

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

**Eighteenth Congress
First Regular Session**

House Bill No. 288



**Introduced by Representatives
Estrellita B. Suansing and Horacio P. Suansing, Jr.**

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 years.¹

The significant contribution of the mining industry to the 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 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 the mining sector is the reason for this proposed bill. A rationalized and a single 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

¹ Source: The Fourth PH-EITI Report _December 2017

mineral reservation. This should be viewed as a package where it is structured to satisfy the objectives of the government for a reasonable increased share without compromising the mining sector's need for reasonable return on its investment.

Some of the key provisions of this bill are the following:

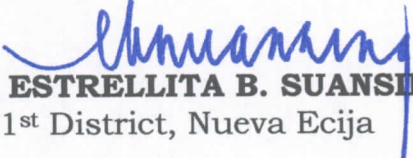
- 1) Impose a three percent (3%) royalty tax on large-scale mining operations located within mining reservation areas;
- 2) Impose a margin-based royalty tax on large-scale mining operations outside mining reservation areas ranging from 1% to 5%, as the case may be;
- 3) Impose a royalty tax on small-scale mining operations equivalent to one-tenth of one percent (1/10 of 1%) of gross output; and
- 4) Impose an additional margin-based tax on windfall profits gained from mining operations ranging from 1% to 10%, as the case may be.

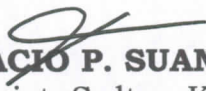
Thin capitalization will be introduced in order for the businesses not to depend on excessive debt funding which would result in high interest expense deductions, and thereby reducing corporate tax liability. Furthermore, for the government to maximize its share, ring-fencing per project is proposed. 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.

Additionally, this bill proposes to exempt mining contractors for all metallic and non-metallic mining operations, whether large- or small-scale, from the application of the confidentiality clauses of the National Internal Revenue Code of 1997, as amended, for the purpose of complying with the requirement of the Extractive Industries Transparency Initiative.

Finally, this bill proposes to require small-scale miners to register with the Mining Board of the concerned local government unit and the Mines and Geosciences Bureau. Such registration entails the securing of a Tax Identification Number from the Bureau of Internal Revenue. The Mining Board is then required to submit an annual report to the Mines and Geosciences Bureau of all small-scale mining contracts for small-scale utilization of a plot of mineral land including the respective production outputs, taxes and fees paid.

This proposed measure has been filed during the 17th Congress and approved the Third and Final Reading as House Bill No. 8400. In view of the foregoing, the immediate passage of this bill is earnestly sought.


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**AN ACT ESTABLISHING THE FISCAL REGIME FOR MINING
INDUSTRY**

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

1 **SECTION 1.** The chapter title of Chapter VII Title VI of the National
2 Internal Revenue Code of 1997 (NIRC), as amended, is hereby amended
3 to read as follows:

4
5 **"CHAPTER VII - [EXCISE TAX ON MINERAL PRODUCTS]**
6 **TAXATION OF MINERAL PRODUCTS".**
7

8 **SEC. 2.** On Section 151 Chapter VII, Title VI of the National Internal
9 Revenue Code of 1997, as amended, is hereby amended to read as
10 follows:

11
12 "SEC. 151. **TAX ON Mineral Products.** -"
13

14 **SEC. 3.** A new section designated as Section 151-A under Chapter VII,
15 Title VI of the National Internal Revenue Code of 1997, as amended, is
16 hereby inserted and shall read as follows:

17
18 **"SEC. 151-A. ROYALTY. -**
19

20 **(A)FOR LARGE-SCALE METALLIC AND NONMETALLIC**
21 **MINING OPERATIONS OUTSIDE OF MINERAL**
22 **RESERVATIONS. - MINING CONTRACTORS OF**
23 **LARGE-SCALE METALLIC AND NONMETALLIC**
24 **MINING OPERATIONS OUTSIDE OF MINERAL**
25 **RESERVATIONS SHALL PAY TO THE GOVERNMENT**
26 **A MARGIN-BASED ROYALTY ON INCOME FROM**

**MINING OPERATIONS IN ACCORDANCE WITH THE
FOLLOWING TABLE:**

MARGIN	ROYALTY
1% UP TO 10%	1.00%
ABOVE 10% UP TO 20%	1.50%
ABOVE 20% UP TO 30%	2.00%
ABOVE 30% UP TO 40%	2.50%
ABOVE 40% UP TO 50%	3.00%
ABOVE 50% UP TO 60%	3.50%
ABOVE 60% UP TO 70%	4.00%
ABOVE 70%	5.00%

- (B) FOR LARGE-SCALE METALLIC AND NONMETALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS. – MINING CONTRACTORS OF LARGE-SCALE METALLIC AND NONMETALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT TO THREE PERCENT (3%) OF THE GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;**
- (C) FOR SMALL-SCALE METALLIC AND NONMETALLIC MINING OPERATIONS WITHIN OR OUTSIDE MINERAL RESERVATIONS. – MINING CONTRACTORS OF SMALL-SCALE METALLIC AND NONMETALLIC MINING OPERATIONS WITHIN OR OUTSIDE MINERAL RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY EQUIVALENT TO ONE-TENTH (1/10) OF ONE PERCENT (1%) OF GROSS OUTPUT;**
- (D) WHEN USED IN THIS SECTION AND IN SECTION 151-B OF THIS CHAPTER. –**

- (1) THE TERM ‘MARGIN’ SHALL MEAN THE RATIO OF INCOME FROM MINING**

1 OPERATIONS BEFORE CORPORATE INCOME
2 TAX TO GROSS OUTPUT.

3 (2) THE TERM 'GROSS OUTPUT' SHALL MEAN
4 THE ACTUAL MARKET VALUE OF MINERALS
5 OR MINERAL PRODUCTS FROM EACH MINE
6 OR MINERAL LAND OPERATED AS A
7 SEPARATE ENTITY, WITHOUT ANY
8 DEDUCTION FOR MINING, PROCESSING,
9 REFINING, TRANSPORTING, HANDLING,
10 MARKETING OR ANY OTHER EXPENSES:
11 PROVIDED, THAT OF THE MINERALS OR
12 MINERAL PRODUCTS ARE SOLD OR
13 CONSIGNED ABROAD BY THE MINING
14 CONTRACTOR UNDER COST, INSURANCE
15 AND FREIGHT (CIF) TERMS, THE ACTUAL
16 COST OF OCEAN FREIGHT AND INSURANCE
17 SHALL BE DEDUCTED: PROVIDED, FURTHER,
18 THAT IN THE CASE OF MINERAL
19 CONCENTRATES WHICH ARE NOT TRADED
20 IN COMMODITY EXCHANGES IN THE
21 PHILIPPINES OR ABROAD, SUCH AS COPPER
22 CONCENTRATES, THE ACTUAL MARKET
23 VALUE SHALL BE WORLD PRICE
24 QUOTATIONS OF THE REFINED MINERAL
25 PRODUCTS CONTENT THEREOF
26 PREVAILING IN THE SAID COMMODITY
27 EXCHANGES, AFTER DEDUCTING THE
28 SMELTING, REFINING, TREATMENT,
29 INSURANCE, TRANSPORTATION AND OTHER
30 CHARGES INCURRED IN THE PROCESS OF
31 CONVERTING MINERAL CONCENTRATES
32 INTO REFINED METAL TRADED IN THOSE
33 COMMODITY EXCHANGES.

34 (3) THE TERM 'INCOME FROM MINING
35 OPERATIONS' SHALL MEAN THE GROSS
36 OUTPUT LESS DEDUCTIBLE EXPENSES,
37 WHICH INCLUDES:

38
39 (a) MINING, MILLING, TRANSPORT AND
40 HANDLING EXPENSES TOGETHER WITH
41 SMELTING AND REFINING COSTS
42 OTHER THAN SMELTING AND REFINING
43 COSTS PAID TO THIRD PARTIES;
44

1 (b) GENERAL AND ADMINISTRATIVE
2 EXPENSES ACTUALLY INCURRED BY
3 THE MINING CONTRACTOR IN THE
4 PHILIPPINES;
5

6 (c) ENVIRONMENTAL EXPENSES OF THE
7 MINING CONTRACTOR, INCLUDING
8 SUCH EXPENSES NECESSARY TO FULLY
9 COMPLY WITH ITS ENVIRONMENTAL
10 OBLIGATIONS AS STIPULATED IN THE
11 ENVIRONMENTAL PROTECTION
12 PROVISION OF THE MINERAL
13 AGREEMENT OR FINANCIAL AND
14 TECHNICAL ASSISTANCE AGREEMENT
15 AND IN THE APPLICABLE
16 IMPLEMENTING RULES AND
17 REGULATIONS;
18

19 (d) EXPENSES FOR THE DEVELOPMENT OF
20 HOST AND NEIGHBORING
21 COMMUNITIES AND FOR THE
22 DEVELOPMENT OF GEOSCIENCES AND
23 MINING TECHNOLOGY, INCLUDING
24 TRAINING COSTS AND EXPENSES AS
25 STIPULATED IN THE MINERAL
26 AGREEMENT OR FINANCIAL AND
27 TECHNICAL ASSISTANCE AGREEMENT
28 AND IN THE APPLICABLE
29 IMPLEMENTING RULES AND
30 REGULATIONS;
31

32 (e) ROYALTY PAYMENTS TO CLAIM
33 OWNERS OR SURFACE LAND OWNERS
34 RELATING TO THE CONTRACT AREA
35 DURING THE OPERATING PERIOD, IF
36 ANY;
37

38 (f) CONTINUING EXPLORATION AND
39 DEVELOPMENT EXPENSES WITHIN THE
40 CONTRACT AREA AFTER THE
41 PREOPERATING PERIOD;
42

43 (g) INTEREST EXPENSES CHARGED ON
44 LOANS OR SUCH OTHER FINANCING
45 RELATED EXPENSES INCURRED BY THE
MINING CONTRACTOR SUBJECT TO THE
FINANCING REQUIREMENT IN THE
MINERAL AGREEMENT OR FINANCIAL
AND TECHNICAL ASSISTANCE

1 AGREEMENT, WHICH SHALL NOT BE
2 MORE THAN THE PREVAILING
3 INTERNATIONAL RATES CHARGED FOR
4 SIMILAR TYPES OF TRANSACTIONS AT
5 THE TIME THE FINANCING WAS
6 ARRANGED, AND WHERE SUCH LOANS
7 ARE NECESSARY FOR THE OPERATION.
8 (h) DEPRECIATION, DEPLETION, AND
9 AMORTIZATION;
10 (i) TAXES, DUTIES, FEES, AND CHARGES;
11 AND
12 (j) ALL OTHER COSTS AND EXPENSES
13 RELATED TO MINING OPERATIONS AND
14 SALE OF MINERALS AND MINERAL
15 PRODUCTS.

16
17 (4) THE TERM 'MINING CONTRACTOR' SHALL
18 MEAN A QUALIFIED PERSON ACTING ALONE
19 OR IN CONSORTIUM WHO IS A PARTY TO A
20 MINERAL AGREEMENT OR FINANCIAL AND
21 TECHNICAL ASSISTANCE AGREEMENT."
22

23 **SEC. 4.** A new section designated as Section 151-B under Chapter VII,
24 Title VI of the National Internal Revenue Code of 1997, as amended, is
25 hereby inserted and shall read as follows:

26
27 **"SEC. 151-B. WINDFALL PROFITS TAX -**
28

29 **(A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS**
30 **CODE, THERE IS HEREBY IMPOSED FOR EACH**
31 **TAXABLE YEAR A MARGIN-BASED WINDFALL**
32 **PROFITS TAX ON INCOME FROM MINING**
33 **OPERATIONS BEFORE CORPORATE INCOME TAX,**
34 **IN ACCORDANCE WITH THE FOLLOWING TABLE:**
35 **PROVIDED, THAT IT SHALL BE DEDUCTIBLE FROM**
36 **TAXABLE INCOME, AS DEFINED IN SECTION 31,**
37 **CHAPTER V, TITLE II OF THIS CODE:**
38

MARGIN	RATE
MORE THAN 35% UP TO 40%	1%
MORE THAN 40% TO 45%	2%
MORE THAN 45% TO 50%	3%
MORE THAN 50% TO 55%	4%

MORE THAN 55% TO 60%	5%
MORE THAN 60% TO 65%	6%
MORE THAN 65% TO 70%	7%
MORE THAN 70% TO 75%	8%
MORE THAN 75% TO 80%	9%
MORE THAN 80%	10%

SEC. 5. Section 34(B) of Chapter VII, Title II of the National Internal Revenue Code of 1997, as amended, is hereby further amended to read as follows:

"SEC. 34. Deductions from Gross Income. – x x x

"(A) Expenses. –

"x x x

"(B) Interest. –

"(1) x x x

"(2) x x x

"(3) x x x

"(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING CONTRACTORS:

(A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO IN EXCESS OF 3 TO 1 AT ANY TIME DURING A TAXABLE YEAR, A DEDUCTION IS DISALLOWED AS A TAX-DEDUCTIBLE EXPENSE FOR THE INTEREST PAID BY THE MINING CONTRACTOR DURING THAT YEAR ON THAT PART OF THE DEBT THAT EXCEEDS THE 3 TO 1 RATIO FOR THE PERIOD THE RATIO WAS EXCEEDED.

(B) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS 3 TO 1 FOR AN INCOME YEAR, SUBSECTION (A) DOES NOT APPLY IF, AT ALL TIMES, DURING THE YEAR, THE AMOUNT OF THE DEBT OF THE MINING CONTRACTOR DOES NOT EXCEED THE ARM'S LENGTH DEBT AMOUNT.

1 (C) WHEN USED IN THIS SECTION -

2 THE TERM 'ARM'S LENGTH DEBT
3 AMOUNT' SHALL MEAN THE AMOUNT OF
4 DEBT THAT A BANK THAT IS NOT AN
5 ASSOCIATE OF THE MINING CONTRACTOR
6 WOULD BE PREPARED TO LEND TO THE
7 MINING CONTRACTOR HAVING REGARD TO
8 ALL THE CIRCUMSTANCES OF THE MINING
9 CONTRACTOR.

10 THE TERM 'ASSOCIATE' SHALL MEAN
11 ANY OTHER PERSON WHO ACTS OR MAY
12 ACT IN ACCORDANCE WITH THE
13 DIRECTIONS, REQUESTS, SUGGESTIONS,
14 OR WISHES OF THE FIRST-MENTIONED
15 PERSON, AND THE FIRST-MENTIONED
16 PERSON IS AN ASSOCIATE OF THE
17 SECOND-MENTIONED PERSON.

18 THE TERM 'DEBT' SHALL MEAN THE
19 GREATEST AMOUNT, AT ANY TIME DURING
20 AN INCOME YEAR, OF THE DEBT
21 OBLIGATIONS OF THE MINING
22 CONTRACTOR ON WHICH INTEREST IS
23 PAYABLE AS DETERMINED ACCORDING TO
24 INTERNATIONAL FINANCIAL REPORTING
25 STANDARDS.

26 THE TERM 'DEBT OBLIGATION'
27 SHALL MEAN AN OBLIGATION TO MAKE A
28 REPAYMENT OF MONEY TO ANOTHER
29 PERSON, INCLUDING AN OBLIGATION
30 ARISING UNDER A PROMISSORY NOTE,
31 BILL OF EXCHANGE, OR BOND, BUT NOT
32 INCLUDING ACCOUNTS PAYABLE OR AN
33 OBLIGATION TO MAKE REPAYMENT OF
34 MONEY IN RESPECT OF WHICH NO
35 INTEREST IS PAYABLE.

36 THE TERM 'EQUITY' SHALL MEAN
37 THE GREATEST AMOUNT, AT ANY TIME
38 DURING AN INCOME YEAR, OF THE EQUITY
39 OF THE MINING CONTRACTOR AS
40 DETERMINED ACCORDING TO
41 INTERNATIONAL FINANCIAL REPORTING
42 STANDARDS AND INCLUDES AN
43 OBLIGATION TO MAKE A REPAYMENT OF
44 MONEY IN RESPECT OF WHICH NO
45 INTEREST IS PAYABLE.

1
2 “(C) *Taxes.* –

3 “x x x

4
5 “(D) *Losses.* –

6 “x x x

7
8 “(E) *Bad Debts.* –

9 “x x x

10
11 “(F) *Depreciation.* –

12 “x x x

13
14 “(G) *Depletion of Oil and Gas Wells and Mines.* –

15 “x x x

16
17 “(H) *Charitable and Other Contributions.* –

18 “x x x

19
20 “(I) *Research and Development.* –

21 “x x x

22
23 “(J) *Pension Trusts.* – x x x

24
25 “(K) *Additional Requirements for Deductibility of Certain*
26 *Payments.* – x x x

27
28 “(L) *Optional Standard Deduction.* – x x x

29
30 “(M) *Premium Payments on Health and/or Hospitalization*
31 *Insurance of an Individual Taxpayer.* – x x x

32
33 **SEC. 6.** *Each Mining Operation Treated as a Separate Taxable Entity.* –
34 Each mining operation, which is subject to a Mineral Agreement or
35 Financial and Technical Assistance Agreement shall be treated as a
36 separate taxable entity. A mining contractor shall be treated as if a
37 separate taxpayer with respect to each and every Mineral Agreement or
38 Financial and Technical Assistance Agreement it holds or is a party to.

39
40 If a Mineral Agreement or Financial and Technical Assistance
41 Agreement is renewed, the renewal shall be treated as part of the original
42 agreement.

43
44 **SEC. 7.** *Exemption from Confidentiality Clauses.* – Mining contractors for
45 all metallic and nonmetallic mining operations, whether large-scale or

1 small-scale, shall observe fiscal transparency and comply with the
2 requirements of the Extractive Industries Transparency Initiative (EITI)
3 of government, and, for this purpose, shall be exempted from application
4 of the confidentiality clauses of the National Internal Revenue Code of
5 1997, as amended, including Section 270 in relation to Section 71, to
6 the extent of their participation in the EITI.

7
8 **SEC. 8. *Fiscal Regime Under Financial and Technical Assistance***
9 ***Agreements and Other Mineral Agreements.*** – The fiscal regime provided
10 herein and the applicable terms and conditions provided under existing
11 laws shall be embodied in the Mineral Agreements and Financial and
12 Technical Assistance Agreements entered into by the government.

13
14 **SEC. 9. *Vested Rights.*** – Valid Mineral Agreements and Financial and
15 Technical Assistance Agreements existing prior to the effectivity of this
16 Act shall continue to be governed by their respective terms and
17 conditions, except if they provide that any terms and conditions
18 resulting from repeal or amendment of any existing laws or regulations
19 or from the enactment of a new law or regulation shall be considered a
20 part of said Financial and Technical Assistance Agreements and Mineral
21 Agreements.

22
23 **SEC. 10. *Registration of Small-scale Miners.*** – All persons undertaking
24 small-scale mining activities shall register as miners with the Mining
25 Board of the concerned local government unit in accordance with
26 Republic Act No. 7076, entitled “An Act Creating a People’s Small-scale
27 Mining Program and for Other Purposes”, and with the Mines and
28 Geosciences Bureau (MGB) and may organize themselves into
29 cooperatives in order to qualify for the awarding of a people’s small-scale
30 mining contract.

31
32 The Mining Board shall submit an annual report to the MGB of
33 all the small-scale mining contracts entered into for the small-scale
34 utilization of a plot of mineral land including the respective production
35 output, taxes and fees paid.

36
37 For this purpose, a tax identification number shall be secured
38 from the Bureau of Internal Revenue as a requirement for registration.

39
40 **SEC. 11. *Implementing Rules and Regulations.*** – The Department of
41 Finance, after consultation with other concerned government agencies,
42 shall, within ninety (90) days from the effectivity of this Act, promulgate
43 rules and regulations to implement the intent and provisions of this Act.

44
45 **SEC. 12. *Repealing Clause.*** – All laws, decrees, executive orders, rules
46 and regulations, or parts thereof, which are contrary to or inconsistent
47 with this Act are hereby repealed, amended or modified accordingly.

1
2 **SEC. 13. *Separability Clause.*** – If any provision of this Act is declared
3 unconstitutional or invalid, other parts or provisions hereof not affected
4 thereby shall continue to be in full force and effect.
5

6 **SEC. 14. *Effectivity.*** – This Act shall take effect fifteen (15) days after its
7 publication in the *Official Gazette* or in a newspaper of general
8 circulation in the Philippines.
9

10 Approved,