



EIGHTEENTH CONGRESS OF THE }
 REPUBLIC OF THE PHILIPPINES }
First Regular Session }

19 JUL -8 PM 12:00

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S E N A T E
 S.B. No. 240

Introduced by SENATOR VICENTE C. SOTTO III

**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**

EXPLANATORY NOTE

Section 2, Article XII of the Philippine Constitution provides that "all lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State." As owner of the resources such as minerals, the government seeks to exercise its police power to regulate mining.

There is a need to amend the existing mining fiscal regime and further enhance the equitable share of the government in the utilization of natural resources. A rationalized and a single fiscal regime applicable to all mineral agreements is sought as it promotes fairness. This complements the enacted Tax Reform for Acceleration and Inclusion (TRAIN) law which aimed to make the tax system simpler, fairer, and more efficient.

In view of the above, we propose to retain the royalty rate of five percent (5%) 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%).

Further to the above, we propose to retain the existing impositions such as the corporate income tax, excise tax, Indigenous People's royalty, and local business tax to level the playing field among all other sectors. An additional government share when the basic government share is less than fifty percent (50%) of the net mining revenue is likewise proposed. Currently, the government gets an additional share under the FTAA fiscal regime only.

Furthermore, we are also introducing thin capitalization so that the mining contractors will not depend too much on debt funding which would result in high interest expense deductions, to reduce corporate income tax liability. In addition, for the government to maximize its share, ring-fencing per project is proposed in order for the contractor not to consolidate income and expenses of all mining projects by the same taxpayer, which practice results in losses from some mining projects being deducted from more profitable projects.

In the exercise of its fiscal policy making power, the State is entitled to collect taxes, royalties, and other forms of impositions as it may deem fit. Taxes are due since the mining contractor is engaged in a taxable activity. Royalty is imposed to compensate the State in the utilization of natural resources by mining contractors, while the proposed additional government share becomes due when prices and profits are high.

Under Executive Order (EO) No. 79¹ the government noted that the obligation of the mining contractors vary depending on whether they enter into a Mineral Product Sharing Agreement or a Financial Technical Assistance Agreement or if they are large or small scale miners. We seek to impose a uniform fiscal regime upon all as these impositions exist regardless of the nature of the agreement or the size of the mining contractor which are based on the same source, the minerals. Currently, only those within mineral reservations are being required to pay a royalty.

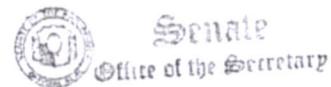
In light of the foregoing, the passage of this bill is earnestly sought.



VICENTE C. SOTTO III

¹ Institutionalizing and implementing reforms in the Philippine Mining Sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources.

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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:

- 1 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.**
- 4 Section 2. The section title of Section 151 of the NIRC, as amended, is hereby changed to **EXCISE TAX ON MINERAL PRODUCTS.**
- 6 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:
9
10 "**SEC. 151-A. ROYALTY.-**
- 11 **(A) ROYALTY RATES. - MINING CONTRACTORS FOR ALL METALLIC AND NON-METALLIC MINING OPERATIONS, WHETHER LARGE-SCALE**

1 OR SMALL-SCALE, SHALL PAY TO THE GOVERNMENT A ROYALTY
2 EQUIVALENT TO:

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

8
9 (2) IF OUTSIDE MINERAL RESERVATIONS:

10 (a) ON THE FIRST THREE (3) YEARS UPON THE EFFECTIVITY
11 OF REPUBLIC ACT NO. _____, THREE PERCENT (3%);

12 (b) ON THE FOURTH YEAR, FOUR PERCENT (4%); AND

13 (c) ON THE FIFTH YEAR AND THEREAFTER, FIVE PERCENT
14 (5%).

15 (B) FOR PURPOSES OF THIS SECTION -

16 (1) 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF
17 MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR
18 MINERAL LAND OPERATED AS A SEPARATE ENTITY, WITHOUT
19 ANY DEDUCTION FOR MINING, PROCESSING, REFINING,
20 TRANSPORTING, HANDLING, MARKETING OR ANY OTHER
21 EXPENSES: PROVIDED, THAT IF THE MINERALS OR MINERAL
22 PRODUCTS ARE SOLD OR CONSIGNDED ABROAD BY THE
23 CONTRACTOR UNDER C.I.F. TERMS, THE ACTUAL COST OF
24 OCEAN FREIGHT AND INSURANCE SHALL BE DEDUCTED:
25 PROVIDED, FURTHER, THAT IN THE CASE OF MINERAL

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

11 (2) 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON
12 ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A
13 MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL
14 ASSISTANCE AGREEMENT (FTAA).

15 (3) EACH MINING OPERATIONS/AREA SUBJECT OF A MINERAL
16 AGREEMENT OR FTAA SHALL BE TREATED AS A SEPARATE
17 TAXABLE ENTITY. A MINING CONTRACTOR SHALL BE TREATED
18 AS IF A SEPARATE TAXPAYER WITH RESPECT TO EACH AND
19 EVERY MINERAL AGREEMENT OR FTAA IT HOLDS OR IS A
20 PARTY TO.

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

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

27 "SEC. 151-B. ADDITIONAL GOVERNMENT SHARE. -
28

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

10 **(B) FOR PURPOSES OF THIS SECTION –**

11 **(1) THE ‘BASIC GOVERNMENT SHARE’ SHALL CONSIST OF ALL**
12 DIRECT TAXES, ROYALTIES, FEES AND RELATED PAYMENTS
13 REQUIRED BY EXISTING LAWS, RULES AND REGULATIONS TO
14 BE PAID BY THE CONTRACTOR. IT SHALL BE THE MINIMUM
15 SHARE THAT GOVERNMENT SHALL RECEIVE DURING ANY
16 CALENDAR YEAR. THE FOLLOWING NATIONAL AND LOCAL
17 TAXES, ROYALTIES AND FEES PAID BY THE CONTRACTOR TO
18 THE GOVERNMENT DURING A CALENDAR YEAR CONSTITUTE
19 THE BASIC GOVERNMENT SHARE:

- 20 (a) CONTRACTOR’S INCOME TAX;
21 (b) CUSTOMS DUTIES AND FEES ON IMPORTED CAPITAL
22 EQUIPMENT;
23 (c) VALUE-ADDED TAX ON IMPORTED GOODS AND SERVICES;
24 (d) WITHHOLDING TAX ON INTEREST PAYMENTS ON
25 FOREIGN LOANS;
26 (e) WITHHOLDING TAX ON DIVIDENDS TO FOREIGN
27 STOCKHOLDERS;
28 (f) DOCUMENTARY STAMPS TAXES;
29 (g) CAPITAL GAINS TAX;
30 (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 OR 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

1 THANSMELTING AND REFINING COSTS PAID TO THIRD
2 PARTIES;

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

5 (c) ENVIRONMENTAL EXPENSES OF THE CONTRACTOR,
6 INCLUDING SUCH EXPENSES NECESSARY TO FULLY COMPLY
7 WITH ITS ENVIRONMENTAL OBLIGATIONS AS STIPULATED IN
8 THE ENVIRONMENTAL PROTECTION PROVISION OF THE
9 MINERAL AGREEMENT OR FTAA AND IN THE APPLICABLE
10 IMPLEMENTING RULES AND REGULATIONS;

11 (d) EXPENSES FOR THE DEVELOPMENT OF HOST AND
12 NEIGHBORING COMMUNITIES AND FOR THE DEVELOPMENT
13 OF GEOSCIENCES AND MINING TECHNOLOGY, INCLUDING
14 TRAINING COSTS AND EXPENSES AS STIPULATED IN THE
15 MINERAL AGREEMENT OR FTAA AND IN THE APPLICABLE
16 IMPLEMENTING RULES AND REGULATIONS;

17 (e) ROYALTY PAYMENTS TO CLAIM OWNERS OR SURFACE LAND
18 OWNERS RELATING TO THE CONTRACT AREA DURING
19 THE OPERATING PERIOD, IF ANY;

20
21 (f) CONTINUING MINE OPERATING DEVELOPMENT EXPENSES
22 WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING
23 PERIOD; AND

24
25 (g) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER
26 FINANCING-RELATED EXPENSES INCURRED BY THE
27 CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT
28 IN THE FTAA, WHICH SHALL NOT BE MORE THAN THE
 PREVAILING INTERNATIONAL RATES CHARGED FOR SIMILAR

1 **TYPES OF TRANSACTIONS AT THE TIME THE FINANCING**
2 **WAS ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY**
3 **FOR THE OPERATIONS.**

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

7 **"(4) LIMITATION OF INTEREST EXPENSE DEDUCTIONS FOR MINING**
8 **CONTRACTORS.**

9 **(i) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO IN**
10 **EXCESS OF 1.5 TO 1 AT ANY TIME DURING A TAXABLE YEAR,**
11 **A DEDUCTION IS DISALLOWED FOR THE INTEREST PAID BY**
12 **THE CONTRACTOR DURING THAT YEAR ON THAT PART OF**
13 **THE DEBT THAT EXCEEDS THE 1.5 TO 1 RATIO FOR THE**
14 **PERIOD THE RATIO WAS EXCEEDED.**

15 **(ii) IF THE DEBT-TO-EQUITY RATIO OF A MINING**
16 **CONTRACTOR EXCEEDS 1.5 TO 1 FOR AN INCOME YEAR,**
17 **SUBSECTION (1) DOES NOT APPLY IF, AT ALL TIMES,**
18 **DURING THE YEAR, THE AMOUNT OF THE DEBT OF THE**
19 **CONTRACTOR DOES NOT EXCEED THE ARM'S LENGTH**
20 **DEBT AMOUNT.**

21 **(iii) IN THIS SECTION -**

22 **'ARM'S LENGTH DEBT AMOUNT', IN RELATION TO A**
23 **MINING CONTRACTOR, MEANS THE AMOUNT OF DEBT**
24 **THAT A BANK THAT IS NOT AN ASSOCIATE OF THE**
25 **CONTRACTOR WOULD BE PREPARED TO LEND TO THE**
26 **CONTRACTOR HAVING REGARD TO ALL THE**
27 **CIRCUMSTANCES OF THE CONTRACTOR;**

1 ‘ASSOCIATE’, IN RELATION TO A PERSON, MEANS ANY
2 OTHER PERSON WHO ACTS OR MAY ACT IN ACCORDANCE
3 WITH THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR
4 WISHES OF THE FIRST-MENTIONED PERSON, AND THE
5 FIRST-MENTIONED PERSON IS AN ASSOCIATE OF THE
6 SECOND-MENTIONED PERSON;

7 ‘DEBT’, IN RELATION TO A CONTRACTOR, MEANS THE
8 GREATEST AMOUNT, AT ANY TIME DURING AN INCOME
9 YEAR, OF THE DEBT OBLIGATIONS OF THE CONTRACTOR
10 ON WHICH INTEREST IS PAYABLE AS DETERMINED
11 ACCORDING TO INTERNATIONAL FINANCIAL REPORTING
12 STANDARDS;

13 ‘DEBT OBLIGATION’ MEANS AN OBLIGATION TO MAKE A
14 REPAYMENT OF MONEY TO ANOTHER PERSON, INCLUDING
15 AN OBLIGATION ARISING UNDER A PROMISSORY NOTE,
16 BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING
17 ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE A
18 REPAYMENT OF MONEY IN RESPECT OF WHICH NO
19 INTEREST IS PAYABLE;

20 ‘EQUITY’, IN RELATION TO A CONTRACTOR, MEANS THE
21 GREATEST AMOUNT, AT ANY TIME DURING AN INCOME
22 YEAR, OF THE EQUITY OF THE CONTRACTOR AS
23 DETERMINED ACCORDING TO INTERNATIONAL FINANCIAL
24 REPORTING STANDARDS AND INCLUDES AN OBLIGATION
25 TO MAKE A REPAYMENT OF MONEY IN RESPECT OF
26 WHICH NO INTEREST IS PAYABLE;

27 Section 6. The fiscal regime and revenue sharing arrangement provided
28 herein and the applicable terms and conditions provided under existing laws

1 shall be embodied in the mineral agreements and FTAAs entered into by the
2 government.

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

9 Section 8. *Implementing Rules and Regulations.* -The Department of Finance,
10 in consultation with other concerned government agencies, shall, within
11 ninety (90) days from the effectivity of this Act, promulgate rules and
12 regulations to implement the intent and provisions of this Act.

13

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

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

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

23 Approved,