REPUBLIKA NG PILIPINAS
KAGAWARAN NG PANANALAPI
KAWANIHAN NG RENTAS INTERNAS
Quezon City

July 29, 2005

REVENUE REGULATIONS NO. 17-2005

SUBJECT : Regulations Providing for the Policies, Guidelines and Procedures in the Implementation of the Tax Subsidy Granted by the Fiscal Incentives Review Board (FIRB) to the Bases Conversion and Development Authority (BCDA) for the Subic-Clark-Tarlac Expressway Project

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. Scope. – These regulations are hereby promulgated to implement:

(1) the tax expenditure subsidy provided for under Section 14(c) of Republic Act (R.A.) No. 9336 in favor of the Bases Conversion and Development Authority (BCDA) for the Philippine taxes on transactions of primary contractors and consultant, subcontractors and suppliers, sub-subcontractors and sub-suppliers involved/participating in the Subic-Clark-Tarlac Expressway Project (the "Project", or alternatively "SCTEP");

(2) the provisions in the Exchange of Notes between the Republic of the Philippines and the Government of Japan that no part of the loan proceeds from the Japan Bank for International Cooperation for the construction of the SCTEP shall be used to pay for Philippine taxes, that the Government of the Republic of the Philippines shall assume the Philippine taxes on Japanese firms or nationals operating as contractors, consultants or suppliers in the Project, and that the Philippine executing agencies shall not withhold any part of fiscal levies and taxes including VAT when making payments for their purchases of products and/or services to the Japanese companies operating as suppliers, contractors and/or consultants; and

(3) more specifically, the tax subsidy granted by the Fiscal Incentives Review Board (FIRB) to the BCDA for such Philippine taxes, including but not limited to, Value-Added Tax (VAT), income tax and excise tax with respect to its procurement/acquisition of goods and services from Japanese primary contractors and consultant in connection with the construction of the SCTEP. Because of the input-output system of our VAT law, the VAT mechanism provided for in these regulations also extends to the subsidy for the VAT on the procurement/acquisition of goods and services by the primary contractors and consultant from their Japanese and Filipino subcontractors and suppliers, as well as by the Japanese and Filipino subcontractors and suppliers from their Japanese and Filipino sub-subcontractors and sub-suppliers, exclusively in connection with the SCTEP.

SECTION 2. 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) "Bases Conversion and Development Authority (primary level)" or "BCDA" shall refer to the implementing agency of the Project.

(b) "Primary contractor (secondary level)" shall refer to the party whose services are engaged by BCDA for the implementation of the Project, and where such party is an unincorporated joint venture, the members of such joint venture.

(c) "Consultant (secondary level)" shall refer to the party whose services for the detailed design and monitoring of works are directly engaged by BCDA for the implementation of the Project, and where such party is an unincorporated joint venture, the members of such joint venture.

(d) "Subcontractor and supplier (tertiary level)" shall refer to the party whose services are engaged by, and/or who supplies goods, materials, supplies, etc. to, the primary contractor and consultant for the implementation of the Project.

(e) "Sub-subcontractor and sub-supplier (fourth level)" shall refer to the party whose services are engaged by, and/or who supplies goods, materials, supplies, etc. to, the subcontractor and supplier for the implementation of the Project.

(f) "Certificate of Entitlement to Subsidy" or "CES" shall mean a non-transferable instrument issued by the FIRB to the BCDA to evidence the grant of the tax subsidy in favor of BCDA for the SCTEP, in an amount sufficient to cover the Philippine taxes on Japanese firms or nationals operating as contractors, consultants or suppliers in the Project.

(g) "Tax Subsidy Availment Certificate" or "TSAC" shall mean the instrument issued by the Bureau of Internal Revenue (BIR) to the BCDA, upon proper application by the BCDA, showing the amount of tax assumed by the BCDA for each of the primary contractors and consultant in connection with the SCTEP, which includes, but is not limited to, the subsidy on income tax and VAT.

(h) "VAT Subsidy Checks" or "VSCs" shall mean the prenumbered instruments released by the BIR to BCDA for issuance to each of the primary contractors and consultant, drawn against the VAT TSAC of each of the primary contractors and consultant. The primary contractors and consultant may use the VSCs received from the BCDA to pay the input VAT passed-on to them by their subcontractors and suppliers.

(i) "Sub-VAT Subsidy Checks" or "SVSCs" shall mean the instruments issued by the BIR to the subcontractors and suppliers upon presentation by the subcontractors and suppliers of their VSCs to the BIR for appropriate annotation of the requested amount of SVSCs to be issued in favor of the sub-subcontractors and sub-suppliers, in accordance

with Section 6(A)(4) hereof. The subcontractors and suppliers may use the SVSCs to pay the input VAT passed-on to them by their sub-subcontractors and sub-suppliers. The sub-subcontractors and sub-suppliers may use the SVSCs to pay their net VAT payable/liability under the Project or other projects, or their other internal revenue taxes.

(j) "Tax Subsidy Debit Memo" or "TSDM" shall mean the document issued by the BIR to the primary contractors and consultant, subcontractors and suppliers, sub-subcontractors and sub-suppliers, upon proper application with the BIR, to evidence the amount of tax payment actually made using the subsidy. The TSDM shall be attached by the recipients to their internal revenue tax returns. The TSDMs issued to the primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers shall reduce the outstanding amounts of the TSAC, VSCs or SVSCs, as the case may be.

SECTION 3. Coverage/Limitation. – The privileges granted herein shall be limited to the purchases of materials, equipment, supplies and services in connection with the Project, amount of tax subsidy, scope and period of tax subsidy as provided for in the FIRB Resolution and CES issued by the FIRB to BCDA, TSAC and VSCs issued to the primary contractors and consultant, and the SVSCs issued to the subcontractors, suppliers, sub-subcontractors and sub-suppliers.

SECTION 4. VAT. - The tax subsidy to be granted by the FIRB to BCDA for VAT represents the output VAT liability of the primary contractors and consultant that the primary contractors and consultant can pass-on to BCDA.

Since the existing VAT system works on the input-output system, the primary contractors and consultant can deduct from their output VAT liability the input VAT passed-on to them by their subcontractors and suppliers for the Project. The subcontractors and suppliers, in turn, can deduct from their output VAT liability the input VAT passed-on to them by their sub-subcontractors and sub-suppliers.

Because of the input-output system of the VAT, to ensure that the tax subsidy will cover the entire VAT passed-on by the (i) sub-subcontractors and sub-suppliers to the subcontractors and suppliers; (ii) subcontractors and suppliers to the primary contractors and consultant; and (iii) primary contractors and consultant to BCDA; and ensure that no part of the loan shall be utilized in payment for any VAT on the Project, the VAT mechanism for this Project as described in these Regulations shall apply to both Japanese and Filipino nationals or entities operating as contractors, subcontractors, suppliers, sub-subcontractors and sub-suppliers in the Project.

Payments by BCDA to the primary contractors and consultant are exempt from the withholding VAT prescribed under Section 114(C) of the National Internal Revenue Code as implemented by Revenue Memorandum Circular No. 42-99. Such exemption from withholding of VAT is also recorded in the Exchange of Notes between the Government of the Republic of the Philippines and the Government of Japan. Accordingly, BCDA shall not withhold any VAT from its payments to the primary contractors and consultant.

The subcontractors, suppliers, sub-subcontractors and sub-suppliers have the right and option to use the VSCs and SVSCs as payment for their VAT liabilities under the Project and other projects, as well as for payment of their other internal revenue tax liabilities. The VSCs and SVSCs issued under these regulations shall be valid for a period of five (5) years reckoned from the date of issuance of the VSCs by the primary contractors and consultant and thereafter shall be revalidated for another five (5) years.

Because of the input-output system of the VAT, the VAT mechanism for this Project as described in these Regulations shall apply to transactions of all entities up to the fourth level only.

SECTION 5. General Guidelines. The BCDA shall file an application with the FIRB for issuance of the CES for the Project. The BCDA shall be responsible for securing the TSAC and VSCs directly from the BIR and thereafter in providing the copy of the TSAC and VSCs to the primary contractors and consultant.

Within three (3) days from receipt of the CES issued by FIRB, the Department of Budget and Management (DBM) shall issue a Special Allotment Release Order (SARO) in favor of the Bureau of Treasury (BTr) to cover the payment of the aforesaid taxes payable to the BIR. The DBM shall furnish the Revenue District Office (RDO) having jurisdiction over the BCDA's principal office and the BTr with a copy of the SARO.

Upon receipt of the SARO, the RDO having jurisdiction over BCDA's principal office shall furnish the Revenue Accounting Division (RAD) under the Collection Service with a copy of the said SARO. The RAD shall record the corresponding revenue collection upon receipt of the BTr's Journal Entry Voucher (JEV).

The BCDA, primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers shall individually 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 diskette form) in accordance with the provisions of Revenue Regulations No. 8-2002, as amended.

The BCDA, primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers referred to herein shall each keep a record of all sales and/or billings made to BCDA in the case of the primary contractors and consultant; all sales and/or billings made to the primary contractors and consultant in the case of the subcontractors and suppliers; and all sales and/or billings made to the subcontractors and suppliers in the case of the sub-subcontractors and sub-suppliers. The respective records of the BCDA, primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers 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 6. ***Procedural Guidelines.*** –

A. Subsidy for VAT

(1) Within three (3) working days from receipt of the CES, the BCDA shall file a letter-request with the Commissioner of Internal Revenue through the RDO having jurisdiction over BCDA's principal office, for the issuance for each of the primary contractors and consultant a TSAC in the amount equivalent to the output VAT liability of the primary contractors and consultant under their contracts. Simultaneous with the request for the release of the TSAC, the BCDA shall likewise request the BIR for the release of the VSCs. The request for the issuance of the TSAC and VSCs shall be signed by the duly authorized official of the BCDA. BCDA shall attach to the request a copy of the contracts with the primary contractors and consultant.

(2) Within three (3) working days from receipt of the TSAC application, the RDO shall issue the TSAC and corresponding VSCs upon a determination that the application is complete and in order. The TSAC shall be made in four (4) copies to be distributed as follows:

Original	–	BCDA
Duplicate	–	Primary contractors or consultant
Triplicate	–	Revenue Accounting Division
Quadruplicate	–	File copy – RDO

(3) Within three (3) working days from receipt by the BCDA of the VSCs, BCDA shall distribute the VSCs to each of the primary contractors and consultant for issuance to their subcontractors and suppliers as payment for the input VAT passed-on to them by such subcontractors and suppliers. In no case shall the total amount of VSCs issued by each of the primary contractors and consultant to their subcontractors and suppliers exceed the amount of their respective VAT TSACs.

(4) The primary contractors and consultant may use the VSCs as payment of their net VAT payable/liability, if any, to the BIR on the SCTEP, or as payment for the input VAT passed-on to them by their subcontractors and suppliers on the Project.

(5) The subcontractors and suppliers may use the VSCs as payment of their net VAT payable/liability to the BIR on the SCTEP, or as payment for the input VAT passed-on to them by their sub-subcontractors and sub-suppliers on the Project. In the latter case, the subcontractors and suppliers shall present the VSCs, together with the invoice billings of their sub-subcontractors and sub-suppliers, to the RDO having jurisdiction over BCDA's principal office for the issuance and release of SVSCs which the subcontractors and suppliers can then issue to their sub-subcontractors and sub-suppliers as payment for the input VAT passed-on to them by the sub-subcontractors and sub-suppliers. In this case, the RDO shall annotate the amount of issued SVSCs on the VSC presented by the subcontractors and suppliers.

In the event that the subcontractors and suppliers do not need the VSCs to pay for the input VAT passed-on to them by sub-subcontractors and sub-suppliers (e.g., where they paid the passed-on VAT in cash), they can utilize the VSCs for the payment of their net VAT payable/liability from other projects or of their other internal revenue tax liabilities.

(6) The sub-subcontractors and sub-suppliers may use the SVSCs issued to them by the subcontractors and suppliers for the payment of their net VAT payable/liability on the Project or other projects, or for the payment of their other internal revenue taxes.

(7) Upon filing of their respective VAT returns, the primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers shall use their VSCs or SVSCs, whichever is applicable, to pay their net VAT payable/liability. The RDO having jurisdiction over BCDA's principal office shall issue a TSDM showing the amount of input VAT claimed, and net VAT payable/liability shown on the VAT return. The TSDM shall be made in four (4) copies to be distributed as follows:

Original	–	Primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers
Duplicate	–	BCDA
Triplicate	–	Revenue Accounting Division
Quadruplicate	–	File copy – RDO

The taxpayer shall reproduce the original copy of the TSDM in two (2) copies, to be distributed as follows:

> Original plus one (1) extra copy to be attached to the internal revenue tax returns to be filed with the BIR.
> Second copy to be attached to the taxpayer's file copy

The primary contractors and consultant shall, together with the VAT returns, submit a summary list of their subcontractors and suppliers. The subcontractors and suppliers shall, together with the VAT returns, also submit a summary list of their sub-subcontractors and sub-suppliers.

(8) The primary contractors and consultant, subcontractors and suppliers shall keep a copy of the VSCs or SVSCs, as the case may be, they issued, which properly indicate the payee's name and amount involved.

(9) The RDO having jurisdiction over BCDA's principal office shall submit a Quarterly Report of VSCs and SVSCs utilized and TSDMs released, together with copies thereof to the RAD within fifteen (15) days after the end of each quarter.

(10) In the event that the prevailing VAT rate is increased by law, the contract price with the primary contractors or consultant is increased, or any, supplemental CES

and TSACs shall be obtained by the BCDA in accordance with the guidelines prescribed in Section 5 herein, and issuances of VSCs and SVSCs for such supplemental TSACs shall likewise be in accordance with the procedures described herein.

The BCDA shall ensure that the utilization of the tax subsidy for the Project shall be implemented in accordance with these regulations.

B. Subsidy for Income Tax

A TSAC shall also be issued by the BIR to cover the income tax directly due from Japanese nationals and/or entities arising solely and exclusively from the implementation of the Project. For this purpose, the respective member-corporations of the primary contractors and consultant (taxpayer) shall file their respective income tax returns, in accordance with rules and regulations, with their respective RDOs while BCDA applies for TSAC with the RDO having jurisdiction over BCDA's principal office. The Income Tax TSAC shall be distributed as follows:

Original	–	Taxpayer
Duplicate	–	BCDA
Triplicate	–	Revenue Accounting Division
Quadruplicate	–	RDO (of BCDA) file

A TSDM shall likewise be issued by the RDO having jurisdiction over BCDA's principal office covering the amount of income tax due in the manner set forth in Section 6, Paragraph 6 hereof.

C. Subsidy for Withholding Tax

A TSAC shall also be issued by the BIR to cover the monthly withholding tax on the Japanese nationals who are employees of the primary contractors and consultant in the implementation of the Project. For this purpose, the primary contractors and consultant shall file their respective monthly withholding tax returns in accordance with rules and regulations with their respective RDOs while BCDA applies for TSAC with the RDO having jurisdiction over BCDA's principal office. The TSAC herein shall be distributed as follows:

Original	–	Primary contractors or consultant
Duplicate	–	BCDA
Triplicate	–	Revenue Accounting Division
Quadruplicate	–	RDO (of BCDA) file

A TSDM shall likewise be issued by the RDO having jurisdiction over BCDA's principal office covering the amount of withholding tax due in the manner set forth in Section 6, Paragraph 7 hereof.

D. Subsidy for Excise Tax

(1) For domestic purchases of goods subject to excise tax, the primary contractors and consultant shall prepare the Purchase Orders (PO) indicating therein the tax base, amount of excise tax due and total amount. The PO shall be coursed through the RDO having jurisdiction over BCDA's principal office for proper evaluation as to the accuracy of the amount of excise tax indicated therein. The PO shall then be used to support the preparation and issuance of a TSAC and TSDMs equivalent to the excise tax amount as computed therein by the concerned RDO having jurisdiction over BCDA's principal office. However, purchase of petroleum products from dealers shall be covered by the tax subsidy only if the same are purchased by dealers directly from local refiners. In addition to the PO, a copy of the Supply Agreement between the dealer and local refiner shall also be submitted together with the application for TSAC and TSDMs for excise tax. The concerned RDO shall ensure that the excise tax thereon has been paid and the documents pertaining to said transactions validated prior to the release of the TSAC and TSDMs.

(2) Prior to the issuance of the TSAC and TSDMs, the issuing unit shall update its books to indicate the available balance for future utilization, after deducting the latest application for TSAC and TSDMs utilization for excise tax purposes. For purchases from petroleum dealers, the name of the dealer and local refiner from whom the petroleum product was purchased shall be indicated in the TSAC and TSDMs to be issued as follows: (Name of the Dealer) for the Account of (Name of the Supplier/Local Refiner). The amount appearing in the said TSAC and TSDMs shall be deducted from the total amount payable by the petroleum dealer to the supplier/local refiner. These TSAC and TSDMs shall be used by the latter as payment of its excise tax liability with the BIR , without the necessity of applying for transfer/utilization.

(3) Upon full and actual receipt of its purchased articles, the primary contractors and consultant shall immediately submit to the concerned RDO the copies of sales invoices/official receipts and delivery receipt (DR), duly acknowledged by BCDA's authorized representative, corresponding to the POs covered by the TSAC and TSDMs issued in its favor. The following information shall be indicated in the DR:

a. Full name of authorized employee;
b. Signature;
c. Date;
d. Time; and
e. Place of actual delivery/unloading of purchased articles.

The RDO shall not process any subsequent application for TSAC and TSDMs on excise tax unless a previously issued TSAC in favor of BCDA has been fully liquidated as herein required.

SECTION 7. Delay in Process– In case of delay on the part of the government in the release of the SARO, TSAC, VSCs, SVSCs or TSDMs, the payment of the VAT due on primary contractors, consultant, subcontractors, suppliers, sub-subcontractors and sub-suppliers' VAT declarations/returns shall be accepted without imposition of penalty for late payment, provided that the subcontractors, suppliers, sub-subcontractors and sub-suppliers shall submit their respective TSDMs, together with their duly filed VAT returns, with the RDO having jurisdiction of their principal offices, within ten (10) days following the release of the TSDM.

SECTION 8. Transition Clause. – Any input tax passed-on to, and paid in cash by, the primary contractors and consultant on their purchases of goods and services in connection with the Project prior to the effectivity of these regulations, shall be paid and reimbursed by the BCDA in cash within ***ten (10) days*** upon receipt of a request for refund from the primary contractors or consultant.

BCDA shall request from the BIR the issuance of a Tax Credit Certificate (TCC) equivalent to the amount of the input tax referred to in the preceding paragraph. The TCC issued to BCDA under this regulation shall be valid for a period of five (5) years reckoned from the date of issuance of the tax credits by the BIR subject to revalidation in accordance with existing regulations. The request for issuance of TCC shall be filed with the BIR office having jurisdiction over BCDA, with the following attachments:

1. VAT Sales Invoice/s or Official Receipt/s issued to the primary contractor or consultant upon its purchase of goods or services,

2. Statement of account, or billing, issued to BCDA requesting for reimbursement,

3. The agreements or contracts which became the bases for the purchase of goods or services by the primary contractor or consultant, and

4. Official Receipt/s issued to the BCDA upon its cash payment to the primary contractors and consultant.

Upon submission of complete documents the BIR shall issue the corresponding TCC within 30 days. The TCC shall be non-transferable.

Any input tax passed-on but not yet paid in cash by the primary contractors and consultant on their purchases of goods and services prior to the effectivity and implementation of these regulations shall be settled by the primary contractors and consultant utilizing their VSCs for payment of the VAT.

SECTION 9. Repealing Clause. – Any existing regulations, orders, instructions or portions thereof that are inconsistent with these regulations are hereby repealed, amended or modified accordingly.

SECTION 10. Effectivity Clause. – These regulations shall take effect after fifteen (15) days from the date of publication in a newspaper of general circulation.

(Original Signed)
MARGARITO B. TEVES
Secretary of Finance

Recommending Approval:

(Original Signed)
JOSE MARIO C. BUÑAG
OIC-Commissioner of Internal Revenue