REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

October 18, 2010

REVENUE REGULATIONS NO. 12-2010

SUBJECT: **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**

TO : All Internal Revenue Officers and Others Concerned

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 <u>not</u> 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 <u>except</u> (1) MCA-Philippines and (2) any Philippine-registered subsidiary, branch or representative office of a foreign legal person. With respect to other taxes, however, the 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 Millennium 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) “KALAHI-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 KALAHI-CIDSS Project of DSWD, which will be a scale-up of the ongoing KALAHI-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 Section 2 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

(d) Before an Assumed Tax becomes due for payment to BIR, MCA-Philippines or the Vendor shall apply with LTRAD 4 for a TSDM. In support of its application, the applicant shall (1) present to LTRAD 4 the original copy of its TSAC or, in the case of MCA-Philippines, the CES; and (2) submit to LTRAD 4:

(i) in the case of VAT and percentage tax, a photocopy of the invoice upon which the tax due is based;

(ii) in the case of excise tax, a photocopy of the purchase order upon which the tax due is based and, in the case of purchases covered by Section 15(1)(b), copy of the petroleum product supply agreement between the dealer and the local refiner;

(ii) in the case of tax on income, a photocopy of the contract of the Vendor for the provision of MCC Funded Goods and Services; or

(iii) in the case of tax on income of a Covered Employee, a certificate from MCA-Philippines or the Vendor setting forth the name of the Covered Employee and the amount of the tax due in respect of such employee.

(e) LTRAD 4 shall issue the TSDM within five (5) business days from receipt of the application and the supporting documentation. LTRAD 4 shall indicate the amount of the tax due on the TSDM. The amount of the tax due shall reduce (i) the outstanding amount of the Assumed Taxes Amount stated on the TSAC of the Vendor, or (ii) in the case of MCA-Philippines, the outstanding amount of the Tax Subsidy stated on the CES. The TSDM shall be made in four (4) copies to be distributed by the LTRAD 4 as follows:

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

(f) MCA-Philippines or the Vendor shall attach (i) the original copy of the TSDM and one photocopy of the TSDM to the internal revenue tax return to be filed with the appropriate RDO; and (ii) one photocopy of the TSDM to the taxpayer's file copy of the internal revenue tax return.

SUBSIDY FOR VAT

SECTION 7. — (a) MCA-Philippines shall not withhold final VAT when making payments to any Vendor who has contracted with MCA-Philippines for the provision of MCC Funded Goods and Services to MCA-Philippines. The Tax Subsidy shall account for the 12% output VAT liability of the Vendors, which they can pass on to MCA-Philippines.

(b) The Tax Subsidy for VAT may be enjoyed by the Vendors, whether foreign or Filipino nationals or entities. The VAT TSAC issued under these Regulations shall be valid for a period of five (5) years and may be revalidated for another five (5) years.

(c) The Vendors have the right and option to use the VAT TSDM as payment for any of their internal revenue tax liabilities.

(d) VAT on importations of goods for a Project or otherwise in connection with the Compact shall not be covered by these Regulations.

SECTION 8. — (a) The MCA-Philippines and each of the Vendors shall submit to the Commissioner of Internal Revenue, through the RDO having jurisdiction over each of their principal offices, a Quarterly Summary List of Purchases and/or Billing Statement or its equivalent (in electronic form) in accordance with the provisions of Revenue Regulations No. 8-2002, as amended.

(b) Each of the Vendors shall keep a record of all sales and/or billings made to MCA-Philippines and other Vendors. The respective records of MCA-Philippines and the Vendors shall be kept and maintained like any other accounting record and shall be open for inspection at any reasonable time during office hours by a duly authorized internal revenue officer.

SECTION 9. — In the event that the prevailing VAT rate is increased by law or the contract price with the Vendor is increased, MCA-Philippines may obtain supplemental VAT TSACs in accordance with the guidelines prescribed above; *provided*, that such supplemental VAT TSACs shall be covered by the existing CES or a supplemental CES.

SUBSIDY FOR PERCENTAGE TAX

SECTION 10. — The Tax Subsidy for percentage tax may be used by any Vendor subject to percentage tax on the provision of MCC Funded Goods and Services.

SUBSIDY FOR INCOME TAX

SECTION 11. — The Tax Subsidy for income tax, including capital gains tax and final withholding tax, may be used by (i) MCA-Philippines; and (ii) any Covered Employee or Vendor, as qualified under Section 2 of these Regulations, with respect to income earned for providing MCC Funded Goods and Services.

SECTION 12. — For purposes of the Tax Subsidy for income tax, the respective member-corporations of an unincorporated joint venture Vendor shall file their respective income tax returns in accordance with existing rules and regulations with their respective RDOs while MCA-Philippines applies for TSAC with LTRAD 4.

SECTION 13. — For ease in the administration of the Tax Subsidy for income tax, (a) income payments to MCA-Philippines; (b) income payments to a Vendor, and (c) income payments to a Covered Employee, shall not be subject to the following withholding taxes:

(i) creditable withholding tax, including as described at Section 57(B) of the NIRC and Revenue Regulations No. 02-98, as amended;
(ii) withholding tax on government money payments, including as described at Republic Act No. 1051 and Revenue Regulations No. 02-98, as amended;
(iii) final withholding tax, including as described at Sections 24(B)(1), 24(B)(2), 25(A)(2), 25(B), 27(D)(1), 28(A)(5), 28(A)(7)(a), 28(B)(1), 28(B)(5)(b) and 33 of the NIRC and Revenue Regulations No. 02-98, as amended;
(iv) withholding tax on wages, including as described at Section 79(A) of the NIRC and Revenue Regulations No. 02-98, as amended.

SUBSIDY FOR EXCISE TAX

SECTION 14. — The Tax Subsidy for excise tax may be used by (a) any Vendor subject to excise tax on its manufacture or other production of goods for a Project or otherwise in connection with the Compact, and (b) MCA-Philippines or any Vendor for their purchase of petroleum products subject to excise tax for a Project or otherwise in connection with the Compact. Excise tax on importations of goods for a Project or otherwise in connection with the Compact shall not be covered by these Regulations.

SECTION 15. Petroleum products — (1) MCA-Philippines or any Vendor may use the Tax Subsidy for excise tax to pay the Excise Tax Portion; *provided*, that the petroleum product was purchased from a Vendor who is (a) the local refiner of said petroleum product, or (b) a dealer who acquired said petroleum product directly from the local refiner of the same.

(2) A TSDM that will be used to pay the Excise Tax Portion shall state: (a) for purchases from a dealer, "(Name of the Dealer) for the Account of (Name of the Local Refiner)"; or (b) for purchases from a local refiner, "For the Account of (Name of the Local Refiner)". Prior to the release of the TSDM, LTRAD 4 shall verify that the local refiner paid the excise tax for the petroleum product. Subject to the agreement between the dealer and the local refiner, the dealer may use the TSDM to pay the local refiner the Excise Tax Portion. The local refiner may use the TSDM to pay BIR its excise tax liability. Both the dealer and the local refiner may use the TSDM without need of applying with BIR for the transfer or utilization of the TSDM.

(3) After the petroleum product has been delivered, MCA-Philippines or the Vendor shall submit to LTRAD 4 one copy of each of the sales invoice, the official receipt and the delivery receipt corresponding to the purchase order that was submitted in support of

the application for the TSDM. LTRAD 4 shall not accept (a) these documents unless the same are endorsed by MCA-Philippines, and (b) the delivery receipt unless the same contains (i) the full name and signature of the representative of MCA-Philippines or the Vendor who is authorized to receive the petroleum product being delivered; and (ii) the date, time and place of actual delivery of the petroleum product. In the case of an application by a Vendor for a TSAC or a TSDM for Tax Subsidy for excise tax, LTRAD 4 shall not process such application unless said Vendor has submitted copies of the sales invoice, official receipt and delivery receipt mentioned above for all TSDMs that have been issued to said Vendor.

MISCELLANEOUS PROVISIONS

SECTION 16. **Delay in Process. —** In case of late payment of an Assumed Tax due to delay on the part of the Department of Budget and Management in the release of the SARO, or on the part of LTRAD 4 in the release of the TSAC or the TSDMs, the payment for the Assumed Tax shall be accepted by BIR without the imposition of penalty for late payment.

SECTION 17. Repealing Clause. — Any existing regulations, orders, instructions or portions thereof that are inconsistent with these Regulations are hereby repealed, amended or modified accordingly.

SECTION 18. Effectivity Clause. — These Regulations shall take effect after fifteen (15) days from the date of publication in a newspaper of general circulation.

(Original Signed)
CESAR V. PURISIMA
Secretary of Finance

Recommending Approval:

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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