

**[BIR REVENUE REGULATIONS NO. 12-2010,
October 18, 2010]**

**REGULATIONS PROVIDING FOR THE POLICIES, GUIDELINES
AND PROCEDURES IN THE IMPLEMENTATION OF THE TAX
SUBSIDY TO BE GRANTED BY THE FISCAL INCENTIVES REVIEW
BOARD TO THE MILLENNIUM CHALLENGE ACCOUNT- PHILIPPINES
FOR THE PHILIPPINE COMPACT PROGRAM**

SECTION 1. Background (a) In March 2008, MCC Determined that the Philippines was eligible to receive a large-scale grant from MCC for a five-year program to be implemented by the Philippines under the Compact with the goal of reducing poverty through economic growth and with the objectives of (i) increasing the incomes of Filipinos through the benefits of community-driven sub-projects; (ii) obtain time savings and lower transportation costs for road users; and (iii) increase investment and government expenditure due to an increase in tax revenue and a reduction in corruption (the "Program")

b. Executive Order No. 849 dated December 15, 2009 ("EO 849") authorized the organization of MCA-Philippines as a subsidiary of DBP Management Corporation, which will function as the accountable entity or central point of contact of the Program. Section 17 of EO 849 provides that the Philippine Government, through the FIRB, will assume all taxes, duties and other fiscal levies which may be imposed in the Philippines on MCA-Philippines, other parties involved in the development and implementation of the Compact, and transactions related to the development and implementation of the Compact.

c. Section 2.8 of the proposed Compact provides: *"The Government will ensure that no MCC Funding will be used for the payment of any existing or future taxes, customs duties, social security and other employment-related contributions, or other similar charges of the Government or any other governmental entity (national or sub-national, including of provinces, cities, municipalities, barangays, and other local government entities) in the Philippines..."*

SECTION 2. Scope - As mandated by Section 17 of EO 849, these Regulations are hereby issued to provide the policies, guidelines and procedures for (1) the use of the tax subsidy to be granted by the FIRB in favor of MCA-Philippines (the "Tax Subsidy") to cover the payment of Philippine internal revenue taxes, such as VAT, income tax, percentage tax and excise tax, that may be imposed on or in respect of:

- i. MCA-Philippines;
- ii. the Program;
- iii. MCC Funding;
- iv. interest or earnings on MCC Funding;
- v. any Project or activity implemented under or in connection with the Program; goods and other property, works, services, technology, and other assets and activities under or in connection with the Compact, the

Program or any Project (each of the foregoing, "MCC Funded Goods and Services"); and

vi. to the extent that the Philippine internal revenue taxes are attributable to the provision or performance of MCC Funded Goods and Services, natural persons and legal persons that provide or perform MCC Funded Goods and Services ("Vendor") as provided under these Regulations, including on the attributable income, profits and payments thereof;

which will be assumed by the Philippines under the Compact (each such tax, an "Assumed Tax") and (2) the exemption of MCA-Philippines and the Vendors from certain withholding obligations with respect to the Assumed Taxes.

As provided in the Compact, the assumption of taxes will not apply to taxes on the income, profit or gross receipts of natural persons who are citizens or permanent residents of the Philippines and legal persons organized under Philippine laws except (1) MCA-Philippines and (2) any Philippine-registered subsidiary, branch or representative office of a foreign legal person. With respect to other taxes, however, that tax subsidy (i.e. subsidy for VAT, percentage and excise) shall be applicable to all Vendors.

SECTION 3. Definition of Terms – In these Regulations, the following terms shall have the following definition (such definition to be equally applicable to both the singular and plural forms of the terms defined):

a. "Assumed Taxes" shall have the meaning given to such term in Section 2 of these Regulations.

b. "Assumed Taxes Amount" shall mean the amount of Assumed Taxes with respect to MCA-Philippines or each Vendor.

c. "BIR" shall mean the Bureau of Internal Revenue.

d. "BOC" shall mean the Bureau of Customs.

e. "CES" shall mean the Certificate of Entitlement to Subsidy, a non-transferable instrument issued by FIRB to MCA-Philippines to evidence the grant of the tax subsidy in favor of MCA-Philippines for the Program, in an amount sufficient to cover the Assumed Taxes with respect to MCA-Philippines and the Vendors.

f. "Compact" shall mean a Millenium Challenge Compact between the USA and the Philippines.

g. "Covered Employee" shall mean any natural person who performs work for a Project or otherwise in connection with the Compact as an employee of MCA-Philippines or a Vendor, and who is not a Philippine citizen or Philippine Permanent Resident.

h. "DPWH" shall mean the Department of Public Works and Highways.

i. "DSWD" shall mean the Department of Social Welfare and Development.

j. "EO 849" shall have the meaning given to such term in Section 1 (b) of these Regulations.

k. "Excise Tax Portion" shall mean that portion of the purchase price of a petroleum product that is equal in amount to the excise tax paid by the local refiner for said petroleum product.

l. "FIRB" shall mean the Fiscal Incentives Review Board.

m. "KALAH-CIDSS" shall mean the Empowerment and Development Project for Poor Communities (Kapit-Bisig Laban sa Kahirapan-Comprehensive and Integrated Delivery of Social Services Operations for Barangay and Municipal Assistance) of DSWD.

n. "LTRAD 4" shall mean the BIR Large Taxpayers Regular Audit Division 4 (Other Services Division).

o. "MCA-Philippines" shall mean the Millennium Challenge Account-Philippines, a non-stock corporation organized under the Corporation Code.

p. "MCC" shall mean the Millennium Challenge Corporation, a corporation of the Government of the USA established pursuant to the USA Millennium Challenge Act of 2003, as amended.

q. "MCC Funded Goods and Services" shall have the meaning given to such term in Section 2 of these Regulations.

r. "NIRC" shall mean the National Internal Revenue Code, as amended.

s. "Philippine Permanent Resident" refers to natural persons holding Philippine Immigrant Visas.

t. "Program" shall have the meaning given to such term in Section 1(a) of these Regulations.

u. "Project" shall mean any of the following:

1. the Secondary National Road Development Project of DPWH, which will involve (i) the reconstruction and rehabilitation of 220 kilometers of the Samar road crossing the provinces of Samar and Eastern Samar, of which approximately 180 kilometers will undergo reconstruction or major rehabilitation while 40 kilometers will receive only minor rehabilitation, and (ii) the replacement or upgrading of associated structures, such as bridges and culverts, to eliminate flooding and improve road safety;

2. the KALAH-CIDSS Project of DSWD, which will be a scale-up of the ongoing KALAH-CIDSS project funded by the World Bank and will involve social preparation and capability building; community projects prioritization, planning and implementation; and monitoring of sustainability; and

3. the Revenue Administration Reform Project of BIR, which will involve automating the business processes, and improving information management, in BIR to significantly raise tax revenues and address effectively the related problems of tax evasion and corruption.

v. "RAD" shall mean the Revenue Accounting Division of the BIR Collection Service.

w. "RDO" shall mean the relevant BIR Revenue District Office.

x. "SARO" shall mean the Special Allotment Release Order issued by the Department of Budget and Management for the payment of the Assumed Taxes authorized under the CES.

y. "Tax Subsidy" shall have the meaning given to such term in Sections of these Regulations.

z. "TSAC" shall mean the Tax Subsidy Availment Certificate issued by BIR to the Vendors under these Regulations.

aa. "TSDM" shall mean the Tax Subsidy Debit Memo issued by BIR to MCA-Philippines and the Vendors under these Regulations.

bb. "USA" shall mean the United States of America.

cc. "VAT shall mean value-added tax.

dd. "Vendor shall mean natural and legal persons engaged directly by MCA-Philippines to provide or perform MCC-Funded Goods and Services. Where such party is an unincorporated joint venture, the members of such joint venture shall be considered as vendors of the Project.

SECTION 4. Limitation – These Regulations shall cover only the Tax Subsidy, as limited by the CES and the FIRB resolution granting the Tax Subsidy with respect to amount, scope and period of the Tax Subsidy.

SECTION 5. Registration of MCA Philippines – MCA-Philippines shall register once with LTRAD 4, on or before the commencement of its operations, in accordance with the provisions of Chapter II of Title IX of the NIRC and its implementing revenue regulations.

SECTION 6. Procedural Guidelines – (a) Upon receipt of the SARO, LTRAD 4 shall furnish the RAD a copy of the SARO. The RAD shall record the corresponding revenue collection upon receipt of the Journal Entry Voucher issued by the Bureau of Treasury.

b. Upon receipt of the CES, MCA-Philippines shall file a letter-request, signed by the duly authorized official of MCA-Philippines, with the Commissioner of Internal Revenue, through LTRAD 4, for the issuance of a TSAC for each Vendor for the relevant Assumed Taxes. In support of its request, MCA-Philippines shall submit one copy of the contract of the Vendor with MCA-Philippines, DPWH, DSWD, BIR as applicable.

c. LTRAD 4 shall issue the TSAC within five (5) business days from receipt of the request and supporting documentation. The TSAC shall state the Assumed Taxes Amount. The Assumed Taxes Amount will reduce the outstanding amount of the Tax Subsidy stated on the CES. The TSAC shall be made in four (4) copies to be distributed as follows:

Original – MCA-Philippines
Duplicate – Vendor
Triplicate – RAD
Quadruplicate – LTRAD 4