



BDB Law

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ADVISORY

MINING

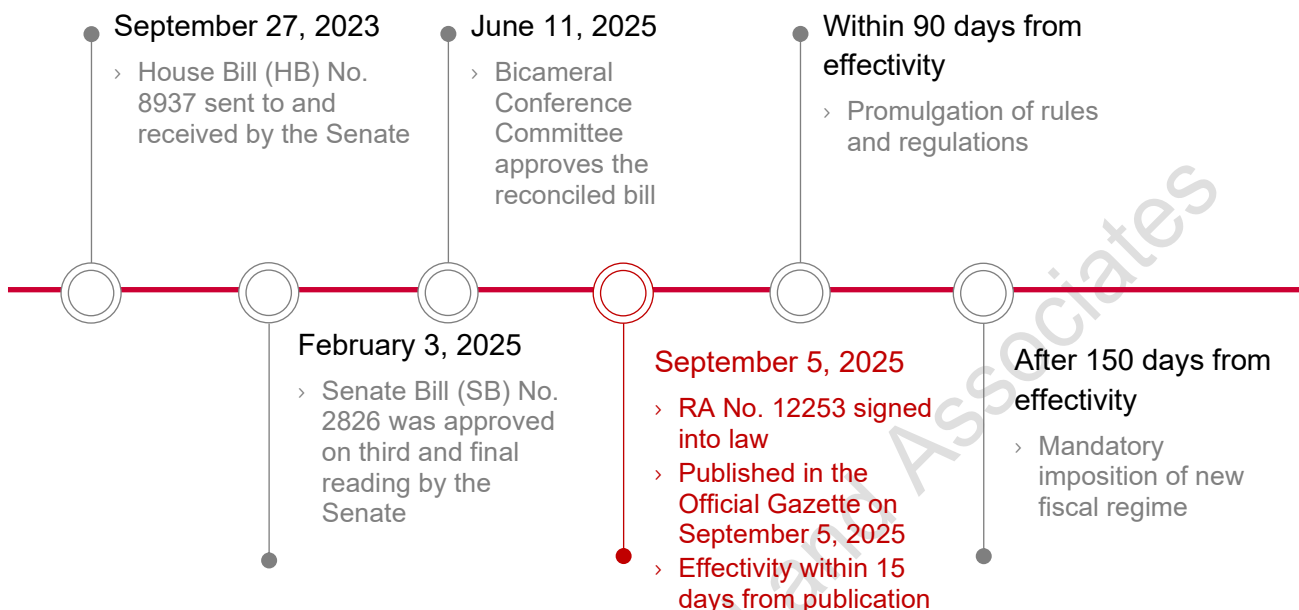
VOL. 2 • SERIES OF

REPUBLIC ACT NO. 12253
Enhanced Fiscal Regime for Large-
Scale Metallic Mining Act

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Salient Features of the Enhanced Mining Tax Regime

I. Timeline



II. Non-Deductible Interest Expense



Interest on related party debts of metallic mining contractors/operators in excess of the quarterly related party debt¹-to-equity² ratio of 2:1 at any time during the taxable year shall not be deductible.

III. Royalty Rate for Large-Scale Metallic Mining Operations

Mining Operations	Royalty Rate	
Operations within mineral reservations	Five percent (5%) of the gross output	
Operations outside mineral reservations	Margin ³	Rate (on gross output)
	Less than or equal to 0%	1/10 of 1%
	Margin	Rate (on income)
	Over 0% but not over 15%	1%
	Over 15% but not over 30%	2%
	Margin	Rate (on income)
	Over 30% but not over 45%	3%
	Over 45% but not over 60%	4%
Over 60%	5%	

¹ Debt means the greatest amount, at any time during the taxable year, of the interest-bearing related party obligations.

² Equity means the greatest amount, at any time during the taxable year, of the equity including an obligation to repay money without interest.

³ Margin means the ratio of income from metallic mining operations to gross output.

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Income from metallic mining operations shall mean the gross output less deductions directly attributable to mining operations which include:

- Mining, milling, transporting and handling expenses together with smelting and refining costs incurred;
- General and administrative expenses;
- Environmental expenses;
- Expenses for the development of host and neighboring communities and of geosciences and mining technology;
- Lease and royalty payments to claim owners or surface landowners;
- Continuing exploration and development expenses;
- Interest expenses charged on loans, subject to limitations;
- Depreciation, depletion, or amortization; and
- Duties, fees, charges, and taxes, excluding royalty, and windfall profits tax.

The following shall govern the filing of returns and payment of the related royalty payments:

Quarterly Returns and Payment	Filed/paid with the BIR within sixty (60) days , either electronically or manually, after the end of the calendar quarter when the products were removed
Bond	File a bond in an amount that approximates the amount of royalty due for the quarter
Final Adjustment Return	The mining contractor or operator shall either: <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Pay the balance of royalty still due; or <input checked="" type="checkbox"/> Carry over the excess credit
Non-refundability/non-credibility	Royalty shall not be creditable or refundable even if the mineral products are actually exported

IV. Windfall Profits Tax Rates for Large-Scale Metallic Mining Operations

Margin of Income	Royalty Rate based on Net Income
Equal to 30% but not over 40%	1%
Over 40% but not over 55%	3%
Over 55% but not over 65%	5%
Over 65% but not over 75%	7%
Over 75%	10%

Specific rules for windfall profits tax:

- Windfall/Margin* means the ratio of net income from metallic mining operations to gross output.
- Net income from metallic mining operations shall include as allowable tax deductions:
 - Corporate income tax; and
 - Royalty for large-scale metallic mining operations.
- Optional standard deduction shall not be used for computing windfall/margin.

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The following shall govern the filing of returns and payment of the related windfall profits tax:

Annual Return and Payment	<p>Filed/paid with the BIR either electronically or manually on or before:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Calendar Year – April 15; or <input checked="" type="checkbox"/> Fiscal Year – 15th day of the 4th month following the close of the FY
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V. Ring- Fencing of Large-Scale Metallic Mining Operations

Rules to follow:

Scenario	Rule
Each mineral agreement or financial or technical assistance agreement it holds and/or operates	The mining contractor shall be treated as a separate taxable entity
Where a contractor has a valid and effective operating agreement	The mining operator shall be considered as a separate taxable entity
When there is more than one (1) valid mining operator under the same mineral agreement or financial technical assistance agreement	Each mining operator shall be deemed a separate taxable entity for its respective mining operations under the agreement
Where a mining operator conducts mining operations by virtue of a valid operating agreement with the mining contractor	The mining operator is the one liable to pay the pertinent taxes

VI. Power to Examine and Audit



The BIR and the BOC may examine and audit all sales and exportation of minerals, mineral products, and raw ores.

VII. Share of the Local Government Units



LGUs shall have a 40% share of the gross collection by the national government and this share shall be released directly and immediately without need for further action and without being subject to any lien or holdback.



LGUs may impose business tax which shall not exceed fifty percent (50%) of one percent (1%) of the total gross output. The business tax shall be on top of the LGU's share in the gross collection from the national government.

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VIII. Share of the Mines and Geosciences Bureau



MGB shall have a 10% share of the royalties from mining operations within mineral reservations.

IX. Incorporation of Fiscal Regime in Mineral Agreements and Vested Rights



The fiscal regime shall:

- ✓ be embodied in mineral/financial/technical assistance agreements;
- ✓ continue to be in force and effect for contracts entered and executed after the enactment of the law;
- ✓ also apply to contracts entered prior to the law but subsequently renewed after the enactment of the law.



Mineral/financial/technical assistance agreements existing prior to the effectivity of the law shall continue to be governed by their respective terms and conditions until expiration except if amendments/new laws are considered written into the agreement.

X. Transparency and Accountability



An inclusive and participatory mechanism for data collection, verification, and public disclosure and scrutiny of all extractive industry-related data shall be institutionalized.



Disclosure shall include the General Information Sheets and other regular reportorial requirements.



A multi-stakeholder group shall be established as part of the transparency and accountability mechanism. It shall compose of relevant representatives from the government, industry, and civil society organizations.

XI. Implementing Rules and Regulations



The implementing rules and regulations shall be issued within 90 days from effectivity of the law. Failure to promulgate shall not prevent the implementation.

XII. Transitory Clause



The new fiscal regime shall be immediately imposed after 150 days from the effectivity of the law.

Learn more:

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Du-Baladad and Associates (BDB Law) is a multi-awarded, global tax law firm in the Philippines that offers services around 3 major areas of practice – **tax, legal and consulting.**

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