

**Republic of the Philippines
House of Representatives
Quezon City**

**Seventeenth Congress
Third Regular Session**

7994

House Bill No. _____



Introduced by Representative Estrellita B. Suansing

EXPLANATORY NOTE

The Philippines is an economy with abundant natural resources. According to Asian Development Bank, the country is considered to be the fifth most mineral endowed-country in the world. However, the overall contribution of metallic mining to the gross domestic product (GDP) is small at less than half a percent on average in the last five years¹.

The significant contribution of mining industry to national economy is dependent upon the public policies implemented. Mining policies should allow the industry to improve as well its contribution to economic growth and development. The issuance of the Executive Order (EO) No. 79 set the platform for reform including the amendment to the mining fiscal regime. EO 79 recognizes the need to increase the contribution of the revenues from the mining industry as it mandates for a new law on mining fiscal regime to take effect before granting mining permits to new and pending applicants. The issuance of EO 79, therefore, is a catalyst to a more equitable sharing of revenue between the industry and the government. It signals the need to formulate an updated mechanism in promoting the social and economic welfare of the country through a new legislation rationalizing existing fiscal regime.

Presently, for large mines, mining contracts offer varying fiscal regimes and therefore fiscal burden are differentiated. The fiscal regime depends on whether the mine is operating in a mineral reservation and whether the mine is operated under a Mineral Production Sharing Agreement (MPSA) or Financial and Technical Assistance Agreement (FTAA). To date almost all mining contracts are under MPSA, while those in mineral reservations are composed mainly of nickel mines. All FTAA agreements are for mines outside mineral reservations.

The complex and differentiated fiscal regime currently accorded to mining sector is the reason for this proposed bill. A rationalized and a single

¹ Source: The Fourth PH-EITI Report_December 2017

fiscal regime applicable to all mineral agreements and FTAA is sought as it promotes fairness. The proposal under this bill shall be applicable to all existing and prospective large metallic, non-metallic, and small-scale mines, and shall be applied to all mines regardless of whether the mine is located outside or inside a mineral reservation. This should be viewed as a package where it is structured to satisfy the objectives of government for a reasonable increased share without compromising the mining sector's need for reasonable return on its investment.

Royalties are compensations to the State by mining companies for the minerals that they extract as anchored under Section 2, Article XII of the Philippine Constitution which provides that all lands of the public domain with the emphasis that forest or timber, mineral lands, and all other natural resources must remain with the State, except for agricultural lands which alone may be alienated. Also, royalty as proposed secures revenue for the government as soon as production commences as is easy to administer. Noting, the proposal retains the royalty rate of 5 percent for those currently located inside a mineral reservation, and a phased-in rate for those outside mineral reservation, to wit:

1. On the first three years upon the effectivity of this Act, three percent (3%);
2. On the fourth year, four percent (4%);
3. On the fifth year and thereafter, five percent (5%).

The bill proposes to retain the imposition of the corporate income tax (CIT) on the mining sector to level the playing field among all other sectors. It is also proposed to impose an additional government share when the basic government share is less than fifty percent (50%) of the net mining revenue. The government currently gets an additional share under the FTA fiscal regime only.

Further, thin capitalization will be introduced in order for the businesses not to depend on excessive debt funding which would result in high interest expense deductions, and thereby reducing corporate tax liability. Furthermore, for the government to maximize its share, ring-fencing per project is proposed. This is to prevent consolidation of income and expenses of all mining projects by the same taxpayer, hence losses from other mining projects could not be deducted from more profitable projects.

In light of the foregoing, the passage of this bill is earnestly sought.


ESTRELLITA B. SUANSING

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AN ACT

**AMENDING CHAPTER VII TITLE VI AND SECTION 151, AND CREATING
NEW SECTIONS 151-A AND 151-B, OF REPUBLIC ACT NO. 8424,
OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF
1997, AS AMENDED, AND FOR OTHER PURPOSES**

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

SECTION 1. The chapter title of Chapter VII Title VI of the National Internal Revenue Code of 1997 (NIRC), as amended, is hereby changed to **TAXATION OF MINERAL PRODUCTS**.

SECTION 2. The section title of Section 151 of the NIRC, as amended, is hereby changed to **EXCISE TAX ON MINERAL PRODUCTS**.

SECTION 3. A new section designated as Section 151-A under Chapter VII Title VI of the NIRC, as amended, is hereby inserted and shall read as follows:

“SEC. 151-A. ROYALTY. –

(A) **ROYALTY RATES. –** MINING CONTRACTORS FOR ALL METALLIC AND NON-METALLIC MINING OPERATIONS, WHETHER LARGE-SCALE OR SMALL-SCALE, SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT TO:

(1) IF WITHIN MINERAL RESERVATIONS, FIVE PERCENT (5%) OF THE MARKET VALUE OF THE GROSS OUTPUT OF THE MINERALS/MINERAL PRODUCTS EXTRACTED OR PRODUCED BY THE MINING OPERATIONS EXCLUSIVE OF ALL OTHER TAXES;

(2) IF OUTSIDE MINERAL RESERVATIONS:

- (a) ON THE FIRST THREE (3) YEARS UPON THE EFFECTIVITY OF THIS ACT, THREE PERCENT (3%);
- (b) ON THE FOURTH YEAR, FOUR PERCENT (4%);
AND
- (c) ON THE FIFTH YEAR AND THEREAFTER, FIVE PERCENT (5%).

(B) FOR PURPOSES OF THIS SECTION –

- (1) **'GROSS OUTPUT'** SHALL MEAN THE ACTUAL MARKET VALUE OF MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY DEDUCTION FOR MINING, PROCESSING, REFINING, TRANSPORTING, HANDLING, MARKETING OR ANY OTHER EXPENSES: PROVIDED, THAT OF THE MINERALS OR MINERAL PRODUCTS ARE SOLD OR CONSIGNED ABROAD BY THE CONTRACTOR UNDER C.I.F. TERMS, THE ACTUAL COST OF OCEAN FREIGHT AND INSURANCE SHALL BE DEDUCTED: PROVIDED, FURTHER, THAT IN THE CASE OF MINERAL CONCENTRATES WHICH ARE NOT TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES OR ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE REFINED MINERAL PRODUCTS CONTENT THEREOF PREVAILING IN THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE SMELTING, REFINING, TREATMENT, INSURANCE, TRANSPORTATION AND OTHER CHARGES INCURRED IN THE PROCESS OF CONVERTING MINERAL CONCENTRATES INTO REFINED METAL TRADED IN THOSE COMMODITY EXCHANGES.
- (2) **'MINING CONTRACTOR'** SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT (FTAA).
- (3) EACH MINING OPERATIONS, WHICH ARE SUBJECT TO A MINERAL AGREEMENT OR FTAA, SHALL BE TREATED AS A SEPARATE TAXABLE ENTITY. A

MINING CONTRACTOR SHALL BE TREATED AS IF A SEPARATE TAXPAYER WITH RESPECT TO EACH AND EVERY MINERAL AGREEMENT OR FTAA IT HOLDS OR IS A PARTY TO.

IF A MINERAL AGREEMENT OR FTAA IS RENEWED, THE RENEWAL SHALL BE TREATED AS PART OF THE ORIGINAL AGREEMENT."

SECTION 4. A new section designated as Section 151-B under Chapter VII Title VI of the NIRC, as amended, is hereby inserted and shall read as follows:

"SEC. 151-B. ADDITIONAL GOVERNMENT SHARE. -

(A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS CHAPTER, THERE IS HEREBY IMPOSED FOR EACH TAXABLE YEAR AN ADDITIONAL GOVERNMENT SHARE WHICH SHALL BE THE AMOUNT TO BE PAID BY THE MINING CONTRACTOR WHEN THE BASIC GOVERNMENT SHARE IS LESS THAN FIFTY PERCENT (50%) OF THE NET MINING REVENUE. THE ADDITIONAL GOVERNMENT SHARE SHALL BE THE DIFFERENCE BETWEEN THE 50% OF NET MINING REVENUE AND THE BASIC GOVERNMENT SHARE DURING THE CALENDAR YEAR.

(B) FOR PURPOSES OF THIS SECTION -

(1) THE **'BASIC GOVERNMENT SHARE'** SHALL CONSIST OF ALL DIRECT TAXES, ROYALTIES, FEES AND RELATED PAYMENTS REQUIRED BY EXISTING LAWS, RULES AND REGULATIONS TO BE PAID BY THE CONTRACTOR. IT SHALL BE THE MINIMUM SHARE THAT THE GOVERNMENT SHALL RECEIVE DURING ANY CALENDAR YEAR. THE FOLLOWING NATIONAL AND LOCAL TAXES, ROYALTIES AND FEES PAID BY THE CONTRACTOR TO THE GOVERNMENT DURING A CALENDAR YEAR CONSTITUTE THE BASIC GOVERNMENT SHARE:

- (a) CONTRACTOR'S INCOME TAX;
- (b) CUSTOMS DUTIES AND FEES ON IMPORTED CAPITAL EQUIPMENT;
- (c) VALUE-ADDED TAX ON IMPORTED GOODS AND SERVICES;

- (d) WITHHOLDING TAX ON INTEREST PAYMENTS ON FOREIGN LOANS;
- (e) WITHHOLDING TAX ON DIVIDENDS TO FOREIGN STOCKHOLDERS;
- (f) DOCUMENTARY STAMPS TAXES;
- (g) CAPITAL GAINS TAX;
- (h) EXCISE TAX ON MINERALS;
- (i) ROYALTIES FROM MINING OPERATIONS AND TO INDIGENOUS PEOPLES, IF APPLICABLE;
- (j) LOCAL BUSINESS TAX;
- (k) REAL PROPERTY TAX;
- (l) COMMUNITY TAX;
- (m) OCCUPATION FEES;
- (n) REGISTRATION AND PERMIT FEES; AND
- (o) ALL OTHER NATIONAL AND LOCAL GOVERNMENT TAXES, ROYALTIES, AND FEES AS OF THE EFFECTIVE DATE OF THE MINERAL AGREEMENT OF FTAA.

RELATED PAYMENTS MADE BY THE CONTRACTOR FOR SPECIAL ALLOWANCE AND ROYALTY TO INDIGENOUS PEOPLES OR INDIGENOUS CULTURAL COMMUNITIES, IF APPLICABLE, AND WHICH ARE SUBJECT OF AGREEMENTS ENTERED INTO BY AND BETWEEN THE CONTRACTOR AND CONCERNED INDIVIDUALS OR PRIVATE PARTIES, AND WERE DULY APPROVED BY THE GOVERNMENT, SHALL BE CONSIDERED AS PART OF THE BASIC GOVERNMENT SHARE.

ANY VALUE-ADDED TAX ON EXPORTED PRODUCTS REFUNDED BY OR CREDITED TO THE CONTRACTOR SHALL NOT FORM PART OF THE BASIC GOVERNMENT SHARE.

- (2) THE '**NET MINING REVENUE**' SHALL MEAN THE GROSS OUTPUT LESS DEDUCTIBLE EXPENSES.

THE FOLLOWING CASH EXPENSES SHALL BE ALLOWED FOR DEDUCTION FROM THE GROSS OUTPUT TO DETERMINE THE NET MINING REVENUE:

- (a) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES TOGETHER WITH SMELTING AND REFINING COSTS OTHER THAN SMELTING AND REFINING COSTS PAID TO THIRD PARTIES;
- (b) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY INCURRED BY THE CONTRACTOR IN THE PHILIPPINES;
- (c) ENVIRONMENTAL EXPENSES OF THE CONTRACTOR, INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN THE ENVIRONMENTAL PROTECTION PROVISION OF THE MINERAL AGREEMENT OR FTAA AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;
- (d) EXPENSES FOR THE DEVELOPMENT OF HOST AND NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING TRAINING COSTS AND EXPENSES AS STIPULATED IN THE MINERAL AGREEMENT OR FTAA AND IN THE APPLICABLE IMPLEMENTING RULES AND REGULATIONS;
- (e) ROYALTY PAYMENTS TO CLAIM OWNERS OR SURFACE LAND OWNERS RELATING TO THE CONTRACT AREA DURING THE OPERATING PERIOD, IF ANY;
- (f) CONTINUING MINE OPERATING DEVELOPMENT EXPENSES WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING PERIOD; AND
- (g) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER FINANCING-RELATED EXPENSES INCURRED BY THE CONTRACTOR SUBJECT TO THE

FINANCING REQUIREMENT IN THE FTAA, WHICH SHALL NOT BE MORE THAN THE PREVAILING INTERNATIONAL RATES CHARGED FOR SIMILAR TYPES OF TRANSACTIONS AT THE TIME THE FINANCING WAS ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY FOR THE OPERATION.

SECTION 5. The NIRC, as amended, is hereby further amended by introducing a new Paragraph (4) under Section 34 (B), Chapter VII, Title II, which shall read as follows:

“(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING CONTRACTORS

- (i) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO IN EXCESS OF 1.5 TO 1 AT ANY TIME DURING A TAXABLE YEAR, A DEDUCTION IS DISALLOWED FOR THE INTEREST PAID BY THE CONTRACTOR DURING THAT YEAR ON THAT PART OF THE DEBT THAT EXCEEDS THE 1.5 TO 1 RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED.
- (ii) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS 1.5 TO 1 FOR AN INCOME YEAR, SUBSECTION (1) DOES NOT APPLY IF, AT ALL TIMES, DURING THE YEAR, THE AMOUNT OF THE DEBT OF THE CONTRACTOR DOES NOT EXCEED THE ARM’S LENGTH DEBT AMOUNT.

- (iii) IN THIS SECTION –

‘ARM’S LENGTH DEBT AMOUNT’, IN RELATION TO A MINING CONTRACTOR, MEANS THE AMOUNT OF DEBT THAT A BANK THAT IS NOT AN ASSOCIATE OF THE CONTRACTOR WOULD BE PREPARED TO LEND TO THE CONTRACTOR HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE CONTRACTOR;

‘ASSOCIATE’, IN RELATION TO A PERSON, MEANS ANY OTHER PERSON WHO ACTS OR MAY ACT IN ACCORDANCE WITH THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES OF THE FIRST-

MENTIONED PERSON, AND THE FIRST-MENTIONED PERSON IS AN ASSOCIATE OF THE SECOND-MENTIONED PERSON;

'DEBT', IN RELATION TO A CONTRACTOR, MEANS THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE DEBT OBLIGATIONS OF THE CONTRACTOR ON WHICH INTEREST IS PAYABLE AS DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL REPORTING STANDARDS;

'DEBT OBLIGATION' MEANS AN OBLIGATION TO MAKE A REPAYMENT OF MONEY TO ANOTHER PERSON, INCLUDING AN OBLIGATION ARISING UNDER A PROMISSORY NOTE, BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE A REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS PAYABLE;

'EQUITY', IN RELATION TO A CONTRACTOR, MEANS THE GREATEST AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE EQUITY OF THE CONTRACTOR AS DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL REPORTING STANDARDS AND INCLUDES AN OBLIGATION TO MAKE A REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

SECTION 6. The fiscal regime and revenue sharing arrangement provided herein and the applicable terms and conditions provided under existing laws shall be embodied in the mineral agreements and FTAAAs entered into by the government.

SECTION 7. Valid mineral agreements and FTAAAs existing prior to the effectivity of this Act that do not provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulations or from the enactment of a new law or regulation shall be considered a part of said mineral agreement and FTAAAs, shall continue to be governed by their existing terms and conditions.

SECTION 8. *Implementing Rules and Regulations.* – The Department of Finance, in consultation with other concerned government agencies, shall, within ninety (90) days from the effectivity of this Act, promulgate

rules and regulations to implement the intent and provisions of this Act.

SECTION 9. *Repealing Clause.* – All laws, decrees, executive orders, rules and regulations, or parts thereof, which are contrary to or inconsistent with this Act are hereby repealed, amended or modified accordingly.

SECTION 10. *Separability Clause.* – If any provision of this Act is declared unconstitutional or invalid, other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

SECTION 11. *Effectivity.* – This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation in the Philippines.

Approved,