM Prime Holdings Inc., G.R. No. 183505, February 26, 2010.

The public market vendor below, who is not a VAT-registered person is liable to VAT in 2010, if: (2012 Bar Question)

- a) She sells raw chicken and meats and her gross sales during the year is P2 Million;
- b) She sells vegetables and fruits in her stall and her gross sales during the year is P1 Million;
- c) She sells canned goods, processed coconut oils, and cut flowers in her stall and her gross sales during the year is P2.5 Million;
- d) She sells live fish, shrimps, and crabs and her gross sales during the year is P5 Million.

SUGGESTED ANSWER:

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

Section 105 & 109, NIRC.

Under the VAT system, there is no cascading because the tax itself is not again being taxed. However, in determining the tax base on sale of taxable goods under the VAT system: (2012 Bar Question)

- a) The professional tax paid by the professional is included in gross receipts;
- b) The other percentage tax (e.g., gross receipts tax) paid by the taxpayer is included in gross selling price;
- c) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price;
- d) The documentary stamp tax paid by the taxpayer is included in the gross selling price or gross receipts.

SUGGESTED ANSWER:

- c) The excise tax paid by the taxpayer before withdrawal of the goods from the place of production or from customs custody is included in the gross selling price

Section 106, NIRC; RR No. 16-2005.

Which transaction below is subject to VAT? (2012 Bar Question)

- a) Sale of vegetables by a farmer in Baguio City to a vegetable dealer;
- b) Sale of vegetables by a vegetable dealer in Baguio City to another vegetable dealer in Quezon City;
- c) Sale of vegetables by the QC vegetable dealer to a restaurant in Manila;
- d) Sale of vegetables by the restaurant operator to its customers.

SUGGESTED ANSWER:

- d) Sale of vegetables by the restaurant operator to its customers

Section 109, NIRC.

[Note: This is not absolutely true because a restaurant may sell the vegetables in their original state which will be exempt from VAT under Section 109(A), irrespective of who is the seller.]

Masarap Kumain, Inc. (MKI) is a Value-Added Tax (VAT)-registered company which has been engaged in the catering business for the past 10 years. It has invested a substantial portion of its capital on flat wares, table linens, plates, chairs, catering equipment, and delivery vans. MKI sold its first delivery van, already 10 years old and idle, to Magpapala Gravel and Sand Corp. (MGSC), a corporation engaged in the business of buying and selling gravel and sand. The selling price of the delivery van was way below its acquisition cost. Is the sale of the delivery van by MKI to MGSC subject to VAT? (2014 Bar Question)

SUGGESTED ANSWER :

Yes. The sale of the delivery van by *MKI* to *MGSC* was incidental to its trade or business, and therefore subject to VAT. Pursuant to the case of Mindanao Geothermal Partnership II v. Commissioner of Internal Revenue (G.R. No. 193301, 194637, March 11, 2013), an isolated transaction may be considered a transaction incidental to the taxpayer's.

Which of the following transactions is subject to Value-Added Tax (VAT)? (2014 Bar Question)

- (A) Sale of shares of stock-listed and traded through the local stock exchange
- (B) Importation of personal and household effects belonging to residents of the Philippines returning from abroad subject to custom duties under the Tariff and Customs Code

- (C) Services rendered by individuals pursuant to an employer-employee relationship**
- (D) Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority**

SUGGESTED ANSWER :

B. Importation of personal and household effects belonging to residents of the Philippines returning from abroad, subject to custom duties under the Tariff and Customs Code

Which importation in 2011 is subject to VAT? (2012 Bar Question)

- a) Importation of fuels by a person engaged in international shipping worth P20 Million;
- b) Importation of raw, unprocessed, refrigerated Kobe beef from Japan by a beef dealer for sale to hotels in Makati City with a fair market value of P10 Million;
- c) Importation of wines by a wine dealer with a fair market value of P2 million for sale to hotels in Makati City;
- d) Importation of books worth P5 Million and school supplies worth P1.2 million.

SUGGESTED ANSWER:

c) Importation of wines by a wine dealer with a fair market value of P2 million for sale to hotels in Makati City

Sections 107 & 109, NIRC.

[Note: d) may also be a correct choice because only importation of books is exempt from VAT. The importation of school supplies is not exempt.]

A VAT-registered contractor performed services for his customer in 2010 and billed him P11.2 Million, broken down as follows: P10 Million – cost of services, plus P1.2 Million, 12% VAT. Of the contract price of P10 Million, only P8 Million plus VAT thereon was received from the customer in 2010, and the balance of P4 Million plus VAT was received by the contractor in 2011. How much is the taxable gross receipts of the contractor for 2010, for VAT purposes? (2012 Bar Question)

- a) P10 Million, the total cost of services performed in 2010;
- b) P8 Million, the amount received from the customer in 2010;
- c) P8 Million plus VAT received from the customer in 2010;
- d) P11.2 Million, the total cost of services performed plus 12% VAT.

SUGGESTED ANSWER:

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

Section 108, NIRC.

A hotel operator that is a VAT-registered person and who leases luxury vehicles to its hotel customers is: (2012 Bar Question)

- a) Subject to the 3% common carriers tax and 12% VAT;
- b) Subject to the 3% common carriers tax only;

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

SUGGESTED ANSWER:

- c) Subject to the 12% VAT only

Section 108, NIRC.

A pawnshop shall now be treated, for business tax purposes: (2012 Bar Question)

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

SUGGESTED ANSWER:

- b) Not as a lending investor, but liable to the 5% gross receipts tax imposed on a non-bank financial intermediary under Title VI (Other Percentage Taxes)

RR No. 10-2004; H. Tambunting Inc. v. CIR, G.R. No. 172394, October 13, 2010.

The Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular (RMC) No. 65-2012 imposing Value-Added Tax (VAT) on association dues and membership fees collected by condominium corporations from its member condominium-unit owners. The RMC's validity is challenged before the Supreme Court (SC) by the condominium corporations.

The Solicitor General, counsel for BIR, claims that association dues, membership fees, and other assessment/charges collected by a condominium corporation are subject to VAT since they constitute income payments or compensation for the beneficial services it provides to its members and tenants.

On the other hand, the lawyer of the condominium corporations argues that such dues and fees are merely held in trust by the condominium corporations exclusively for their members and used solely for administrative expenses in implementing the condominium corporations' purposes. Accordingly, the condominium corporations do not actually render services for a fee subject to VAT.

Whose argument is correct? Decide. (2014 Bar Question)

SUGGESTED ANSWER :

The argument of the condominium corporation is correct. The association dues should not be subject to VAT because the condominium corporation does not realize any gain or profit. They merely hold the fees in trust for administrative expenses. This, it does not form part of the gross income of the

corporation, and consequently, is not subject to VAT. (RTC Resolution SCA No.12-1236 on RMC 65-2012, Petition for Declaratory Relief).

Are the following transactions subject to VAT? If yes, what is the applicable rate for each transaction. State the relevant authority/ies for your answer.

- a. **Construction by XYZ Construction Co. of concrete barriers for the Asian Development Bank in Ortigas Center to prevent car bombs from ramming the ADB gates along ADB Avenue in Mandaluyong City.**
- b. **Call Center operated by a domestic enterprise in Makati that handles exclusively the reservations of a hotel chain which are all located in North America. The services are paid for in US\$ and duly accounted for with the *Bangko Sentral ng Pilipinas*.**
- c. **Sale of orchids by a flower shop which raises its flowers in Tagaytay. (2010 Bar Question)**

SUGGESTED ANSWER:

- a. The transaction is subject to VAT at the rate of zero-percent (0%). ADB is exempt from direct and indirect taxes by virtue of a special law, thereby making the sale of services to it by a VAT-registered construction company, effectively zero-rated.
- b. The sale of services is subject to VAT at zero percent (0%). This rate includes services rendered to a person engaged in business outside the Philippines and the consideration is paid in acceptable foreign currency duly accounted for by the BSP.
- c. The sale of orchids is subject to VAT at 12%. This is a sale of agricultural non-food product in its original state which is no longer one of the exempt transactions.

Except for one transaction, the rest are exempt from value added tax. Which one is VAT taxable? (2012 Bar Question)

- a) Sales of chicken by a restaurant owner who did not register as a VAT person and whose gross annual sales is P1.2 Million;
- b) Sales of copra by a copra dealer to a coconut oil manufacturer who did not register as a VAT person and whose gross annual sales is P5 Million;
- c) Gross receipts of CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession;
- d) Sales of a book store during the year amounted to P10 Million; it did not register as a VAT person with the BIR.

SUGGESTED ANSWER:

- c) Gross receipts of CPA during the year amounted to P1 Million; the CPA registered as a VAT person in January 2011, before practicing his profession

Section 108, NIRC.

A lessor or real property is exempt from value added tax in one of the transactions below. Which one is it? (2012 Bar Question)

- a) Lessor leases commercial stalls located in the Greenhills Commercial Center to VAT-registered sellers of cell phones; lessor's gross rental during the year amounted to P12 Million;
- b) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million;
- c) Lessor leases commercial stalls at P10,000.00 per stall per month and residential units at P15,000.00 per unit per month; his gross rental income during the year amounted to P3 Million;
- d) Lessor leases two (2) residential houses and lots at P50,000.00 per month per unit, but he registered as a VAT person.

SUGGESTED ANSWER:

- b) Lessor leases residential apartment units to individual tenants for P10,000.00 per month per unit; his gross rental income during the year amounted to P2 Million**

Section 109(Q), NIRC.

IBP Bank extended loans to debtors during the year, with real properties of the debtors being used as collateral to secure the loans. When the debtors failed to pay the unpaid principal and interests after several demand letters, the bank foreclosed the same and entered into contracts of lease with tenants. The bank is subject to the tax as follows: (2012 Bar Question)

- a) 12% VAT on the rental income, but exempt from the 7% gross receipts tax;
- b) 7% gross receipts tax on the rental income, but exempt from VAT;
- c) Liable to both the 12% VAT and 7% gross receipts tax;
- d) Exempt from both the 12% VAT and 7% gross receipts tax.

SUGGESTED ANSWER:

- b) 7% gross receipts tax on the rental income, but exempt from VAT**

Section 121, NIRC.

Which statement is correct? A bar review center owned and operated by lawyers is: (2012 Bar Question)

- a) Exempt from VAT, regardless of its gross receipts during the year because it is an educational center;
- b) Exempt from VAT, provided that its annual gross receipts do not exceed P1.5 Million in 2011;
- c) Subject to VAT, regardless of its gross receipts during the year;
- d) Subject to VAT, if it is duly accredited by TESDA.

SUGGESTED ANSWER:

- b) Exempt from VAT, provided that its annual gross receipts do not exceed P1.5 Million in 2011**

Section 109(V), NIRC.

Claim for tax credit or refund of excess input tax is available only to: (2012 Bar Question)

- a) A VAT-registered person whose sales are made to embassies of foreign governments and United Nations agencies located in the Philippines without the BIR approval of the application for zero-rating;
- b) Any person who has excess input tax arising from local purchases of taxable goods and services;
- c) A VAT-registered person whose sales are made to clients in the Philippines;
- d) A VAT-registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts.

SUGGESTED ANSWER:

d) A VAT-registered person whose sales are made to customers outside the Philippines and who issued VAT invoices or receipts with the words "ZERO RATED SALES" imprinted on the sales invoices or receipts.

KepecoPhils. Corp. v. CIR, G.R. No. 179961, January 31, 2011.

Input tax is available to a VAT-registered buyer, provided that: (2012 Bar Question)

- a) The seller is a VAT-registered person;
 - b) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component;
 - c) The goods or service is subject to or exempt from VAT, but the sale is covered by a VAT invoice or receipt issued by VAT-registered person;
 - d) The name and TIN of the buyer is not stated or shown in the VAT invoice or receipt
- Which statement shown above is NOT correct?

SUGGESTED ANSWER:

b) The seller issues a VAT invoice or official receipt, which separately indicates the VAT component

Section 113(B), NIRC.

For 2012, input tax is not available as a credit against the output tax of the buyer of taxable goods or services during the quarter, if:

- a) The VAT invoice or receipt of the seller is registered with the BIR;
- b) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein;
- c) The VAT invoice or receipt is issued in the name of the VAT-registered buyer and his TIN is shown in said invoice or receipt;
- d) The VAT invoice or receipt issued by the seller shows the Taxpayer Identification Number plus the word "VAT" or "VAT registered person".

SUGGESTED ANSWER:

b) The VAT invoice or receipt of the seller does not separately indicate the gross selling price or gross receipts and the VAT component therein

Section 113, NIRC.

Gangwam Corporation (GC) filed its quarterly tax returns for the calendar year 2012 as follows:

First quarter - April 25, 2012

Second quarter - July 23, 2012

Third quarter - October 25, 2012

Fourth quarter - January 27, 2013

On December 22, 2013, GC filed with the Bureau of Internal Revenue (BIR) an administrative claim for refund of its unutilized input Value-Added Tax (VAT) for the calendar year 2012. After several months of inaction by the BIR on its claim for refund, GC decided to elevate its claim directly to the Court of Tax Appeals (CTA) on April 22, 2014.

In due time, the CTA denied the tax refund relative to the input VAT of GC for the first quarter of 2012, reasoning that the claim was filed beyond the two-year period prescribed under Section 112(A) of the National Internal Revenue Code (NIRC).

(A) Is the CTA correct?

(B) Assuming that GC filed its claim before the CTA on February 22, 2014, would your answer be the same? (2014 Bar Question)

SUGGESTED ANSWER :

(A) No. The CTA is not correct. The two-year period to file a claim for refund refers to the administrative claim and does not refer to the period within which to elevate the claim to the CTA. The filing of the administrative claim for refund was timely done because it is made within two years from the end of the quarter when the zero-rated transaction took place (*Section 112 (A), NIRC*). When GC decided to elevate its claim to the CTA on April 22, 2014, it was after the lapse of 120 days from the filing of the claim for refund with the BIR, hence, the appeal is seasonably filed. The rule on VAT refunds is two years to file the claim with the BIR, plus 120 for the Commissioner to act and inaction after 120 days is a deemed adverse decision on the claim, appealable to the CTA within thirty (30) days from the lapse of the 120-day period. (*CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010*).

(B) Yes. The two-year prescriptive period to file a claim for refund refers to the administrative claim with the BIR and not the period to elevate the claim to the CTA. Hence, the CTA cannot deny the refund for reasons that the first quarter claim was filed beyond the two-year period prescribed by law. However, when the claim is made before the CTA on February 24, there is definitely no appealable decision as yet because the 120-day period for the Commissioner to act on the claim for refund has not yet lapsed. Hence, the act of the taxpayer in elevation the claim to the CTA is premature and the CTA has no jurisdiction to rule thereon. (*CIR v. Aichi Forging Company of Asia, Inc., G.R. No. 184823, October 6, 2010*).

For calendar year 2011, FFF, Inc., a VAT-registered corporation, reported unutilized excess input VAT in the amount of P1,000,000.00 attributable to its zero-rated sales. Hoping to impress his boss, Mr. G, the accountant of FFF, Inc., filed with the Bureau of Internal Revenue (BIR) on January 31, 2013 a claim for tax refund/credit of the P1,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011. Not having received any communication from the BIR, Mr. G filed a Petition for Review with

the CTA on March 15, 2013, praying for the tax refund/credit of the P1,000,000.00 unutilized excess input VAT of FFF, Inc. for 2011.

a) Did the CTA acquire jurisdiction over the Petition of FFF, Inc.?

b) Discuss the proper procedure and applicable time periods for administrative and judicial claims for refund/credit of unutilized excess input VAT. (2015 Bar Question)

SUGGESTED ANSWER:

a. The CTA has not acquired jurisdiction over the Petition of FFF, Inc. because the juridical claim has been prematurely filed on March 15, 2013. The Supreme Court ruled that the 30-day period after the expiration of the 120-day period fixed by law for the Commissioner of Internal Revenue to act on the claim for refund is jurisdictional and failure to comply would bar the appeal and deprive the CTA of its jurisdiction to entertain the appeal.

In this case, Mr. G filed the administrative claim on January 31, 2013. The petition for review should have been should have been filed on June 30, 2013. Filing the judicial claim on March 15, 2013 is premature, thus the CTA did not acquire jurisdiction.

b. The administrative claim must be filed with the Commissioner of Internal Revenue (CIR) within the two-year prescriptive period. The proper reckoning period date for the two-year prescriptive period is the close of the taxable quarter when the relevant sales were made. However, as an exception, are claims applied only from June 8, 2007 to September 12, 2008, wherein the two-year prescriptive period for filing a claim for tax refund or credit of unutilized input VAT payments should be counted from the date of filing of the VAT return and payment of the tax.

The taxpayer can file a judicial claim in one of two ways: (1) file the judicial claim within thirty days after the Commissioner of Internal Revenue denies the claim within the 120-day period, or (2) file the judicial claim within 30 days from the expiration of the 120-day period if the Commissioner does not act within the 120-day period.

As a general rule, the 30-day period to appeal is both mandatory and jurisdictional. As an exception, premature filing is allowed only if filed between December 10, 2003 and October 5, 2010, when the BIR Ruling No. DA-489-03 was still in force.

Which statement is FALSE under the VAT law? (2012 Bar Question)

- a) A VAT-registered person will be subject to VAT for his taxable transactions, regardless of his gross sales or receipts;
- b) A person engaged in trade or business selling taxable goods or services must register as a VAT person, when his gross sales or receipts for the year 2011 exceed P1.5 Million;
- c) A person who issued a VAT-registered invoice or receipt for a VAT-exempt transaction is liable to the 12% VAT as a penalty for the wrong issuance thereof;
- d) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received.

SUGGESTED ANSWER:

d) Once a doctor of medicine exercises his profession during the year, he needs to register as a VAT person and to issue VAT receipts for professional fees received

Section 236(G)(1)(b), NIRC.

KaPedringMatibag, a sole proprietor, buys and sells "kumot at kulambo" both of which are subject to value-added tax. Since he is using the calendar year as his taxable year, his taxable quarters end on the last day of March, June, September, and December. When should KaPedring file the VAT quarterly return for his gross sales or receipts for the period of June 1 to September 30? (2011 Bar Question)

- (A) Within 25 days from September 30
- (B) Within 45 days from September 30
- (C) Within 15 days from September 30
- (D) Within 30 days from September 30

SUGGESTED ANSWER:

- (A) Within 25 days from September 30