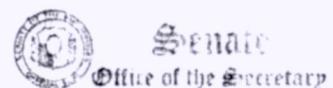


SEVENTEENTH CONGRESS OF THE
REPUBLIC OF THE PHILIPPINES
Third Regular Session)



19 MAY 28 P 3 :32

SENATE

S. No. 2235

(In substitution of S.B. Nos. 225, 927, and 1979 taking into consideration
H.B. No. 8400)

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A handwritten signature in black ink, appearing to read "SECRETARY".

Prepared by the Committee on Ways and Means with Senators Drilon, Recto, Sotto III, and Angara as authors

AN ACT
ESTABLISHING THE FISCAL REGIME FOR THE MINING INDUSTRY

Be it enacted by the Senate and 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 "CHAPTER VII - [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF
4 MINERAL PRODUCTS."

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

7 "SEC. 151. TAX ON Mineral Products. -"

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

11 "SEC. 151-A. ROYALTY. -

12 A. FOR ALL LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE
13 OF MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-
14 SCALE METALLIC MINING OPERATIONS OUTSIDE OF MINERAL
15 RESERVATIONS SHALL PAY TO THE GOVERNMENT A MARGIN-BASED

1 ROYALTY ON INCOME FROM MINING OPERATIONS IN ACCORDANCE
2 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%

3 B. FOR LARGE-SCALE METALLIC MINING OPERATIONS WITHIN
4 MINERAL RESERVATIONS. - MINING CONTRACTORS OF LARGE-
5 SCALE METALLIC MINING OPERATIONS WITHIN MINERAL
6 RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY
7 EQUIVALENT TO THREE PERCENT (3%) OF THE GROSS OUTPUT OF
8 THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED
9 BY THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER TAXES;

10 C. FOR SMALL-SCALE METALLIC MINING OPERATIONS WITHIN OR
11 OUTSIDE MINERAL RESERVATIONS. - MINING CONTRACTORS OF
12 SMALL-SCALE METALLIC WITHIN OR OUTSIDE MINERAL
13 RESERVATIONS SHALL PAY TO THE GOVERNMENT A ROYALTY
14 EQUIVALENT TO ONE TENTH (1/10) OF ONE PERCENT (1%) OF GROSS
15 OUTPUT;

16 D. FOR PURPOSES OF THIS SECTION AND SECTION 151-B, THE TERM -

17 (1) 'MARGIN' SHALL MEAN THE RATIO OF INCOME FROM MINING
18 OPERATIONS BEFORE CORPORATE INCOME TAX TO GROSS OUTPUT;

19 (2) 'GROSS OUTPUT' SHALL MEAN THE ACTUAL MARKET VALUE OF
20 MINERALS OR MINERAL PRODUCTS FROM EACH MINE OR MINERAL
21 LAND OPERATED AS A SEPARATE ENTITY, WITHOUT ANY

1 DEDUCTION FOR MINING, PROCESSING, REFINING, TRANSPORTING,
2 HANDLING, MARKETING OR ANY OTHER EXPENSES: PROVIDED,
3 THAT OF THE MINERALS OR MINERAL PRODUCTS SOLD OR
4 CONSIGNMENT ABROAD BY THE MINING CONTRACTOR UNDER COST,
5 INSURANCE OR FREIGHT (CIF) TERMS, THE ACTUAL COST OF OCEAN
6 FREIGHT AND INSURANCE SHALL BE DEDUCTED: PROVIDED,
7 FURTHER, THAT IN THE CASE OF MINERAL CONCENTRATES WHICH
8 ARE NOT TRADED IN COMMODITY EXCHANGES IN THE PHILIPPINES
9 OR ABROAD, SUCH AS COPPER CONCENTRATES, THE ACTUAL
10 MARKET VALUE SHALL BE WORLD PRICE QUOTATIONS OF THE
11 Refined MINERAL PRODUCTS CONTENT THEREOF PREVAILING IN
12 THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING THE
13 SMELTING, REFINING, TREATMENT, INSURANCE, TRANSPORTATION
14 AND OTHER CHARGES INCURRED IN THE PROCESS OF CONVERTING
15 MINERAL CONCENTRATES INTO Refined METAL TRADED IN THOSE
16 COMMODITY EXCHANGES;

17 (3) 'INCOME FROM MINING OPERATIONS' SHALL MEAN THE GROSS
18 OUTPUT LESS DEDUCTIBLE EXPENSES, WHICH INCLUDE:

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

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

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

(E) ROYALTY PAYMENTS TO CLAIMOWNERS OR SURFACE LAND OWNERS RELATING TO THE CONTRACT AREA DURING THE OPERATING PERIOD, IF ANY;

(F) CONTINUING EXPLORATION AND DEVELOPMENT EXPENSES
WITHIN THE CONTRACT AREA AFTER THE PRE-OPERATING
PERIOD;

(G) INTEREST EXPENSES CHARGED ON LOANS OR SUCH OTHER FINANCING RELATED EXPENSES INCURRED BY THE MINING CONTRACTOR SUBJECT TO THE FINANCING REQUIREMENT IN THE MINERAL AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENT, 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;

(H) DEPRECIATION, DEPLETION, AND AMORTIZATION;

(I) TAXES, DUTIES, FEES, AND CHARGES; AND

(J) ALL OTHER COSTS AND EXPENSES RELATED TO MINING OPERATIONS AND SALE OF MINERALS AND MINERAL PRODUCTS.

(4) 'MINING CONTRACTOR' SHALL MEAN A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM WHO IS A PARTY TO A MINERAL

1 **AGREEMENT OR FINANCIAL OR TECHNICAL ASSISTANCE**
2 **AGREEMENT."**

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

6 **"SEC. 151-B. WINDFALL PROFITS TAX. -**

7 **(A) IN ADDITION TO THE TAXES IMPOSED UNDER THIS CODE,**
8 **THERE IS HEREBY IMPOSED FOR EACH TAXABLE YEAR A MARGIN-**
9 **BASED WINDFALL PROFITS TAX ON INCOME FROM MINING**
10 **OPERATIONS BEFORE CORPORATE INCOME TAX, IN ACCORDANCE**
11 **WITH THE FOLLOWING TABLE: PROVIDED, THAT IT SHALL BE**
12 **DEDUCTIBLE FROM TAXABLE INCOME, AS DEFINED IN SECTION 31,**
13 **CHAPTER V, TITLE II OF THIS CODE:**

MARGIN	RATE
MORE THAN 35% UP TO 40%	1%
MORE THAN 40% UP TO 45%	2%
MORE THAN 45% UP TO 50%	3%
MORE THAN 50% UP TO 55%	4%
MORE THAN 55% UP TO 60%	5%
MORE THAN 60% UP TO 65%	6%
MORE THAN 65% UP TO 70%	7%
MORE THAN 70% UP TO 75%	8%
MORE THAN 75% UP TO 80%	9%
MORE THAN 80%	10%

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

16 **"SEC. 34. DEDUCTIONS FROM GROSS INCOME. - xxx**

17 **(A) Expenses. - xxx**

18 **(B) Interest. -**

1 (1) xxx

2 (2) xxx

3 (3) xxx

4 (4) **LIMITATION OF DEDUCTIONS FOR MINING CONTRACTORS:**

5 (A) IF A MINING CONTRACTOR HAS A DEBT-TO-EQUITY RATIO
6 IN EXCESS OF THREE (3) TO ONE (1) AT ANY TIME DURING A
7 TAXABLE YEAR, A DEDUCTION IS DISALLOWED AS A TAX-
8 DEDUCTIBLE EXPENSE FOR THE INTEREST PAID BY THE MINING
9 CONTRACTOR DURING THAT YEAR ON THAT PART OF THE
10 DEBT THAT EXCEEDS THE THREE (3) TO ONE (1) RATIO FOR THE
11 PERIOD THE RATIO WAS EXCEEDED;

12 (B) IF THE DEBT-TO-EQUITY RATIO OF A MINING CONTRACTOR
13 EXCEEDS THREE (3) TO ONE (1) FOR AN INCOME YEAR,
14 SUBSECTION (1) DOES NOT APPLY IF, AT ALL TIMES, DURING
15 THE YEAR, THE AMOUNT OF THE DEBT OF THE MINING
16 CONTRACTOR DOES NOT EXCEED THE ARM'S LENGTH DEBT
17 AMOUNT;

18 (C) FOR PURPOSES OF THIS SECTION, THE TERM 'ARM'S LENGTH
19 DEBT AMOUNT', SHALL MEAN THE AMOUNT OF DEBT THAT A
20 BANK THAT IS NOT AN ASSOCIATE OF THE MINING
21 CONTRACTOR WOULD BE PREPARED TO LEND TO THE MINING
22 CONTRACTOR HAVING REGARD TO ALL THE CIRCUMSTANCES
23 OF THE MINING CONTRACTOR;

24 THE TERM 'ASSOCIATE', SHALL MEAN ANY OTHER PERSON
25 WHO ACTS OR MAY ACT IN ACCORDANCE WITH THE
26 DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES OF THE
27 FIRST-MENTIONED PERSON, AND THE FIRST-MENTIONED
28 PERSON IS AN ASSOCIATE OF THE SECOND MENTIONED
29 PERSON;

30 THE TERM 'DEBT', SHALL MEAN THE GREATEST AMOUNT, AT
31 ANY TIME DURING AN INCOME YEAR, OF THE DEBT
32 OBLIGATIONS OF THE MINING CONTRACTOR ON WHICH

1 INTEREST IS PAYABLE AS DETERMINED ACCORDING TO
2 INTERNATIONAL FINANCIAL REPORTING STANDARDS;

3 THE TERM 'DEBT OBLIGATION' SHALL MEAN AN OBLIGATION
4 TO MAKE A REPAYMENT OF MONEY TO ANOTHER PERSON,
5 INCLUDING AN OBLIGATION ARISING UNDER A PROMISORY
6 NOTE, BILL OF EXCHANGE, OR BOND, BUT NOT INCLUDING
7 ACCOUNTS PAYABLE OR AN OBLIGATION TO MAKE
8 REPAYMENT OF MONEY IN RESPECT OF WHICH NO INTEREST IS
9 PAYABLE;

10 THE TERM 'EQUITY', SHALL MEAN THE GREATEST AMOUNT, AT
11 ANY TIME DURING AN INCOME YEAR, OF THE EQUITY OF THE
12 MINING CONTRACTOR AS DETERMINED ACCORDING TO
13 INTERNATIONAL FINANCIAL REPORTING STANDARDS AND
14 INCLUDES AN OBLIGATION TO MAKE A REPAYMENT OF MONEY
15 IN RESPECT OF WHICH NO INTEREST IS PAYABLE.

- 16 (C) Taxes. - xxx
- 17 (D) Losses. - xxx
- 18 (E) Bad Debts. - xxx
- 19 (F) Depreciation. - xxx
- 20 (G) Depletion of Oil and Gas Wells and Mines. -
21 x x x
- 22 (H) Charitable and Other Contributions. -
23 x x x
- 24 (I) Research and Development. -
25 x x x
- 26 (J) Pension Trusts. - x x x
- 27 (K) Additional Requirements for Deductibility of Certain Payments. - x x x
- 28 (L) Optional Standard Deduction. - x x x
- 29 Premium Payments on Health and/or Hospitalization Insurance of an Individual
30 Taxpayer. - x x x"

31 SEC. 6. *Each Mining Operation Treated as a Separate Taxable Entity.* - Each
32 mining operation, which is subject to a Mineral Agreement or Financial or Technical

1 Assistance Agreement shall be treated as a separate taxable entity. A mining contractor
2 shall be treated as if a separate taxpayer with respect to each and every Mineral
3 Agreement or Financial or Technical Assistance Agreement it holds or is a party to.

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

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

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

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

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

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

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

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

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

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

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

Approved,