



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session
2557

House Bill No. _____



Introduced by Representative Sharon S. Garin

EXPLANATORY NOTE

This measure seeks to rationalize and institute a single fiscal regime applicable to all mineral agreements. After a thorough discussions and consultations with all stakeholders in the industry and government agencies in the 17th Congress, the House has passed this bill into 3rd reading. It is the version where both the government can collect more revenues while the mining sector will grow and will be developed.

Executive Order No. 79, issued sometime in 2012, imposed a moratorium on the approval of the new mining permits. Hence, up to present, there are no newly-issued mining permits that have caused failure to attract quality direct investments in the mining industry.

There are about 15 projects in line worth billions of dollars that were on-hold because of the moratorium under E.O. No. 79. These projects are expected to generate more revenue and job opportunities. Some of these are the \$US5.9 billion US Tampuan project in South Cotabato; the Mindoro Nickel's project worth \$US2.5 billion; Philex Mining Silangan's project in Surigao del Norte with estimate value of 752 billion for copper and 605 billion for gold; the Nadecon's Kingking project in Davao del Norte; Davao Oriental's Asiaticus project; Lepanto Mining's FSE project in Benguet, and Masbate's Philsaga Mining contract.

Due to the moratorium, mining merely contributes 1% of the national economy.

TRAIN law under R.A.No. 10963 doubled the excise tax on mining operations to 4% from 2%. Thereafter, industry stakeholders are now clamoring for the lifting of the moratorium but the government must impose a

higher tax rate on mining. It is then imperative to increase the excise tax on mining to finally lift the suspension.

Hence, this bill imposes a one to five percent margin based royalty tax on large-scale mines and a one to ten percent windfall profits tax on income from mining operations. The mining industry would now stand to pay the government 9% in taxes.

Ultimately, this bill aims to strengthen the mining sector so it can again generate multi-billion dollar's worth of investments in many communities that had remained poor and isolated for many years.

In view of the foregoing, the passage of this bill is earnestly urged.



SHARON S. GARIN
Party-list, AAMBIS-OWA



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

2557

House Bill No. _____

Introduced by Representative Sharon S. Garin

AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE 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 Internal
2 Revenue Code of 1997, as amended, is hereby amended to read as follows:

3
4 **"CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION**
5 **OF MINERAL PRODUCTS."**

6
7 SEC. 2. On Sec. 151 of Chapter VII, Title VI of the National Internal Revenue
8 Code of 1997, as amended, is hereby amended to read as follows:

9
10 **"Sec. 151 TAX ON Mineral Products. –"**

11
12 SEC. 3. A new section designated as Section 151-A under Chapter VII Title VI
13 of the National Internal Revenue Code of 1997, as amended, is hereby
14 inserted and shall read as follows:

15
16 **"SEC. 151-A. ROYALTY. -**

17
18 A. FOR ALL LARGE-SCALE METALLIC AND NON-METALLIC MINING
19 OPERATIONS OUTSIDE OF MINERAL RESERVATIONS. - MINING
20 CONTRACTORS OF LARGE-SCALE METALLIC AND NON-METALLIC
21 MINING OPERATIONS OUTSIDE OF MINERAL RESERVATIONS
22 SHALL PAY TO THE GOVERNMENT A MARGIN-BASED ROYALTY
23 ON INCOME FROM MINING OPERATIONS IN ACCORDANCE WITH
24 THE FOLLOWING TABLE:

25

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 NON-METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS.** - MINING CONTRACTORS OF LARGE-SCALE METALLIC AND NON-METALLIC 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 NON-METALLIC MINING OPERATIONS WITHIN OR OUTSIDE MINERAL RESERVATIONS.** - MINING CONTRACTORS OF SMALL-SCALE METALLIC AND NON-METALLIC 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 OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT.

(2) THE TERM '**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 SOLD OR CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST, INSURANCE AND FREIGHT (CIF). TERMS, THE ACTUAL COST OF OCEAN FREIGHT AND

1 INSURANCE SHALL BE DEDUCTED: PROVIDED, FURTHER, THAT
2 IN THE CASE OF MINERAL CONCENTRATES WHICH ARE NOT
3 TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES OR
4 ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL
5 MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE
6 REFINED MINERAL PRODUCTS CONTENT THEREOF PREVAILING
7 IN THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE
8 SMELTING, REFINING, TREATMENT, INSURANCE,
9 TRANSPORTATION AND OTHER CHARGES INCURRED IN THE
10 PROCESS OF CONVERTING MINERAL CONCENTRATES INTO
11 REFINED METAL TRADED IN THOSE COMMODITY EXCHANGES.
12

13 (3) THE TERM '**INCOME**' FROM MINING OPERATIONS' SHALL MEAN
14 THE GROSS OUTPUT LESS DEDUCTIBLE EXPENSES, WHICH
15 INCLUDE:
16

17 (a) MINING, MILLING, TRANSPORT AND HANDLING EXPENSES
18 TOGETHER WITH SMELTING AND REFINING COSTS OTHER
19 THAN SMELTING AND REFINING COSTS PAID TO THIRD
20 PARTIES;
21

22 (b) GENERAL AND ADMINISTRATIVE EXPENSES ACTUALLY
23 INCURRED BY THE MINING CONTRACTOR IN THE
24 PHILIPPINES;
25

26 (c) ENVIRONMENTAL EXPENSES OF THE MINING CONTRACTOR,
27 INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY
28 WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN
29 THE ENVIRONMENTAL PROTECTION PROVISION OF THE
30 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
31 ASSISTANCE AGREEMENT AND IN THE APPLICABLE
32 IMPLEMENTING RULES AND REGULATIONS;
33

34 (d) EXPENSES FOR THE DEVELOPMENT OF HOST AND
35 NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT
36 OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING
37 TRAINING COSTS AND EXPENSES AS STIPULATED IN THE
38 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
39 ASSISTANCE AGREEMENT AND IN THE APPLICABLE
40 IMPLEMENTING RULES AND REGULATIONS;
41

42 (e) ROYALTY PAYMENTS TO CLAIMOWNERS OR SURFACE LAND
43 OWNERS RELATING TO THE CONTRACT AREA DURING THE
44 OPERATING PERIOD, IF ANY;
45

46 (f) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES
47 WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING
48 PERIOD;
49

- 1 (g) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER
2 FINANCING RELATED EXPENSES INCURRED BY THE MINING
3 CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT
4 IN THE MINERAL AGREEMENT OR FTA, WHICH SHALL NOT
5 BE MORE THAN THE PREVAILING INTERNATIONAL RATES
6 CHARGED FOR SIMILAR TYPES OF TRANSACTIONS AT THE
7 TIME THE FINANCING WAS ARRANGED, AND WHERE SUCH
8 LOANS ARE NECESSARY FOR THE OPERATION;
9
10 (h) DEPRECIATION, DEPLETION, AND AMORTIZATION;
11
12 (i) TAXES, DUTIES, FEES, AND CHARGES.
13
14 (j) ALL OTHER COSTS AND EXPENSES RELATED TO MINING
15 OPERATIONS AND SALE OF MINERALS AND MINERAL
16 PRODUCTS.
17
18 (4) THE TERM '**MINING CONTRACTOR**' SHALL MEAN A QUALIFIED
19 PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY
20 TO A MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
21 ASSISTANCE AGREEMENT.
22

23 SEC. 4. A new section designated as Section 151-B under Chapter VII Title VI
24 of the National Internal Revenue Code of 1997, as amended, is hereby
25 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 CODE,
30 THERE IS HEREBY IMPOSED FOR EACH TAXABLE YEAR A
31 MARGIN-BASED WINDFALL PROFITS TAX ON INCOME FROM
32 MINING OPERATIONS BEFORE CORPORATE INCOME TAX, IN
33 ACCORDANCE WITH THE FOLLOWING TABLE: *PROVIDED*, THAT
34 IT SHALL BE DEDUCTIBLE FROM TAXABLE INCOME, AS DEFINED
35 IN SECTION 31, CHAPTER V, TITLE II OF THIS CODE:
36

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. – xxx

(A) *Expenses.* – xxx

(B) *Interest.* –

(1) xxx

(2) xxx

(3) xxx

(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING CONTRACTORS

(i) 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.

(ii) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR EXCEEDS 3 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 MINING CONTRACTOR DOES NOT EXCEED THE ARM'S LENGTH DEBT AMOUNT.

(iii) WHEN USED IN THIS SECTION -

THE TERM '**ARM'S LENGTH DEBT AMOUNT**', SHALL MEAN THE AMOUNT OF DEBT THAT A BANK THAT IS NOT AN ASSOCIATE OF THE MINING CONTRACTOR WOULD BE PREPARED TO LEND TO THE MINING CONTRACTOR HAVING REGARD TO ALL THE CIRCUMSTANCES OF THE MINING CONTRACTOR;

1 THE TERM '**ASSOCIATE**', SHALL MEAN ANY OTHER
2 PERSON WHO ACTS OR MAY ACT IN ACCORDANCE WITH
3 THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES
4 OF THE FIRST-MENTIONED PERSON, AND THE FIRST-
5 MENTIONED PERSON IS AN ASSOCIATE OF THE SECOND
6 MENTIONED PERSON;

7
8 THE TERM '**DEBT**', SHALL MEAN THE GREATEST AMOUNT,
9 AT ANY TIME DURING AN INCOME YEAR, OF THE DEBT
10 OBLIGATIONS OF THE MINING CONTRACTOR ON WHICH
11 INTEREST IS PAYABLE AS DETERMINED ACCORDING TO
12 INTERNATIONAL FINANCIAL REPORTING STANDARDS;

13
14 THE TERM '**DEBT OBLIGATION**' SHALL MEAN AN
15 OBLIGATION TO MAKE A REPAYMENT OF MONEY TO
16 ANOTHER PERSON, INCLUDING AN OBLIGATION ARISING
17 UNDER A PROMISSORY NOTE, BILL OF EXCHANGE, OR
18 BOND, BUT NOT INCLUDING ACCOUNTS PAYABLE OR AN
19 OBLIGATION TO MAKE REPAYMENT OF MONEY IN
20 RESPECT OF WHICH NO INTEREST IS PAYABLE;

21
22 THE TERM '**EQUITY**', SHALL MEAN THE GREATEST
23 AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE
24 EQUITY OF THE MINING CONTRACTOR AS DETERMINED
25 ACCORDING TO INTERNATIONAL FINANCIAL REPORTING
26 STANDARDS AND INCLUDES AN OBLIGATION TO MAKE A
27 REPAYMENT OF MONEY IN RESPECT OF WHICH NO
28 INTEREST IS PAYABLE.

- 29
30 (C) *Taxes.* – xxx
31 (D) *Losses.* – xxx
32 (E) *Bad Debts.* – xxx
33 (F) *Depreciation.* – xxx
34 (G) *Depletion of Oil and Gas Wells and Mines.* – xxx
35 (H) *Charitable and Other Contributions.* – xxx
36 (I) *Research and Development.* – xxx
37 (J) *Pension Trusts.* – xxx
38 (K) *Additional Requirements for Deductibility of Certain Payments.* –
39 xxx
40 (L) *Optional Standard Deduction.* – xxx
41 (M) *Premium Payments on Health and/or Hospitalization Insurance of an*
42 *Individual Taxpayer.* – xxx”

43
44 **SEC. 6. Each Mining Operation Treated as a Separate Taxable**
45 **Entity.** – Each mining operation, which is subject to a Mineral
46 Agreement or Financial or Technical Assistance Agreement shall be
47 treated as a separate taxable entity. A mining contractor shall be
48 treated as if a separate taxpayer with respect to each and every Mineral
49 Agreement or Financial or Technical Assistance Agreement it holds or
50 is a party to.

1
2 If a Mineral Agreement or Financial or Technical Assistance Agreement
3 is renewed, the renewal shall be treated as part of the original
4 agreement.

5
6 **SEC. 7. Exemption from Confidentiality Clauses.** – Mining
7 contractors for all metallic and non-metallic mining operations, whether
8 large-scale or small-scale, shall observe fiscal transparency and
9 comply with the requirements of the Extractive Industries Transparency
10 Initiative (EITI) of government, and, for this purpose, shall be
11 exempted from application of the confidentiality clauses of the National
12 Internal Revenue Code of 1997, as amended, including Section 270 in
13 relation to Section 71, to the extent of their participation in EITI.

14
15 **SEC. 8. Fiscal Regime Under Financial or Technical Assistance**
16 **Agreements and Other Mineral Agreements.** - The fiscal regime
17 provided herein and the applicable terms and conditions provided under
18 existing laws shall be embodied in the mineral agreements and
19 Financial or Technical Assistance Agreements entered into by the
20 government.

21
22 **SEC. 9. Vested Rights.** - Valid mineral agreements and Financial or
23 Technical Assistance Agreements existing prior to the effectivity of this
24 Act that do not provide that any terms and conditions resulting from the
25 repeal or amendment of any existing laws or regulations or from the
26 enactment of a new law or regulation shall be considered a part of said
27 mineral agreement and Financial or Technical Assistance Agreements,
28 shall continue to be governed by their existing terms and conditions.

29
30 **SEC. 10. Registration of Small-Scale Miners.** – All persons
31 undertaking small-scale mining activities shall register as miners with
32 the Mining Board of the concerned local government unit in accordance
33 with Republic Act No. 7076, "An Act Creating A People's Small-Scale
34 Mining Program And For Other Purposes" and with the Mines and
35 Geoscience Bureau (MGB) and may organize themselves into
36 cooperatives in order to qualify for the awarding of a people's small-
37 scale mining contract.

38
39 The Mining Board shall submit an annual report to the MGB of all the
40 small-scale mining contracts entered into for the small-scale utilization
41 of a plot of mineral land including the respective production output,
42 taxes and fees paid.

43
44 For this purpose, a tax identification number shall be secured from the
45 Bureau of Internal Revenue as a requirement for registration.

46

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

5

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

10

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

14

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

18

19 Approved,