March 2, 2018

BIR RULING NO. 300-18

Republic Act (RA) No. 9520

Sto. Domingo Development Cooperative
#49 Maharlika Highway, Poblacion,
Sto. Domingo, Ilocos Sur

Attention: *AAA*

Gentlemen :

This refers to your letter dated November 29, 2017 which was forwarded by Honorable Anthony M. Bravo, Ph.D., Deputy Minority Leader, Representative, Coop-NATCCO Partylist, thru a letter dated December 05, 2017, requesting for clarification on behalf of **Sto. Domingo Development Cooperative ("SDDC" for brevity)** relative to the opinion of then Regional Director Teresita M. Dizon of Revenue Region No. 1, Calasiao, Pangasinan, that SDDC cannot invoke its value added tax (VAT) exemption privilege to avoid the passing or the shifting of VAT to it by Pepsi-Cola Products Philippines, Inc. ("PCPPI" for brevity) since the seller PCPPI is the one primarily liable for the VAT and not SDDC.

Documents submitted disclosed that SDDC, with Taxpayers Identification Number (TIN) 000-000-000-000, is a cooperative registered with the Cooperative Development Authority (CDA) under Certificate of Registration No. 9520-01005843 dated January 08, 2010; that it is transacting business with members only; that it was issued Certificate of Tax Exemption No. COOP-045-15-RR-01-RDO-002 dated May 27, 2015 by then Regional Director of Revenue Region No. 1, Calasiao, Pangasinan, Atty. Arnel SD. Guballa, pursuant to Article 60 of Republic Act (RA) No. 9520; and that SDDC maintains that its tax exemption coverage applies to all merchandise flow from purchases to direct selling to its outlet members respectively.

In reply, please be informed that Article 60 of RA No. 9520, otherwise known as the *"Philippine Cooperative Code of 2008"* provides that:

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"ART. 60. Tax Treatment of Cooperative. — Duly registered cooperatives under this Code which do not transact any business with non-members or the general public shall not be subject to any taxes and fees imposed under the internal revenue laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section."

In relation thereto, Section 7 of the Joint Rules and Regulations Implementing Articles 60, 61, and 144 of Republic Act 9520, Otherwise Known as the Philippine Cooperative Code of 2008 in relation to RA No. 8424 or the National Internal Revenue Code, as Amended, states that:

"Section 7. Tax exemptions of duly registered cooperatives which transact business with members only. — Duly registered cooperatives dealing/transacting business with members only shall be exempt from paying any taxes and fees, including but not limited to:

a) Income Tax imposed by Title II of the NIRC, as amended;

b) Value-Added Tax (VAT) imposed under Title IV of the NIRC, as amended;

c) Percentage Tax imposed under Title V of the NIRC, as amended;

d) Donor's Tax imposed under Title III of the NIRC, as amended, on donations to duly accredited charitable research and educational institutions and reinvestment to socio-economic projects within the area of operation of the cooperatives;

e) Excise Tax under Title VI of the NIRC, as amended, for which it is directly liable;

f) Documentary Stamp Tax imposed under Title VII of the NIRC, as amended, provided, however, that the other party to the taxable document/transaction who is not exempt shall be the one directly liable for the tax;

g) Annual Registration Fee of P500.00 under Section 236 (B) of the NIRC, as amended;

h) All taxes on transactions with insurance companies and banks, including but not limited to 20% final tax on interest deposits and 7.5% [1] *final income tax on interest income derived from a depository bank under the expanded foreign currency deposit system; and*

i) Electric cooperatives duly registered with the Authority shall be exempt from VAT on revenues on systems loss and VAT on revenues on distribution, supply, metering and lifeline subsidy of electricity to their members."

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Applying the above quoted provisions, SDDC shall only be exempt from all national internal revenue taxes for which it is directly liable as enumerated in Section 7 of the said Joint Rules and Regulations. It does not include indirect taxes which may be passed on to it by its suppliers.

It should be noted that VAT is an indirect tax payable by the seller and not by the purchaser of goods. Being an indirect tax, it can be shifted or passed on to the buyer/purchaser, transferee or lessee of the goods, properties or services. Once shifted to the buyer/customer as an addition to the cost of goods or services sold, it is no longer a tax but an additional cost which the buyer/customer has to pay in order to obtain the goods or services. Thus, the shifting of the VAT to SDDC does not make it directly liable and therefore, it cannot invoke its tax exemption privilege under Article 60 of RA No. 9520 to avoid the passing on or shifting of the VAT.

Moreover, Section 10 (c) of the same Joint Rules and Regulations states that all cooperatives, regardless of classification shall be subject to VAT billed on purchases of goods and services. Section 10 (c) of the said Joint Rules and Regulations provides, *viz.*:

> *"Section 10. TAXABILITY OF COOPERATIVES TO OTHER INTERNAL REVENUE TAXES. — All cooperatives, regardless of classification shall be subject to:*
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> xxx xxx xxx
>
> *c.) VAT billed on purchases of goods and services, except the VAT on the importation by agricultural cooperatives 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, pursuant to Section 109 (L) of the NIRC, as amended. All tax free importations shall not be transferred to any person until five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the tax and/or the duties thereon;*
>
> xxx xxx xxx"

In view of the foregoing, the purchase of goods, properties, or services of SDDC shall be subject to the 12% VAT pursuant to Sections 106 and 107 of the National Internal Revenue Code of 1997, as amended.

Please be guided accordingly.

Very truly yours,

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(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Republic Act (RA) No. 10963 increased the tax rate from 7.5% to 15% effective January 01, 2018.

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