



WHO SHOULD BENEFIT FROM  
FINITE NATURAL RESOURCES?

# MINING TAX REFORM

## LEGISLATION PRIMER

# Context of Mining in PH



**The Philippines is one of the most mineralized countries in the world.**

According to the Fraser Institute, the Philippines ranks as the 5th most mineralized country in the world.



**PH effective tax rates for mining is among the lowest in the world.**

According to a 2004 comparative study of selected mining countries, the total tax take of the government is at the second lowest quartile with effective tax rate at 45.3% (J. Otto et al., 2006)



**Mining failed to contribute significantly to economic development and government revenues**

Mining has one of the lowest contribution to the gross domestic product among industries in the country. This is also true in terms of government revenues.



**The mining fiscal regime is complicated**

Under the Philippine Mining Act, a different fiscal regime is applied to each type of mining agreement - mineral production sharing agreement OR financial & technical assistance agreement. This is further complicated on the area of operation. A complex fiscal regime is not suitable for a government such as ours, that has weak institutional capacity.



**Majority of our minerals is exported cheap as raw ore**

The Philippines is currently the biggest single nickel supplier of China. After Indonesia banned exports of raw ore, the country became top exporter. Raw ore, however, has no value added and generates lesser jobs than when minerals are processed domestically.



**Communities benefit the least and suffer the most.**

Estimates shows that communities and local governments receive less relative to what national government collects.

# Status Quo in Figures

**5.6 billion pesos**  
was government and indigenous peoples' total collection from the metallic mining sector in 2013 according to the Philippine Extractive Industries Transparency Initiative 2015 Country Report. This is equivalent to 0.003% of total government revenues. This amount is equal to...

**7.7 per cent**  
of total revenues of mining companies in 2013. Estimated revenues of companies amounts to P74.3 billion pesos. Of the total collected amount from the industry...

**73 per cent**  
went to national government while indigenous peoples' royalties amounted to only 4% of total and local government units' direct collections and share from national wealth accounts for only 23% as estimates show.

**0.7 per cent**  
was the mining industry's contribution to GDP in 2014 according to the Mines and Geosciences Bureau. Since 1997, contribution reached only up to 1% in 2010.

**0.6 per cent**  
of total employment is generated by the mining industry in 2014. This is equivalent to roughly 235,000 jobs generated by all sub-sectors of the industry including metallic, non-metallic, and small-scale mining.

# Proposed Bantay Kita Bill Increases government share



## **Imposition of 5% royalties on all mining operations.**

Mining operations shall be levied assessed and collected on minerals, mineral products and quarry resources a mineral royalty of five percent (5%) based on the market value of the gross output at the time of sale; or the value used by the Bureau of Customs in determining tariff and custom duties.



## **Charging windfall profits or a cash flow surcharge of 10%**

A surcharge of ten percent (10%) shall be imposed on the cash flows of each mining area for every taxable fiscal year. For purposes of the cash flow surcharge (CFS), each mining area shall be considered a separate taxable quantity. The tax base of the CFS is determined by adding back the depreciation and interest expense and other financing charges to the regular taxable income used for the purposes of the corporate income tax. Any surcharge loss is carried forward to subsequent years so as to avoid charging the CFS until the mining area has a positive cash flow.



## **Repeal of tax incentives**

All tax incentives granted to mineral mining and quarry contractors shall be repealed upon effectivity of this Act other than those for pollution control devices under Section 91 of the Philippine Mining Act.



## **Limit deduction of interest expense**

If a contractor has a debt-to-equity ratio in excess of 1.5 to 1 at any time during a taxable fiscal year, a deduction of the interest paid by the contractor in the portion of the debt which exceeds the 1.5 to 1 ration for that same fiscal year shall not be allowed

# Proposed Bantay Kita Bill

## Promotes downstream industry



### Creation of the Mining Downstream Coordinating Council

There is hereby created the Mining Downstream Coordinating Council. The DENR, in coordination with Department of Trade and Industry (DTI), Department of Science and Technology (DoST), National Economic Development Authority (NEDA), the Mining Industry, and Civil Society.



MINING  
INDUSTRY



GOVERNMENT



CIVIL SOCIETY



### Progressive export tax on raw ore.

A progressive export tax system on the gross value of raw ore exported is hereby imposed to encourage the processing of raw ore in the country.

A 20% export tax on the gross value of raw ore will be imposed two years upon effectivity of this Act; 40% on the following year; and 60% the year after.



### Eventual banning of export of raw ore.

To ensure availability of raw materials for processing plants locating in the Philippines, a ban on export of raw ore shall be imposed on the fifth year of this Act's effectivity.

# Proposed Bantay Kita Bill Respects rights of IPs & LGUs

Note: Three pending bills in the 17th Congress - 1 in the House of Representatives and 2 in the Senate, also known as the Mining Inter-agency Coordinating Council Bill, aggregates all payments into one rate. This threatens the autonomy of LGUs to levy taxes and rights of indigenous peoples to negotiate. The bill includes a provision on LGUs waiving its power to regulate operations in issuing of business permits and other license requirements to a Mining Industry Zone authority to be created if the bill passes into a law.



## **Section 14.a. Increase LGU Share from proceeds in the utilization of national wealth**

A local government unit shall, in addition to the internal revenue allotment, have a share of fifty percent (50%) of the gross collection derived by the national government from the preceding fiscal year from excise taxes, royalties and such other taxes, fees or charges, including related surcharges, interests or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction...



## **Section 14.c Sharing of local business tax among LGUs**

With respect to payment of business tax, 80% of the payment shall go to the local government unit hosting the mining operation and the 20% of the payment shall go to the local government unit where the main office of the business is located..."



## **Maintains status quo on Indigenous Peoples Royalties**

The minimum 1% royalty shall be paid only to legitimate holders of Certificate of Ancestral Domains Title or Certificate of Ancestral Lands Title. The management of royalties shall build on the indigenous knowledge systems of the IPs/ICCs.

# Proposed Bantay Kita Bill

## Other Provisions



### **Section 15. Creation of natural resource trust fund**

To ensure intergenerational equity as a right of future generations of Filipinos and transparency and accountability in the use of proceeds from the extraction of mineral and quarry resources, the national government shall create a national natural resource trust fund where all the proceeds from mining activities excluding shares of local government units shall accrue. Likewise, local government units are mandated to create a local natural resource trust fund where shares from national government and locally collected taxes from mining and quarrying shall accrue



### **Section 6. Separate taxable personality**

Each mining operation in a mining area will be considered a separate taxable entity. If a mining contractor is party or holds more than one mineral agreement, it shall be treated as a separate entity with respect to business operations related to each mining area."



### **Proposed Addition: More efficient download of funds to LGUs**

The Bureau of Treasury, within five (5) banking days from receipt thereof, shall deposit the forty percent (40%) LGU share to the accounts of the LGUs through their GFIs or their authorized agent bank



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