COMMENT

“We have chosen the cooperative approach that begins and ends with us, the people. One where we are both the owners and customers of development. One that derives its strength from the pooling of our human and financial resources to solve our problems. One that enables people to work with people as the price for the space we occupy in this world.”

GUILLERMO P. CUA
MASS-SPECC
Cagayan De Oro

It has always been and will continue to be the mandate of the Cooperative Development Authority to adhere to the declared policy of the State to foster the creation and growth of the cooperatives as a practical vehicle for promoting self-reliance and harnessing people power towards the attainment of economic development and social justice. As of December 2016 data of the Authority, there are already 25,997 cooperatives registered with the different CDA Extension Offices all over the country.

The Cooperative Development Authority (CDA) wishes to express its gratitude for allowing us to COMMENT to the House Bill 4774 on the Proposed Measure on Lowering the Personal Income Tax and Consumption Tax with Offsetting Measures.

As a backgrounder, the 1987 Philippine Constitution recognizes the important role of cooperatives in the development of the nation. The significant provisions are to wit:

Sec. 1, par. 3, 2nd sentence of Article XII which provides:

“Private enterprises including corporation, cooperatives and similar collective organizations shall be encouraged to broaden their base of membership.” (Underscoring supplied)

Sec. 6, 2nd sentence of the same article which further states that:

“Individuals and private groups including corporations, cooperatives and similar collective organizations shall have the right to own establish, and operate economic enterprises subject to the duty of the state to promote distributive justice and to intervene when the common good so demands.”

Sec. 15 of the same article which states that:
“The Congress shall create an agency to promote the viability and growth of cooperatives as instruments for social justice and economic development.

While Section 5 of Article XIII which holds that:

“The state shall recognize the right of farmers, farm workers, and land owners, as well as cooperatives, and other independent farmer’s organization to participate in the planning, organization and management of the program, and shall provide support to agriculture through appropriate technology and research, and adequate financial, production, marketing and other support services.”

Pursuant to these Constitutional mandate, Republic Act No. 6938 otherwise known as the “Cooperative Code of the Philippines” was enacted and approved on March 10, 1990 and was further amended by RA 9520, otherwise known as the “Philippine Code of 2008 on February 17, 2009.

To implement the provisions of the Code and to see to it that the cooperatives be properly organized and managed by the members and assisted by the government, the COOPERATIVE DEVELOPMENT AUTHORITY was likewise created and approved on the same day under Republic Act No. 6939. The agency as the lead government agency on cooperative is charged to promote the viability and growth of cooperatives as instruments of equity, social justice and economic development, defining its powers, functions and responsibilities, rationalizing government policies and agencies with cooperative functions, supporting cooperative development, transferring the registration and regulations functions of existing government agencies on cooperatives as such and consolidating the same with the agency, appropriating funds therefore and for other purposes.

Cooperative is a self-help organization. Through which, the people are doing what the Government shall be doing for them. This is the reason why Tax exemptions are granted to cooperatives.

In determining if a cooperative is exempted or not, the following provisions of RA No. 9520 or Philippine Cooperative Code of 2008 shall be controlling:

“ART.61. Tax and Other Exemptions. Cooperatives transacting business with both members and non-members shall not be subjected to tax on their transactions with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including not limited to final taxes on members’ deposits and documentary tax. Notwithstanding the provisions of any law or regulation
to the contrary, such cooperatives dealing with non-members shall enjoy the following tax exemptions:

"(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally a certified by the department of trade and industry (DTI). All tax free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferor or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.

"(2) Cooperatives with accumulated reserves and undivided net savings of more than Ten million pesos (P10,000,000.00) shall pay the following taxes at the full rate:

"xx.

"(b) Value-Added Tax On transactions with non-members: Provided, however, That cooperatives duly registered with the Authority; are exempt from the payment of value-added tax; subject to Sec. 109, sub-sections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: Provided, That the exempt transaction under Sec. 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process products for sale by the cooperative to its members and non-members: Provided, further, That any processed product or its derivative arising from the raw materials produced by its members, sold in then name and for the account of the cooperative: Provided, finally, That at least twenty-five per centum (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds.(Emphasis Supplied);

xxx.”
Cooperatives duly registered with the Authority is exempt from VAT on the following transactions with members and non-members irrespective whether the cooperative’s accumulated reserves and undivided net savings exceeds 10 million pesos (P10,000,000.00), to wit:

1. 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;

2. Gross receipts from lending activities by credit or multi-purpose cooperatives duly registered with the Cooperative Development Authority;

3. Sales by non-agricultural, non-electric and non-credit cooperatives duly registered with the Cooperative Development Authority: Provided, That the share capital 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;

The accumulated reserves and undivided net surplus can be found in the Statement of Operation.

The law says: “Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (P10,000,000.00) shall be exempt.xxx.” The basis then of the P10,000,000.00 threshold is the accumulated reserves and undivided net savings. The tax base for all cooperatives liable to income tax shall be the net surplus arising from the business transactions with non-members after deducting the amounts for the statutory reserve funds as provided for in the Cooperative Code and other laws.¹

Clearly, for taxation purposes or for the tax exemption to apply, distinction is to be made as with whom the cooperative transacts business whether member or non-member. RA 9520, Article 61 on Tax and other exemptions is explicit on the enjoyment of tax exemptions for cooperatives dealing with non-members, when such cooperative is with accumulated reserves and undivided net savings of not more than 10 million pesos (P10,000,000.00).

In actuality, the intention is not to free cooperatives forever from paying their just share of taxes due the government. However, to totally abdicate this not so absolute tax exemption of cooperatives, will defeat the very intent of no less than the 1987 Philippine Constitution. Cooperatives should be treated as a distinct enterprise. The basic reason is that cooperatives are voluntary organizations of people who want to improve their economic lives by their own

¹ Section 8, b.2.1.1, DOF Joint Rules and Regulations Implementing Articles 60, 61 and 144 of RA No. 9520 in Relation to RA No. 8424 or the National Internal Revenue Code, as Amended.
initiatives and using their own resources. Cooperatives are considered, among other things, as instruments of equity, social justice and economic development.\(^2\) They are associations organized for the economic and social betterment of their members, operating business enterprises based on mutual aid, and founded upon internationally accepted principles and practices. Cooperatives are tools of empowerment of the people, specially when both the social and economic ends are achieved. \(^3\)

The argument that exempting Cooperatives from VAT because cooperatives will be selling their goods with higher prices to recover the Input Tax that they paid when they bought their supplies from a VAT-registered entity is not correct. There would be no effect for whatever are the benefits of the cooperative, it must be divided among the members who are also the buyers themselves in accordance to their patronage.

While there is no direct payment of taxes, in actuality, cooperatives contribute to the very essence of taxation as the lifeblood of the nation. RA 9520 in the distribution of net surplus mandates that an amount for the community development fund, which shall not be less than 3% of the net surplus. The community development fund shall be used for projects or activities that will benefit the community where the cooperatives operates. This has the effect of giving back to the community whatever privileges are granted to a cooperative, one of which is its exemption from tax. Community development involves increasing the number or quality of jobs so that individual and aggregate income expands, with this, cooperatives have the potential to foster economic growth.

The cooperative’s privilege or tax exemption is a social justice measure. As a social justice measure, it is meant, to borrow the words of Justice Laurel, “for the equalization of social and economic forces.”

We invoke jurisprudence in Dumaguete Cathedral Credit Cooperative vs. Commissioner, Bureau of Internal Revenue that:

“In closing, cooperatives, including their members, deserve a preferential tax treatment because of the vital role they play in the attainment of economic development and social justice. Thus, although taxes are the lifeblood of the government, the States power to tax must give way to foster the creation and growth of cooperatives. To borrow the words of Justice Isagani A. Cruz. The power of taxation, while indispensable, is not absolute and may be subordinated to the demands of social justice.”

No less than our Constitution guarantees the protection of cooperatives. Section 15, Article XII of the Constitution considers cooperatives as instruments for social justice and economic development. At the same time, Section 10 of Article II of the Constitution declares that it is a policy of the State to promote social justice in all phases of national development. In relation thereto, Section 2 of Article XIII of the Constitution states that the promotion of

\(^2\)CDA Charter
\(^3\)Aqulino Q. Pimentel, Jr., and Mordino R. Cua
social justice shall include the commitment to create economic opportunities based on freedom of initiative and self-reliance.⁴

Policy makers should increasingly be interested in alternative form of business that will both be responsive to community needs and economic growth. The cooperative form of business is the obvious choice.

We hope that in the drafting of the proposed legislation, the foregoing premises be taken into consideration.

USEC. ORLANDO R. RAVANERA
Chairman, CDA

⁴DUMAGUETE CATHEDRAL CREDIT COOPERATIVE [DCCCO], vs. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 182722