Taxation, Royalties and Government Incentives

Elements of Mining Feasibility Study

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Definition

"A financing of a particular economic unit in which a lender is satisfied to look initially to the cash flows and earnings of the economic unit as the source of funds from which a loan will be repaid and to the assets of the economic unit as collateral for the loan."

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Course Outline

- Introduction
- Fiscal Regime of MPSAs
- Fiscal Regime of FTAAs
  - *Basic Government Share*
  - *Additional Government Share*
  - *Sale of Minerals or Mineral Products*
  - *Deductible Expenses*
  - *Sale of Minerals or Mineral Products*

Course Outline

(Applicable to Both MPSAs and FTAAs)

- Environmental Fund
- Social Fund
- Royalties
  - *Indigenous Peoples/Indigenous Cultural Communities*
  - *Small-scale Miners*
  - *Mineral Reservations*
- Investment Guarantees and Incentives
  - *Mining Act*
  - *Omnibus Investments Code*
    - Tax Incentives
    - Non-tax Incentives

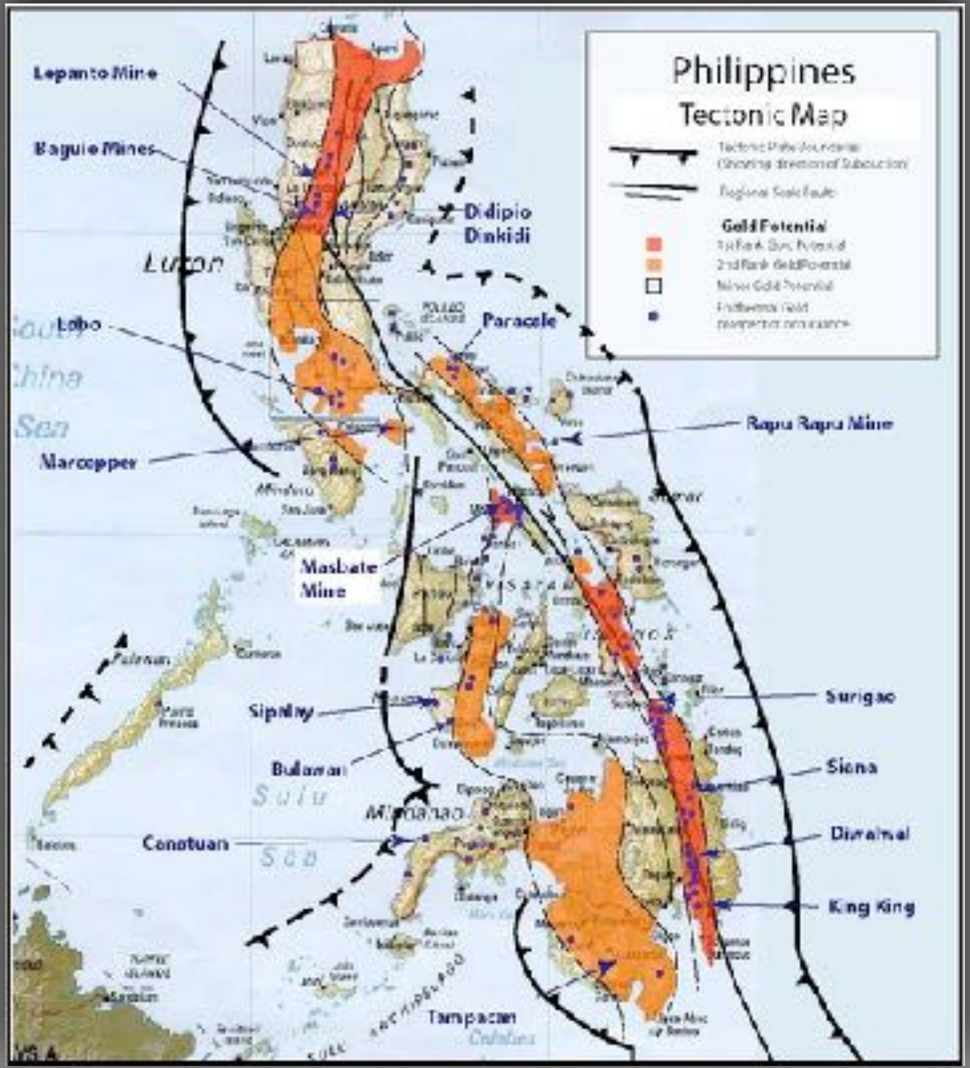
Course Outline

(Applicable to Both MPSAs and FTAAs)

- Tax Regime
  - *Income Tax*
  - *Allowable Deductions for Mining Companies*
  - *Tax on Dividends*
  - *Excise Tax*
  - *Value-Added Tax*
- Local Government Taxes
- Other Taxation Issues
- Conclusion

CONSTITUTION

- All lands of the public domain, water, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and other natural resources are owned by the state.
- The exploration, development and utilization of these natural resources are under the full control and supervision of the State.



MINING ACT

- Exploration Permit
- Mineral Agreements

  - MPSA

  - Co-Production Agreement

  - Joint Venture Agreement
- Financial and Technical Assistance Agreement
- Mineral Processing Permits
- http://www.mgb.gov.ph/images/stories/RA_7942.pdf
- http://www.mgb.gov.ph/images/stories/CDAO-Final.pdf

Republic of the Philippines
Congress of the Philippines
Metro Manila

Republic Act No. 7942

AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION AND CONSERVATION

CHAPTER I
INTRODUCTORY PROVISIONS

Section 1. Title. - This act shall be known as the Philippine Mining Act of 1995.

Section 2. Declaration of Policy. - All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.

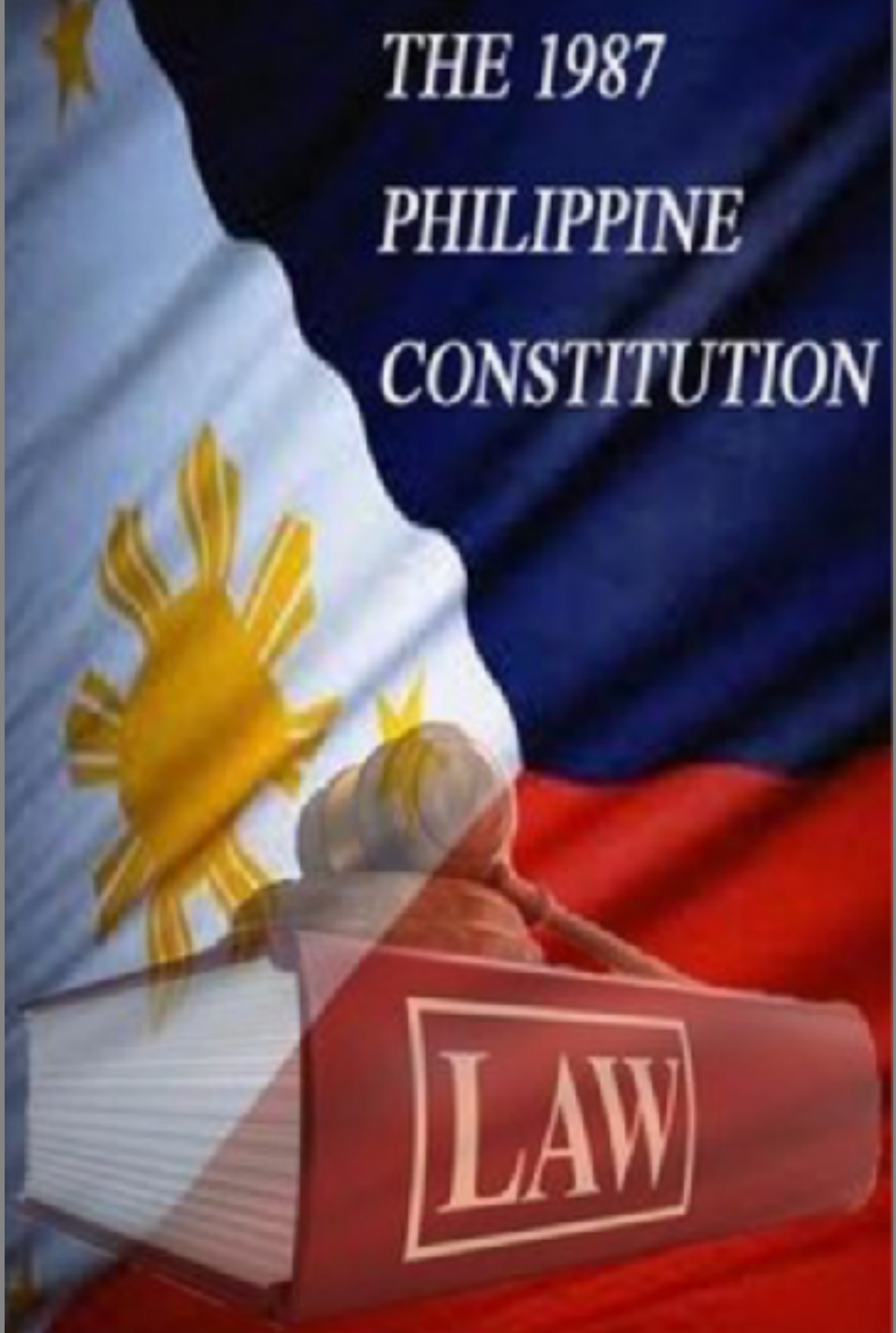
Section 3. Definition of Terms. - As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean:

(a) "Ancestral lands" refers to all lands exclusively and actually possessed, occupied, or utilized by indigenous cultural communities by themselves or through their ancestors in accordance with their customs and traditions since time immemorial, and as may be defined and delineated by law.

(b) "Block" or "meridional block" means an area bounded by one-half (1/2) minute of latitude and one-half (1/2) minute of longitude, containing approximately eighty-one hectares (81 has).

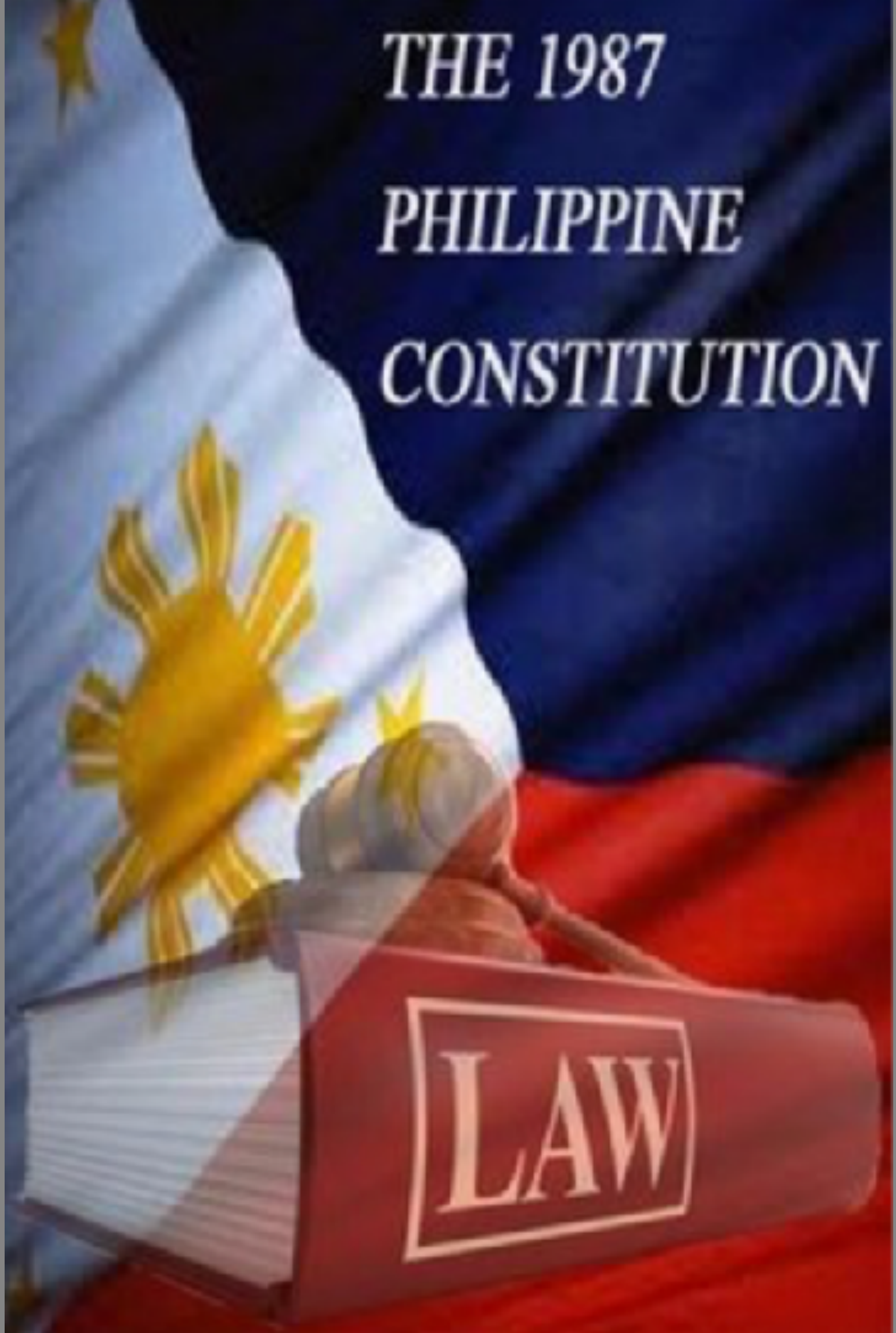
CONSTITUTION

- The State has the option of entering into co-production, joint venture or production sharing agreements with Philippine citizens of Philippine corporations or associations.
- At least 60% of the capital of a corporation or association must be owned by Phil. Citizen to qualify as a Philippine corporation or association.



CONSTITUTION

- Exception to the nationality requirement: The Constitution authorizes the President to enter into agreements with foreign-owned corporations involving either financial or technical assistance, for large- scale exploration, development and utilization of minerals, petroleum and other mineral oils.



Fiscal framework of the mining industry

- RA 7942 or the Mining Act of 1995, and its Implementing Rules and Regulations;
- DENR AO 2007-12, providing for the revised guidelines establishing the fiscal regime of the FTAA;
- FTAA/MPSA terms and conditions;
- Incentives granted by the Board of Investments (BOI) pursuant to Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987;
- National Internal Revenue Code;
- Tariff and Customs Code of the Philippines; and
- Other laws, rules, and regulations in relation to taxes and incentives governing mining activities.

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Fiscal Regime of MPSAs

Total government share in an MPSA shall be the excise tax on mineral products

- on metallic minerals, the excise tax based on the actual market value of the gross output at the time of removal will be as follows:
  - for copper and other metallic minerals except gold and chromite – 4%
  - for gold and chromite – 4%
- on nonmetallic minerals and quarry resources – 4% based on the actual market value of the annual gross output thereof at the time of removal.

Fiscal Regime of MPSAs

- "Gross output" means the actual market value of the 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.
- CIF deducted; mineral concentrates pricing;
- Highest market price prevailing in the locality; marketing commissions; foreign exchange and commodities hedging; sales to an affiliate
- Before any sale or shipment of mineral product is made, existing and future marketing contracts/sales agreements must be submitted to the MGB Director and the MGB Regional Director for registration.

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Fiscal Regime of FTAAs

- Government share shall consist of the (i) basic government share and (ii) additional government share
- Negotiated by the government and the contractor taking into consideration the capital investment of the project, risks involved, contribution of the project to the economy, the technical complexity of the project and other factors that will provide for a fair and equitable sharing between the parties
- https://www.mgb.gov.ph/images/stories/DAO_2007-12.pdf

Fiscal Regime of FTAAs

Net Mining Revenue is computed as follows:

Gross revenues from sale of mineral products Less: Deductible operating expenses

Plus: Government taxes, duties, and fees included as part of deductible expenses

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NetMining Revenue

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Fiscal Regime of FTAAs

Basic Government Share

- consists of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the FTAA holder
- the following national and local taxes, royalties and fees paid by the FTAA holder are deemed part of the Basic Government Share: FTAA holder's income tax; customs duties and fees on imported capital equipment; value-added tax on imported goods and services; withholding tax on interest payments on foreign loans; withholding tax on dividends to foreign stockholders; documentary stamps taxes; capital gains tax; excise tax on minerals; royalties for mineral reservations and to indigenous peoples, if applicable; local business tax; real property tax; community tax; occupation fees; registration and permit fees; and all other national and local government taxes, royalties and fees as of the Effective Date of the FTAA.

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Fiscal Regime of FTAAs

- A “Recovery Period” is granted in favor of the FTAA holder ends five years from the Date of Commencement of Commercial Production or at a date the aggregate of the Net Cash Flows from the mining operations is equal to the aggregate of its Pre-Operating Expenses, whichever comes first.
- In case the FTAA project incurs very large investments with a high production rate and an extensive mine life, the Recovery Period may be extended subject to the DENR Secretary’s approval.

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Fiscal Regime of FTAAs

Recoverable pre-operating expenses are limited to actual expenses and capital expenditures relating to the following:

- acquisition, maintenance and administration of any mining tenements or agreements covered by the FTAA;
- exploration, evaluation, feasibility and environmental studies, production, mining, milling, processing and rehabilitation;
- stockpiling, handling, transport services, utilities and marketing of minerals and mineral products;
- development within the FTAA Area relating to the mining operations;
- infrastructure contributions and payments made to local governments except taxes, royalties and fees;
- payments to landowners, surface rights holders, claim owners, indigenous cultural people or indigenous cultural communities, if any;

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Fiscal Regime of FTAAs

Recoverable pre-operating expenses are limited to actual expenses and capital expenditures relating to the following:

- expenses incurred in fulfilling the FTAA holder's obligations to contribute to national development and training of Filipino personnel;
- consulting fees incurred inside and outside the Philippines for work related directly to the mining operations and consistent with the FTAA holder's approved Work Program;
- the establishment and administration of field and regional offices including administrative overheads incurred within the Philippines which are properly allocable to the mining operations and directly related to the performance of the FTAA holder's obligations and exercise of its rights under the FTAA;
- financing costs provided that the interests will not be more than the prevailing international rates charged for similar types of transactions at the time the financing was arranged;

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Fiscal Regime of FTAAs

Recoverable pre-operating expenses are limited to actual expenses and capital expenditures relating to the following:

- all costs of constructing and developing the mine incurred before the Date of Commencement of Commercial Production; and
- general and administrative expenses actually incurred by the FTAA holder for the benefit of the FTAA area.

The FTAA holder will not raise any form of financing from domestic sources of funds, whether in Philippine or foreign currency, for conducting its mining operations for and in the contract area

Fiscal Regime of FTAAs

From the date of approval of the Declaration of Mine Feasibility up to the end of the Recovery Period, the FTAA holder is required to pay the following

- excise tax on minerals;
- royalties for mineral reservations and to indigenous peoples, if applicable;
- local business tax;
- real property tax;
- community tax;
- occupation fees;
- registration and permit fees; and
- all other national and local government taxes, royalties and fees as of the effective date of the FTAA.

Fiscal Regime of FTAAs

- After the Recovery Period, the FTAA holder must pay all applicable taxes, fees, royalties and other related payments to the national and local governments, which comprise the Basic Government Share.

- Any value-added tax on exported products refunded by or credited to the FTAA holder will not form part of the Basic Government Share.

Fiscal Regime of FTAAs

Additional Government Share

- If the Basic Government Share is less than 50% of the Net Mining Revenue, an “Additional Government Share” to increase the total government share to 50% of the Net Mining Revenue must be paid by the FTAA holder.

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Fiscal Regime of FTAAs

*Deductible Expenses: t*he following cash expenses are allowed for deduction from the Gross Output to determine the Net Mining Revenue*:*

- mining, milling, transport and handling expenses together with smelting and refining costs other than smelting and refining costs paid to third parties;
- general and administrative expenses actually incurred by the FTAA holder in the Philippines;
- expenses necessary to fully comply with its environmental obligations as stipulated in the environmental obligation under the FTAA, Mining Act, and IRR;
- expenses for the development of host and neighboring communities and for the development of geosciences and mining technology including training costs and expenses;
- royalty payments;
- continuing mine operating dev't expenses within the FTAA Area after the pre-operating period; &
- interest expenses charged on loans or such other financing-related expenses incurred by the FTAA holder, 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 operations.

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Fiscal Regime of FTAAs

Sale of Minerals or Mineral Products

- Dispose of the minerals and by-products produced at the highest commercially achievable market price with the lowest commercially achievable commissions and related fees under circumstances then prevailing, and to negotiate for sales terms and conditions compatible with world market conditions.
- Inform the government when it enters into a marketing agreement or sales contract with foreign and local buyers. Marketing contracts and sales agreements involving commercial disposition of minerals and by-products are subject to the DENR Secretary's approval. The government undertakes to treat with confidentiality approved marketing contracts and sales agreements.
- Government is entitled to examine all sale and exportation of minerals or mineral products including the terms and conditions of all sales commitments.
- Sales commitments with affiliates shall be made only at prices based on or equivalent to arm's length sales.

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Fiscal Regimes Applicable to Both MPSAs and FTAAs

- Environmental Fund
- Social Fund
- Royalties
  - *Indigenous Peoples/Indigenous Cultural Communities*
  - *Small-scale Miners*
  - *Mineral Reservations*
- Investment Guarantees and Incentives
  - *Mining Act*
  - *Omnibus Investments Code*
- Tax Regime under the NIRC
- Local Government Taxes

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Environmental Fund

Environmental Protection and Enhancement Program (EPEP)

- http://www.mgb.gov.ph/images/stories/DAO_2015-02.pdf
- equivalent to 10% of Total Project Cost
- the operational link between the environmental protection and enhancement commitments under the Mining Act revised implementing rules and regulations as well as those stipulated in the ECC and the Contractor's plan of mining operation
- describes the expected and considered acceptable impact and shall set out the life-of-mine environmental protection and enhancement strategies, including final mine rehabilitation and/or decommissioning, based on best practices observed in environmental management in mining

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Environmental Fund

Annual Environmental Protection and Enhancement Program (AEPEP)

- based on the approved EPEP
- to implement its AEPEP, FTAA holder must allocate annually 3%-5% of its direct mining and milling cost depending on the environment/geologic condition, nature and scale of operations and technology employed in the FTAA Area.

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Environmental Fund

Contingent Liability and Rehabilitation Fund (CLRF)

- Monitoring Trust Fund (MTF)
  - must be in cash and in an amount to be determined by the Mine Rehabilitation Fund (MRF) Committee which shall not be less than the amount of PHP50,000.
  - covers the maintenance of and other operating budget incurred by the Multipartite Monitoring Team (MMT) that will monitor the operations within the mining area. The MMT comprises representatives from the government, the affected community, contractors, indigenous people/indigenous cultural community, and relevant nongovernment organizations.
  - Replenishment of this amount must be done monthly

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Environmental Fund

Contingent Liability and Rehabilitation Fund (CLRF)

- Rehabilitation Cash Fund (RCF)
  - established to ensure compliance with the approved rehabilitation activities and schedules for a specific mining project phase, including research programs as defined in the EPEP and/or AEPEP
  - equivalent to 10% of the total amount needed to implement the EPEP or PHP5 million, whichever is lower. The RCF must be deposited as a Trust Fund in a mutually agreed-on government depository bank

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Environmental Fund

Contingent Liability and Rehabilitation Fund (CLRF)

- Environmental Trust Fund (ETF)
  - consists of a replenishable amount of at least PHP50,000
- Mine Waste and Tailings Fees Reserve Fund (MWTRF)
  - mine waste and tailings fees collected semiannually based on the amounts of mine waste and mill tailings generated for the said period.
  - fees collected will accrue to a MWTRF and deposited in a gov't depository bank to be used for payment of compensation for any damage caused by mining
  - PHP0.05/MT of mine waste produced and PHP0.10/MT of mill tailings generated from the mining operations

Environmental Fund

Contingent Liability and Rehabilitation Fund (CLRF)

- Final Mine Rehabilitation and Decommissioning Fund (FMRDF)
  - mining contractor must make annual contributions to an FMRDF in accordance with the contractor's mandatory Final Mine Rehabilitation and Decommissioning Plan (FMRDP) and must contain cost estimates, taking into consideration expected inflation, technological advances, the unique circumstances faced by the mining operation, among others.
  - the estimates based on the cost of having the decommissioning and/or rehabilitation works done by third-party contractors. The estimates, on a per year basis, over a 10-year period.
  - deposited as a trust fund in a government depository bank and must be used solely for the implementation of the approved FMRDP
  - Annual cash provisions must be made to the FMRDF, based on the formula:
    - Annual Provision = Cost of Implementing the Approved FMRDP x Percentage Required (in accordance with the IRR)

Environmental Fund Summary

Environmental Protection and Enhancement Program

Annual Environmental Protection and Enhancement Program

Contingent Liability and Rehabilitation Fund

- Monitoring Trust Fund
- Rehabilitation Cash Fund
- Environmental Trust Fund
- Mine Waste and Tailings Fees Reserve Fund
- Final Mine Rehabilitation and Decommissioning Fund

Social Funds

- Contractor will allot annually a minimum of 1.5% of the operating costs necessary to implement the foregoing:
  - Social Development and Management Program - 1.125% (75% of 1.5%);
  - Development of Mining Technology and Geosciences - 0.150% (10% of 1.5%); and
  - Information, Education, and Communication Program - 0.225% (15% of 1.5%).
- "Operating cost" means the specific costs of producing a sellable product on a commercial scale incurred in the calculation of the net income before tax. This includes costs and expenditures related to mining/extraction and treatment/processing (inclusive of depreciation, depletion and amortization), exploration activities during operation stage, power, maintenance, administration, excise tax, royalties, transport and marketing, and annual progressive/environmental management.

Royalties

Free and Prior Consent of Indigenous Peoples/IndigenousCultural Communities (IPs/ICC) for Mining Operations within Ancestral Domains

- not less than 1% of the value of the gross output of minerals sold in favor of IPs/ICCs if mining operations are conducted within ancestral lands/domains

Small-scale Miners

- over areas covered by small-scale miners, the contractor shall pay royalties to the concerned small-scale miners upon utilization of the minerals depending on the agreement with small-scale miners

Mineral Reservations

- Mining operations within mineral reservations are subject to a royalty paid to the MGB that shall not be less than 5% of the market value of the gross output exclusive of all other taxes.

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Investment Guarantees and Incentives

Mining Act of 1995

Chapter XVI of the Mining Act provides that contractors in mineral agreements and FTAAs shall be entitled to fiscal and non-fiscal incentives as provided in the Omnibus Investments Code or EO 226, as amended.

- pollution control devices acquired, constructed or installed by contractors will not be considered as improvements on the land or building where they are placed, and will not be subject to property tax and other taxes or assessments;
- a net operating loss without the benefit of incentives incurred in any of the first 10 years of operations may be carried over as a deduction from taxable income for the next five years immediately following the year of such loss. The entire amount of the loss will be carried over to the first of the five taxable years following the loss, and any portion of such loss that exceeds the taxable income of such first year will be deducted in a like manner from the taxable income of the next remaining four years;

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Investment Guarantees and Incentives

Mining Act of 1995

- fixed assets may be depreciated as follows:
  - to the extent of not more than twice as fast as the normal rate of depreciation or depreciated at normal rate of depreciation if the expected life is 10 years or less; or
  - depreciated over any number of years between five years and the expected life if the latter is more than 10 years, and the depreciation thereon allowed as a deduction from taxable income; and
- the contractor may opt to deduct exploration and development expenditures accumulated at cost as of the date of the prospecting or exploration and development expenditures paid or incurred during the taxable year, up to 25 per cent of the net income from mining operations. The actual exploration and development expenditures minus the 25 per cent net income from mining shall be carried forward to the succeeding years until fully deducted.

Investment Guarantees and Incentives

Mining Act of 1995

Basic rights and guarantees:

- repatriation of investments, or the right to repatriate the entire proceeds of the liquidation of the foreign investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation;
- remittance of earnings, or the right to remit earnings from the investment in the currency in which the foreign investment was originally made and at the exchange rate prevailing at the time of remittance;
- foreign loans and contracts, or the right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from financial or technical assistance contracts;
- freedom from expropriation, or the right to be free from expropriation by the government of the property represented by investments or loans, or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation;

Investment Guarantees and Incentives

Mining Act of 1995

Basic rights and guarantees:

- requisition of investment, or the right to be free from requisition of the property represented by the investment or of the property of the enterprises except in cases of war or national emergency and only for the duration thereof.
- payments received as compensation for the requisitioned property may be remitted in the currency in which the investments were originally made and at the exchange rate prevailing at the time of remittance; and
- confidentiality, where any confidential information supplied by the contractor pursuant to the Mining Act and its IRR will be treated as such by the DENR and the government, and during the term of the project to which it relates.

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Investment Guarantees and Incentives

Omnibus Investments Code

- The Mining Act mandates that mining activities always be included in the Investment Priorities Plan that is prepared annually by the Board of Investments.
- In 2012, the BOI suspended the grant of mining income tax holiday (ITH) for new mining projects. The 2017-19 Investment Priorities Plan, approved on 28 February 2017, only provides for registration with incentives limited to capital equipment on exploration of mineral resources; and processing of metallic and non-metallic minerals to produce semi-processed mineral products.
- Production of pure metals, whether or not integrated with mining operations shall be covered under the listing All Qualified Manufacturing Activities including Agro-Processing, which is entitled to an ITH. However, the income qualified for ITH shall be limited to the income directly attributable to the eligible revenue generated from registered project unless otherwise specified in the Specific Guidelines.
- Mere mining/quarrying or even those with minimal processing (e.g., crushing, grinding, screening, drying, etc.) shall not qualify for registration under the 2017 IPP.

Investment Guarantees and Incentives

Omnibus Investments Code

- Tax Incentives
  - Income tax holiday consisting of income tax exemption for six years from commercial operation for pioneer firms, and for four years for non-pioneer firms. This may be extended in the following instances:
    - the project uses indigenous raw materials at rates set by the BOI; or
    - the project meets the prescribed ratio of capital-equipment-to-number-of workers set by the BOI; or
    - the net foreign exchange savings or earnings amount to at least USD500,000 annually during the first three years of operation.
  - Expanding firms are entitled to an exemption from income taxes proportionate to their expansion for a period of three years from commercial operation. However, they are not entitled to additional deductions for incremental labor expenses during the period they avail of this incentive. A pioneer firm cannot avail of the income tax holiday for more than eight years.
  - Exemption from taxes and duties on imported spare parts and consumable supplies for export producers with Customs Bonded Manufacturing Warehouse exporting at least 70% of its production.

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Investment Guarantees and Incentives

Omnibus Investments Code

- Tax Incentives
  - For the first five years from registration, an additional deduction from taxable income of 50% of the wages of additional skilled and unskilled workers in the direct labor force. This incentive is granted only if the registered enterprise meets a prescribed capital to labor ratio and cannot be availed of simultaneously with the income tax holiday.
  - Exemption from taxes and duties on the importation of breeding stocks and genetic materials within 10 years from the date of registration or commercial operation.
  - Tax credit for taxes and duties on raw materials, supplies and semi-manufactured products used in the manufacture of export products and forming part thereof.
  - For registered enterprises with bonded manufacturing warehouses, exemption from taxes and duties on imported supplies and spare parts for consigned equipment.
  - Exemption from the wharfage duties and any export tax, duty, impost and fees within 10 years from date of registration.
  - Exemption from local taxes for six years from date of registration for pioneer enterprises and for four years from registration for non-pioneer enterprises.

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Investment Guarantees and Incentives

Omnibus Investments Code

- Non-tax Incentives
  - Simplified customs procedures for the importation of equipment, spare parts, raw materials and supplies and the export of processed products.
  - No restrictions for the use of consigned equipment. A re-export bond is required.
  - Employment of foreign nationals in supervisory, technical or advisory positions for five years from registration, extendible for limited periods. The president, general manager and treasurer (or their equivalent) of foreign registered firms are not subject to the foregoing limitations.
  - The privilege to operate bonded manufacturing/trading warehouses subject to customs rules and regulations.

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Tax Regime under the National Internal Revenue Code

Income Tax

- Domestic corporations are generally subject to Philippine income tax at the rate of 30% on their taxable income derived during the tax year from all sources within the Philippines and abroad.
- Taxable income refers to the pertinent items of gross income specified in the Tax Code, less the deductions authorized by the Tax Code for such types of income.
- Gross income includes income derived from the conduct of trade or business, gains derived from dealings in property, interests, rents, royalties, dividends, among others.
- Allowable deductions include ordinary and necessary business expenses, interest, taxes, losses, bad debts, depreciation, charitable and other contributions.

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Tax Regime under the National Internal Revenue Code

Income Tax

- The Tax Code also imposes a Minimum Corporate Income Tax ("MCIT") of 2% of the gross income as of the end of the taxable year, on domestic and resident foreign corporations subject to normal income tax rates. A corporation is liable to pay the MCIT only when:
  - the corporation has zero or negative taxable income; or
  - the amount of MCIT is greater than the normal income tax due from such corporation.
- The Tax Code allows any excess of the MCIT over the normal income tax to be carried forward on an annual basis and credited against the normal income tax for three immediately succeeding taxable years.

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Tax Regime under the National Internal Revenue Code

Allowable Deductions for Mining Companies

- Aside from business expenses and similar deductions from gross income, the Tax Code allows mining contractors to claim as a tax deduction an allowance for depreciation in respect of all properties used in mining operations, computed as follows:
  - at the normal rate of depreciation if the expected life is 10 years or less; or
  - depreciated over any number of years between five years and the expected life if the latter is more than 10 years, and the depreciation thereon allowed as deduction from taxable income; provided, that the contractor notifies the BIR at the beginning of the depreciation period which depreciation rate will be used.

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Tax Regime under the National Internal Revenue Code

Allowable Deductions for Mining Companies

- The Tax Code also permits mining companies to claim as a tax deduction a reasonable allowance for depletion or amortization computed in accordance with the cost-depletion method in accordance with rules and regulations prescribed by the Department of Finance, upon recommendation of the Commissioner of the BIR, and which should not exceed the capital invested. After production in commercial quantities has commenced, certain intangible exploration and development drilling costs shall be:
  - deductible in the year incurred if such expenditures are incurred for non-producing wells and/or mines; or
  - deductible in full in the year paid or incurred or, at the election of the taxpayer, may be capitalized or amortized if such expenditures incurred are for producing wells and/or mines in the same contract area.

Tax Regime under the National Internal Revenue Code

Allowable Deductions for Mining Companies

- In computing taxable income from mining operations, the Tax Code gives the taxpayer the option to deduct exploration and development expenditures accumulated as cost or adjusted basis for cost depletion as of the date of prospecting, as well as exploration and development expenditures paid or incurred during the taxable year. However, the total amount deductible for exploration and development expenditures cannot exceed 25% of the net income from mining operations computed without the benefit of any tax incentives. The actual exploration and development expenditures minus 25% of the net income from mining can be carried forward to the succeeding years until fully deducted. The election of the taxpayer to deduct the exploration and development expenditures is irrevocable and binding in succeeding taxable years.

Tax Regime under the National Internal Revenue Code

Tax on Dividends

- Dividends received by a domestic corporation or a resident foreign corporation (i.e., a foreign corporation engaged in trade or business in the Philippines) from another domestic corporation are not subject to Philippine income tax. On the other hand, dividends received by a non-resident foreign corporation not engaged in trade or business in the Philippines are generally subject to Philippine income tax at the rate of 30% of the gross amount of the dividends. The 30% tax on dividends is a final withholding tax.

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Tax Regime under the National Internal Revenue Code

Tax on Dividends

- Under the Tax Code, the income withholding tax rate on dividends may be reduced to 15% if either of the following conditions is present:
  - The country in which the non-resident foreign corporation is domiciled allows a credit against the tax due from the non-resident foreign corporation's taxes deemed to have been paid in the Philippines, equivalent to at least 15%; or
  - The country in which the non-resident foreign corporation is domiciled does not impose any income tax on dividends received from the Philippine corporation.

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Tax Regime under the National Internal Revenue Code

Excise Tax

- On coal and coke, a tax of PHP150.00 per metric ton;
- On all non-metallic minerals and quarry resources, a tax of 4% based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the Bureau of Customs ("BOC") in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation;
- On all metallic minerals, a tax of 4% based on the actual market value of the gross output thereof at the time of removal, in the case of those locally extracted or produced; or the value used by the BOC in determining tariff and customs duties, net of excise tax and value-added tax, in the case of importation;
- 6% of the fair international market price for indigenous petroleum

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Tax Regime under the National Internal Revenue Code

Value-added Tax

- The Tax Code also imposes value-added tax ("VAT") on any person (whether individual or corporate) who, in the course of trade or business, sells, barters, exchanges, leases goods or properties and renders services, and any person who imports goods into the Philippines.
- The VAT is generally imposed on the sale of goods, properties and services at the standard rate of 12%. For sales of goods subject to VAT, the 12% rate is imposed on the "gross selling price" or the total amount of money or its equivalent, which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties.
- The Tax Code also imposes 12% VAT on every importation of goods based on the total value used by the BOC in determining tariff and customs duties, plus customs duties, excise taxes, if any, and other charges. The importer has the obligation to pay VAT on its importation. The 12% VAT must be paid, along with the other import duties and charges, before the imported goods may be released from customs custody.

Local Government Taxes

LGUs entitled to 40% of the excise tax (Barangay - 35%; Municipal - 45%; and Province - 20%)

- Annual Occupation Fees
  - PHP50.00/hectare (outside mineral reservations)
  - PHP100/hectare (inside mineral reservations)
- Local Business Tax - rates vary depending on the LGUs, max of 2% of gross receipts
- Real Property Tax - rates vary LGUs depending on LGUs, max of 2% of assessed value, mobile equipment is not subject to tax
- Special education levy - 1% of the assessed value of the property
- Registration fees - rate depends on the activity to be registered
- Community tax - max of PHP 5,000 for individuals and PHP 10,000 for establishments per year
- Other local taxes - type of taxes depend on local government concerned at maximum of 2% based on gross sales/receipts

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Other Taxes and Issues

- National Water Resources Board permits under PD 1067
  - Application fee is PhP 7,200 per permit/well/surface extraction point;
  - Annual water charges is PhP5,000 plus a fee ranging from P12.30 to P30.55/liter/second
- Administrative Fees - wharfage and port fees, firearms and driving of motor vehicles, professional fees, Permit to Install Communication Equipment for installation of radio communication from the DICT, Application for Alien's Local Employment – for foreigners
- Resource Nationalism
- Tax Stabilization
- Carried Interests
- Transfer taxes and capital gains on the transfer of licenses

Taxes, Royalties and Incentives

Summary

Applicable Taxes and Fees on Large-Scale and Small-Scale Mining Sector

Type of Tax	Large-Scale Mining
Direct payments to NG	
Income tax	• Corporate income tax (CIT) at the rate of 30% of taxable income derived from all sources within and without the Philippines [Section 27(A), NIRC, as amended] or minimum CIT of 2% of gross income, whichever is higher.
Excise tax on minerals (Section 151, NIRC, as amended)	• 4% of the gross output from metallic and non-metallic minerals produced • Per metric ton for coal and coke: ▪ PhP50.00 (effective January 1, 2018) ▪ PhP100.00 (effective January 1, 2019) ▪ PhP150.00 (effective January 1, 2020) • 6% of the fair international market price from indigenous petroleum

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Type of Tax	Large Scale Mining
Value added tax (VAT)	• 12% VAT on imported materials and equipment
Documentary stamp tax (DST), if applicable	• Rate depends on the type of transaction
Capital gains tax (CGT), if applicable	• 15% of net capital gains from stocks not traded in the stock exchange [Section 27 (D)(2), NIRC, as amended]
Tax on sale, barter or exchange of shares of stocks listed and traded through the local stock exchange, if applicable	• $^{6}/_{10}$ of 1% of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed [Section 127(A), NIRC, as amended]
Royalty payment of minerals/ mineral products extracted from mineral reservations	• Not less than 5% of the market value of the gross output of the minerals/mineral products extracted or produced from the mineral reservations exclusive of all other taxes (Section 13, DAO 2010-21).
Customs duties and fees	• 1% – 7% Most Favoured Nation (MFN); 0% ASEAN Trade in Goods Agreement (ATIGA) for chemicals • 1% - 10% (MFN); 0% (ATIGA) for explosives • 1% - 15% (MFN); 0% (ATIGA) for mechanical and electrical equipment • 1% - 20% (MFN); 0% (ATIGA) for vehicles, aircraft and vessels

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Mining Investment Incentives (Fiscal and Non-Fiscal Incentives)

BOI		**Incentives under the Mining Act**
Fiscal Incentives	**Non-Fiscal Incentives**	*Aside from the BOI incentives, the Mining Act makes available the following incentives:*
(a) **Income Tax Holiday** BOI-registered enterprises are exempt from paying income taxes from the start of commercial operations. New projects with pioneer status, such as mining, were exempt for 6 years, those of non-pioneer firms for 4 years, and expanding firms for 3 years. Subject to BOI guidelines, this exemption may be extended for another year. Pioneer firms may not avail of this incentive for more than 8 years. Any further extension of this incentive is not allowed. As mentioned, the income tax holiday for mining projects (new and renewal) has been suspended in 2012. (b) **Tax and duty exemption** on imported **capital equipment, spare parts, and accessories**	(a) **Employment of foreign nationals** Allowed in supervisory, technical or advisory positions within 5 years from a project's registration and may be extended for limited periods; if majority of the capital stock is foreign-owned, foreigners may hold key management posts beyond the specified term. (b) **Simplification of customs procedures** For importing equipment, spare parts, raw materials, and supplies and exporting processed products in the operations of their bonded warehouses. (c) **Unrestricted use of consigned equipment.** (d) **Access to bonded manufacturing or trading warehouse system**	(a) **Incentives for pollution control devices** (b) **Income tax–carry forward of losses** (c) **Income Tax-Accelerated Depreciation** *To avail of these incentives, mining contractors are subjected to some conditions. They must comply with all its obligations under the law and with all the MGB's directives. They must also allow MGB to examine its books and other pertinent records to determine compliance with the Mining Act, IRR, and the terms of the mineral agreement.* *Despite the grant of incentives, the payment of the government share is guaranteed under the rules*

BOI		Incentives under the Mining Act *Aside from the BOI incentives, the Mining Act makes available the following incentives:*
Fiscal Incentives	**Non-Fiscal Incentives**	
Zero percent duty with corresponding 12% VAT until 2011 or until the Omnibus Investments Code is amended. This incentive however was retained under the 2017 Investment Priorities Plan. (c) **Exemption from taxes and duties on imported spare parts** For export producers with customs bounded warehouse exporting at least 70% of production. (d) **Tax credit on domestic capital equipment** 100% of the value of tax and customs duties that would have been waived had these items been imported. (e) **Exemption from wharfage dues, export tax, duty, impost and fees** Limited to export of non-traditional export products		

Type of Tax	Large Scale Mining
Administrative fees	• e.g. wharfage and port fees; licensing fees for radio, firearms and driving of motor vehicles; and professional fees
Annual occupation fee	• For areas outside mineral reservations: ▪ Exploration permit – PhP10.00 per hectare or fraction thereof per annum ▪ Mineral agreements and FTAAs – PhP50.00 per hectare or fraction thereof per annum • For areas inside mineral reservations: ▪ Exploration permits, mineral agreements and FTAAs – PhP100.00 per hectare or fraction thereof per annum (Section 218, DAO 2010-21)
<u>**Direct payments to LGUs**</u>	• Local business tax ▪ Rate varies among local governments • Real property tax (RPT) ▪ In the case of province, at the rate not exceeding 1% and in the case of city and municipality in Metropolitan Manila Area (MMA), at the rate not exceeding 2% of the assessed value i.e., market value of the property multiplied by the assessment level which varies among local governments ▪ Mobile equipment is not subject to tax

Type of Tax	Large Scale Mining
	• Special education levy ▪ 1% of the assessed value of the property • Registration fees ▪ Rate depends on the activity to be registered • Community tax ▪ Maximum of PhP5,000 for individual and PhP10,000 for establishment per year • Other local taxes ▪ Type of taxes depend on local government concerned at maximum of 2% based on gross sales/receipts
<u>Direct payments to other Filipinos</u>	• Royalty to landowners/claim owners ▪ Depends on the negotiation between landowner/claim owner and mining contractor • Royalty to indigenous people, if within ancestral lands ▪ Minimum of 1% of the gross output from minerals