

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City



SIXTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. **4951**

Introduced by Representatives Nicasio M. Aliping, Jr. and Ronald M. Cosalan

EXPLANATORY NOTE

The Bangko Sentral ng Pilipinas (BSP) has statutory authority to buy and sell gold in any form at prevailing market prices. Gold-buying is an integral part of its mandate to manage the gross international reserves of the country.

The gold holdings of the BSP is determinative of the strength of the country's international reserve position and also serves as security and hedge against inflation.

In order to promote the accumulation of gold resources and the sale of gold to the BSP, Sec. 17 of RA No. 7076 mandates that all gold produced by small-scale miners in any mineral area shall be sold to the BSP, or its duly authorized representatives, which shall buy it at prices competitive with those prevailing in the world market regardless of volume or weight.

However, the excise tax on gold is assessed against the BSP in the absence of proof that the gold miner or producer has paid the excise tax. The BSP thus collects outright the 2% excise tax on gold based on the gross amount of gold sold. In addition, the BSP withholds 5% of gross payments as creditable withholding tax.

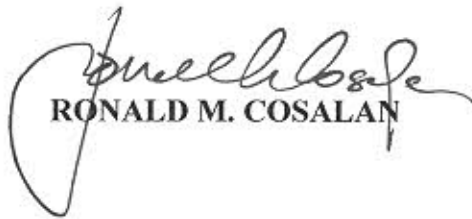
Small-scale miners and traders who seek to avoid payment of excise and income taxes sell their gold to buyers in the black market. From the black market, the gold is smuggled out of the country. This has adversely affected the gold-buying operations of the BSP which resulted in a significant plunge in its purchases of gold in 2012 and 2013 as compared to 2011. So that, from the 554,994 fine troy ounces of

gold purchased by the BSP in 2011, its purchases drastically dropped to only 32,888 fine troy ounces in 2012 down to a measly 17,778 fine troy ounces in 2013.

Any depletion in the BSP's gold inventory will certainly affect monetary stability and the convertibility of the Philippine peso. The banking and credit system will consequently suffer to the detriment of the economy.

By removing excise and income taxes on gold sold to the BSP, small-scale miners and traders would be encouraged to sell their gold to the BSP instead of the black market. The smuggling of gold out of the country would thus be curbed and the accumulation by the BSP of gold resources would be greatly enhanced. The BSP would thus be able to maintain adequate international reserves to meet foreseeable net demands for foreign currencies.

In view of the foregoing, approval of this bill is earnestly requested.


RONALD M. COSALAN


NICASIO M. ALIPING, JR.

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AN ACT
FURTHER AMENDING SECTIONS 32 AND 151 OF
REPUBLIC ACT NO. 8424, AS AMENDED, OTHERWISE
KNOWN AS THE NATIONAL INTERNAL REVENUE CODE,
TO EXCLUDE FROM GROSS INCOME AND EXEMPT FROM
THE PAYMENT OF EXCISE TAX THE SALE OF GOLD BY
SMALL-SCALE MINERS TO THE BANGKO SENTRAL NG
PILIPINAS PURSUANT TO REPUBLIC ACT NO. 7076

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 32 of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code, is hereby further amended to read, as follows:

“Section 32. Gross Income. –

(A) *General Definition.* – Except when otherwise provided in this Title, gross income means all income derived from whatever source, including (but not limited to) the following items:

- (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
- (2) Gross income derived from the conduct of trade or business or the exercise of a profession;

- (3) Gains derived from dealings in property;
- (4) Interests;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Annuities;
- (9) Prizes and winnings;
- (10) Pensions; and
- (11) Partner's distributive share from the net income of the general professional partnership.

(B) *Exclusions from Gross Income.* – The following items shall not be included in gross income and shall be exempt from taxation under this title:

(1) *Life Insurance.* – The proceeds of life insurance policies paid to the heirs or beneficiaries upon the death of the insured, whether in a single sum or otherwise, but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.

(2) *Amount Received by Insured as Return of Premium.* – The amount received by the insured, as a return of premiums paid by him under life insurance, endowment, or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(3) *Gifts, Bequests, and Devises.* – The value of property acquired by gift, bequest, devise, or descent: *Provided, however,* That income from such property, as well as gift, bequest, devise or descent of income from any property, in cases of transfers of divided interest, shall be included in gross income.

(4) *Compensation for Injuries or Sickness.* – Amounts received, through Accident or Health Insurance or under Workmen's Compensation Acts, as compensation for personal injuries or sickness, plus the amounts of any damages received, whether by suit or agreement, on account of such injuries or sickness.

(5) *Income Exempt under Treaty.* - Income of any kind, to the extent required by any treaty obligation binding upon the Government of the Philippines.

(6) *Retirement Benefits, Pensions, Gratuities, etc.* -

(a) Retirement benefits received under Republic Act No. 7641 and those received by officials and employees of private firms, whether individual or corporate, in accordance with a reasonable private benefit plan maintained by the employer: *Provided*, That the retiring official or employee has been in the service of the same employer for at least ten (10) years and is not less than fifty (50) years of age at the time of his retirement: *Provided, further*, That the benefits granted under this subparagraph shall be availed of by an official or employee only once. For purposes of this Subsection, the term '*reasonable private benefit plan*' means a pension, gratuity, stock bonus or profit-sharing plan maintained by an employer for the benefit of some or all of his officials or employees, wherein contributions are made by such employer for the officials or employees, or both, for the purpose of distributing to such officials and employees the earnings and principal of the fund thus accumulated, and wherein it is provided in said plan that at no time shall any part of the *corpus* or income of the fund be used for, or be diverted to, any purpose other than for the exclusive benefit of the said officials and employees.

(b) Any amount received by an official or employee or by his heirs from the employer as a consequence of separation of such official or employee from the service of the employer because of death, sickness or other physical disability or for any cause beyond the control of the said official or employee.

(c) The provisions of any existing law to the contrary notwithstanding, social security benefits, retirement gratuities, pensions and other similar benefits received by resident or nonresident citizens of the Philippines or aliens who come to reside permanently in the Philippines from foreign government agencies and other institutions, private or public.

(d) Payments of benefits due or to become due to any person residing in the Philippines under the laws of the United States administered by the United States Veterans Administration.

(e) Benefits received from or enjoyed under the Social Security System in accordance with the provisions of Republic Act No. 8282.

(f) Benefits received from the GSIS under Republic Act No. 8291, including retirement gratuity received by government officials and employees.

(7) *Miscellaneous Items.* –

(a) *Income Derived by Foreign Government.* – Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.

(b) *Income Derived by the Government or its Political Subdivisions.* – Income derived from any public utility or from the exercise of any essential governmental function accruing to the Government of the Philippines or to any political subdivision thereof.

(c) *Prizes and Awards.* – Prizes and awards made primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civic achievement but only if:

(i) The recipient was selected without any action on his part to enter the contest or proceeding; and

(ii) The recipient is not required to render substantial future services as a condition to receiving the prize or award.

(d) *Prizes and Awards in Sports Competition.* – All prizes and awards granted to athletes in local and international sports competitions and tournaments whether held in the Philippines or abroad and sanctioned by their national sports associations.

(e) *13th Month Pay and Other Benefits.* – Gross benefits received by officials and employees of public and private entities: *Provided, however,* That the total exclusion under this subparagraph shall not exceed Thirty thousand pesos (P30,000) which shall cover:

(i) Benefits received by officials and employees of the national and local government pursuant to Republic Act No. 6686;

(ii) Benefits received by employees pursuant to Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986;

(iii) Benefits received by officials and employees not covered by Presidential Decree No. 851, as amended by Memorandum Order No. 28, dated August 13, 1986; and

(iv) Other benefits such as productivity incentives and Christmas bonus: *Provided, further*, That the ceiling of Thirty thousand pesos (P30,000) may be increased through rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner, after considering, among others, the effect on the same of the inflation rate at the end of the taxable year.

(f) *GSIS, SSS, Medicare and Other Contributions.* – GSIS, SSS, Medicare and Pag-IBIG contributions, and union dues of individuals.

(g) *Gains from the Sale of Bonds, Debentures or other Certificate of Indebtedness.* – Gains realized from the sale or exchange or retirement of bonds, debentures or other certificate of indebtedness with a maturity of more than five (5) years.

(h) *Gains from Redemption of Shares in Mutual Fund.* – Gains realized by the investor upon redemption of shares of stock in a mutual fund company as defined in Section 22 (BB) of this Code.

(I) INCOME OF SMALL-SCALE MINERS. – INCOME DERIVED BY SMALL-SCALE MINERS FROM THE SALE OF GOLD TO THE BANGKO SENTRAL NG PILIPINAS PURSUANT TO REPUBLIC ACT NO. 7076.”

SEC. 2. Section 151 of Republic Act No. 8424, as amended, otherwise known as the National Internal Revenue Code, is hereby further amended to read, as follows:

“Section 151. Mineral Products. –

(A) *Rates of Tax.* – There shall be levied, assessed and collected on minerals, mineral products and quarry resources, excise tax as follows:

(1) On coal and coke, a tax of Ten pesos (P10.00) per metric ton;

(2) On all nonmetallic minerals and quarry resources, a tax of two percent (2%) based on the actual market value of the gross output thereof at the

time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation.

Notwithstanding the provision of paragraph (4) of Subsection (A) of Section 151, locally extracted natural gas and liquefied natural gas shall be taxed at the rate of two percent (2%);

(3) On all metallic minerals, a tax based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation, in accordance with the following schedule;

(a) Copper and other metallic minerals;

(i) On the first three (3) years upon the effectivity of Republic Act No. 7729, one percent (1%);

(ii) On the fourth and the fifth years, one and a half percent (1½%); and

(iii) On the sixth year and thereafter, two percent (2%);

(b) Gold and chromite, two percent (2%).

(4) On indigenous petroleum, a tax of three percent (3%) of the fair international market price thereof, on the first taxable sale, barter, exchange or such similar transaction, such tax to be paid by the buyer or purchaser before removal from the place of production. The phrase "*first taxable sale, barter, exchange or similar transaction*" means the transfer of indigenous petroleum in its original state to a first taxable transferee. The fair international market price shall be determined in consultation with an appropriate government agency.

For the purpose of this Subsection, "*indigenous petroleum*" shall include locally-extracted mineral oil, hydrocarbon gas, bitumen, crude asphalt, mineral gas and all other similar or naturally associated substances with the exception of coal, peat, bituminous shale and/or stratified mineral deposits.

(B) For purposes of this Section, the term –

(1) "*Gross output*" shall be interpreted as the actual market value of minerals or mineral products or of bullion from each mine or mineral land operated as a separate entity, without any deduction from mining, milling, refining (including all expenses incurred to prepare the said minerals or mineral products in a marketable state), as well as transporting, handling, marketing or any other expenses: *Provided*, That if the minerals or mineral products are sold or consigned abroad by the lessee or owner of the mine under C.I.F. terms, the actual cost of ocean freight and insurance shall be deducted: *Provided, however*, That in the case of mineral concentrate, not traded in commodity exchanges in the Philippines or abroad, such as copper concentrate, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining and other charges incurred in the process of converting the mineral concentrates into refined metal traded in those commodity exchanges.

(2) "*Minerals*" shall mean all naturally occurring inorganic substances (found in nature) whether in solid, liquid, gaseous or any intermediate state.

(3) "*Mineral products*" shall mean things produced and prepared in a marketable state by simple treatment processes such as washing or drying, but without undergoing any chemical change or process or manufacturing by the lessee, concessionaire or owner of mineral lands.

(4) "*Quarry resources*" shall mean any common stone or other common mineral substances as the Director of the Bureau of Mines and Geo-Sciences may declare to be quarry resources such as, but not restricted to, marl, marble, granite, volcanic cinders, basalt, tuff and rock phosphate: *Provided*, That they contain no metal or other valuable minerals in economically workable quantities.

(C) NOTWITHSTANDING THE FOREGOING, GOLD SOLD BY SMALL-SCALE MINERS TO THE BANGKO SENTRAL NG PILIPINAS PURSUANT TO REPUBLIC ACT NO. 7076 SHALL BE EXEMPT FROM THE PAYMENT OF EXCISE TAX: PROVIDED, HOWEVER, THAT IF EXCISE TAX THEREON WAS PAID PRIOR TO THE SALE OF GOLD TO THE BANGKO SENTRAL NG PILIPINAS, THE TAXPAYER MAY FILE A CLAIM FOR REFUND OR CREDIT WITH THE COMMISSIONER FOR EXCISE TAX PAID."

SEC. 3. Implementing Rules and Regulations. – The Secretary of Finance, upon recommendation of the Governor of the Banko Sentral ng Pilipinas and the

Commissioner of Internal Revenue, shall within sixty (60) days from the effectivity of this Act promulgate the rules and regulations necessary for the effective implementation of this Act. All prior rules and regulations pertaining to excise tax on gold sold to the Bangko Sentral ng Pilipinas shall be deemed revoked upon issuance of said rules and regulations.

SEC. 4. *Separability Clause.* – If any portion or provision of this Act is declared unconstitutional, the remainder of this Act or any provision not affected thereby shall remain in force and effect.

SEC. 5. *Repealing Clause.* – All laws, presidential decrees, letters of instruction, executive orders, rules and regulations, or any part thereof inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 6. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approved,