



by

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### **Mining and taxation**

The BIR issued Revenue Regulation No. 6-2012 with the following provisions:

*Excise Tax* – Mined metallic materials shall be subject to 2% excise tax, payable at the time of removal, based on the actual market value of the gross output. Possession of said metallic minerals must show that the proper tax has been paid, otherwise the possessor shall be liable for the tax due;

*Value Added Tax (VAT)* - Persons selling metallic minerals, except sale of gold to the Bangko Sentral ng Pilipinas (BSP), shall be subject to VAT<sup>1</sup>. Sales of gold to the BSP has VAT of zero percent (0%)<sup>2</sup>; and

*Income Tax* - Sellers are subject to income tax at the rate prescribed under Section 24(A) in case of individual taxpayers, and under Section 27 (A) of the 1997 NIRC in the case of corporations. Buyers of said metallic minerals are required to withhold five percent (5%) of gross payments made and remit the same to the government.

Further, all buyers of metallic minerals are constituted as agents for the collection of 2% excise tax on metallic minerals and a 5% creditable withholding tax thereon.

<sup>1</sup> The BIR has a threshold for sales of metallic minerals under the National Internal Revenue Code of 1997 and existing issuances.

<sup>2</sup> Sales of gold to the BSP is subject to VAT at a rate of 0%, as prescribed by under Section 106 (A) (2) (a) (4) of the 1997 NIRC, if the seller is VAT registered taxpayer.

All gold mined in the Philippines is required by law to be sold to the BSP. In practice, however, traders buying gold from small scale miners in Mindanao and the Mountain Province resell the gold to foreign buyers, who in turn surreptitiously export them, mostly to Hong Kong<sup>3</sup>. The BSP regularly uses its gold reserves as collateral for availing loans, some as buffer against global financial upheavals.

According to the DENR<sup>4</sup>, the amount of gold traded domestically plunged 92% in the first quarter of 2012 as compared to the previous year. The paradox is that while domestic mining operations continue to increase due to the continuing price of gold internationally, the BSP experiences decreases in gold purchases. High taxes imposed on gold trade in 2011 may have led gold buyers to trade underground, or to smuggle gold abroad. Demand for gold will continue to rise considering that gold and silver are used by speculators as reliable hedge against the pervasive international economic meltdown. Another difficulty encountered by the government is the difficulty in tracking actual domestic production of gold, which is mostly mined by small scale miners.

SB 2754<sup>5</sup> was filed increasing the excise tax on mineral products and quarry resources from the current 2% to 7% based on the actual market value of the gross output thereof

at the time of removal. If the mineral product is imported its value shall be based on the value used by the BOC in determining the tariff, customs duties, net excise tax and the VAT.

The bill further provides that the revenue collected from the excise tax on mineral products and quarry resources shall be equally divided between the local government unit (LGU) and the national government (NG). The LGU portion of the revenue shall be remitted directly to the LGU concerned as support for the Special Education Fund (SEF). The SEF on the other hand shall be spent on classrooms, tables and chairs, books, teaching aids, and other educational materials.

The BIR<sup>6</sup> collected P718.8 million in excise tax in 2009 and P1,299.7 million in 2010. Data for the BIR collection for 2011 is not yet available. However, using the latest collection data, 2010, and using ratio and proportion, the rough estimate of the excise tax collection for the year 2012 would at least be **P4,548.95 million**.

Regarding the specific ore extracted in the Philippines, precious metals like gold and silver are on a decline, contrary to the trend in base metals. Note that in terms of value, precious metals rank higher than base metals. The following are the available data (2010 and 2011 only):

Metals Extracted in the Philippines							
Mineral	Unit	2011		2010		%Change	
		Quantity	Value	Quantity	Value	Quantity	Value
<b>PRECIOUS METALS</b>			<b>65,898,447,124</b>		<b>71,698,391,862</b>		<b>-8</b>
Gold	kg	31,120	63,142,761,963	40,847	70,508,198,235	-24	-10
Silver	kg	45,530	2,755,685,161	41,004	1,190,193,627	11	132
<b>BASE METALS</b>			<b>56,248,482,781</b>		<b>40,271,604,780</b>		<b>40</b>
Copper Concentrate	DMT	253,975	19,091,584,582	236,814	15,775,710,591	7	21
Nickel Concentrate	DMT	38,798	11,197,108,000	33,539	9,795,473,000	16	14
Nickel Direct Shipping Ore	DMT	20,104,142	24,463,091,114	13,763,734	14,080,650,478	46	74
Metallurgical Chromite	DMT	25,483	145,178,018	14,807	117,135,758	72	24
Zinc	DMT	37,354	1,036,557,037	19,819	502,634,953	88	106
Iron Ore	DMT	126,177	314,964,029	0	0		
<b>TOTAL</b>			<b>122,146,929,905</b>		<b>111,969,996,642</b>		<b>9</b>

Source: Author's estimate using BIR data of 2010.

<sup>3</sup> Jun Ramirez, BIT targets gold black market, Manila Bulletin, April 5, 2012.

<sup>4</sup> Kristine L. Alave, PH gold trade plunges 92% in Q1 as metal "disappears", Philippine Daily Inquirer, June 11, 2012.

<sup>5</sup> SB 2754 is introduced by Senator Ralph G. Recto.

<sup>6</sup> Data is from the report of the Mines and Geosciences Bureau, Department of Environment and Natural Resources, during the Conference on Mining's Impact on Philippine Economy and Ecology, March 2, 2012, Grand Ballroom, Intercontinental Hotel.

Focusing on excise tax, the Philippines imposes a lower rate of 2%. However, once the Philippine excise tax is increased to 7%, the tax burden will be higher than that of Indonesia's.

PHILIPPINES VS. INDONESIA (MINING TAXES) <sup>7</sup>				
	PHILIPPINES	INDONESIA (1)		
Type of Metal	All	Copper	Gold	Nickel
<b>Income Tax</b>	<b>30%</b>	25%	25%	25%
Taxes/Fees/Royalties (3)				
<b>Excise Tax (4)</b>	<b>2.0%</b>	<b>4.0%</b>	<b>3.75%</b>	<b>5.0%</b>
Business Tax (5)	1.5%	N/A	N/A	N/A
In Mineral Reserve				
Add: Mineral Reserve Royalty	5.0%	N/A	N/A	N/A
In Ancestral Land				
Add: Royalty to Ips	1.0%	N/A	N/A	N/A
<b>Total</b>	<b>9.5%</b>	<b>4.0%</b>	<b>3.75%</b>	<b>5.0%</b>

Notes:

1. Assumes publicly listed company, royalty rates following approval of Regulation No. 9, 2012.
2. Royalty is applicable to Nickel Ore; Nickel Matte is taxed at 4%.
3. Based on Gross Output.
4. Royalty in the case of Indonesia.
5. Assumes municipalities charge at the maximum allowable rate of 70% of 2% as per Sec.143 (h) of the Local Government Code; the 30% balance is charged at the rate applicable in Makati.

**Defending the mining industry  
Chamber of Mines of the Philippines**

The Chamber of Mines of the Philippines expressed its position on issues affecting the mining industry of the Philippines by commenting on House Bill 6342, evaluating the Philippine Mining Act of 1995 (RA 7942). The following are excerpts of its comments:

1. There is a need to utilize the mining industry as a catalyst to the development of areas particularly the countryside.
2. In 2003 World Report by a Washington based NGO, it states the following *"...mining consumes 10% of the world's energy, spews out toxic emissions, and threatens 40% of the world's undeveloped forests but the effects could be drastically reduced."*
3. Environmental protection measures, social responsibilities and the protection of the rights of the indigenous peoples/indigenous communities have been considered by the global mining community and is well covered by the Mining Act.
4. Contrary to the claim that mining is one of the weakest sectors in the global market investor interest in the mining industry did not wane in view of the continuing demand for minerals by China, India, Korea, Japan, and other developing countries.
5. In mineral-rich ASEAN countries, excise/royalty tax is in the range of 1.5% to 3% and is normally based on gross revenues for ease of computation and collection. In Southern Africa, the rates are also within the same range of 2% to 5%, with Botswana and Mozambique imposing 10% only on diamonds being a high value mineral. Corporate income rates in ASEAN and South African countries are in the 30% rate with Botswana and Cambodia imposing only 25% and 30%, respectively.
6. The bill (HB 6342) seeks to prohibit the use of cyanide for gold extraction. The prohibition of the use of cyanide will kill the gold mining industry. Cyanide is widely used by large-scale mining operators in the Philippines and internationally because cyanide is the most cost and recovery-efficient chemical for extracting gold. Contrary to popular belief, the educated and responsible use of cyanide in mining can be safe and with minimal adverse effects.
7. Concerning the distribution of excise tax and royalty tax collection, BIR and DENR figures indicate that in 2007, the total collections reached P1.68 billion of which P1.03 billion went to the national government (NG), and P649 million went to the local government units (LGUs). Total collections went down a bit in 2008 to P1.07 billion with the NG getting P662 million and the LGUs, P413 million. These figures indicate

<sup>7</sup> Peter Wallace, Chairman, The Wallace Business Forum, Conference on Mining's Impact on Philippine Economy and Ecology, March 2, 2012, Grand Ballroom, Intercontinental Manila, March 2, 2012.

that the LGUs share the benefits from mining activities.

8. Current regulations require the mining proponent to establish a social development and management program equivalent to at least 1% of direct mining and milling cost. Moreover, indigenous peoples/indigenous cultural communities (IPS/ICCS) are entitled to a royalty of 1% of the gross output from mining operations within their ancestral domain areas. For mining operations within a mineral reservation, the contractor is required to pay to the government an additional royalty of not less than 5% of the gross output.
9. Congress is in the process of harmonizing fiscal incentives<sup>8</sup>. There is chance that the tax incentives currently enjoyed by mining companies in the Philippines would be lessened or be scrapped altogether. In this regard, the Chamber of Mines is against the passage of the bill citing the following reasons: (a) the proposed deletion of existing tax incentives will make the Philippines uncompetitive as a venue for top-grade investors; (b) the fiscal policy of the government should be attuned with the country's Medium Development Plan 2004-2010; and (c) mining is high risk, capital intensive business, where investors require a substantial fiscal incentive to equalize the risk.

### Observations

Recently, several issues on mining came up resulting in the filing of bills affecting the industry. Some bills amend the Mining Act of 1996 (RA 7942), some remove the fiscal incentives enjoyed by the industry, while some impose higher taxes to compensate for the pollution caused by mining activities. The following are the issues:

1. **Smuggling** – Smuggling exists in order to avoid the payment of taxes and duties, usually accompanying every importation. However, in the case of domestically mined gold, avoidance of taxes is practiced by small scale miners by smuggling out the precious metal to other countries.
2. **Tourism** – The Philippines is encouraging foreign tourists to visit the country. There are several natural wonders in the country, unique to the Philippines, a strong “*come on*” for tourists. Unfortunately, some tourist spots also near mining areas. It is especially true in Palawan where the main attractions are the places endowed with pristine environment. Two of Palawan's tourist attractions are the underground river of Puerto Princesa and the Tubbataha reef.
3. **Local governments** - The LGUs have a big role in the implementation of the mining laws for the simple reason that mining activities are located in their areas of jurisdiction. They have a share in revenues in the form of taxes. Furthermore, the LGUs issue mining permits. However, some LGUs implement a

total ban on open pit mining contrary to the opinion of the DENR. The mining act of 1995 assigned the awarding of permits to the DENR thereby centralizing the procedure. However, the LGUs, reluctant to give up its powers to the DENR continues to give mining permits.

4. **Use of pollutants** – One of the objections of the inhabitants in areas near the mining areas is the miners' use of pollutants in refining ores. For example, as admitted by the Chamber of Mines, in refining gold ores, cyanide must be used. Definitely, the health of the people lining nearby would be adversely affected.
5. **Gray area** – The current mining laws classify miners either as small scale or large scale miners. There is no middle ground. Note that small scale miners are no longer artisanal in nature. They have the financial and technical capacity to operate large scale. In this regard, these groups of miners apply in the LGUs as small scale miners, while waiting for the DENR's approval of their project.
6. **Industrialization** - Admittedly, modern life can't exist without mining. Everything used in modern lining came from mines. However, the Philippines, in spite of its being endowed with mining resources, export mining products in the form of ores, not finished products. Indonesia imposes heavy tax on exports of their ores in order to encourage industrialization of their country. Perhaps, the Philippines should follow the move of neighboring Indonesia.
7. **Monitoring** – The natural gift of mines dispersed throughout the archipelago could also be its curse. Its dispersed location requires the monitoring of all mining activities, aggravated by the remote location of the mines. For example, the quarrying and blasting of limestone worried the Dumagat tribesmen and local resident because they are afraid of the possible collapse of the 44 year old Angat Dam. The NGO, *Sagip Sierra Madre Kalikasan Society (SSMES)* later joined the concerns of both the tribesmen and the local residents. Experts reinforced the valid concerns when it found out that the dam and its dyke are sitting on a fault line. The worry-some aspect of the news is that the DENR<sup>9</sup>, the government agency tasked to monitor mining activities “*appears to be the last to act*”.
8. **Settlement, a preferred option**<sup>10</sup> – In Peru, another country rich in mining resources, the large mining companies settle controversies through compromise payment, avoiding court actions. In this manner, the controversial issues regarding the operation of mines are not discussed openly, particularly the press. Out of court settlement easily satisfies the adversely affected communities particularly the indigenous ones. The setback in the preferred option is that no closure is ever attained. The pertinent mining issues would still remain, in spite of the settlement.

<sup>8</sup> Position Paper on the Proposed “Consolidated Investment Incentives Code of the Philippines”, Ronald S. Recindro, Vice President for Legal and Policy, April 17, 2012, Chamber of Mines of the Philippines.

<sup>9</sup> Freddie C. Velez, Angat Also Threatened by Mining, Manila Daily Bulletin, April 21, 2012.

<sup>10</sup> Aljazeera news report, May 3, 2012, 6:00 p.m.



9. **Violence**<sup>11</sup> - The Sagitarius Mines, Inc. (SMI) is in the midst of tribal conflict among the B'laan tribesmen. The conflict is called "pangayaw" or tribal war. The SMI is preparing the groundwork for massive mining operations in the borders of Davao del Sur, South Cotabato and Sultan Kudarat. One of the causes of the B'laan tribal conflict is the perceived favoritism on the part of the SMI in the hiring of some members of the opposing clan members. The complicated part of the situation is that the dissatisfied group aligns itself with the more radical and organized New People's Army (NPA) in order to push its interests in the SMI.

### Presidential Policy Direction

Amid the issues affecting the domestic mining industry, the President issued Executive Order No. 79 dated July 6, 2012 in order to harmonize differing interpretations and opinions. The important provisions of EO 79 are the following:

1. **Areas closed to mining operations**<sup>12</sup> - Mining activities are banned in the following areas:
  - a. Areas expressly enumerated in Section 19 of RA 7942;
  - b. Protected areas categorized and established under the National Integrated Protected Areas System (NIPAS) under RA No. 7586;
  - c. Prime agricultural lands, in addition to lands covered by RA 6657, or the Comprehensive Agrarian Reform Law of 1988, as amended, including plantations and areas devoted to valuable crops, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries declared as such by the Secretary of the Department of Agriculture (DA);
  - d. Tourism development areas, as defined in the National Tourism Development Plan (NTDP); and
  - e. Other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may hereafter indentify pursuant to existing laws, rules and regulations, such as, but not limited to the NIPAS Act.
2. **Environmental concerns** – The lead role in the environmental issues lies the national government, particularly the Department of Environment and Natural Resources (DENR). The participation of the local government unit is necessary for the enforcement on existing environmental laws<sup>13</sup>. An important provision of the EO is the limitation of the powers of the LGUs by providing that LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national

laws and regulations<sup>14</sup>. The provisions will eliminate the seemingly overlapping jurisdictions among government agencies.

3. **Simplification of government bureaucracy** – In order to centralize and simplify government bureaucracy, the EO creates a "one stop shop" where all mining related applications are processed. All concerned government agencies and instrumentalities, including but not limited to DENR-MGB (Mines and Geosciences Bureau), NCIF, DOF and concerned LGUs are hereby directed to ensure an efficient and effective consolidation of functions, and to cooperate and render assistance as may be necessary.

The EO also mandates the DENR to create a centralized database of all mining-related information.<sup>15</sup>

4. **Small-Scale mining activities** – There are enough laws affecting the small-scale miners. EO 79 integrates and harmonizes these laws by enumerating the following rules:
  - a. Small-scale mining activities shall comply with RA No. 7076, or the People's Small-Scale Mining Act of 1991, and the Environmental Impact Statement System requirements under presidential Decree No. 1586;
  - b. Pursuant to RA No. 7076, small-scale mining operations shall be undertaken only within the declared People's Small-Scale Mining Areas, or *Minahang Bayan*;
  - c. Pursuant to Section 24 of RA No. 7076, P/CMRBs in provinces and cities where they have not been constituted shall be operationalized within three (3) months from the effectivity of this Order;
  - d. Small-scale mining shall be applicable for metallic minerals except gold, silver, and chromite as provided for in RA No. 7065;
  - e. The use of mercury in small-scale mining shall be strictly prohibited, and
  - f. Training and capacity building measures in the form of technical assistance for small-scale mining cooperatives and association shall be conducted by the concerned government agencies.

Hopefully, EO 79 would clarify the issues now adversely affecting the mining industry.



<sup>11</sup> Execs say mining firm is caught in "pangayaw", The Philippine Daily Inquirer, June 24, 2012.

<sup>12</sup> Section 1, Executive Order No. 79, Institutionalizing and implementing reform in the Philippine mining sector, providing policies and guidelines to ensure environmental protection and responsible mining in the utilization on mineral resources.

<sup>13</sup> Section 2, Full Enforcement of Environment Standards in Mining, EO 79.

<sup>14</sup> Section 12, Consistency of Local ordinances with the Constitution and National Laws/LGU cooperation, EO 79.

<sup>15</sup> Section 15, Creation of Centralized Database for the Mining Industry, EO 79.

# FISCAL AND/OR TAX INCENTIVES

## UNDER SELECTED PHILIPPINE ENVIRONMENTAL LAWS

by

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### Background Information.

The three (3) branches of the Executive Department which are mainly tasked with the protection, preservation and utilization of our natural resources are the: (1) Department of Environment and Natural Resources [DENR] (1987 Administrative Code); (2) Department of Agriculture [DA] (1987 Administrative Code); and (3) Department of Energy [DOE] (Republic Act [RA] No. 7638). These departments can seek the assistance of other offices by deputizing them or entering into some concessions like Memorandum of Agreement or Understanding (MOA or MOU), and the like. The Philippines is awash with laws focusing on the protection of the environment. This is necessary considering that the country is blessed with natural wonders which are endemic to it. In fact, the 1987 Philippine Constitution contains provisions relating to the environment. Article II, Declaration of Principles and State Policies, Section 15 avers: “*The State shall protect and promote the right to health of the people and instill health consciousness among them.*” Section 16 provides: “*The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.*” It should be noted that, the Philippine national territory is defined as:

*“The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its territorial sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.” (Article I of the 1987 Constitution)<sup>1</sup>*

The bulk of the precepts can be found under *Article XII, National Economy and Patrimony*. These are:

*“Section 1. The goals of the national economy are 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; and an expanding productivity as the key to raising the quality of life for all, especially the under-privileged.*

*“The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, through industries that make full and efficient use of human and natural resources, and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.*

*“In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations, shall be encouraged to broaden the base of their ownership.*

*“Sec. 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the*

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<sup>1</sup> Commonwealth Act (CA) No. 141 also known as The Public Land Act, was enacted on 7 November 1936. “Its provisions apply to lands of the public domain; but timber and mineral lands are governed by special laws. The lands commonly called ‘friar lands’ and those which, being privately-owned, have reverted to or become the property of the Republic of the Philippines, are governed by the laws presently in force or which may hereafter be enacted.” (Agcaoili, Oswald D.: Law on Natural Resources, p. 1)

measure and limit of the grant.<sup>2</sup>

*“The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.*

*“The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.*

*“The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.*

*“The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.*

*“Sec. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof, by purchase, homestead, or grant.*

*“Taking into account the requirements of conservation, ecology, and development, and subject to the requirements of agrarian reform, the Congress shall determine, by law, the size of lands of the public domain which may be acquired, developed, held, or leased and the conditions therefor.*

*“Sec. 4. The Congress shall, as soon as possible, determine, by law, the specific limits of forest lands and national parks, marking clearly their boundaries on the ground. Thereafter, such forest lands and national parks shall be conserved and may not be increased nor diminished, except by law. The Congress shall provide for such period as it may determine, measures to prohibit logging in endangered forests and watershed areas.*

*“Sec. 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure*

*their economic, social, and cultural well-being.*

*“The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.*

*“Sec. 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands.*

*“Sec. 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.*

*“Sec. 8. Notwithstanding the provisions of Section 7 of this Article, a natural-born citizen of the Philippines who has lost his Philippine citizenship may be a transferee of private lands, subject to limitations provided by law.”*

Furthermore, in support of both the worldwide move of protecting the environment and the Constitution, the Philippines has enacted laws which give or extend incentives to various sectors that help or would help the country in developing and usefully exploiting the natural resources. In explaining the Constitutional proviso, it has been said that:

*“The threefold goal of the national economy consists of (1) more equitable distribution of wealth; (2) increase of wealth for the benefit of the people; (3) increased productivity.*

*“National policy also seeks to harmonize the relation between agriculture and industrialization. What is envisioned is not that agriculture should dictate the pace of industrialization but rather that industrialization should be made possible by releasing locked up capital through agrarian reform. This therefore is necessarily related to the article on social justice. There is no hard-bound rule that agricultural development must have priority over industrialization. What is envisioned is a flexible and rational relationship between the two as dictated by the common good.*

*“The phrase ‘unfair foreign competition and trade practices’ in the second paragraph of Section 1 is not to be understood in a limited legal and technical sense but in the sense of anything that is harmful to Philippine enterprises. At the same time, however, the intention is not to protect local inefficiency. Nor is it the intention to protect local industries from foreign competition at the expense of the consuming public.” (Joaquin G. Bernas, SJ: Constitutional Structure and Powers of Government, Part 1, p. 898).*

Local government units (LGUs) perform vital roles in the implementation of environmental laws. To cite an example,

<sup>2</sup> All lands of the public domain as well as all natural resources enumerated therein, whether on public or private land, belong to the State (Agpalo, Ruben E.: The Law on Natural Resources, p. 11 [2006]). The Regalian doctrine as enshrined under the 1987 Constitution. In the case of La Bugal-B’Laan Association, Inc. vs. Ramos [GR No. 127882, January 27, 2004], the Supreme Court held: “All mineral resources are owned by the State. Their exploration, development and utilization (EDU) must always be subject to the full control and supervision of the State. More specifically, given the inadequacy of Filipino capital and technology in large-scale EDU activities, the State may secure the help of foreign companies in all relevant matters – especially financial and technical assistance – provided that, at all times, the State maintains its rights of full control. X x x.” (Supra, p. 12)



pursuant to Section 36 of the Philippine Clean Air Act of 1999, LGUs shall share the responsibility in the management and maintenance of air quality within their territorial jurisdiction. LGUs are given the prerogative to raise revenue to sustain their developmental projects and endeavors. This is in addition to the internal revenue allotment (IRA) they receive. Under the Local Government Code (LGC) of 1991 (Republic Act [RA] No. 7160 took effect on January 1, 1992), it is provided:

*“Section 129. Power to Create Sources of Revenue. - Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees, and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government units.”*

The above authority, which can be exercised only within the LGUs territorial jurisdiction, is based on certain provisions of the 1987 Constitution, to wit:

**“ARTICLE X  
“LOCAL GOVERNMENT**

**“GENERAL PROVISIONS**

*“Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.*

*“Sec. 2. The territorial and political subdivisions shall enjoy local autonomy.*

*“Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.*

*“Sec. 4. The President of the Philippines shall exercise general supervision over local governments. Provinces with respect to component cities and municipalities, and cities and municipalities with respect to component barangays, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions.*

*“Sec. 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.*

*“Sec. 6. Local government units shall have a just*

*share, as determined by law, in the national taxes which shall be automatically released to them.*

*“Sec. 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.”*

It is important to note that under Section 132 of the LGC, the power of the LGUs shall be exercised by the Sanggunian through an ordinance passed for the purpose. Chapter 2 of the LGC enumerates the taxing and other revenue-raising powers of LGUs. Of course, there are limitations on the taxing power of LGUs. There are certain taxes which they cannot impose, e.g., income tax, documentary stamp taxes, customs duties, gift tax, others (Sec. 133, LGC).

**Selected Environmental Laws And Their Investment And/ Or Tax/Fiscal Incentives. -**

**1. DEVELOPMENT OF NON-CONVENTIONAL ENERGY**  
(Presidential Decree (PD) No. 1068, January 13, 1977). -

PD No. 1068 states that *“It is the declared policy of the State to achieve self-reliance in the country’s energy requirements primarily through the intensified exploration, development, exploitation and utilization of indigenous conventional energy resources such as petroleum, coal, natural gas and liquids, water and geothermal resources and nuclear fuel resources; and non-conventional alternatives such as solar, wind, tidal and bio-mass energy which have great potential for immediate and future applications. In furtherance of this policy there is an urgent need to coordinate, integrate and control the pursuit of research, development and utilization efforts of all government agencies and instrumentalities pursuant to and in accordance with a comprehensive national energy program.”* (Section 1)

The incentives are provided under Section 4, viz:

**“Section 4. Incentives -** *The provisions of any law to the contrary notwithstanding any person, whether natural or juridical, who will directly participate in the national program to accelerate research, development and utilization of non-conventional energy sources shall have the following privileges:*

*“(a) Costs incurred in the establishment and construction of non-conventional energy conversion facilities or equipment duly certified by the Energy Development Board may, at the option of the taxpayer, be directly chargeable to expense and shall fully deductible as such from gross income in the year wherein such expenses were incurred.*

*“(b) Exemption from payment of tariff duties and compensating tax on the importation of machinery and equipment, and spare parts and all materials required in the establishment and construction of non-conventional energy facilities or equipment subject to the conditions that said machinery, equipment, spare parts and materials of comparable price and quality are not manufactured domestically; are directly and actually needed and will be used exclusively by the taxpayer in the establishment and construction of non-*



conventional facilities or equipment; are covered by shipping documents in the name of the taxpayer to whom the shipment will be delivered direct by the customs authorities; and prior approval of the Energy Development Board was obtained by the taxpayer before the importation of such machinery, equipment spare parts and materials which approval shall not be unreasonably withheld: Provided, however, that the taxpayer may not sell, transfer or dispose of these machinery, equipment, spare parts or materials without the prior approval of the Energy Development Board and payment of taxes due the government: Provided, further, that should the taxpayer sell, transfer, or dispose of these machinery, equipment, spare parts or materials without the prior consent of the Energy Development Board, it shall be twice the amount of the Tax exemption granted: Provided, finally that the Energy Development Board shall allow and approve the sale, transfer, or disposition of the said items without tax, if made: (1) to another taxpayer who will establish and construct non-conventional energy conversion facilities or equipment; (2) for reason of technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the taxpayer.

“(c) Government financial institutions such as the Development Bank of the Philippines, the Philippine National Bank, the Government Service Insurance System, the Land Bank of the Philippines and such other government institutions as are now engaged or may hereafter engage in financing of investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to applications for financial assistance by individuals/enterprises/industries participating in the national program to accelerate the research, development and utilization of non-conventional energy sources, as duly recommended and endorsed by the Energy Development Board.”

## **2. MINI HYDROELECTRIC POWER INCENTIVE ACT (RA No. 7156, September 12, 1991). -**

Under this law, it is “X x x declared the policy of the State to strengthen and enhance the development of the country’s indigenous and self-reliant scientific and technological resources and capabilities and their adaptation to the country in order to attain energy self-sufficiency and thereby minimize dependence on outside source of energy supply.” It is emphasized that, “In pursuance thereof, it is further declared that mini-hydroelectric power developers shall be granted the necessary incentives and privileges to provide an environment conducive to the development of the country’s hydroelectric power resources to their full potential.” (Section 2. Underscoring supplied)

The pertinent provision which extends the privileges is Section 10, viz:

“Sec. 10. Tax Incentives. — Any person, natural or judicial, authorized to engage in mini-hydroelectric power development shall be granted the following tax incentives or privileges:

“(1) Special Privilege Tax Rates. — The tax payable by grantees to develop potential sites for hydroe-

lectric power and to generate, transmit and sell electric power shall be two percent (2%) of their gross receipts from the sale of electric power and from transactions incident to the generation, transmission and sale of electric power. Such privilege tax shall be made payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the 20th day of the month following the end of each calendar or fiscal quarter;

“(2) Tax and Duty-free Importation of Machinery, Equipment and Materials. — Within seven (7) years from the date of award, importation of machinery and equipment, materials and parts shipped with such machinery and equipment including control and communication equipment shall not be subject to tariff duties and value-added tax: Provided, That the said machinery, equipment, materials and parts: (a) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (b) are directly and actually needed and will be used exclusively in the construction and impounding of water, transformation into energy, and transmission of electric energy to the point of use; and (c) are covered by shipping documents in the name of the duly registered developer to whom the shipment will be directly delivered by customs authorities: Provided, further, That prior approval of the OEA was obtained before the importation of such machinery, equipment, materials and parts was made;

“(3) Tax Credit on Domestic Capital Equipment. — A tax credit equivalent to one hundred percent (100%) of the value of the value-added tax and customs duties that would have been paid on the machinery, equipment, materials and parts had these items been imported shall be given to an awardee-developer who purchases machinery, equipment, materials and parts from a domestic manufacturer: Provided, That such machinery, equipment, materials and parts are directly needed and will be used exclusively by the awardee-developer: Provided, further, That prior approval by the OEA was obtained by the local manufacturer: Provided, finally, That the sale of such machinery, equipment, materials and parts shall be made within seven (7) years from the date of award;

“(4) Special Realty Tax Rates on Equipment and Machinery. — Any provision of the Real Property Tax Code or any other law to the contrary notwithstanding, realty and other taxes on civil works, equipment, machinery and other improvements of a registered mini-hydroelectric power developer shall not exceed two and a half percent (2.5%) of their original cost;

“(5) Value-added Tax Exemption. — Exemption from the ten percent (10%) value-added tax on the gross receipts derived from the sale of electric power whether through the NPC grid or through existing electric utility lines; and

“(6) Income Tax Holiday. — For seven (7) years from the start of commercial operation, a registered mini-hydroelectric power developer shall be fully exempt from income taxes levied by the National Government.”



**3. PHILIPPINE MINING ACT OF 1995** (RA No. 7942, March 3, 1995). - Section 2 of the law clearly defines its objective:

*“SEC. 2. Declaration of Policy - All mineral resources in public and private lands within the territory and exclusive economic zone of the Republic of the Philippines are owned by the State. It shall be the responsibility of the State to promote their rational exploration, development, utilization and conservation through the combined efforts of government and the private sector in order to enhance national growth in a way that effectively safeguards the environment and protect the rights of affected communities.*

*“SEC. 19. Areas Closed to Mining Applications. — Mineral agreement or financial or technical assistance agreement applications shall not be allowed:*

*(a) In military and other government reservations, except upon prior written clearance by the government agency concerned;*

*(b) Near or under public or private buildings, cemeteries, archeological and historic sites, bridges, highways, waterways, railroads, reservoirs, dams or other infrastructure projects, public or private works including plantations or valuable crops, except upon written consent of the government agency or private entity concerned;*

*(c) In areas covered by valid and existing mining rights;*

*(d) In areas expressly prohibited by law;*

*(e) In areas covered by small-scale miners as defined by law unless with prior consent of the small-scale miners, in which case a royalty payment upon the utilization of minerals shall be agreed upon by the parties, said royalty forming a trust fund for the socio-economic development of the community concerned; and*

*(f) Old growth or virgin forests, proclaimed watershed forest reserves, wilderness areas, mangrove forests, mossy forests, national parks, provincial/*

*municipal forests, parks, greenbelts, game refuge and bird sanctuaries as defined by law and in areas expressly prohibited under the National Integrated Protected Areas System (NIPAS) under Republic Act No. 7586, Department Administrative Order No. 25, series of 1992 and other laws.”*

The incentive provisions of RA 7942 are found under Sections 90 to 94. They are quoted hereunder:

**CHAPTER XVI  
INCENTIVES**

*“Sec. 90. Incentives - The contractors in mineral agreements, and financial or technical assistance agreements shall be entitled to the applicable fiscal and non-fiscal incentives as provided for under Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987. Provided, That holders of exploration permits may register with the Board of Investments and be entitled to the fiscal incentives granted under the said Code for the duration of the permits or extensions thereof: Provided, further, That mining activities shall always be included in the investment priorities plan.*

*“Sec. 91. Incentives for Pollution Control Devices - Pollution control devices acquired, constructed or installed by contractors shall not be considered as improvements on the land or building where they are placed, and shall not be subject to real property and other taxes or assessments: Provided, however, That payment of mine wastes and tailings fees is not exempted.*

*“Sec. 92. Income Tax-Carry Forward of Losses - A net operating loss without the benefit of incentives incurred in any of the first ten (10) years of operations may be carried over as a deduction from taxable income for the next five (5) years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the five (5) taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining four (4) years.*

*“Sec. 93. Income Tax-Accelerated Depreciation - Fixed assets may be depreciated as follows:*

*“a. To the extent of not more than twice as fast as the normal rate of depreciation or depreciated at normal rate of depreciation if the expected life is ten (10) years or less; or*

*“b. Depreciated over any number of years between five (5) years and the expected life if the latter is more than ten (10) years, and the depreciation thereon allowed as deduction from taxable income: Provided, That the contractor notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used.*

*“In computing for taxable income, unless otherwise provided in this Act, the contractor may, at his option, deduct exploration and development*

expenditures accumulated at cost as of the date of the prospecting or exploration and development expenditures paid or incurred during the taxable year: Provided, That the total amount deductible for exploration and development expenditures shall not exceed twenty-five per centum (25%) of the net income from mining operations. The actual exploration and development expenditures minus the twenty-five per centum (25%) net income from mining shall be carried forward to the succeeding years until fully deducted.

“Net income from mining operation is defined as gross income from operations less allowable deductions which are necessary or related to mining operations. Allowable deductions shall include mining, milling and marketing expenses, depreciation of properties directly used in the mining operations. This paragraph shall not apply to expenditures for the acquisition or improvement of property of a character which is subject to the allowances for depreciation.

“Sec. 94. Investment Guarantees - The contractor shall be entitled to the basic rights and guarantees provided in the Constitution and such other rights recognized by the government as enumerated hereunder:

“a. Repatriation of investments. - The right to repatriate the entire proceeds of the liquidation of the foreign investment in the currency in which the investment was originally made and at the exchange rate prevailing at the time of repatriation.

“b. Remittance of earnings. - The right to remit earnings from the investment in the currency in which the foreign investment was originally made and at the exchange rate prevailing at the time of remittance.

“c. Foreign loans and contracts. - The right to remit at the exchange rate prevailing at the time of remittance such sums as may be necessary to meet the payments of interest and principal on foreign loans and foreign obligations arising from financial or technical assistance contracts.

“d. Freedom from expropriation. - The right to be free from expropriation by the Government of the property represented by investments or loans, or of the property of the enterprise except for public use or in the interest of national welfare or defense and upon payment of just compensation. In such cases, foreign investors or enterprises shall have the right to remit sums received as compensation for the expropriated property in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance.

“e. Requisition of investment. - The right to be free from requisition of the property

represented by the investment or of the property of the enterprises except in case of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investments were originally made and at the exchange rate prevailing at the time of remittance.

“f. Confidentiality. - Any confidential information supplied by the contractor pursuant to this Act and its implementing rules and regulations shall be treated as such by the Department and the Government, and during the term of the project to which it relates.”



4. **AGRICULTURE AND FISHERIES MODERNIZATION ACT OF 1997** (RA No. 8435, December 22, 1997). -

Section 2 declares it “the policy of the State to enable those who belong to the agriculture and fisheries sectors to participate and share in the fruits of development and growth in a manner that utilizes the nation’s resources in the most efficient and sustainable way possible by establishing a more equitable access to assets, income, basic and support services and infrastructure.”

The stimulus under the law is enshrined under Title 5, Trade and Fiscal Incentives:

**TITLE 5  
TRADE AND FISCAL INCENTIVES**

“Sec.108. Taxation policies must not deter the growth of value-adding activities in the rural areas.

“Sec. 109. All enterprises engaged in agriculture and fisheries as duly certified by the Department<sup>3</sup> in consultation with the Department of Finance and the

<sup>3</sup> Refers to the Department of Agriculture (DA), Sec. 4, Definition of Terms.



board of Investment, shall, for five (5) years after the effectivity of this Act, be exempted from the payment of tariff and duties for the importation of all types of agriculture and fisheries inputs, equipment and machinery such as, but not limited to, fertilizer, insecticide, pesticide, tractor, trailers, trucks, farm implements and machinery, harvesters, threshers, hybrid seeds, genetic materials, sprayers, packaging machinery and materials, bulk-handling facilities such as conveyors and mini loaders, weighing scales, harvesting equipment, spare parts of all agricultural equipment, fishing equipment and parts thereof, refrigeration equipment, and renewable energy systems such as solar panels. Provided, however, That the imported agricultural and fishery inputs, equipment and machinery shall be for the exclusive use of the importing enterprise.

"The Department, in consultation with the Department of Finance and the Board of Investment, shall, within ninety (90) days from the effectivity of this Act, formulate the implementing rules and regulations governing the importation of agriculture and fishery inputs, equipment and machinery.

"Sec. 110. Any person, partnership, corporation, association and other juridical entity found circumventing the provisions of Section 109 of this Act shall suffer the penalty of imprisonment for a period of not less than six (6) months but not more than one (1) year, or a fine equivalent to two hundred percent (200%) of the value of the imported materials, or both, at the discretion of the court, and the accessory penalties of confiscation of the imported goods in favor of the government and revocation of the privileges given under this title.

"In cases where the violator is a juridical entity, the officers responsible in the violation of Section 109 shall suffer the penalty of imprisonment prescribed in this Section.

"The importation of goods equivalent to or exceeding the declared assets of the enterprise, partnership, or the authorized capital stock in case of corporations, and/or the resale of the imported goods shall be a prima facie evidence of the violation of the provisions of Section 109 of this Act."

## **5. ECOLOGICAL SOLID WASTE MANAGEMENT ACT OF 2000** (RA No. 9003, January 26, 2001). -

RA No. 9003 declares that it is the policy of the State to adopt a systematic, comprehensive and ecological solid waste management program which shall, among others, ensure the protection of public health and environment and utilize environmentally-sound methods that maximize the utilization of valuable resources and encourage resource conservation and recovery (Section 2, Declaration of Policies).

The incentives are found under Chapter IV. These are:

### **CHAPTER IV INCENTIVES**

"Sec. 45. Incentives. - (a) Rewards, monetary or otherwise, shall be provided to individuals, private

organizations and entities, including non-government organizations, that have undertaken outstanding and innovative projects, technologies, processes and techniques or activities in re-use, recycling and reduction. Said rewards shall be sourced from the Fund herein created.

"(b) An incentive scheme is hereby provided for the purpose of encouraging LGUs, enterprises, or private entities, including NGOs, to develop or undertake an effective solid waste management, or actively participate in any program geared towards the promotion thereof as provided for in this Act.

"(1) Fiscal Incentives. - Consistent with the provisions of E. O. 226, otherwise known as the Omnibus Investments Code, the following tax incentives shall be granted:

"(a) Tax and Duty Exemption on Imported Capital Equipment and Vehicles - Within ten (10) years upon effectivity of this Act, LGUs, enterprises or private entities shall enjoy tax and duty free importation of machinery, equipment, vehicles and spare parts used for collection, transportation, segregation, recycling, re-use and composing of solid wastes: Provided, That the importation of such machinery, equipment, vehicle and spare parts shall comply with the following conditions:

"(i) They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;

"(ii) They are reasonably needed and will be used actually, directly and exclusively for the above mentioned activities;

"(iii) The approval of the Board of Investment (BOI) of the DTI for the importation of such machinery, equipment, vehicle and spare parts.

"Provided, further, That the sale, transfer or disposition of such machinery, equipment, vehicle and spare parts, without prior approval of the (BOI), within five (5) years from the date of acquisition shall be prohibited, otherwise, the LGU concerned, enterprise or private entities and the vendee, transferee, or assignee shall be solidarily liable to pay twice the amount of tax and duty exemption given it.

"(b) Tax Credit on Domestic Equipment - Within ten (10) years from the effectivity of this Act, a tax credit equivalent to 50% of the value of the national internal revenue taxes and customs duties that would have been waived on the machinery, equipment, vehicle and spare parts, had these items been imported shall be given to enterprises, private entities, including NGOs, subject to the same conditions and prohibition cited in the preceding paragraph.

"(c) Tax and Duty Exemption of Donations, Legacies and Gift - All legacies, gifts and donations to



LGUs, enterprises or private entities, including NGOs, for the support and maintenance of the program for effective solid waste management shall be exempt from all internal revenue taxes and customs duties, and shall be deductible in full from the gross income of the donor for income tax purposes.

“(2) Non-Fiscal Incentives. - LGUs, enterprises or private entities availing of tax incentives under this Act shall also be entitled to applicable non-fiscal incentives provided for under E. O. 226, otherwise known as the Omnibus Investments Code.

“The Commission shall provide incentives to businesses and industries that are engaged in the recycling of wastes and which are registered with the Commission and have been issued ECCs in accordance with the guidelines established by the Commission. Such incentives shall include simplified procedures for the importation of equipment, spare parts, new materials, and supplies, and for the export of processed products.

“(3) Financial Assistance Program. - Government financial institutions such as the Development Bank of the Philippines (DBP), Landbank of the Philippines (LBP), Government Service Insurance System (GSIS), and such other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financial services to individuals, enterprises, or private entities engaged in solid waste management.

“(4) Extension of Grants to LGUs. - Provinces, cities and municipalities whose solid waste management plans have been duly approved by the Commission or who have been commended by the Commission for adopting innovative solid waste management programs may be entitled to receive grants for the purpose of developing their technical capacities toward actively participating in the program for effective and sustainable solid waste management.

“(5) Incentives to Host LGUs. - Local government units who host common waste management facilities shall be entitled to incentives.”

**6. PHILIPPINE CLEAN WATER ACT OF 2004** (RA No. 9275, March 22, 2004). -

Under Section 2 of RA 9275, it is declared that: “The State shall pursue a policy of economic growth in a manner consistent with the protection, preservation and revival of the quality of our fresh, brackish and marine waters. To achieve this end, the framework for sustainable development shall be pursued.”

Chapter 4 (Incentives and Rewards) details the privileges that are granted to those who are qualified, to wit:

“SECTION 25. Rewards. - Rewards, monetary or otherwise, shall be provided to individuals, private organization and entities, including civil society, that

have undertaken outstanding and innovative projects, technologies, processes and techniques or activities in water quality management. Said rewards shall be sourced from the Water Quality Management Fund herein created.

“SECTION 26. Incentives Scheme. - An incentive scheme is hereby provided for the purpose of encouraging LGUs, water districts (WDs), enterprises, or private entities, and individuals, to develop or undertake an effective water quality management, or actively participate in any program geared towards the promotion thereof as provided in this Act.

“A. Non-fiscal incentive

“1. Inclusion in the Investments Priority Plan (IPP). - Subject to the rules and regulations of the Board of Investments (BOI), industrial wastewater treatment and/or adoption of water pollution control technology, cleaner production and waste minimization technology shall be classified as preferred areas of investment under its annual priority plan and shall enjoy the applicable fiscal and non-fiscal incentives as may be provided for under the Omnibus Investment Code, as amended.

“Fiscal Incentives

“1. Tax and Duty Exemption on Imported Capital Equipment. - Within ten (10) years upon the effectivity of this Act, LGUs, WDs, enterprises or private entities shall enjoy tax-and-duty-free importation of machinery, equipment and spare parts used for industrial wastewater treatment/collection and treatment facilities: Provided, That the importation of such machinery, equipment and spare parts shall comply with the following conditions:

“a) They are not manufactured domestically in sufficient quantity, of comparable quality and at reasonable prices;

“b) They are reasonably needed and will be used actually, directly and exclusively for the above mentioned activities; and

“c) Written endorsement by the Department that the importation of such machinery, equipment and spare parts would be beneficial to environmental protection and management: Provided, further, That the sale, transfer or disposition of such machinery, equipment and spare parts without prior approval of the BOI within five (5) years from the date of acquisition shall be prohibited, otherwise the LGU concerned, WD, enterprise or private entity and the concerned vendee, transferee or assignee shall be solidarity liable to pay twice the amount of tax and duty exemption given it.

“2. Tax Credit on Domestic Capital Equipment. - Within ten (10) years from the effectivity of this Act, a tax credit equivalent to one hundred percent (100%) of the value of the national internal revenue taxes and

customs duties that would have been waived on the machinery, equipment, and spare parts, had these items been imported shall be given to enterprises or private entities and individuals, subject to the same conditions and prohibition cited in the preceding paragraph.

"3. Tax and Duty Exemption of Donations, Legacies and Gifts. - All legacies, gifts and donations to LGUs, WDs, enterprises, or private entities and individuals, for the support and maintenance of the program for effective water quality management shall be exempt from donor's tax and shall be deductible from the gross income of the donor for income tax purposes.

"Imported articles donated to, or for the account of any LGUs, WDs, local water utilities, enterprises, or private entities and individuals to be exclusively used for water quality management programs shall be exempted from the payment of customs duties and applicable internal revenue taxes.

"Industrial wastewater treatment and/or installation of water pollution control devices shall be classified as pioneer and preferred areas of investment under the BOI's annual priority plan and shall enjoy the applicable fiscal and non-fiscal incentives as may be provided for under the Omnibus Investment Code, as amended.

#### "B. Financial Assistance Program

"Government financial institutions such as the Development Bank of the Philippines, Land Bank of the Philippines, Government Service Insurance System, and such other government institutions providing financial services shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to extend financial services to LGUs, WDs, enterprises, or private entities engaged in sewage collection and treatment facilities.

#### "C. Extension or Grants to LGUs

"Cities and municipalities which shall establish or operate sewerage facilities may be entitled to receive grants for the purpose of developing technical capabilities."

On July 6, 2012, President Benigno S. Aquino III issued Executive Order (EO) No. 79 entitled: *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*. The EO hopes "to improve environmental mining standards and increase revenues to promote sustainable economic development and social growth, both at the national and local levels." (Last 'Whereas clause'.) Section 13 of the EO establishes an inter-agency One-Stop Shop for all mining related applications and processes within six (6) months from

its effectivity.

Of note is Section 1 which states:

"SECTION 1. Areas Closed to Mining Applications. Applications for mineral contracts, concessions, and agreements shall not be allowed in the following:

"a) Areas expressly enumerated under Section 19 of RA No. 7942;

"b) Protected areas categorized and established under the National Integrated Protected Areas System (NIPAS) under RA No. 7586;

"c) Prime agricultural lands, in addition to lands covered by RA No. 6657, or the Comprehensive Agrarian Reform Law of 1988, as amended, including plantations and areas devoted to valuable crops, and strategic agriculture and fisheries development zones and fish refuge and sanctuaries declared as such by the Department of Agriculture (DA);

"d) Tourism development areas, as identified in the National Tourism Development Plan (NTDP); and,

"e) Other critical areas, island ecosystems, and impact areas of mining as determined by current and existing mapping technologies, that the DENR may hereafter identify pursuant to existing laws, rules, and regulations, such as, but not limited to, the NIPAS Act.

"Mining contracts, agreements, and concessions approved before the effectivity of this Order shall continue to be valid, binding, and enforceable so long as they strictly comply with existing laws, rules, and regulations and the terms and conditions of the grant thereof. For this purpose, review and monitoring of such compliance shall be undertaken periodically."

It can be observed that the incentives given by the government under the selected environmental laws are attractive enough to would-be investors. Recently, the present administration has embarked on its Public-Private Partnership (PPP) initiatives. PPP's are joint ventures (JVs) between the government and the private sector on certain projects where the former lacks expertise or capital. The common scenario is for the private investor to build and operate the facility and later on turn over the same to the government upon recovery of its capital plus reasonable profit or income.

Additionally, the National Internal Revenue Code (NIRC), as amended, contains provisions which exempt some beneficiaries from tax. Section 30<sup>4</sup> of the Tax Code provides an enumeration of entities which are exempt from tax on


<sup>4</sup> Formerly Section 26. "Deleted from the list of exempt organizations are the following: (1) Clubs organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, no part of the net income of which inures to the benefit of any private stockholder or member; and (2) Corporations and associations organized for the exclusive purpose of holding title to property, collecting income therefrom and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from income tax. Added to the list, x x x, are nonstick and nonprofit educational institutions" (Dascil, Rodelio T.: NIRC of the Philippines, 3<sup>rd</sup> Revised Ed.)

corporations. Moreover, several transactions are exempt from the value-added tax (VAT) imposed by the NIRC. The list which is found in Section 109, includes among others, those which are exempt under international agreements to which the Philippines is a signatory or under special laws; importation of fuel, goods and supplies by persons engaged in international shipping or air transport operations; sale, importation or lease of passenger or cargo vessels and aircraft, including engine, equipment and spare parts thereof for domestic or international transport operations. The Tariff and Customs Code (TCC), as amended, also has provisions on tariff and duty exemptions.

would still pour-in considering other factors such as an English-speaking work force, availability of raw materials, adequate infrastructure in some areas or zones, accessibility to other regions, presence of a huge local market or economy, etc. In the final analysis, what is imperative is the proper implementation of the laws.

All the laws relative to incentives and privileges are provided by the government so as to attract foreign and local investments. Some sectors consider these attractions redundant in the sense that even in its absence, investments





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