



HOUSE OF REPRESENTATIVES

H. No. 8400

BY REPRESENTATIVES SUANSING (E.), QUIMBO, PANGANIBAN, MACAPAGAL-ARROYO, SANTOS-RECTO, BARZAGA, TAN (A.), ESCUDERO, BOLILIA, ENVERGA, SUANSING (H.), ARENAS, PICHAY, GARCIA (G.), GARIN (S.), NOEL, PIMENTEL, SALON, ROMUALDO, ARCILLAS, LEE, ERICE, CALDERON, TAMBUNTING, BATOCABE, ZUBIRI, SAVELLANO, PADUANO, AQUINO-MAGSAYSAY, DELOSO-MONTALLA AND NIETO, PER COMMITTEE REPORT NO. 891

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
2 National Internal Revenue Code of 1997, as amended, is hereby
3 amended to read as follows:

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

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

9 "SEC. 151. *TAX ON Mineral Products.* -"

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

4 "SEC. 151-A. *ROYALTY.* -

5 "(A) FOR LARGE-SCALE METALLIC AND
6 NONMETALLIC MINING OPERATIONS OUTSIDE OF
7 MINERAL RESERVATIONS. - MINING CONTRACTORS OF
8 LARGE-SCALE METALLIC AND NONMETALLIC MINING
9 OPERATIONS OUTSIDE OF MINERAL RESERVATIONS SHALL
10 PAY TO THE GOVERNMENT A MARGIN-BASED ROYALTY ON
11 INCOME FROM MINING OPERATIONS IN ACCORDANCE
12 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%

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22 "(B) FOR LARGE-SCALE METALLIC AND
23 NONMETALLIC MINING OPERATIONS WITHIN
24 MINERAL RESERVATIONS. - MINING CONTRACTORS OF
25 LARGE-SCALE METALLIC AND NONMETALLIC MINING
26 OPERATIONS WITHIN MINERAL RESERVATIONS SHALL PAY
27 TO THE GOVERNMENT A ROYALTY EQUIVALENT TO THREE
28 PERCENT (3%) OF THE GROSS OUTPUT OF THE MINERALS

1 OR MINERAL PRODUCTS EXTRACTED OR PRODUCED BY
2 THE MINING OPERATIONS, EXCLUSIVE OF ALL OTHER
3 TAXES;

4 "(C) FOR SMALL-SCALE METALLIC AND
5 NONMETALLIC MINING OPERATIONS WITHIN OR
6 OUTSIDE MINERAL RESERVATIONS. - MINING
7 CONTRACTORS OF SMALL-SCALE METALLIC AND
8 NONMETALLIC MINING OPERATIONS WITHIN OR OUTSIDE
9 MINERAL RESERVATIONS SHALL PAY TO THE
10 GOVERNMENT A ROYALTY EQUIVALENT TO ONE-TENTH
11 (1/10) OF ONE PERCENT (1%) OF GROSS OUTPUT;

12 "(D) WHEN USED IN THIS SECTION AND IN SECTION
13 151-B OF THIS CHAPTER. -

14 "(1) THE TERM 'MARGIN' SHALL MEAN THE RATIO OF
15 INCOME FROM MINING OPERATIONS BEFORE CORPORATE
16 INCOME TAX TO GROSS OUTPUT.

17 "(2) THE TERM 'GROSS OUTPUT' SHALL MEAN THE
18 ACTUAL MARKET VALUE OF MINERALS OR MINERAL
19 PRODUCTS FROM EACH MINE OR MINERAL LAND
20 OPERATED AS A SEPARATE ENTITY, WITHOUT ANY
21 DEDUCTION FOR MINING, PROCESSING, REFINING,
22 TRANSPORTING, HANDLING, MARKETING OR ANY OTHER
23 EXPENSES: *PROVIDED*, THAT OF THE MINERALS OR
24 MINERAL PRODUCTS SOLD OR CONIGNED ABROAD BY THE
25 MINING CONTRACTOR UNDER COST, INSURANCE AND
26 FREIGHT (CIF) TERMS, THE ACTUAL COST OF OCEAN
27 FREIGHT AND INSURANCE SHALL BE DEDUCTED:
28 *PROVIDED, FURTHER*, THAT IN THE CASE OF MINERAL
29 CONCENTRATES WHICH ARE NOT TRADED IN COMMODITY

1 EXCHANGES IN THE PHILIPPINES OR ABROAD, SUCH AS
2 COPPER CONCENTRATES, THE ACTUAL MARKET VALUE
3 SHALL BE WORLD PRICE QUOTATIONS OF THE REFINED
4 MINERAL PRODUCTS CONTENT THEREOF PREVAILING IN
5 THE SAID COMMODITY EXCHANGES, AFTER DEDUCTING
6 THE SMELTING, REFINING, TREATMENT, INSURANCE,
7 TRANSPORTATION AND OTHER CHARGES INCURRED IN
8 THE PROCESS OF CONVERTING MINERAL CONCENTRATES
9 INTO REFINED METAL TRADED IN THOSE COMMODITY
10 EXCHANGES.

11 "(3) THE TERM 'INCOME FROM MINING OPERATIONS'
12 SHALL MEAN THE GROSS OUTPUT LESS DEDUCTIBLE
13 EXPENSES, WHICH INCLUDE:

14 "(A) MINING, MILLING, TRANSPORT AND HANDLING
15 EXPENSES TOGETHER WITH SMELTING AND REFINING
16 COSTS OTHER THAN SMELTING AND REFINING COSTS PAID
17 TO THIRD PARTIES;

18 "(B) GENERAL AND ADMINISTRATIVE EXPENSES
19 ACTUALLY INCURRED BY THE MINING CONTRACTOR IN
20 THE PHILIPPINES;

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

28 "(D) EXPENSES FOR THE DEVELOPMENT OF HOST
29 AND NEIGHBORING COMMUNITIES AND FOR THE
30 DEVELOPMENT OF GEOSCIENCES AND MINING

1 TECHNOLOGY, INCLUDING TRAINING COSTS AND
2 EXPENSES AS STIPULATED IN THE MINERAL AGREEMENT
3 OR FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT
4 AND IN THE APPLICABLE IMPLEMENTING RULES AND
5 REGULATIONS;

6 "(E) ROYALTY PAYMENTS TO CLAIM OWNERS OR
7 SURFACE LAND OWNERS RELATING TO THE CONTRACT
8 AREA DURING THE OPERATING PERIOD, IF ANY;

9 "(F) CONTINUING EXPLORATION AND DEVELOPMENT
10 EXPENSES WITHIN THE CONTRACT AREA AFTER THE
11 PREOPERATING PERIOD;

12 "(G) INTEREST EXPENSES CHARGED ON LOANS OR
13 SUCH OTHER FINANCING RELATED EXPENSES INCURRED
14 BY THE MINING CONTRACTOR SUBJECT TO THE FINANCING
15 REQUIREMENT IN THE MINERAL AGREEMENT OR
16 FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT,
17 WHICH SHALL NOT BE MORE THAN THE PREVAILING
18 INTERNATIONAL RATES CHARGED FOR SIMILAR TYPES OF
19 TRANSACTIONS AT THE TIME THE FINANCING WAS
20 ARRANGED, AND WHERE SUCH LOANS ARE NECESSARY
21 FOR THE OPERATION;

22 "(H) DEPRECIATION, DEPLETION, AND
23 AMORTIZATION;

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

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

28 "(4) THE TERM 'MINING CONTRACTOR' SHALL MEAN
29 A QUALIFIED PERSON ACTING ALONE OR IN CONSORTIUM

1 WHO IS A PARTY TO A MINERAL AGREEMENT OR
2 FINANCIAL AND TECHNICAL ASSISTANCE AGREEMENT."

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

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

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

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

4 "SEC. 34. *Deductions from Gross Income.* - x x x

5 "(A) *Expenses.* -

6 "x x x

7 "(B) *Interest.* -

8 "(1) x x x

9 "(2) x x x

10 "(3) x x x

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

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

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

26 "(C) WHEN USED IN THIS SECTION. -

27 "THE TERM 'ARM'S LENGTH DEBT AMOUNT' SHALL
28 MEAN THE AMOUNT OF DEBT THAT A BANK THAT IS NOT AN

1 ASSOCIATE OF THE MINING CONTRACTOR WOULD BE
2 PREPARED TO LEND TO THE MINING CONTRACTOR HAVING
3 REGARD TO ALL THE CIRCUMSTANCES OF THE MINING
4 CONTRACTOR.

5 "THE TERM 'ASSOCIATE' SHALL MEAN ANY OTHER
6 PERSON WHO ACTS OR MAY ACT IN ACCORDANCE WITH
7 THE DIRECTIONS, REQUESTS, SUGGESTIONS, OR WISHES
8 OF THE FIRST-MENTIONED PERSON, AND THE
9 FIRST-MENTIONED PERSON IS AN ASSOCIATE OF THE
10 SECOND-MENTIONED PERSON.

11 "THE TERM 'DEBT' SHALL MEAN THE GREATEST
12 AMOUNT, AT ANY TIME DURING AN INCOME YEAR, OF THE
13 DEBT OBLIGATIONS OF THE MINING CONTRACTOR ON
14 WHICH INTEREST IS PAYABLE AS DETERMINED
15 ACCORDING TO INTERNATIONAL FINANCIAL REPORTING
16 STANDARDS.

17 "THE TERM 'DEBT OBLIGATION' SHALL MEAN AN
18 OBLIGATION TO MAKE A REPAYMENT OF MONEY TO
19 ANOTHER PERSON, INCLUDING AN OBLIGATION ARISING
20 UNDER A PROMISSORY NOTE, BILL OF EXCHANGE, OR
21 BOND, BUT NOT INCLUDING ACCOUNTS PAYABLE OR AN
22 OBLIGATION TO MAKE REPAYMENT OF MONEY IN RESPECT
23 OF WHICH NO INTEREST IS PAYABLE.

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

1 “(C) *Taxes.* –
 2 “x x x
 3 “(D) *Losses.* –
 4 “x x x
 5 “(E) *Bad Debts.* –
 6 “x x x
 7 “(F) *Depreciation.* –
 8 “x x x
 9 “(G) *Depletion of Oil and Gas Wells and*
 10 *Mines.* –
 11 “x x x
 12 “(H) *Charitable and Other Contributions.* –
 13 “x x x
 14 “(I) *Research and Development.* –
 15 “x x x
 16 “(J) *Pension Trusts.* – x x x
 17 “(K) *Additional Requirements for Deductibility of*
 18 *Certain Payments.* – x x x
 19 “(L) *Optional Standard Deduction.* – x x x
 20 “(M) *Premium Payments on Health and/or*
 21 *Hospitalization Insurance of an Individual*
 22 *Taxpayer.* – x x x.”
 23 SEC. 6. *Each Mining Operation Treated as a Separate*
 24 *Taxable Entity.* – Each mining operation, which is subject to a
 25 Mineral Agreement or Financial and Technical Assistance
 26 Agreement shall be treated as a separate taxable entity. A mining
 27 contractor shall be treated as if a separate taxpayer with respect to

1 each and every Mineral Agreement or Financial and Technical
 2 Assistance Agreement it holds or is a party to.

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

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

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

21 SEC. 9. *Vested Rights.* – Valid Mineral Agreements and
 22 Financial and Technical Assistance Agreements existing prior to the
 23 effectivity of this Act shall continue to be governed by their
 24 respective terms and conditions, except if they provide that any
 25 terms and conditions resulting from repeal or amendment of any
 26 existing laws or regulations or from the enactment of a new law or

1 regulation shall be considered a part of said Financial and Technical
2 Assistance Agreements and Mineral Agreements.

3 SEC. 10. *Registration of Small-scale Miners.* – All persons
4 undertaking small-scale mining activities shall register as miners
5 with the Mining Board of the concerned local government unit in
6 accordance with Republic Act No. 7076, entitled “An Act Creating A
7 People’s Small-scale Mining Program and for Other Purposes”, and
8 with the Mines and Geosciences Bureau (MGB) and may organize
9 themselves into cooperatives in order to qualify for the awarding of
10 a people’s small-scale mining contract.

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

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

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

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

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

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

Approved,

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