



Comments on House Bill 8937: AN ACT ENHANCING THE FISCAL REGIME FOR THE MINING INDUSTRY, AMENDING FOR THE PURPOSE SECTION 34(B), AND CREATING NEW SECTIONS 151-A, 151-B, 151-C, AND 151-D, ALL UNDER REPUBLIC ACT NO. 8424, OTHERWISE KNOWN AS THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED

Prepared by SONNY N. DOMINGO¹

01 April 2024

The rationalization of the mining fiscal regime is necessary for more appropriate, practical, and effective taxation within the sector. The same will ensure that the national government and affected municipalities will substantially capture the benefits from the various mineral extraction industries. Related to this, the senate bills from the 17th congress, particularly those filed by former senators Dilon, Sotto and Recto (SBs 225, 927 and 1979), should be revisited. Those bills had more progressive provisions detailing greater returns from royalties and net margin taxation. HB 8937 is a revised version of a bill that was also deliberated on during the 17th congress.

Below are specific comments and inputs pertaining to House Bill 8937:

1. Lowering the existing mining royalty from 5% to 4% is not advised. As it stands, the revenues from mining activities accruing to local and national counterparts seem inadequate. Further lowering taxation is counter-intuitive from aspirations related to social and environmental justice.
2. Lowering the number of taxation tiers for those outside Mineral reservations is recommended. This is to simplify the taxation regime and allow for easier grounding and application of policy.
3. Value adding or mineral ore processing has to be domestically pursued. The country has been losing billions from sub-optimal valuation/pricing of exported raw mineral ores. In most cases, only nickel and iron metals are priced in raw material exports. Other precious minerals like scandium, manganese, chromium, and aluminum oxide are left unvalued at great loss to the country. It is too convenient for local mining operators to just export unprocessed raw mineral ores. The imposition of an export tax on the export

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of unprocessed mineral ores may catalyze or incentivize investments on local processing and value-adding industries.

A royalty rate of 7.5% can be levied on the export of unprocessed nickel/ raw mineral ores. As a point of comparison, Western Australia levied the same royalty on the export of coal.

4. The Philippines exports approximately 80% of nickel as direct shipping ore (unprocessed). More than 95% of this unprocessed ore goes to China, with Nickel and Iron as only payable metals. These concerns necessitate appropriate legislative and executive bureaucratic action. The numbers also highlight the need to craft an industry road map that secures both industry and national interests.
5. The small scale mining act has to be revised. As currently defined by law, most small-scale mining operators in the country are operating extra-legally. Small-scale mining outputs are also largely unaccounted for. Gold sale to the black market is flourishing and is largely unhindered. The Bangko Sentral ng Pilipinas (BSP) appears ineffective in capturing the sale of gold from small scale operators (even upon removal of taxes).
6. For purposes of taxation and with the absence of legislation amending RA 7076 or the small scale mining act, this bill should present at least a revised definition of small scale mining. The government needs to provide distinctions among artisanal, small-scale, and large-scale mining operations. The following definitions may be adopted:
 - a. **Artisanal mining** covers subsistence mining and is tax-free, mainly dependent on manual labor and operating without the use of heavy equipment and explosives.
 - b. **Small-scale mining** is entrepreneurial and taxable, allowing for the use of heavy equipment, chemicals and explosives in mining operations. This covers current operational arrangements characterized by relatively low capital investment.
 - c. **Large-scale mining** follows the definition provided in RA 7942.
7. Taxation for small scale gold mining can be levied at the milling or processing plants where gold is extracted from mined ores if taxation at the point of sale is not feasible. The milling or processing plants are fixed establishments where effective monitoring and regulation by the BIR, the LGUs and the DENR are possible.

The BSP should also consider the establishment of more buying centers. Where not viable, there needs to be appropriate buyer accreditation mechanisms to counter the ease and accessibility offered by informal markets to miners.

8. The following table presents specific inputs to the fiscal regime proposals from the lower house (HB 8937) and DOF:

HOUSE BILL NO. 8937	DOF PROPOSED BILL	REMARKS
<p>SEC. 2. The title of Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:</p> <p>“CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF MINERAL PRODUCTS”</p>	<p>SEC. 2. The title of Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby amended to read as follows:</p> <p>“CHAPTER VII – [EXCISE TAX ON MINERAL PRODUCTS] TAXATION OF MINERAL PRODUCTS</p>	
<p>SEC. 3. A new section designated as Section 151-A under Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby inserted, and shall read as follows:</p> <p>“SEC. 151-A. ROYALTY. –</p> <p>(A) ROYALTY RATE FOR LARGE-SCALE METALLIC MINING OPERATIONS. – ROYALTY RATE FOR LARGE-SCALE METALLIC MINING OPERATIONS THAT ARE SUBJECT TO MINERAL AGREEMENTS AND FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENTS (FTAA):</p> <p>(1) OPERATIONS WITHIN MINERAL RESERVATIONS. – LARGE-SCALE METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS SHALL BE SUBJECT TO THE ROYALTY RATE OF FOUR PERCENT (4%) OF THE GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED.</p> <p>(2) OPERATIONS OUTSIDE MINERAL RESERVATIONS. – LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE MINERAL RESERVATIONS SHALL BE SUBJECT TO A MARGIN-BASED ROYALTY ON INCOME FROM METALLIC MINING OPERATIONS, IN ACCORDANCE WITH THE FOLLOWING TABLE:</p>	<p>SEC. 3. A new section designated as Section 151-A under Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby inserted, and shall read as follows:</p> <p>“SEC. 151- A. ROYALTY. –</p> <p>(A) ROYALTY RATE FOR LARGE-SCALE METALLIC MINING OPERATIONS. – ROYALTY RATE FOR LARGE-SCALE METALLIC MINING OPERATIONS THAT ARE SUBJECT TO MINERAL AGREEMENTS AND FINANCIAL OR TECHNICAL ASSISTANCE AGREEMENTS (FTAA):</p> <p>(1) OPERATIONS WITHIN MINERAL RESERVATIONS. – LARGE-SCALE METALLIC MINING OPERATIONS WITHIN MINERAL RESERVATIONS SHALL BE SUBJECT TO THE ROYALTY RATE OF FIVE PERCENT (5%) OF THE GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED.</p> <p>(2) OPERATIONS OUTSIDE MINERAL RESERVATIONS. – LARGE-SCALE METALLIC MINING OPERATIONS OUTSIDE MINERAL RESERVATIONS SHALL BE SUBJECT TO A MARGIN-BASED ROYALTY ON INCOME FROM METALLIC MINING OPERATIONS, IN ACCORDANCE WITH THE FOLLOWING TABLE:</p>	<p>Agree with the 5% royalty rate, if not higher</p> <p>Please add:</p> <p>(3)A royalty rate of 7.5% shall be levied on the export of raw nickel/ mineral ores.</p>

HOUSE BILL NO. 8937	DOF PROPOSED BILL	REMARKS																												
<table border="1"> <thead> <tr> <th>MARGIN</th> <th>RATE</th> </tr> </thead> <tbody> <tr> <td>1% UP TO 10%</td> <td>1.00%</td> </tr> <tr> <td>ABOVE 10% UP TO 20%</td> <td>1.50%</td> </tr> <tr> <td>ABOVE 20% UP TO 30%</td> <td>2.00%</td> </tr> <tr> <td>ABOVE 30% UP TO 40%</td> <td>2.50%</td> </tr> <tr> <td>ABOVE 40% UP TO 50%</td> <td>3.00%</td> </tr> <tr> <td>ABOVE 50% UP TO 60%</td> <td>3.50%</td> </tr> <tr> <td>ABOVE 60% UP TO 70%</td> <td>4.00%</td> </tr> <tr> <td>ABOVE 70%</td> <td>5.00%</td> </tr> </tbody> </table> <p>(B) ROYALTY RATE FOR SMALL-SCALE METALLIC MINING OPERATIONS. – PURSUANT TO SECTION 13(D) OF REPUBLIC ACT NO. 7076, OTHERWISE KNOWN AS THE ‘PEOPLE’S SMALL-SCALE MINING ACT OF 1991,’ THERE SHALL BE LEVIED, ASSESSED, AND COLLECTED A ROYALTY RATE EQUIVALENT TO ONE-TENTH (1/10) OF ONE PERCENT (1%) OF GROSS OUTPUT OF THE MINERALS OR MINERAL PRODUCTS EXTRACTED OR PRODUCED BY SMALL-SCALE METALLIC MINING OPERATIONS.</p> <p>ALL PERSONS ENGAGED IN SMALL-SCALE METALLIC MINING ACTIVITIES SHALL REGISTER WITH THE MINES AND GEOSCIENCES BUREAU (MGB) AND THE MINING BOARD OF THE CONCERNED LOCAL GOVERNMENT UNIT IN ACCORDANCE WITH REPUBLIC ACT NO. 7076, OTHERWISE KNOWN AS THE ‘PEOPLE’S SMALL-SCALE MINING ACT OF 1991,’ AND MAY ORGANIZE THEMSELVES INTO COOPERATIVES IN ORDER TO QUALIFY FOR THE AWARDED OF A PEOPLE’S SMALL-SCALE MINING CONTRACT. A TAX IDENTIFICATION NUMBER SHALL BE SECURED FROM THE BUREAU OF INTERNAL REVENUE AS REQUIREMENT FOR REGISTRATION.</p>	MARGIN	RATE	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%	<table border="1"> <thead> <tr> <th>MARGIN</th> <th>RATE</th> </tr> </thead> <tbody> <tr> <td>EQUAL TO 1% BUT NOT OVER 20%</td> <td>1.50%</td> </tr> <tr> <td>OVER 20% BUT NOT OVER 40%</td> <td>2.50%</td> </tr> <tr> <td>OVER 40% BUT NOT OVER 60%</td> <td>3.50%</td> </tr> <tr> <td>OVER 60%</td> <td>5.00%</td> </tr> </tbody> </table> <p>ROYALTIES FOR LARGE-SCALE METALLIC OPERATIONS UNDER SECTION 151-A SHALL BE PAID TO THE BUREAU OF INTERNAL REVENUE AND SHALL BE EXCLUDED IN THE LIST OF TAXES, FEES AND CHARGES DEEMED TO BE NATIONAL INTERNAL REVENUE TAXES UNDER SECTION 21 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED.</p>	MARGIN	RATE	EQUAL TO 1% BUT NOT OVER 20%	1.50%	OVER 20% BUT NOT OVER 40%	2.50%	OVER 40% BUT NOT OVER 60%	3.50%	OVER 60%	5.00%	<p>Agree with lesser number of tiers.</p> <p>Please add:</p> <p>Royalties for small-scale metallic mining operations shall be levied at the milling or processing plants where gold is extracted from mined ores if taxation at the point of sale is not feasible.</p> <p>The milling or processing plants are fixed establishments where effective monitoring and regulation by the BIR, the LGUs, and the DENR are possible.</p> <p>The BSP shall establish more buying centers. Where the same is not viable, appropriate buyer accreditation mechanisms will be established to match the convenience and accessibility offered by informal market buyers to miners.</p>
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<p>(C) FOR PURPOSES OF THIS SECTION AND IN SECTION 151-B OF THIS CHAPTER, THE TERM:</p> <p>(1) 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 OF THE MINERALS OR MINERAL PRODUCTS SOLD OR CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST, INSURANCE AND FREIGHT (CIF) 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 COMPUTED AS 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 COMMUNITY EXCHANGES;</p> <p>(2) INCOME FROM METALLIC MINING OPERATIONS SHALL MEAN THE GROSS OUTPUT LESS DEDUCTIBLE EXPENSES WHICH INCLUDE:</p>	<p>(B) FOR PURPOSES OF THIS SECTION AND IN SECTION 151-B OF THIS CHAPTER, THE TERM:</p> <p>(1) 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 OF THE MINERALS OR MINERAL PRODUCTS SOLD OR CONSIGNED ABROAD BY THE MINING CONTRACTOR UNDER COST, INSURANCE AND FREIGHT (CIF) 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 COMPUTED AS 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 COMMUNITY EXCHANGES;</p> <p>(2) INCOME FROM METALLIC MINING OPERATIONS SHALL MEAN THE GROSS OUTPUT LESS ALLOWABLE DEDUCTIONS WHICH INCLUDE:</p>	<p>Please add:</p> <p>For purposes of taxation and with the absence of new legislation amending RA 7076 or the small-scale mining act, distinctions are hereby provided between artisanal and small-scale mining. The following definitions of artisanal, small-scale, and large-scale mining operations are hereby adopted:</p> <p>a. Artisanal mining covers subsistence mining and is tax-free, mainly dependent on manual labor and operating without the use of heavy equipment and explosives.</p> <p>b. Small-scale mining is entrepreneurial and taxable, allowing for the use of heavy equipment, chemicals and explosives in mining operations. This covers current operational arrangements with low capital investment in the sector.</p> <p>c. Large-scale mining follows the definition provided in RA 7942.</p>

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<p>SEC. 6. A new section designated as Section 151-D under Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby inserted, and shall read as follows:</p> <p>“SEC. 151-D. SUBMISSION OF SALES AND EXPORTATION OF MINERALS, MINERAL PRODUCTS, AND RAW ORES. – ALL METALLIC MINING CONTRACTORS SHALL PROVIDE THE BUREAU OF INTERNAL REVENUE A COPY OF APPROVED MARKETING CONTRACTS AND SALES AGREEMENTS, INCLUDING THOSE SUBMITTED TO THE MINES AND GEOSCIENCES BUREAU, ON ALL SALES AND EXPORTATION OF MINERALS, MINERAL PRODUCTS, AND RAW ORES.</p> <p>THE MINES AND GEOSCIENCES BUREAU SHALL REQUIRE METALLIC MINING COMPANIES TO SUBMIT ASSAY REPORT FOR EACH SHIPMENT BEFORE LEAVING THE LOADING PORTS. THE REPORT SHALL BE SHARED WITH THE DEPARTMENT OF FINANCE AND THE BUREAU OF INTERNAL REVENUE.</p> <p>THE BUREAU OF INTERNAL REVENUE SHALL BE ENTITLED TO EXAMINE AND AUDIT FOR TAX PURPOSES ALL SALES AND EXPORTATION OF MINERALS, MINERAL PRODUCTS, AND RAW ORES, INCLUDING THE TERMS AND CONDITIONS OF ALL SALES COMMITMENTS.”</p>	<p>SEC. 6. A new section designated as Section 151-D under Chapter VII, Title VI of the National Internal Revenue Code of 1997, as amended, is hereby inserted, and shall read as follows:</p> <p>“SEC.151-D. SUBMISSION OF SALES AND EXPORTATION OF MINERALS, MINERAL PRODUCTS, AND RAW ORES. – ALL METALLIC MINING CONTRACTORS SHALL PROVIDE THE BUREAU OF INTERNAL REVENUE A COPY OF APPROVED MARKETING CONTRACTS AND SALES AGREEMENTS, INCLUDING THOSE SUBMITTED TO THE MINES AND GEOSCIENCES BUREAU, ON ALL SALES AND EXPORTATION OF MINERALS, MINERAL PRODUCTS, AND RAW ORES.</p> <p>THE MINES AND GEOSCIENCES BUREAU SHALL REQUIRE METALLIC MINING COMPANIES TO SUBMIT ASSAY REPORT FOR EACH SHIPMENT BEFORE LEAVING THE LOADING PORTS. THE REPORT SHALL BE SHARED WITH THE DEPARTMENT OF FINANCE AND THE BUREAU OF INTERNAL REVENUE.</p> <p>THE BUREAU OF INTERNAL REVENUE SHALL BE ENTITLED TO EXAMINE AND AUDIT FOR TAX PURPOSES ALL SALES AND EXPORTATION OF MINERALS, MINERAL PRODUCTS, AND RAW ORES, INCLUDING THE TERMS AND CONDITIONS OF ALL SALES COMMITMENTS.”</p>	<p>Please add:</p> <p>Applicable export tax shall be levied on raw ores.</p>

Requested PIDS Studies:

Clemente, E., S. Domingo, A. Manejar. 2018. Answering critical questions on mining in the Philippines. PIDS Discussion Paper Series No. 2018-38. Quezon City, Philippines: Philippine Institute for Development Studies.

Domingo, S. and A. Manejar. 2020. Bottlenecks to formalization of small-scale mining in the Philippines. PIDS Policy Notes No. 2020-07 (August 2020). Quezon City, Philippines: Philippine Institute for Development Studies.

Pascual, L., S. Domingo, and A. Manejar. 2019. Answering critical questions on mining in the Philippines: Phase 2. PIDS Discussion Paper Series No. 2019-22. Quezon City, Philippines: Philippine Institute for Development Studies.

Pascual, L., S. Domingo, and A. Manejar. 2023. Opposing development perspectives in open-pit mining in the Philippines. PIDS Policy Notes No. 2023-11 (May 2023). Quezon City, Philippines: Philippine Institute for Development Studies.