

A Review of the Taxation of the Philippine Mining Industry^{*}

I. INTRODUCTION

This paper discusses the present state of the Philippine mining industry, its vital role in the country's economic development particularly in terms of generating revenues for the government through taxes, providing employment opportunities, and in building up the country's gross international reserves (GIR) through the industry's mandated sale of gold to the Bangko Sentral ng Pilipinas (BSP).

It also highlights the legal framework on mining, taxes imposed and revenue performance of the industry. It also presents the various proposals filed in Congress seeking to amend the present mining fiscal regime and certain tax provisions under the National Internal Revenue Code (NIRC) of 1997, as amended.

II. LEGAL FRAMEWORK OF THE MINING INDUSTRY IN THE PHILIPPINES

A. Constitutional provisions

The 1987 Philippine Constitution continues to be the bedrock of all laws governing the extractive sector in the Philippines. It is the fundamental law of the land, with provisions on the national economy and patrimony (Art. XII), the most germane of which is on the exploration, development, and utilization of natural resources, which is under full control and supervision of the State (Section 2).

The State may directly undertake the exploration, development, and utilization of natural resources or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations at least 60% of whose capital is owned by Filipinos. The agreements may last for a maximum of 25 years and may be renewed for another period of not more than 25 years.

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As an exception to the 60-40% ownership rule, the President may agree with foreign-owned corporations on technical or financial assistance for large-scale exploration, development and use of minerals, petroleum and mineral oils. Such agreements must be in accordance with the law and must be based on real contribution to the country's economic growth and general welfare. It also provides that Congress may, by law, allow for small-scale utilization of natural resources by Filipino citizens (Art. XII, Section 2).

Likewise, the Constitution provides for the entitlement of local government units (LGUs) to a just share in the national taxes and an equitable share in the proceeds of the utilization and development of national wealth within their respective areas (Art. X, Sections 6 and 7).

B. The Philippine Mining Act of 1995

Republic Act (RA) No. 7942, also known as the "Philippine Mining Act of 1995", as implemented by Department of Environment and Natural Resources (DENR) Administrative Order No. 2010-21 (DAO No. 2010-21), is the governing law that regulates mineral resources development in the country. Its primary objective is to revitalize the Philippine mining industry by providing fiscal reforms and incentives, while maintaining the viable inventory of minerals to sustain the industry.

The Philippine Mining Act of 1995 declares that mineral resources are owned by the State and that the exploration, development, utilization and processing thereof shall be under its full control and supervision. Thus, it is the responsibility of the State to protect the environment by reducing the adverse impact of mining in the areas where these are taking place.

The law governs all mining operations in the country, which includes various measures to protect the environment, and defines areas in which mining is allowed. It was also designed to revive the mining industry and attract more foreign investments by defining the agreements for mineral exploitation, and provide the requirements for acquiring mining rights.

For mining operations, Table 1 summarizes the relevant provisions of the Philippine Mining Act particularly on mining rights and qualified entities, viz.:

Table 1
Mining Rights and Qualified Entities under the Philippine Mining Act of 1995

Type of mining right	Maximum area (hectares)	Term	Qualified entity
Exploration Permit	32,000 onshore 81,000 offshore	2 years; renewable to a maximum of 8 years	Individuals or Filipino or foreign corporations
Mineral Agreement (Mineral Production Sharing Agreement, Co-production Agreement or Joint-Venture Agreement)	16,200 onshore 40,500 offshore	25 years; renewable for like period	Individuals or Filipino corporations
Financial or Technical Assistance Agreement	81,000 onshore 324,000 offshore	25 years; renewable for like period	Filipino or foreign corporations

Note. Table copied from PH-EITI (2014b, p. 111).

RA 7942 (with its implementing rules and regulations and guidelines) provides, among others, the definitions, rules, and procedures pertaining to exploration permit, mineral agreements, and financial or technical assistance agreement; government share, taxes and fees, and incentives (fiscal regime in relation to the NIRC, Local Government Code (LGC), and Omnibus Investments Code); transport, sale, and processing of minerals; and safety and environmental protection. It also contains provisions on mineral reservations, ancestral lands, quarry resources, and small-scale mining (PH-EITI, 2018, p. 3).

At present, RA 7942 is considered by the industry as one of the most socially and environmentally-sensitive legislations in its class. Its salient features include: (a) local government empowerment; (b) respect and concern for indigenous cultural communities; (c) equitable sharing of benefits of natural wealth; (d) economic demands of present generation while providing the necessary foundation for future generations; (e) worldwide trend towards globalization; and (f) protection for and wise management of the environment.

C. The People's Small-Scale Mining Act of 1991

The special law on small-scale mining is RA 7076, otherwise known as the People's Small-Scale Mining Act of 1991, which is implemented by DAO No. 2015-03.

It is noted that both RA 7942 and Executive Order (EO) No. 79, which were issued to set policies and guidelines to ensure environmental protection and responsible mining in the utilization of mineral resources, refer to RA 7076 as the law that governs small-scale mining (PH-EITI, 2018).

The People's Small-Scale Mining Act intends to generate more employment opportunities and provide an equitable sharing of the nation's wealth and natural resources through the implementation of People's Small-Scale Mining Program (Section 2).

Meanwhile, the following lands when suitable for small-scale mining may be declared by the Mining Regulatory Board as small scale mining areas (Section 6):

- (a) Public lands not subject to any existing right;
- (b) Public lands covered by existing mining rights which are not active mining areas; and
- (c) Private lands, subject to certain rights and conditions, except those with substantial improvements or in bonafide and regular use as a yard, stockyard, garden, plant nursery, plantation, cemetery or burial site, or land situated within one hundred meters (100 m.) from such cemetery or burial site, water reservoir or a separate parcel of land with an area of ten thousand square meters (10,000 sq.m.) or less.

Likewise, RA 7076 provides for, among others, the payment and distribution of taxes from small-scale miners. It requires small-scale miners to "pay all taxes, royalties or government production shares as are now or may hereafter be provided by law". It further states that the revenue to be derived by the government from the operation of the People's Small-scale Mining Program shall be subject to the sharing provided in the LGC (Section 18). The law also mandates small-scale miners to sell all the gold they produce to the BSP which shall buy it at prices competitive with those prevailing in the world market, regardless of volume or weight (Section 17). It also provides that custom mills may be established in mineral processing zones designated by LGUs upon recommendation of the Provincial/City Mining Regulatory Boards (P/CMRB) (Section 18). Custom mills are supposed to be constituted as withholding agents for the royalties, production share or other taxes due the Government and register with the Bureau of Internal Revenue (BIR) as such (Section 18). It is further provided that 15% of the national government's share shall be used to create the People's Small-Scale Mining Protection Fund (PH-EITI, 2018).

D. EO No. 79

EO 79 s. 2012, as implemented by DAO 2012-07, is a mining policy aimed to provide for reforms that would strengthen environmental protection, promote responsible mining in mineral resource use, provide a more equitable revenue-sharing scheme in the mining sector and promote sustainable economic development and social growth at national and local levels. Among the important provisions of the said EO is the establishment of additional "No Go Zones" for mining and the imposition of a moratorium on new mining agreements pending the enactment of a law that would rationalize existing revenue sharing scheme.

The policy also introduces a number of innovations on the Philippine Mining Act, i.e., expansion of areas closed to mining applications, establishment of mineral reservations, competitive public bidding for areas open to mining, and compliance with the 'social acceptability' requirement of the communities affected. It also calls for strict implementation of the provisions of the Small-Scale Mining Act and prohibits the use of mercury in small-scale mining activities.

In 2015, DENR issued the revised implementing rules and regulations (IRR) of the Small-Scale Mining Act of 1991 (DAO 2015-03). It features the mining policy reform contained in EO 79 particularly in confining small-scale mining operations in People's Small-Scale Mining Areas or Minahang Bayan and adopting the Environmental Impact Assessment System pursuant to Presidential Decree (PD) No. 1586 (1978) in issuing Environmental Compliance Certificates, thereby ensuring more stringent rules on environmental protection.

Among the salient features of the revised IRR are as follows:

- (a) Limiting small-scale mining of metallic minerals to just gold, silver and chromite [Section 13(a)];
- (b) Banning the use of mercury, hydraulicking and compressor mining [Section 13(C)(3)] ;
- (c) Providing for centralized custom mill(s) within a mineral processing zone inside a Minahang Bayan (Section 14);
- (d) Limiting the total term of a small-scale mining contract, including its renewals, to a maximum period of six years [Section 13(a)];
- (e) Allowing the establishment of Minahang Bayan in areas covered by large-scale mining applications that have been denied but with pending appeals, provided that royalties shall be paid in escrow, while awaiting for the final resolution of the said appeals [Section 8(b)(2)];
- (f) Limiting the qualified applicants of a small-scale mining contract to a cooperative or a group of small-scale miners [Section 4(ak)];
- (g) Requiring the small-scale mining contractors to pay a government share in the amount to be set by the Board, on top of the payment of the usual taxes (Section 28); and
- (h) Requiring mineral processors to secure mineral processing licenses from the Provincial/City Mining Regulatory Board concerned instead of the Provincial Governor or City Mayor (Section 70).

III. PROFILE AND ECONOMIC CONTRIBUTION OF THE PHILIPPINE MINING INDUSTRY

A. Approved and registered mining rights

As of January 31, 2019, there were 362 approved and registered mining rights issued by the Philippine government, of which 82% of the 699 thousand hectare mining area are under a mineral sharing production agreement (MPSA) and 14% are under a financial or technical assistance agreement (FTAA).

Table 2

Number of Approved and Registered Mining Rights (as of 31 January 2019)

Type of mining rights	Number	Area (in hectare)
MPSA	302	571,588
FTAA	5	96,723
Exploration Permits (EPs)	15	31,097
Mineral Processing Permits (MPPs)	40	n.a.
Total	362	699,408

Note. Data available from MGB website (2019). For MPPs, area is not applicable (n.a.).

B. Gross value added (GVA) in mining

From 2009 to 2018, the contribution of the mining industry to the economy has been relatively low. The average GVA of the mining industry for the period was PhP87.7 billion, which is 0.72% of the gross domestic product (GDP) of the Philippines. The highest GVA to GDP ratio was recorded at 1% in 2011. Since then, the ratio remained below 1% (See Table 3).

Comparing metallic to non-metallic mining, Table 3 shows that metallic mining's contribution to the economy is higher than non-metallic mining. For the 10-year period, the average GVA of metallic mining was PhP53.0 billion which is 0.43% of Philippines' GDP while non-metallic mining contribution was only at 0.28%.

Table 3

*Gross Value Added in Metallic and Non-Metallic Mining and Ratio to GDP, 2009-2018
(Amounts in PhP billion)*

Year	GVA			Ratio to GDP		
	Metallic mining	Non-metallic mining	Total	Metallic mining	Non-metallic mining	Total
2009	47.55	18.23	65.78	0.59%	0.23%	0.82%
2010	65.25	22.97	88.21	0.72%	0.26%	0.98%
2011	67.28	29.62	96.90	0.69%	0.31%	1.00%
2012	50.91	28.63	79.54	0.48%	0.27%	0.75%
2013	48.74	28.99	77.73	0.42%	0.25%	0.67%
2014	57.71	33.01	90.72	0.46%	0.26%	0.72%
2015	48.27	32.60	80.86	0.36%	0.24%	0.61%
2016	46.07	41.07	87.14	0.32%	0.28%	0.60%
2017	48.46	54.03	102.49	0.31%	0.34%	0.65%
2018	50.22	57.69	107.91	0.29%	0.33%	0.62%
Average	53.04	34.68	87.73	0.43%	0.28%	0.72%

Note. Data on GVA available at PSA OpenSTAT website (Gross Value Added in Mining and Quarrying by Industry Group at Current Prices, Quarterly (1998 Q1-2018 Q4), 2019). Data for GDP available at PSA OpenSTAT website (GNI and GDP by Industrial Origin at Current Prices, Quarterly (1998 Q1-2018 Q4), 2019).

For the 10-year average, metallic mining made up 60.5% of the total GVA in mining industry while the remaining 39.5% was from non-metallic mining (Figure 1).

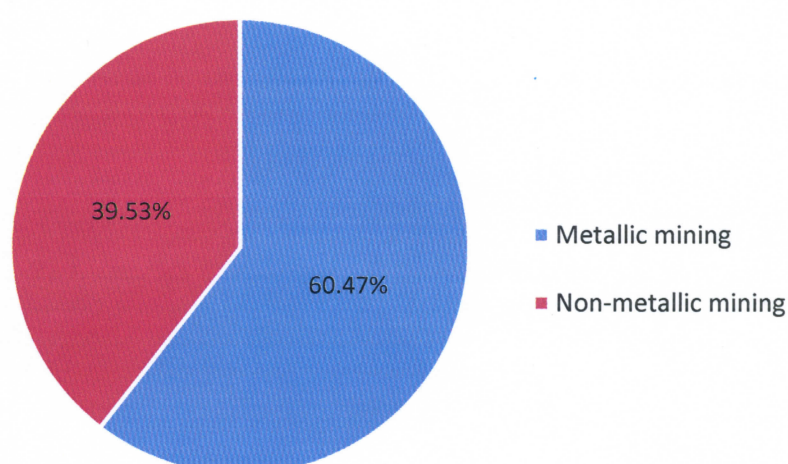


Figure 1. Average percentage distribution of the GVA in mining industry, 2009-2018

For metallic mining, gold mining has contributed the most for the period 2009 to 2018 with average ratio to GDP of 0.23% followed by nickel mining at 0.12%. However, GVA in gold mining started to drop in 2012 from PhP42.5 billion in 2011 to PhP20.4 billion the following year. Based on the 2012 BSP Annual Report, the BSP's mint and refinery production on gold delivery bars did not meet the target due to the decline in gold purchases by the BSP. The continuing decline in gold purchases of the four regional buying stations of the BSP started in July 2011 when the BIR imposed 2% excise tax and 5% creditable withholding tax (CWT) on all gold sold to the BSP. Likewise, lower trading gains of gold in foreign financial institution were experienced during the year (BSP, 2013).

Table 4

Gross Value Added in Metallic Mining at Current Prices, 2009-2018
(Amounts in PhP billion)

Year	Copper	Gold	Chromium	Nickel	Others	Total
2009	5.26	37.01	0.10	4.33	0.85	47.55
2010	7.66	48.20	0.09	8.05	1.25	65.25
2011	9.24	42.50	0.11	12.31	3.11	67.28
2012	7.46	20.41	0.17	19.91	2.96	50.91
2013	10.87	18.79	0.13	17.11	1.84	48.74
2014	10.40	18.97	0.25	27.24	0.84	57.71
2015	8.87	20.04	0.09	18.61	0.67	48.27
2016	8.59	24.28	0.14	12.33	0.73	46.07
2017	9.37	25.29	0.14	13.01	0.66	48.46
2018	10.03	24.82	0.37	14.39	0.62	50.22
Average	8.77	28.03	0.16	14.73	1.35	53.04

Note. Data on GVA available at PSA OpenSTAT website (Gross Value Added in Mining and Quarrying by Industry Group at Current Prices, Quarterly (1998 Q1-2018 Q4), 2019).

Table 5

Ratio of GVA in Metallic Mining at Current Prices to GDP, 2009-2018

Year	Copper	Gold	Chromium	Nickel	Others	Total
2009	0.07%	0.46%	0.00%	0.05%	0.01%	0.59%
2010	0.09%	0.54%	0.00%	0.09%	0.01%	0.72%
2011	0.10%	0.44%	0.00%	0.13%	0.03%	0.69%
2012	0.07%	0.19%	0.00%	0.19%	0.03%	0.48%
2013	0.09%	0.16%	0.00%	0.15%	0.02%	0.42%
2014	0.08%	0.15%	0.00%	0.22%	0.01%	0.46%
2015	0.07%	0.15%	0.00%	0.14%	0.00%	0.36%
2016	0.06%	0.17%	0.00%	0.09%	0.01%	0.32%
2017	0.06%	0.16%	0.00%	0.08%	0.00%	0.31%
2018	0.06%	0.14%	0.00%	0.08%	0.00%	0.29%
Average	0.07%	0.23%	0.00%	0.12%	0.01%	0.43%

Note. Percentage of 0.00% is less than 0.01%.

On the other hand, the GVA on non-metallic mining was generally growing from PhP18.2 billion in 2009 to PhP57.7 billion in 2018. Other non-metallic mining contributed the most for the period with average ratio to GDP of 0.15% followed by stone quarrying, clay and sandpits at 0.13%.

Table 6

*Gross Value Added in Non-Metallic Mining at Current Prices, 2009-2018
(Amounts in PhP billion)*

Year	Stone quarrying, clay and sandpits	Other non- metallic mining	Total
2009	7.95	10.29	18.23
2010	9.48	13.49	22.97
2011	10.22	19.40	29.62
2012	12.90	15.73	28.63
2013	15.13	13.86	28.99
2014	16.97	16.04	33.01
2015	18.57	14.03	32.60
2016	19.90	21.18	41.07
2017	22.94	31.09	54.03
2018	26.17	31.51	57.69
Average	16.02	18.66	34.68

Note. Data on GVA available at PSA OpenSTAT website (Gross Value Added in Mining and Quarrying by Industry Group at Current Prices, Quarterly (1998 Q1-2018 Q4), 2019).

Table 7

Ratio of GVA in Non-Metallic Mining at Current Prices to GDP, 2009-2018

Year	Stone quarrying, clay and sandpits	Other non- metallic mining	Total
2009	0.10%	0.13%	0.23%
2010	0.11%	0.15%	0.26%
2011	0.11%	0.20%	0.31%
2012	0.12%	0.15%	0.27%
2013	0.13%	0.12%	0.25%
2014	0.13%	0.13%	0.26%
2015	0.14%	0.11%	0.24%
2016	0.14%	0.15%	0.28%
2017	0.15%	0.20%	0.34%
2018	0.15%	0.18%	0.33%
Average	0.13%	0.15%	0.28%

As shown in Figure 2, for the period 2009 to 2018, metallic mining's contribution to the economy has been on the decline while non-metallic mining is increasing. As already mentioned, this could be attributed to the continuing decline in gold purchases by the BSP due to the imposition of a 2% excise tax and 5% CWT in all gold sold to BSP. In response to this, the BIR issued RR No. 7-2017 reducing the CWT on mineral sales from 5% to 1% as a way of encouraging small-scale miners to sell their gold to the BSP.

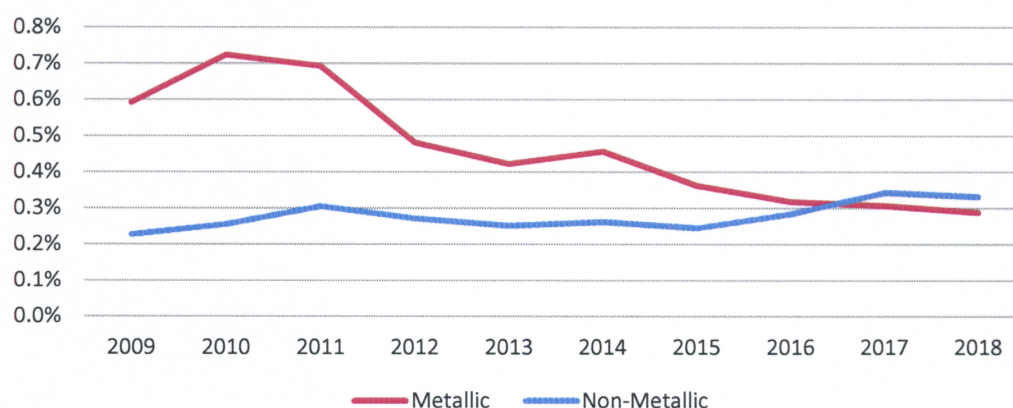


Figure 2. Ratio of GVA in metallic and non-metallic mining industry to GDP, 2009-2018

C. Employment in Mining and Quarrying

For the period 2009 to 2017, employment in mining and quarrying averaged 219,000 annually, representing 0.6% of total employment in the country. (Table 8).

Table 8

Employment in Mining and Quarrying, Growth Rate, and Mining Contribution to Total Employment, 2009-2017

Year	Employment in mining and quarrying	Growth rate	Mining contribution to total employment
2009	169,000		0.5%
2010	197,000	16.57%	0.5%
2011	211,000	7.11%	0.6%
2012	250,000	18.48%	0.7%
2013	250,000	0.00%	0.7%
2014	235,000	-6.00%	0.6%
2015	236,000	0.43%	0.6%
2016	219,000	-7.20%	0.5%
2017	204,000	-6.85%	0.5%
Average	219,000	2.82%	0.6%

Note. Basic data from MGB (MGB, 2015), (MGB, 2016) (MGB, 2018).

D. Gross production value in mining

In terms of production value, large-scale mining accounts for 61.2% or PhP94.5 billion of the total average gross production value in mining for the period 2009 to 2017. This is followed by non-metallic mining at 28.8% or PhP43.8 billion while small-scale gold mining only accounts for 10.0% or PhP13.6 billion.

Table 9
Gross Production Value in Mining, 2009 to 2017 (Amounts in PhP billion)

Year	Large-scale mining	Small-scale gold mining	Non-metallic mining	Total
2009	42.80	36.80	26.50	106.10
2010	69.10	42.90	33.30	145.30
2011	88.50	34.60	41.10	164.20
2012	97.10	2.10	45.60	144.80
2013	98.20	1.10	57.80	157.10
2014	135.70	1.50	37.50	174.70
2015	106.40	1.20	42.60	150.20
2016	103.00	1.00	50.20	154.20
2017	109.50	0.90	59.80	170.20
Average	94.48	13.57	43.82	151.87

Note. Data from MGB (MGB, 2018).

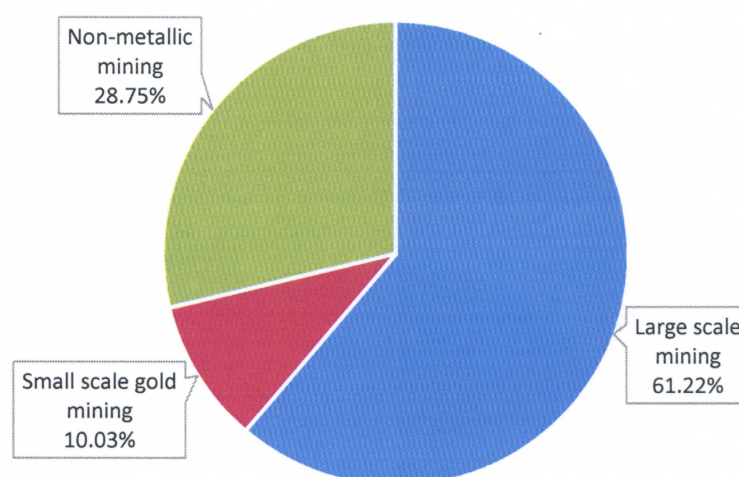


Figure 3. Average percentage distribution of the gross production value in mining, 2009-2017

E. Annual gold production volume and BSP gold purchase

For the period 2012 to 2017, the Philippine total annual gold production volume was generally on the uptrend. A closer look at the gold production volume of small-scale mining shows that it has been on a downward trend from 28,102 kilogram (kg.) in 2009 to only 486 kg. in 2017. Meanwhile, gold production volume in large-scale mining remains in the uptrend except in 2017 when it posted a negative growth of 1.1%. With regard to BSP, the gold purchase volume for the period 2009 to 2017 was generally on the downtrend. Table 10 shows that gold production volume in small-scale mining and BSP gold purchase started to decline in 2011. It is noted that from a ratio of 76.3% in BSP gold purchase to total annual gold production volume in 2009, it went down to only 2.0% in 2017 (See Tables 10 and 11).

Based on the BSP Annual Reports, refinery production started not meeting its target starting 2011 due to the shortage of raw materials. As already mentioned, the continuing decline in the gold purchases of the four regional buying stations of the BSP started in July 2011 when the BIR started imposing the 2% excise tax and 5% CWT on the sale of gold to the BSP. However, in 2014, refinery production was able to meet its target due to the 7% increase in the purchase of gold by the Mint and Refinery Operations Department of the BSP. Nevertheless, gold purchases in the four regional gold buying station (Davao, Baguio, Naga and Zamboanga) in 2014 continued to drop.

Table 10

Philippine Annual Gold Production Volume, and BSP Gold Purchase Volume, 2009-2017

Year	Gold production volume (in kg)			BSP gold purchase (in kg.)	Ratio of BSP to total
	Small-scale	Large-scale	Total		
2009	28,102	8,735	36,837	28,102	76.29%
2010	28,556	12,290	40,846	28,556	69.91%
2011	17,639	13,481	31,120	17,648	56.71%
2012	951	13,614	14,565	1,090	7.48%
2013	589	16,659	17,248	589	3.41%
2014	908	17,515	18,423	633	3.44%
2015	749	20,565	21,314	487	2.28%
2016	590	22,464	23,054	444	1.93%
2017	486	22,213	22,699	457	2.01%
Average	8,730	16,393	25,123	8,667	24.83%

Note. Gold production volume (MGB, official communication, 2018). BSP purchases of gold (BSP, official communication, 2018).

Table 11
Growth Rate of Philippine Annual Gold Production Volume, and BSP Gold Purchase Volume, 2010-2017

Year	Gold Production Volume			BSP gold purchase
	Small-scale	Large-scale	Total	
2010	1.62%	40.70%	10.88%	1.62%
2011	-38.23%	9.69%	-23.81%	-38.20%
2012	-94.61%	0.99%	-53.20%	-93.82%
2013	-38.07%	22.37%	18.42%	-45.96%
2014	54.16%	5.14%	6.81%	7.47%
2015	-17.51%	17.41%	15.69%	-23.06%
2016	-21.23%	9.23%	8.16%	-8.83%
2017	-17.63%	-1.12%	-1.54%	2.93%
Average	-21.44%	13.05%	-2.32%	-24.73%

Other factors that might have an effect on gold production includes inclement weather, peace and order, among others. The limited number of gold buying stations of the BSP may also be a factor. As mentioned, the BSP's current gold buying stations include the Mint and Refinery Operations Department in Quezon City and its offices in the cities of Baguio, Davao, Naga City and Zamboanga.

Further, some industry players are of the opinion that the stringent criteria as to physical form, dimension, weight set by the BSP compel small-scale miners to sell their gold to local dealers at lower prices. The Guidelines of the BSP Gold Buying Program states that gold sold to the BSP must comply with the following requirements before its acceptance, viz.:

- (a) **Physical form:** The gold should be in a bar or disc form; powdered gold or jewelry shall not be accepted. The gold should not contain mercury and amalgam in any quantity because of the health and environmental risks associated with it. It should likewise be free of slag and other foreign matters and there should be no sign of metallic segregation/layering or poured shortness. In addition, the gold should not be damp nor wet.
- (b) **Maximum dimensions:** The gold bar should be 16.5 cm. long, 8 cm. wide and 4 cm. thick, while gold discs should be 10 cm. in diameter and 5 cm. thick.
- (c) **Weight:** The maximum weight of gold bar or disc should be five (5) kilograms while the maximum weight per lot is ten (10) kilograms; and

- (d) **Minimum preliminary gold assay:** Golds sold to the BSP should contain a minimum preliminary gold assay of at least thirty percent (30%) (BSP, 2018).

A mining firm is also required to submit a certification that it has no tax liability from the BIR prior to the issuance of mining permit by the MGB. Aside from the taxes, the BSP deducts from the payment made to small-scale miners a processing cost, with a minimum of PhP1,600 per lot, and metal recovery factor applied in accordance with the following schedule:

Table 12

Schedule of Processing Cost and Metal Recovery Factor of the BSP

% Gold assay	Processing cost (PHP /Tr.Oz. of material received)	Metal recovery factor (MRF)
99.5 and above	PhP 34.00	99.80%
90.0 to less than 99.5	PhP 37.77	99.30%
70.0 to less than 90.0	PhP 39.37	99.00%
50.0 to less than 70.0	PhP 42.17	98.90%
30.0 to less than 50.0	PhP 45.67	98.60%

Note. Information copied from Guidelines – BSP Gold Buying Program (BSP, 2018_b).

It is noted that securing permits from the MGB is likewise viewed to be costly and complicated. Pursuant to DAO No. 2015-03, small-scale miners pay PhP1,000 for application for small-scale mining license and PhP20,000 for application for mining contract for gold mining.

F. Gross International Reserves (GIR)

Pursuant to RA 7653, otherwise known as “The New Central Bank Act”, as amended by RA 11211, the primary objective of the BSP is to maintain price stability conducive to a balanced and sustainable growth of the economy. The BSP shall also promote and maintain monetary stability and convertibility of the Philippine peso. Hence, in order to maintain the international stability and convertibility of the peso, the BSP shall maintain international reserves adequate to meet any foreseeable net demands on the BSP for foreign currencies (Section 65). As noted, gold is one of the important compositions of the international reserves of the BSP (Section 66).

The BSP buys gold as part of its international reserves, as gold still represents the ultimate form of payment in the world. It is noted that the GIR is the main indicator of the country’s liquidity and ability to pay for the imports and service foreign obligations. It consists of holdings of gold, special drawing rights (SDR), foreign investments, and foreign exchange, including Reserve Position in the Fund (RPF).

The BSP's purchase of gold builds up international reserves using local currency and for diversification of reserve portfolio. However, the observation is that instead of becoming part of the Philippines' GIR, large amount of gold produced by small-scale mining are suspected to have been smuggled to neighboring countries.

Table 13 shows the country's GIR for the period 2009 to 2018, with the highest growth rate of 41.0% in 2010 while the lowest was -4.4% in 2014. Based on 2010 BSP Annual Report, the country's GIR reached a historic high in 2010. The higher reserves stemmed mainly from sustained foreign exchange inflows from merchandise exports, services receipts and direct and portfolio investments. Likewise, the country's international reserves were boosted by the sustained robustness of remittances of overseas Filipino (BSP, 2011, p. 76).

Table 13

Gross International Reserves, 2009-2018 (Amounts in USD billion)

Year	Reserve position in the fund	Gold	SDRs	Foreign investments	Foreign exchange	Total
2009	0.14	5.46	1.14	36.66	0.85	44.24
2010	0.25	7.01	1.12	53.44	0.55	62.37
2011	0.47	8.01	1.12	65.28	0.42	75.30
2012	0.53	10.35	1.29	70.73	0.93	83.83
2013	0.59	7.50	1.30	72.94	0.86	83.19
2014	0.57	7.48	1.23	69.96	0.30	79.54
2015	0.44	6.70	1.17	71.74	0.61	80.67
2016	0.44	7.26	1.14	68.29	3.56	80.69
2017	0.42	8.34	1.21	65.82	5.78	81.57
2018	0.47	8.15	1.18	66.73	2.65	79.19
Average	0.43	7.63	1.19	64.16	1.65	75.06

Note. Data available at BSP website (2019).

Table 14

Growth Rate of Gross International Reserves, 2010-2018

Year	Reserve Position in the Fund	Gold	SDRs	Foreign Investments	Foreign Exchange	Total
2010	82.32%	28.40%	-1.79%	45.79%	-35.14%	40.98%
2011	88.32%	14.30%	-0.26%	22.15%	-23.10%	20.73%
2012	13.21%	29.21%	15.25%	8.35%	118.97%	11.33%
2013	11.13%	-27.57%	1.12%	3.12%	-7.74%	-0.77%
2014	-3.93%	-0.20%	-5.89%	-4.08%	-64.92%	-4.38%
2015	-23.13%	-10.43%	-4.34%	2.54%	104.22%	1.42%
2016	0.66%	8.30%	-2.97%	-4.81%	481.25%	0.03%
2017	-3.89%	14.85%	6.39%	-3.62%	62.29%	1.09%
2018	11.64%	-2.20%	-2.23%	1.39%	-54.18%	-2.91%
Average	19.59%	6.07%	0.59%	7.87%	64.63%	7.50%

On the average, for the period 2009 to 2018, 85.5% of the GIR is attributable to foreign investments followed by gold reserves at 10.2% and foreign exchange at 2.2% (Figure 4).

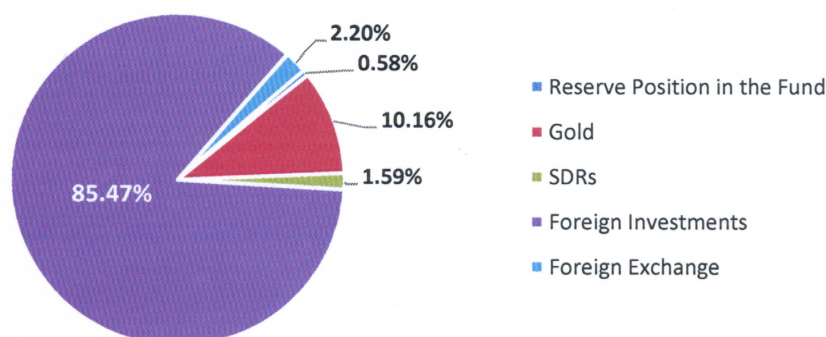


Figure 4. Average percentage distribution of the GIR, 2014-2018

G. Export trade statistics on mineral products and non-metallic mineral manufactures

Table 15 shows the export trade statistics on minerals and mineral products for the period 2009 to 2017, with average total annual export amounting to USD2.8 billion. Growth rate was generally on the uptrend, except for 2012, 2015 and 2016, when total export on mineral products decreased by 18%, 29% and 18%, respectively.

It is noted that significant increase in the export of gold was seen in 2017 when it increased by 37,684% as compared to previous year's export of USD3.0 million. Meanwhile, export on chromium ore remains low at more or less USD10 million. On the other hand, the only recorded export on nickel for the last 10 years is in 2012, 2013 and 2017, with 2012 amounting to only USD1,500 (See Tables 15 and 16).

Table 15

Export Trade Statistics of Minerals and Mineral Products, 2009 to 2017 (Amounts in USD billion)

Year	Mineral products							Total
	Copper concentrates	Copper metal	Gold	Iron ore agglomerates	Chromium ore	Nickel	Others	
2009	0.15	0.69	0.12	0.09	0.01	-	0.41	1.47
2010	0.26	0.80	0.13	0.11	0.01	-	0.62	1.93
2011	0.34	1.21	0.21	0.06	0.01	-	1.01	2.84
2012	0.24	0.50	0.11	0.09	0.01	0.00	1.39	2.34
2013	0.44	0.64	0.07	0.11	0.02	0.00	2.13	3.41
2014	0.57	0.46	0.03	0.12	0.01	-	2.85	4.04
2015	0.60	0.38	0.11	0.12	0.00	-	1.64	2.85
2016	0.53	0.13	0.00	0.11	0.01	-	1.58	2.35
2017	0.37	1.27	1.12	0.06	0.01	0.00	1.46	4.29
Average	0.39	0.68	0.21	0.10	0.01	0.00	1.45	2.84

Note. Basic data generated from BSP online statistical database (BSP, 2018_a). For chromium ore, export for 2015 amounted to USD4.3 million while exports for nickel is less than USD70 thousand.

Table 16

Growth Rates: Export Trade Statistics of Minerals and Mineral Products, 2010-2017

Year	Mineral products							Total
	Copper concentrates	Copper metal	Gold	Iron ore agglomerates	Chromium ore	Nickel	Others	
2010	74%	17%	10%	20%	-3%	-	48%	31%
2011	29%	51%	68%	-43%	-20%	-	63%	47%
2012	-28%	-58%	-50%	37%	0%	-	38%	-18%
2013	82%	27%	-38%	32%	83%	4,453%	54%	46%
2014	28%	-28%	-50%	5%	-63%	-100%	34%	18%
2015	5%	-18%	227%	-2%	-22%	-	-42%	-29%
2016	-12%	-67%	-97%	-9%	49%	-	-4%	-18%
2017	-30%	914%	37,684%	-43%	8%	-	-8%	82%
Average	19%	105%	4,719%	0%	4%	2,177%	23%	20%

It is noted that for the period 2009 to 2017, export on gold only made up 8.6% of average total export on mineral products. Meanwhile, aside from other mineral products which make up almost 60% of export trade, copper metal has a higher average export trade of 27.7% than gold for the same period (Figure 5).

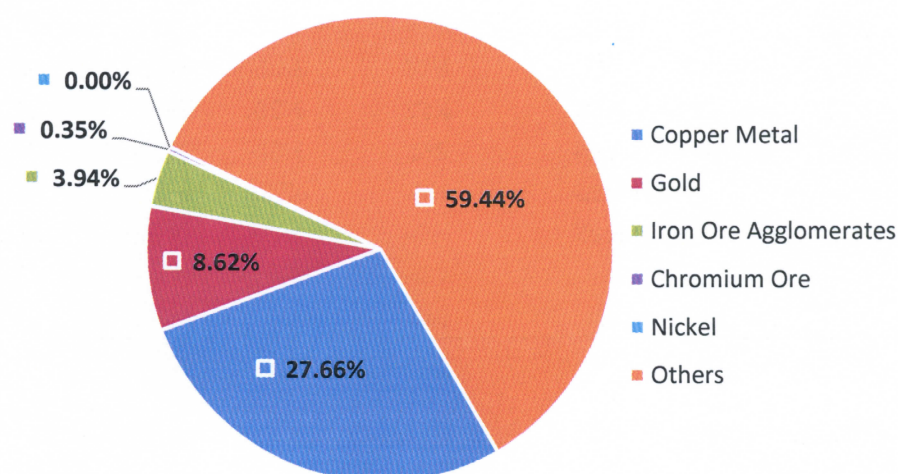


Figure 5. Average percentage distribution of export on mineral products, 2009-2017

With regard to non-metallic mineral manufactures, export trade statistics shows that average annual export for the period 2009 to 2017 amounted to USD0.19 billion with average annual growth rate of 8.7%. It is noted that the highest recorded export is in 2014 at USD0.3 billion. (See Table 17)

Table 17
Export Trade Statistics of Non-Metallic Mineral Manufactures, 2009 to 2017

Year	Non-metallic mineral manufactures	
	Export trade (in USD billion)	Growth rate
2009	0.16	
2010	0.16	3.77%
2011	0.18	9.08%
2012	0.14	-18.12%
2013	0.20	40.44%
2014	0.33	60.42%
2015	0.18	-45.97%
2016	0.15	-14.52%
2017	0.20	34.17%
Average	0.19	8.66%

Note. Basic data generated from BSP online statistical database (BSP, 2018a).

H. On gold exportation and importation

For the year 2017, the Philippines ranked 37th in the list of exporters of gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form while it ranked 45th in the list of importers for the same product.

For the period 2009 to 2017, the average total value of gold exported by the Philippines is at USD0.5 billion which is only 0.2% of the total world export on gold. It is noted that the highest recorded value of export for the period is in 2017, when gold export increased by 92.6%. (See Table 18)

Meanwhile, the average total value of gold imported into the Philippines amounts to USD0.3 billion, which is only 0.1% of the total world import on gold (See Table 19). Comparing the export data on Table 18 to the import data on Table 19, we can see that the increase in the gold export by the Philippines would generally result in a decrease in the importation of gold, and vice versa except for 2010, 2012 and 2013.

Table 18

Philippine Gold Export and Ratio to Total World Export on Gold, 2009-2017
(Amounts in USD billion)

Year	Total world export	Philippines	Growth rate	Ratio to total world export	Rank
2009	114.90	0.22		0.19%	43
2010	146.06	0.33	50.98%	0.22%	41
2011	225.74	0.51	56.47%	0.23%	42
2012	383.35	0.48	-6.98%	0.12%	52
2013	477.90	0.34	-28.38%	0.07%	55
2014	313.12	0.27	-19.93%	0.09%	59
2015	311.41	0.41	51.62%	0.13%	51
2016	336.42	0.64	54.81%	0.19%	52
2017	321.34	1.24	92.56%	0.38%	37
Average	292.25	0.49	31.40%	0.18%	

Note. Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form. Basic data generated from International Trade Centre (ITC) Trade Map website (ITC, 2019). Table does not tally with data on Table 17.

Table 19

Philippine Gold Import and Ratio to Total World Import on Gold, 2009-2017
(Amounts in USD billion)

Year	Total world import	Philippines	Growth rate	Ratio to total world import	Rank
2009	81.92	0.21		0.26%	24
2010	118.43	0.47	120.36%	0.40%	23
2011	180.47	0.29	-38.90%	0.16%	28
2012	331.32	0.27	-5.55%	0.08%	30
2013	411.06	0.22	-18.94%	0.05%	36
2014	280.68	0.35	58.26%	0.12%	28
2015	329.95	0.22	-37.28%	0.07%	33
2016	368.01	0.14	-37.25%	0.04%	41
2017	350.94	0.10	-30.10%	0.03%	45
Average	272.53	0.25	1.32%	0.13%	

Note. Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form. Basic data generated from International Trade Centre (ITC) Trade Map website (ITC, 2019).

Table 20 shows the Top 10 countries to which the Philippines export its gold. It is noted that 66.6% of the gold exported by the Philippines was traded with Hong Kong followed by Switzerland at 22.2%. Meanwhile, Table 21 shows the Top 10 countries supplying gold into the Philippines. It is noted that 52.5% of the gold imported into the Philippines came from Singapore followed by Japan and the Republic of Korea at 25.0% and 18.3%, respectively.

Table 20
Country Destination of Gold Exported by the Philippines, 2017

Country	% to total Philippine gold export
1. Hong Kong, China	66.63%
2. Switzerland	22.22%
3. Australia	5.98%
4. India	4.22%
5. Japan	0.46%
6. Taipei, Chinese	0.15%
7. China	0.15%
8. Singapore	0.06%
9. Italy	0.05%
10. United States of America	0.03%

Note. Basic data used to compute for the percent distribution of the total Philippine gold export was generated from International Trade Centre (ITC) Trade Map website (ITC, 2019).

Table 21
Country Supplier of Gold Imported into the Philippines, 2017

Country	% to total Philippine gold import
1. Singapore	52.50%
2. Japan	25.01%
3. Korea, Republic of	18.34%
4. China	2.67%
5. United States of America	0.67%
6. Hong Kong, China	0.46%
7. Germany	0.12%
8. Taipei, Chinese	0.11%
9. Malaysia	0.08%
10. Luxembourg	0.01%

Note. Basic data used to compute for the percent distribution of the total Philippine gold export was generated from International Trade Centre (ITC) Trade Map website (ITC, 2019).

I. Revenues collected from the mining industry

For the period 2009 to 2017, total revenues collected from mining was generally on the uptrend except for years 2012, 2015 and 2017. It is noted that in 2012, excise tax collection from BIR decreased by -68.4% or PhP4.8 billion as compared to previous year's collection. This resulted in an overall negative growth of

10.1% to total revenue collected from mining. In 2015, the negative growth of 46.1% of fees, charges and royalties collected by DENR-MGB, as well as the negative growth of 35.1% of excise tax collected by the BIR resulted in an overall negative growth of 8.3% in total revenue collected from mining (See Tables 22 and 23).

Table 22

Taxes, Fees and Royalties from Mining, 2009 to 2017 (Amounts in PhP billion)

Year	Fees, charges & royalties collected by DENR-MGB	Excise tax collected by BIR	Taxes collected by NG agencies	Taxes & fees collected by LGUs	Total
2009	0.40	0.72	10.58	1.00	12.70
2010	0.80	1.31	10.19	1.07	13.37
2011	1.18	6.99	13.39	1.35	22.90
2012	1.92	2.21	14.73	1.73	20.59
2013	1.87	2.49	18.50	1.53	24.39
2014	3.14	3.20	24.58	1.96	32.88
2015	1.69	2.08	23.59	2.80	30.16
2016	1.40	1.76	27.71	3.54	34.41
2017	1.41	2.25	19.11	2.94	25.70
Average	1.53	2.56	18.04	1.99	24.12

Note. Basic data from MGB (MGB, 2015), (MGB, 2016) (MGB, 2018).

Table 23

Growth Rate: Taxes, Fees and Royalties from Mining, 2010 to 2017

Year	Fees, charges & royalties collected by DENR-MGB	Excise tax collected by BIR	Taxes collected by NG agencies	Taxes & fees collected by LGUs	Total
2010	102.07%	81.68%	-3.70%	6.88%	5.27%
2011	47.49%	434.94%	31.40%	25.73%	71.34%
2012	62.35%	-68.42%	10.06%	28.59%	-10.10%
2013	-2.49%	13.03%	25.56%	-11.77%	18.47%
2014	67.97%	28.45%	32.85%	28.58%	34.83%
2015	-46.09%	-35.09%	-4.02%	42.32%	-8.30%
2016	-17.33%	-15.42%	17.49%	26.62%	14.11%
2017	0.64%	28.00%	-31.05%	-17.07%	-25.31%
Average	26.83%	58.40%	9.82%	16.23%	12.54%

It is noted that for the period 2009 to 2017, about 75% of the average total revenue collected from mining was attributable to taxes collected by NG agencies followed by excise tax collected by the BIR at 11%. Taxes and fees collected by LGUs made up 8% of the average total revenue from mining while revenues collected by DENR-MGB accounted for 6%. (Figure 6)

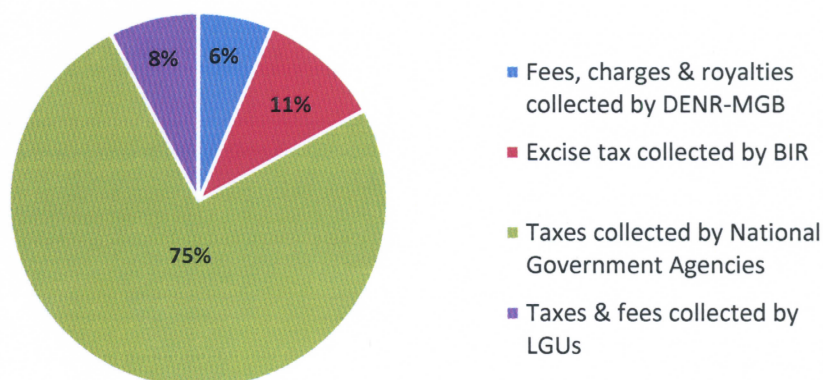


Figure 6. Average percentage distribution of revenues collected from mining, 2009-2017

On the other hand, data gathered from the BSP shows that excise tax collection and CWT collection on gold sold to BSP for the period 2011 to 2017 was on the downtrend except for 2017 when it recorded positive growth rates on both taxes despite the lowering of the CWT from 5% to 1% in 2017 (RR 7-2017).

Table 24

BSP Excise Tax and CWT Collection on Gold Purchases, 2011-2017
(Amounts in PhP million)

Year	Tax collection			Growth rate		
	Excise	CWT	Total	Excise	CWT	Total
2011	58.69	146.73	205.42			
2012	29.43	75.88	105.31	-49.86%	-48.29%	-48.74%
2013	21.19	52.97	74.16	-28.00%	-30.19%	-29.58%
2014	20.89	52.22	73.10	-1.43%	-1.43%	-1.43%
2015	15.76	39.40	55.16	-24.55%	-24.55%	-24.55%
2016	14.90	37.24	52.14	-5.48%	-5.48%	-5.48%
2017	17.07	38.65	55.71	14.58%	3.78%	6.87%
Average	25.42	63.30	88.71	-15.79%	-17.69%	-17.15%

Note. Tax collection data (BSP, official communication, 2018)

IV. FISCAL REGIME OF THE MINING INDUSTRY IN THE PHILIPPINES

A. Revenue sharing scheme

The fiscal regime of the mining industry, whether large-scale or small-scale mining sector, is provided for in the laws governing each sector, in conjunction with laws of general application such as the NIRC of 1997, as amended, and the Customs Modernization and Tariff Act (CMTA), and regulations issued specifically for the mining industry. Meanwhile, administrative fees and charges are governed by the rules and regulations of the concerned government agencies, e.g. DENR.

All mining contractors, regardless of size, are liable to all applicable national taxes imposed under the NIRC of 1997, as amended, as well as to local taxes and fees imposed by LGUs and the prescribed fees and charges imposed by various national government agencies such as the MGB.

It is noted that large-scale mining operations are covered mainly by the different mineral agreements such as mineral production sharing agreement (MPSA), co-production agreement (CA), and joint venture agreement (JVA). Income derived by the national government from these mineral agreements follow a revenue sharing scheme, wherein collections consist of the contractor's income tax, royalty fees on mineral reservation, excise tax, special allowance, withholding tax due from its foreign stockholders, other taxes, duties, and fees under existing law (PH-EITI, 2016).

On the other hand, the national government's share in FTAAAs consists of a Basic Government Share and an Additional Government Share, where the latter is the amount to be paid by the Contractor when the former is less than 50% of the Net Mining Revenue. The Basic Government Share consist of all direct taxes, royalties, fees and related payments required by existing laws, rules and regulations to be paid by the Contractor (PH-EITI, 2016).

For mineral reservations, the NG collects an additional royalty not exceeding 5% of the market value of the gross output of the minerals/mineral products extracted or produced from mineral reservations exclusive of all other taxes. Ten percent (10%) of this royalty and 10% of other revenues such as administrative, clearance, exploration and other related fees derived by the government from the exploration, development and utilization of the mineral resources within mineral reservations shall accrue to the MGB as a trust fund and shall be allotted for special projects and other administrative expenses related to the exploration, development and environmental management of minerals in Government reservations (DAO 2010-21).

Local governments are entitled to a 40% share from the gross collection of the national government from mining taxes, royalties and other fees within their territorial jurisdiction. In the case of occupation fees which is collected by the LGUs, the provinces get 30% and the host municipalities get 70% (Section 88, RA 7942).

Meanwhile, for small scale mining, small-scale mining contract (SSMC) holders are obliged to pay taxes, royalties or government production share as provided by law (Section 13, RA 7076). However, RA 7076 does not provide other details on the rates and the collecting agencies for these revenues. The Revised IRR of RA 7076 (DAO 2015-03) identifies the specific payments to be paid the government, as follows (Nuñez, 2015):

- (a) Application fee of PhP1,000 for licensing of SSMC applicants, payable to the MGB Regional Office [Section 7(b)].
- (b) Application fee to enter into a SSMC of PhP10,000 for non-metallic minerals and PhP20,000 for gold, silver and/or chromite, payable to the MGB Regional Office [Section 10(b)].
- (c) National and local taxes provided for in the NIRC, as amended [Section 28(a)].
- (d) Royalty fee of 5% of the gross output within mineral reservations [Section 28(b)].
- (e) Government production share [Section 28(c)].
- (f) Occupation fee of PhP100.00 per hectare or a fraction thereof per year payable to the municipality where the SSMC area is located (Section 29).

With regard to the government production share in small-scale mining, Section 19 of RA 7076 provides that the revenue to be derived by the government from the operation of the mining program shall be subject to the sharing provided under the Local Government Code (LGC), specifically Section 292 of RA 7160 (1991). Meanwhile, the government production share shall be determined by the Provincial/City Mining Regulatory Board [Section 4 (e) and (r), DAO 2015-03]. However, there appears to be no specific provision fixing the amount of the government production share (Nuñez, 2015).

For co-production and joint venture agreements, the government shall, in addition to receiving the government share prescribed in item 8, be entitled to compensation for its other contributions that shall be agreed upon by the parties concerned [Section 4(r), DAO 2015-03].

Likewise, Section 20 of RA 7076 provides for the creation of a People's Small-Scale Mining Protection Fund which is fifteen percent (15%) of the national government's share of the internal revenue tax. Said fund shall be used primarily for information dissemination and training of small-scale miners on safety, health, and environmental protection, and the establishment of mine rescue and recovery teams including the procurement of rescue equipment necessary in cases of emergencies such as landslides, tunnel collapse, or the like. In addition, the fund shall

be made available to address the needs of small-scale miners brought about by accidents and/or fortuitous events.

For the allocation of the government production share, Section 292 of RA 7160 provides for a sharing arrangement of 20%-45%-35% among the host/province, city/municipality and barangay, respectively, or a 65%-35% sharing between a highly urbanized or independent city and its barangay. Neither the law nor any of the implementing regulations provides for the rate or amount of the government share from small-scale mining to be paid to the host municipality or city (Nuñez, 2015).

Annex A present the summary of taxes applicable to the large-scale and small-scale mining sector.

B. Fiscal and non-fiscal incentives under the Philippine Mining Act of 1995

Chapter XVI of RA 7942 contains the incentives and investment guarantees accorded to contractors in mineral agreements. Mining contractors can avail of fiscal and non-fiscal incentives granted under the Omnibus Investment Code or EO 226, as amended, subject to their registration with the Board of Investments (BOI) and compliance with its requirements. However, exploration permittees registered with the BOI can only enjoy the fiscal incentives for the duration of the Permits or effectivity of EO 226 as amended, whichever comes first. BOI registration and the enjoyment of incentives under said registration shall be governed by the Investment Priorities Plan (IPP). Likewise, no entitlement to any incentive under EO 226 shall accrue to any contractor prior to the date of approval of its Mineral Agreement or FTAA and/or date of BOI registration, as the case may warrant in the latter. Moreover, all mining activities shall always be included in BOI's listing of IPP (Section 223, DAO 2010-21).

It is noted that in 2012, the BOI suspended the grant of mining income tax holiday (ITH) for new mining projects (Nuñez, 2015). In fact, the 2017 IPP 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. Meanwhile, 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. It is noted, however, that 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. Likewise, application for registration must be accompanied by a copy of the exploration permit, MPSA, FTAA or Quarry Permit, whichever is applicable.

Annex B present the list of mining investment incentives applicable to a BOI-registered enterprise under the Omnibus Investment Code, as amended.

V. PROPOSED FISCAL REFORMS IN THE PHILIPPINE MINING INDUSTRY

A. On the imposition of royalty to all metallic and non-metallic mining operations, and new fiscal regime and revenue sharing arrangement on new mineral agreements and FTAA's covering large-scale mining operations

House Bill (HB) No. 8400

HB 8400 seeks to impose a royalty applicable to all existing and prospective metallic and non-metallic mining operations whether large-scale or small-scale and whether operating within or outside the mineral reservation by incorporating the said royalty in Title VI, Chapter VII, Section 151 of the NIRC of 1997, as amended, viz.:

- (a) On large-scale mining outside mineral reservation – Margin-based royalty on income¹ subject to the following schedule:

Margin ²	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) On large-scale mining within mineral reservation – 3% of the gross output³ of the minerals or mineral products extracted or produced by the mining operations, exclusive of all other taxes; and

¹ The term income from mining operation shall mean the gross output less deductible expenses.

² Margin shall mean the ratio of income from mining operations before corporate income tax to gross output.

³ 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 if the minerals or mineral products sold or consigned abroad by the mining Contractor under Cost, Insurance, Freight (C.I.F) terms, the actual cost of ocean freight and insurance shall be deducted: *Provided, further*, That in the case of mineral concentrates which are not traded in commodity exchanges in the Philippines or abroad, such as copper concentrates, the actual market value shall be the world price quotations of the refined mineral products content thereof prevailing in the said commodity exchanges, after deducting the smelting, refining, treatment, insurance, transportation and other charges incurred in the process of converting mineral concentrates into refined metal traded in those commodity exchanges.

- (c) On small-scale mining – A royalty equivalent to one-tenth (1/10) of one percent (1%) of gross output.

In addition, the bill seeks to impose an additional margin-based tax on windfall profits gained on income from mining operations before corporate income tax, to wit:

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%

Senate Bill (SB) No. 1979

SB 1979 seeks to amend Section 151 of the NIRC, as amended by imposing royalty on all metallic and non-metallic mining operations, whether large-scale or small-scale as follows:

- (a) If within mineral reservations – 5% of the market value of gross output; and
- (b) If outside mineral reservations, phased-in rate as follows:
 - i. On the first three years upon the effectivity of this Act, three percent (3%);
 - ii. On the fourth year four percent (4%); and
 - iii. On the fifth year and thereafter, five percent (5%).

A new Section 151-B is also proposed to be added to impose an additional government share which shall be the amount to be paid by the mining contractor when the basic government share (BGS) is less than fifty percent (50%) of the net mining revenue (NMR). The additional government share shall be the difference between the 50% of NMR and the BGS during the calendar year. The NMR is the gross output less deductible expenses.

The following national and local taxes, royalties and fees paid by the Contractor to the Government constitute the BGS:

- (a) Contractor's income tax
- (b) Customs duties and fees on imported capital equipment;
- (c) Value-added tax (VAT) on imported goods and services;
- (d) Withholding tax on interest payments on foreign loans;
- (e) Withholding tax on dividends to foreign stockholders;
- (f) Documentary stamp taxes;
- (g) Capital gains tax;
- (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 effectivity date of the Mineral Agreement or FTAA.

SB 225 and 927

SB Nos. 225 and 927 seek to impose a new fiscal regime and revenue sharing arrangement on new mineral agreements and FTAA's covering large-scale metallic mining operations including existing MAs and FTAA's that are for renewal and renegotiation. It shall also cover existing MAs and FTAA's where such agreements provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulations or from the enactment of a law, regulation or administrative order shall be considered as a part of the said agreements.

The bills propose the following:

- (a) Each final mining area shall be treated as a separate taxable entity and the government share under the FTAA and MPSA shall be whichever is higher of the following:

- i. Ten percent (10%) of gross revenue; or
- ii. Fifty-five (55%) of adjusted net mining revenue (ANMR)⁴; Provided that in the event that the ANMR margin⁵ exceeds fifty percent (50%) due to increase in metal prices or other factors, the government, as owner of the mineral shall get fifty-five (55%) percent of the threshold ANMR⁶ plus sixty percent (60%) of the excess ANMR⁷.
- iii. The payment of government share shall be in lieu of all national and local taxes including income tax, royalty for indigenous cultural communities (ICC), duties on imported specialized capital mining equipment, fees for mayors and/or business permits and other fees and charges imposed by the host LGUs, except RPT, VAT, CGT, stock transaction tax (STT), DST, withholding tax on passive income, donor's tax, environmental fee, Securities and Exchange Commission (SEC) fee, water usage fee, and administrative and judicial cost and penalty. The list of exceptions shall be reviewed annually, or as often as may be necessary; provided, however, that none of the exceptions indicated herein shall be delisted.

The government and the contractor shall negotiate the Government share in co-production and joint venture agreements provided that it shall not be less than the share under the mineral agreements and FTAA's.

The government share shall remain allocated as follows: sixty percent (60%) to the NG and forty percent (40%) to the LGUs. If the contract area is within an ancestral domain/land, the royalties for the ICCs shall be taken from the Government share and the net Government share shall be allocated to the NG and LGUs at the ratio stated earlier. It further provides for speedier remittances of the LGUs shares within ten (10) days from the end of each quarter.

Mining areas that will be covered shall be declared by the President as Mining Industry Zones (MIZ) which will be administered by the Philippine Mining

⁴ Gross revenue less allowable costs that include production costs and the actual general and administrative costs, but not to exceed ten percent (10%) of the direct mining, milling and processing costs. Other allowable costs may be determined in the Implementing Rules and Regulations of this Act. Pre-operating expenses may be allowed as deductions provided that the amount shall be deducted within a five-year period from start of commercial operation. The interest expenses, and bank and financial charges shall not be allowed as deductible expenses from the gross revenue.

⁵ Total adjusted net margin revenue divided by the gross revenue.

⁶ Fifty percent (50%) of the gross revenue.

⁷ The adjusted net mining revenue that is in excess of the threshold adjusted net mining revenue or the difference between the total adjusted net mining revenue and the threshold adjusted net mining revenue.

Development Corporation (PMDC). The PMDC shall provide assistance to the contractor in having its business registered with the appropriate government agencies and in applying with the concerned entities for the provision of services needed in the operation of the business. On the other hand, the MGB of the DENR shall continue to exercise its functions as mandated by existing laws unless otherwise amended by the bill.

On common provisions

The bills also propose to require each final mining area as a separate taxable entity. HB 8400 and SB 1979 limit interest expense deduction for mining contractors in excess of debt to equity ratio of 1.5 to 1 at any time during the taxable year. However, the limitation will not apply if the amount of debt of the contractor does not exceed the arm's length debt amount while SB 225 and 927 disallow interest expenses, and bank and financial charges as deductible expenses, while pre-operating expenses are allowed for recovery which shall be limited to actual expenses and capital expenditures.

Under HB 8400 and SB 1979, the following cash expenses are proposed to be allowed as deductions from the gross output to determine either the income from mining operations or net mining revenue under both bills:

- (a) Mining, milling, transport and handling expenses together with smelting and refining costs other than smelting and refining costs paid to third parties;
- (b) General and administrative expenses actually incurred by the Contractor in the Philippines;
- (c) Environmental expenses;
- (d) Expenses for the development of host and neighboring communities and for the development of geosciences and mining technology;
- (e) Royalty payments to claim owners 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 contractor subject to the financing requirement in the Mineral Agreement or Financial and Technical Assistance Agreement (FTAA), which shall not be more than the prevailing international rates charged for similar types of transactions;
- (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.

All bills provide that valid mineral agreements and FTAA's existing prior to the effectivity of the Act that do not provide that any terms and conditions resulting from repeal or amendment of any existing laws or regulations or from the enactment of a new law or regulation shall be considered a part of said mineral agreement or FTAA's, shall continue to be governed by their existing terms and conditions.

B. On the increase of the excise tax on mineral products

SB 1541 seeks to increase the excise tax from the uniform rate of 2% to 7% on minerals, mineral products and quarry resources. It is noted, however, that excise tax on mineral products was increased to 4% pursuant to RA 10963.

It also proposes an equal sharing between the national government and local government from the excise tax on minerals, mineral products and quarry resources. The 50% from the revenue collection share of the local government must be allocated and utilized for infrastructure, education, health insurance and environmental conservation.

C. On strengthening the country's GIR by exempting small-scale mining from income and excise taxes

At present, Congress is seeking for the exemption from payment of income and excise taxes the sale of gold by registered small-scale miners to the BSP. It is noted that HB 3297 has been transmitted and received by the Senate of the Philippines on October 9, 2018. As of January 22, 2019, its counterpart bill, SB 2127, has been approved on 2nd reading without amendments.

The key provisions of the bills are as follows:

- (a) Mandates that the income derived from the sale of gold to the BSP by registered small-scale miners, as defined under the People's Small-Scale Mining Act, and accredited traders; and the sale of gold by registered small-scale miners to accredited traders for eventual sale to the BSP shall not be included in gross income and shall be exempt from taxation.
- (b) Mandates that the gold which is sold, or eventually sold to the BSP shall be exempt from the payment of excise tax. A taxpayer who had paid excise tax prior to the sale of gold to the BSP may claim for refund with the Commissioner of Internal Revenue (CIR) for the excise tax paid.

- (c) Authorizes the grant of the same tax treatment given to the direct sale of gold to the BSP by registered small-scale miners, as defined under the People's Small-Scale Mining Act, to accredited traders for eventual sale to BSP.
- (d) Presumes that the gold sold to the BSP by accredited traders has been purchased by said traders from small-scale miners.

The main objective of the bills is to enable the BSP to build up the country's GIR by buying domestically produced gold from registered small-scale miners using pesos. Likewise, to assist the BSP in the fulfillment of its mandate under its charter, returning to the formal sector the sale of gold from small-scale mining; and to support the trade of small-scale miners as originally envisioned under the People's Small-Scale Mining Act.

Likewise, the authors of the bills believed that by removing the income and excise taxes imposed on gold sold to the BSP, the smuggling of gold out of the country may be curbed, thus, will encourage small-scale miners and traders to sell their gold to the BSP instead of resorting to the black market.

D. On requiring a legislative franchise as a pre-requisite to the issuance of an exploration permit, mineral agreement, or FTAA for any mining project in the Philippines

The House Committees on Legislative Franchises and Natural Resources have approved the substitute bill⁸ requiring all mining operations in the country to secure a legislative franchise.

Section 11 of RA 7942 was amended to require private contractors to first secure a legislative franchise before they can apply for a large-scale quarrying permit or an exploration permit before entering into a mineral agreement or financial and/or technical assistance agreement. The terms and conditions of said permits and agreements shall be made available to the public.

Private contractors presently holding exploration permits, mineral agreements, and financial and/or technical assistance agreements, and large-scale quarrying permits are given two years from the time the law takes effect to secure a legislative franchise, otherwise their permits and agreements will be terminated.

Before renewal of any franchise, the Secretary of Environment and Natural Resources shall review the existing mineral agreement, or FTAA or large-scale

⁸ The unnumbered bill is in substitution for HB 5674 (2018), HB 6259 (2018), HB 2165 (2018), HB 2915 (2018) and HB 3229 (2018), which seeks to amend RA 7942 otherwise known as the "Philippine Mining Act of 1995".

quarrying agreement to determine if the entire contract area has been utilized and is necessary for purposes of the mining operations of the contractor.

Upon the Secretary's recommendation, the contractor shall relinquish to the government any portion of the contract area which shall not be necessary for such purpose.

The substitute bill also requires the DENR Secretary to inform the Congress before any action is taken with regard to the withdrawal or cancellation of a mineral agreement. Similarly, Congressional information is required before any action is taken with regard to the withdrawal or cancellation of a financial or technical assistance agreement.

A new section pertaining to the roadmap for the development of downstream industry and national industrialization plan was introduced. The DENR, in coordination with the Departments of Trade and Industry, Science and Technology, National Economic and Development Authority and other stakeholders shall submit within a period of six (6) months a National Program and Road Map based on the Philippine Development Plan, and a National Industrialization Plan for the Development of Value-Adding Activities and Downstream Industries for Strategic Metallic Ores.

More importantly, the substitute bill mandates all contractors, in accordance with international standards and agreements for mining rehabilitation, to rehabilitate the area they have utilized and/or operated within ten (10) years, reckoned from the expiration date of the permit or agreement, or from the effective date of cancellation of such, whichever comes earlier.

Failure to rehabilitate shall be penalized by a fine of P100M for each hectare that has not been rehabilitated.

Within 90 days after the effectivity of the Act, the DENR shall promulgate the necessary rules and regulations for its proper implementation (Galvez, 2018).

VI. CONCLUSION AND RECOMMENDATIONS

The mining industry is a significant growth driver of an economy. However, the progress of the mining industry in the Philippines is proceeding at an extremely slow pace, contributing only to an average 0.7% to GDP during the period 2008-2017. Average total gross production value even drastically declined to only PhP108.9 billion while total revenues averaged to only PhP22.5 billion in 2017 from PhP30 billion in 2014. The limited economic and fiscal contribution of mining industry may be due to limitation in the current fiscal policy framework and development program of the national government.

To be noted is the unprecedented decline of gold production by small-scale mining stemming from the mandatory imposition of creditable withholding tax and excise tax being withheld by the BSP since the BIR issuance of RR 6-2012. Consequently, this led to a huge decline in tax collections for the period 2012-2017. This caused alarm to many of our legislators with the possible depletion of gold (as it largely contributes to the country's GIR) as small-scale miners allegedly opted to sell it to traders or black market and being smuggled to other countries. Hence, they propose to exempt the sale of gold to BSP from income and excise taxes.

However, it is also worthy to note that the imposition of taxes is justified on the ground that it is the right of the government to share in the gains from minerals extracted or produced since said minerals are owned by the State. The imposition of appropriate taxes on small-scale miners is a guarantee of getting back what is due to the Filipino people. With the establishment of the Minahang Bayan (prescribed under DAO 2015-03), the government will be able to monitor gold production by small-scale miners, thus, it will help the government curb illegal mining and mitigate the adverse environmental impacts of indiscriminate mining operations in the country as well. With the existing laws, rules and regulations concerning small-scale mining in place, it is but proper for the government to strictly enforce such laws.

While mining has the potential to become a highly profitable industry and beneficial to all stakeholders, there is a need to formulate and implement an effective socio-economic policy. The inadequacies in regulation and inconsistencies in fiscal policy stalled the development of the mining industry. Hence, the combined efforts of the government and the mining sector are essential in order to boost economic growth and at the same time safeguard the environment and the rights of affected communities.

Lastly, the proposals to establish a new mining fiscal regime are timely and highly justified in order to realize the gains and benefits from the mining industry.



Annex A

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

Type of Tax	Large-Scale Mining	Small-Scale Mining
<u>Direct payments to NG</u>		
Income tax	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> In case of corporations, seller is subject to the 30% CIT In case of individuals, seller is subject to the personal income tax on a graduated schedule of 0%-35%, or an 8% tax on gross sales or receipts and other non-operating income in excess of PhP250,000 in lieu of the graduated income tax rates and the percentage tax under Section 116 of the Tax Code for self-employed individuals earning income purely from self-employment or practice of profession [Section 24(A), NIRC, as amended]. For buyers of metallic minerals, they are required to withhold 5% CWT, except for the BSP which is required to withhold 1% CWT [Section 2, Revenue Regulation (RR) No. 7-2017].
Excise tax on minerals (Section 151, NIRC, as amended)	<ul style="list-style-type: none"> 4% of the gross output from metallic and non-metallic minerals produced Per metric ton for coal and coke: <ul style="list-style-type: none"> 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 	<ul style="list-style-type: none"> Same as large-scale mining

Type of Tax	Large Scale Mining	Small Scale Mining
Value added tax (VAT)	<ul style="list-style-type: none"> 12% VAT on imported materials and equipment 	<ul style="list-style-type: none"> Sale of gold to BSP is exempt from the VAT [Section 109(Z), NIRC, as amended]
Documentary stamp tax (DST), if applicable	<ul style="list-style-type: none"> Rate depends on the type of transaction 	
Capital gains tax (CGT), if applicable	<ul style="list-style-type: none"> 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	<ul style="list-style-type: none"> $\frac{6}{10}$ 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	<ul style="list-style-type: none"> 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). 	<ul style="list-style-type: none"> 5% of the gross output within mineral reservations (Section 28, DAO 2015-03).
Customs duties and fees	<ul style="list-style-type: none"> 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 	

Type of Tax	Large Scale Mining	Small Scale Mining
Administrative fees	<ul style="list-style-type: none"> e.g. wharfage and port fees; licensing fees for radio, firearms and driving of motor vehicles; and professional fees 	<ul style="list-style-type: none"> e.g. license application fee for SSMC applicants, and application fee for SSMC
Annual occupation fee	<ul style="list-style-type: none"> For areas outside mineral reservations: <ul style="list-style-type: none"> Exploration permit – PhP10.00 per hectare or fraction thereof per annum Mineral agreements and FTAAAs – PhP50.00 per hectare or fraction thereof per annum For areas inside mineral reservations: <ul style="list-style-type: none"> Exploration permits, mineral agreements and FTAAAs – PhP100.00 per hectare or fraction thereof per annum (Section 218, DAO 2010-21) 	<ul style="list-style-type: none"> PhP100.00 per hectare or fraction thereof per annum to be paid to the municipality where the SSMC area is located.
<u>Direct payments to LGUs</u>	<ul style="list-style-type: none"> Local business tax <ul style="list-style-type: none"> Rate varies among local governments Real property tax (RPT) <ul style="list-style-type: none"> 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 	<p>To be paid to the provincial treasurer*</p> <ul style="list-style-type: none"> Mineral tax or sales tax on metallic minerals <ul style="list-style-type: none"> PhP1,000 per metric ton or 2% of gross receipts Small-scale mining permit fee <ul style="list-style-type: none"> PhP3,000 – PhP15,520 Filing fee <ul style="list-style-type: none"> PhP10 – PhP20 per hectare or specific amount up to PhP500 Processing fee <ul style="list-style-type: none"> PhP20 – PhP25 per hectare or specific amount up to PhP150

Type of Tax	Large Scale Mining	Small Scale Mining
	<ul style="list-style-type: none"> • Special education levy <ul style="list-style-type: none"> ▪ 1% of the assessed value of the property • Registration fees <ul style="list-style-type: none"> ▪ Rate depends on the activity to be registered • Community tax <ul style="list-style-type: none"> ▪ Maximum of PhP5,000 for individual and PhP10,000 for establishment per year • Other local taxes <ul style="list-style-type: none"> ▪ Type of taxes depend on local government concerned at maximum of 2% based on gross sales/receipts • Royalty to landowners/claim owners <ul style="list-style-type: none"> ▪ Depends on the negotiation between landowner/claim owner and mining contractor • Royalty to indigenous people, if within ancestral lands <ul style="list-style-type: none"> ▪ Minimum of 1% of the gross output from minerals 	<ul style="list-style-type: none"> • Verification fee <ul style="list-style-type: none"> ▪ PhP500 – PhP3,600 per hectare <p><u>To be paid to the municipal treasurer*</u></p> <ul style="list-style-type: none"> • Business permit fee <ul style="list-style-type: none"> ▪ PhP150 – PhP2,500 • Tax on mining operations <ul style="list-style-type: none"> ▪ 2% of gross receipts of preceding year or graduated schedule based on gross receipts (Nuñez, 2015)
<u>Direct payments to other Filipinos</u>		

Note. Direct payments to LGUs of small-scale mining varies depending on the local ordinance of the different local governments. What is presented in the table is just a summary and range of payments depending on selected local ordinance presented in the study Philippines EITI Scoping Study on Small-Scale Metallic Mining (Nuñez, 2015).

Annex B

Mining Investment Incentives (Fiscal and Non-Fiscal Incentives)

BOI		Incentives under the Mining Act <i>Aside from the BOI incentives, the Mining Act makes available the following incentives:</i>
Fiscal Incentives	Non-Fiscal Incentives	
<p>(a) Income Tax Holiday</p> <p>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.</p> <p>As mentioned, the income tax holiday for mining projects (new and renewal) has been suspended in 2012.</p> <p>(b) Tax and duty exemption on imported capital equipment, spare parts, and accessories</p>	<p>(a) Employment of foreign nationals</p> <p>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.</p> <p>(b) Simplification of customs procedures</p> <p>For importing equipment, spare parts, raw materials, and supplies and exporting processed products in the operations of their bonded warehouses.</p> <p>(c) Unrestricted use of consigned equipment.</p> <p>(d) Access to bonded manufacturing or trading warehouse system</p>	<p>(a) Incentives for pollution control devices</p> <p>(b) Income tax-carry forward of losses</p> <p>(c) Income Tax-Accelerated Depreciation</p> <p><i>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.</i></p> <p><i>Despite the grant of incentives, the payment of the government share is guaranteed under the rules</i></p>

Fiscal Incentives	BOI	Non-Fiscal Incentives	Incentives under the Mining Act <i>Aside from the BOI incentives, the Mining Act makes available the following incentives:</i>
<p>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.</p>			
<p>(c) Exemption from taxes and duties on imported spare parts</p>			
<p>For export producers with customs bounded warehouse exporting at least 70% of production.</p>			
<p>(d) Tax credit on domestic capital equipment</p>			
<p>100% of the value of tax and customs duties that would have been waived had these items been imported.</p>			
<p>(e) Exemption from wharfage dues, export tax, duty, impost and fees</p>			
<p>Limited to export of non-traditional export products</p>			

BOI Fiscal Incentives	Non-Fiscal Incentives	Incentives under the Mining Act <i>Aside from the BOI incentives, the Mining Act makes available the following incentives:</i>
(f) Tax and duty free importation on breeding stocks and genetic materials		
(g) Tax credit		
On portion of domestic breeding stocks and genetic materials, and for taxes on raw materials		
(h) Additional deductions from taxable income		
i. For labor expense, available for the first 5 years from registration, equivalent to 50% of the wages of additional skilled and unskilled workers in the direct labor force. Deduction is doubled when the activity is located in a less developed area; and		
ii. For necessary and major infrastructure work.		

Note. Table copied from the First Country Report of PH-ETI (PH-EITI, 2014^a, pp. 83-85).