



Mining the Mining Industry through Progressive Reforms

Karlo Fermin S. Adriano, PhD
Assistant Secretary and Head
Fiscal Policy and Monitoring Group

Digging Dipper: A Mining Policy Forum
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Outline

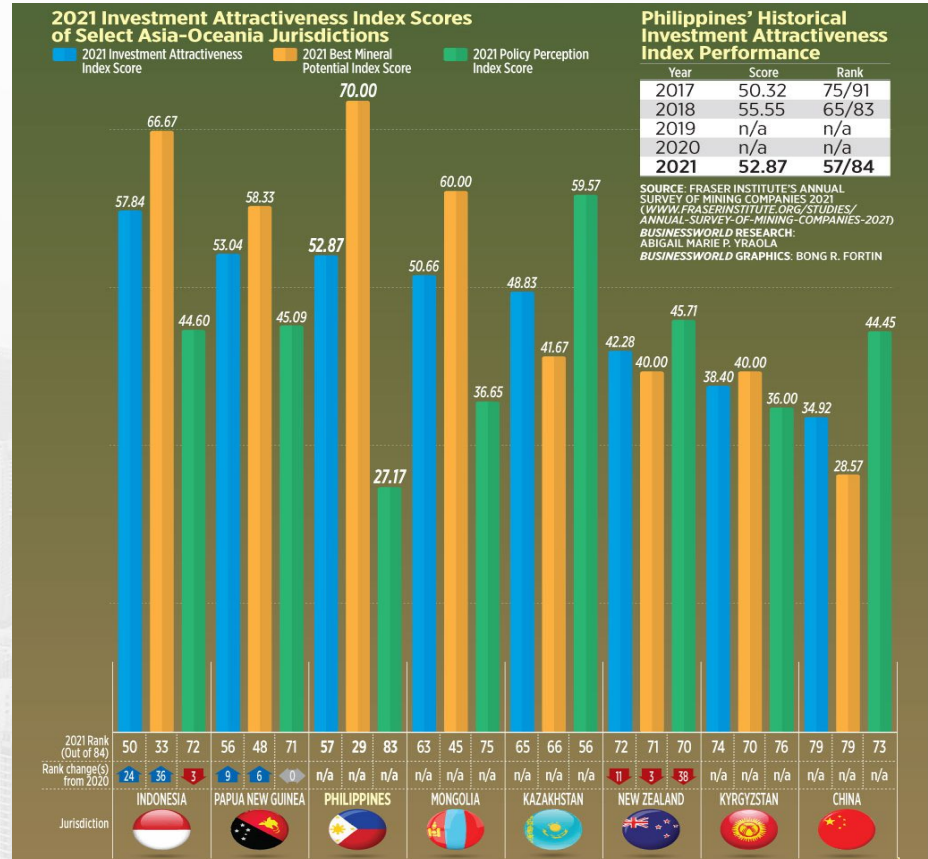
A. Issues on the current mining fiscal regime (MFR) and regulations

1. Challenges surrounding mining fiscal regime
2. Complex mining regulatory policies

B. Addressing the issues on the mining sector

1. Mining fiscal regime proposal: key features of the bill
2. Improving Ease of Doing Business

According to the Fraser Institute, the Philippines has one of the best mineral potential, but the current policies **DO NOT** encourage investments in the sector.



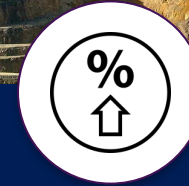
ISSUE 1: Challenges surrounding the Mining Fiscal Regime



Discussion of a new mining fiscal regime has been ongoing since 2012



There are several mining fiscal regimes, resulting in complex tax system



The Average Effective Tax Rate (AETR) or government take on mining is relatively high compared to peers

Discussion of a new mining fiscal regime has been ongoing since 2012.

Executive Order No. 79, s. 2012

MALACAÑAN PALACE
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 79

INSTITUTIONALIZING AND IMPLEMENTING REFORMS IN THE PHILIPPINE MINING SECTOR PROVIDING POLICIES AND GUIDELINES TO ENSURE ENVIRONMENTAL PROTECTION AND RESPONSIBLE MINING IN THE UTILIZATION OF MINERAL RESOURCES

WHEREAS, Section 16, Article II of the 1987 Constitution provides that the State shall protect and advance the right of the Filipino people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;

WHEREAS, Section 1, Article XII of the 1987 Constitution seeks a more equitable distribution of opportunities, income, and wealth; a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; an expanding productivity as the key to raising the quality of life for all, especially the underprivileged; and that in the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop;

WHEREAS, Section 2, Article XII of the 1987 Constitution provides that the exploration, development, and utilization of mineral resources shall be under the full control and supervision of the State;

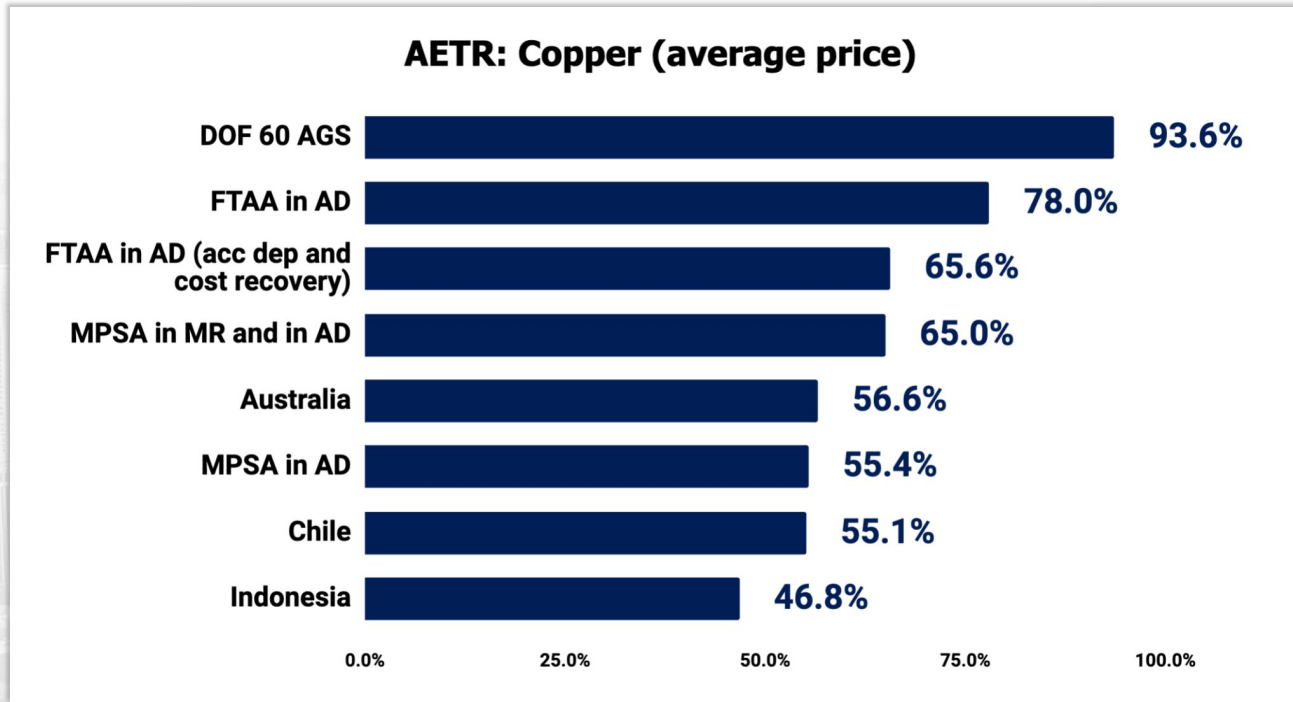
WHEREAS, further to Section 2, Article XII of the 1987 Constitution, which recognizes the small-scale utilization of resources by Filipino citizens, small-scale mining shall be recognized as a formal sector of the industry;

There are **several fiscal regimes** for the **Philippine mining industry, resulting in**

complex tax systems

#	Current Philippine mining fiscal regimes
1	Mineral Production Sharing Agreement (MPSA)
2	MPSA in Ancestral Domain
3	MPSA in Ancestral Domain and in Mineral Reservation
4	Financial and Technical Assistance Agreement (FTAA) in Ancestral Domain
5	FTAA in Ancestral Domain with cost recovery (with accelerated depreciation)

The AETR (tax burden) of PH's mining fiscal regimes are **higher than our peers**.



PH's current MFR is heavily geared towards taxation based on gross revenue .

Tax/Royalty	Philippines	Indonesia	Australia	Chile	Peru
On income:					
Income tax	25%	25%	30%	27%	30%
Mining tax	n/a	n/a	n/a	5-14%	2-8%
Royalty	n/a	n/a	n/a	n/a	1-12%
On revenue:					
Royalty	n/a	1-10% (sales)	2.5-5%(sales)	n/a	n/a
Excise	4%	n/a	n/a	n/a	n/a
Royalty – IP	1%	n/a	n/a	n/a	n/a
Royalty – MR	5%	n/a	n/a	n/a	n/a
AGS (50%):	FTAA	n/a	n/a	n/a	n/a

ISSUE 2: Complex regulatory policies



Redundant permits.
Overlapping functions result in excessive processes (e.g., permits for tree cutting; FPIC process).



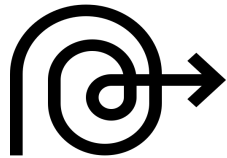
Conflicting NG and LGU policies.
LGU ordinances contradict NG policy (e.g., LGU ban on open pit mining).

In addressing these issues, the government is developing a **coherent and holistic national mining policy that aims to enhance economic and regulatory policies surrounding the mining sector.**

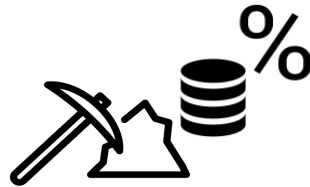
Addressing the Issues: Initiative 1 - The Mining Fiscal Regime



Key features of the DOF-proposed Rationalization of the Mining Fiscal Regime Bill



Simplification of the mining fiscal regime (base taxation is MPSA)



Imposition of a **royalty tax outside mineral reservation** to address the constitutional issue



Introduction of a **windfall profit tax mechanism** to ensure government's fair share when mineral prices are high



Provisions on **thin-capitalization, transfer pricing, ring-fencing, transparency and accountability**

KEY FEATURES: Current vs Proposed Regime

Item	Current regime	HB 8937	SB 2826
Number of Fiscal Regimes	5	2	2
Royalty MR	5%	4%	5%
Royalty outside MR	0%	1- 5% (margin-based with 8 tiers)	1-5% (margin-based with 5 tiers)
Windfall profit tax	0%	1-10% (margin-based with 10 tiers)	1-10% (margin-based with 5 tiers)
Thin capitalization, transfer pricing, ring-fencing, and transparency	Without	With	With
Collecting agency (royalty)	MGB	BIR (only metallic)	BIR (both metallic and non-metallic)

The implementation of the rationalized mining fiscal regime has **three main benefits** :

1. Reduction of **AETR to certain regimes** with very high AETR;
2. Imposition of **two new taxes** that **shares the risk** between government and mining investors (profit based taxes); and
3. **Policy predictability and stability** to mining investors.

1. Reducing AETR of “heavily taxed” mining regimes will lead to more mining investments

- ❖ The study of Clarete, R. and Adriano, K. estimated the impact of changes in AETR to mining investments;
 - an **increase in AETR will reduce rate factor** of investment by **83.7 percent**;
 - **A 10 percent increase in AETR** may decrease **investments** by **8.37 percent**;
 - **A 10 percent decrease in AETR** may increase **investments** by **8.37 percent**.

2. Imposing two new taxes based on profit

- ❑ Ensures **risk** will be shouldered **equally** by the government and the private sector;
- ❑ Ensures that the government will get its **fair share** when metallic prices are high; and
- ❑ Royalty outside mineral reservation addresses the **constitutional issue** that some mines are not paying royalty while at the same time **generating additional revenues**.

3. Instilling policy predictability and stability

- ❑ After 12 years, the MFR will provide **policy certainty** on mining taxation; and
- ❑ Mining taxation that is **FAIR and EQUITABLE** for both government and the private sector.

Addressing the Issues: Initiative 2 - The Improvement of Ease of Doing Business

Aside from the proposed mining fiscal regime, the national mining policy will also introduce amendments on existing regulations and policies that will enhance the competitiveness of the mining sector by improving ease of doing business .

Policy direction: Improvement in the ease of doing business through stable and predictable policies and streamlined procedures.

1. Minimize business continuity risks from LGU ordinances:

- a. Craft guidelines to harmonize local ordinances with national policy; and
- b. ARTA and other concerned agencies to streamline the permit application process.

2. Amend existing regulations to eliminate redundant mining processes:

- a. One-time requirement of an Free Prior and Informed Consent (FPIC) to cover all stages of the mining process can be pursued; and
- b. Tree-cutting permits can be embedded in the agreements (MPSAs/FTAAs) to avoid the necessity of applying for separate tree-cutting permits.

Reforming the Mining Fiscal Regime and improving the Ease of Doing Business are crucial steps in ensuring that the mining sector becomes a major driver of the country's economic growth.

As we develop and advocate for the passage of these reforms, we recognize the important role of the private sector and our reform partners in the whole policy process.

With your support, we are confident that we can push the Philippine mining industry forward and help realize the President's vision for the mining industry.



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SB 2826 also provides **safeguard measures** to ensure that the government gets its fair share from mining operations.

Item	Current regime	HB 8937	SB 2826
Thin capitalization	Without	4:1 debt-to-equity ratio (applicable on all debts in excess of arm's length standard)	2:1 debt-to-equity ratio (applicable on related-party debts)
Ring-fencing	Without	Provides that ring fencing rule will apply on each mining operation as a separate taxable entity.	Specifically provides that each mining contractor shall be treated as separate taxable entity with respect to each and every mineral agreement it holds or operates.*

****In case mining contractor is the mining operator, the mining operator is the separate taxable entity. If mining contractor commissions mining operator, the mining operator is the taxable entity. If there is more than one valid mining operator under the same mineral agreement or FTAA, each mining operator shall be deemed as a separate taxpayer for its respective mining operations.***

SB 2826 will **institutionalize global standards** on transparency and accountability in the mining sector.

Item	Current regime	HB 8937	SB 2826
Transfer pricing	Without	<ul style="list-style-type: none"> • BIR to audit and examine all sales and exportation of minerals, mineral products and raw ores. • Mining companies must submit assay reports to the MGB before shipping minerals. These reports will be shared with the DOF and BIR. 	<ul style="list-style-type: none"> • Gives BIR and BOC a broader scope of authority, allowing them to conduct examination and audits. • BIR and BOC can examine mining companies' financial records, sales agreements, and assay reports.
Transparency and accountability provisions	Without	Public disclosure and scrutiny of revenue data and social and environmental expenditures in the entire extractives value chain.	Public disclosure and scrutiny of revenue data and social and environmental expenditures in the entire extractives value chain. Also includes the general information sheet and other reportorial requirements to the SEC.

SB 2826 will provide stable revenue source for indigenous cultural communities with mining operations .

Provisions		
RA 7942 (Mining Act)	DENR DAO 2010-21 (Mining Act IRR)	SB 2826
<p>Section 17. <i>Royalty Payments for Indigenous Cultural Communities.</i></p> <p>...the royalty payment, upon utilization of the minerals shall be agreed upon by the parties. The said royalty shall form part of a trust fund for the socioeconomic well-being of the indigenous cultural community.</p>	<p>3rd paragraph of Section 16, <i>Ancestral Lands</i></p> <p>...the concerned parties shall agree on the royalty payment for the concerned ICC which may not be less than one percent (1%) of the gross output.</p>	<p>Section 12. <i>Royalty due to Indigenous Cultural Communities from mining operations within ancestral domains.</i></p> <p>...the ICC/IP shall be paid not more than two percent (2%) of the gross output of minerals produced from the ancestral domain.</p>

KEY FEATURES: Current vs Proposed Regime

Item	Current regime	HB 8937	SB 2826
Earmarking provision	Without	Without	With earmarking provision on MGB share on royalty of mines inside mineral reservations (10% share)