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Proposed Philippine Federal Constitution: Innovations in taxation

The advent of Charter change is at hand. Several attempts to amend or revise the 1987 Philippine Constitution have been made during the past administrations. But none of them were as close to amending the Constitution as the present one. President Duterte's political will to shift our form of government to federalism is the strongest it has ever been. And as the third regular session of the 17th Congress of the Philippines recently opened, the probability of modifying the Constitution is at its peak. Thus, a preview of the following innovative provisions in the proposed draft of the Federal Constitution (hereinafter referred as the "draft") about taxation shall provide a better understanding of what's to come.

First, concerning a general provision on taxation, the draft mandates that taxation shall be progressive, in contrast to our present Constitution, which provides that Congress "shall evolve a progressive system of taxation." Second, with regard to the number of votes necessary to enact laws granting tax exemption, the draft proposes to raise the minimum requirement of votes to "at least two-thirds of all the members of each House of Congress, voting separately" from "a majority of all the members of Congress."

Third, the draft proposes to introduce the concepts of exclusive powers, shared powers and reserved powers. Exclusive powers pertain to those powers that are restricted or limited to the Federal Government or the Federated Region. Under the draft, exclusive powers include the Federal Government's exclusive power over customs and tariffs, and the Federated Region's exclusive power over creation of sources of revenues. Shared powers, on the other hand, are those not exclusively given to either the Federal Government or to the Federated Regions, and which can be exercised jointly or separately. And in case of dispute or conflict in their exercise, the federal power shall prevail. As for the reserved powers, these are the powers not exclusively given to either the Federal Government or to the Federated Region nor shared by them and not prohibited by the Constitution. The reserved powers shall be vested in the Federal Government.

Fourth, with reference to the Judiciary, the Federal Supreme Court shall have jurisdiction over the review, revision, modification, or affirmation on appeal or certiorari, as the law or the Rules of Court may provide, of cases involving, among others: the jurisdiction of any lower court, the legality of any tax impost, assessment, or toll, or any penalty imposed in relation thereto; or error or question of law. Moreover, the Federated Regions shall have a regional Judiciary, which shall be composed of the Regional Supreme Court, Regional Appellate Court, regional trial courts and such lower courts and special courts, in component provinces, cities and municipalities. Their jurisdictions shall be defined by their respective Regional Assemblies in accordance with the Federal Constitution.

Fifth, in respect of election contributions, the draft provides that any citizen who contributes at P10,000 but not exceeding P100,000 to any registered political party or presidential candidate through the Democracy Fund shall be allowed a full credit against income taxable year coinciding with the elections in which such political party or presidential candidate participated; provided, that such amounts shall be subject to proper adjustment under the rules promulgated by the Federal Commission on Elections. Furthermore, any corporation, partnership, or association which contributes at least one P100,000 but not exceeding P3 million to any registered political party or presidential candidate through the Democracy Fund shall be allowed a full credit against income tax due for the taxable year coinciding with the elections in which such political party participated; provided, that such amounts shall be subject to proper adjustment under the rules promulgated by the Federal Commission on Elections.

Sixth, with regard to the civil right to data privacy as applied to taxpayers, the draft provides that the data obtained about a person shall be used and processed only for purposes authorized by law. A person has the right to inquire from any government office or agency the information or data that has been obtained, stored, or processed about himself, and to demand, that such data and information be corrected or deleted, or in case of a private entity or person, that their use be enjoined.

Last, as regards unreasonable searches and seizure as applied to tax-related criminal cases, the draft provides that the prohibition against unreasonable searches and seizure shall extend to the conduct of unlawful and unreasonable surveillance through technological, electronic, or any other means.

Accordingly, while the basis of the aforesaid provisions will, most likely, undergo several revisions, as it is an early version of the Federal Constitution, it is best to see its silhouette. As the country ushers in the process of Charter change, it is the duty of the citizenry to scrutinize every legal provision with an attitude of being receptive to innovative ideas. The populace must encourage interaction, conflict, argument and debate, as these are ingredients for great ideas and genuine innovation. The general public must not be afraid of change. For without change, no innovation or progress can be made.

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