

1 **PH-EITI 11th MSG MEETING**
2 **9:00 AM- 12:00 PM | March 7, 2014**
3 **Visayas Room, Department of Finance,**
4 **Roxas Blvd., Manila**

7 **Attendees:**

8		
9	Asst. Sec. Ma. Teresa S. Habitan	Department of Finance (DOF)
10	Director Stela Montejo	DOF
11	Asec. Daniel A. Ariaso, Sr.	Department of Energy (DOE)
12	Engr. Benjamin Mortos	DOE
13	Gil Ansay	DOE
14	Engr. Romualdo Aguilos	Mines and Geosciences Bureau—Department of Environment and Natural Resources (MGB-DENR)
15		
16	Rizzalyn Bautista	Department of the Interior and Local Government (DILG)
17	Patricio De Quiros	Union of Local Government Authorities (ULAP)
18	Dr. Cielo Magno	Bantay Kita
19	Regine Tumlos	Bantay Kita
20	Prof. Jay L. Batongbacal	University of the Philippines, College of Law
21	Prof. Maria Aurora Teresita W. Tabada	Visayas State University
22	Ronald Allan A. Barnacha	Philippine Rural Reconstruction Movement (PRRM)/ North Luzon
23		
24	Starjoan Villanueva	Alternate Forum for Research in Mindanao, (AFRIM) Inc.
25	Agustin Docena	Samar Island Bio-diversity Foundation (SIBF)/Eastern Visayas Network of NGOs and POs, Inc. (EVNET)
26		
27	Dr. Merian C. Mani	Romblon Ecumenical Forum Against Mining (REFAM)/ Romblon State University
28		
29	Gerard Brimo	Chamber of Mines of the Philippines (COMP)
30	Nelia Halcon	COMP
31	Ronald S. Recidoro	COMP
32	Dr. Benjamin Austria	Petroleum Association of the Philippines (PAP)
33	Atty. Gay Alessandra V. Ordenes	Secretariat
34	Maria Meliza T. Tuba	Secretariat
35	Abigail D. Ocate	Secretariat
36	Mary Ann D. Rodolfo	Secretariat
37	Grace A. Estacio	Secretariat

1 RESOURCE PERSONS:

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Director Carmencita Delantar Department of Budget and Management (DBM)
Asst. Comm. Alfredo Misajon Bureau of Internal Revenue (BIR)

7 **AGENDA:**

- 8 • Minutes of the 10th MSG meeting
- 9 • Matters arising from previous MSG meetings
- 10 • Updates on scoping study (2nd report)
- 11 • Presentation by DBM
- 12 • Presentation by BIR
- 13 • Other Matters

14
15

16 **1. Call to Order:**

17

18 1.1. The Philippine Extractive Industries Transparency Initiative (PH-EITI) Multi-Stakeholder Group (MSG)
19 meeting was called to order at 9:00 AM.

20

21 1.2. The proposed agenda was presented and subsequently approved by the body.

22

23 **2. Minutes of the 10th MSG Meeting**

24

25 2.1. The body approved the minutes of the 10th MSG meeting with no revisions.

26

27 **3. Matters Arising from Previous MSG Meetings**

28

29 3.1. *Establishment and management of a revenue-linked database:* It was recalled that this activity is
30 dependent on the availability of the Multi-Donor Trust Fund (MDTF) from the World Bank.

31

32 The Secretariat shared that the World Bank will be advancing the funds for the critical activities scheduled in
33 the next six (6) months, since there will be further delay in the processing of the MDTF. It was mentioned
34 that the fund will be Bank-executed and is expected to be available by March or early April this year.

35

36 3.2. *Auditing of government reports:* It was recalled that the Secretariat was tasked to invite the Commission
37 on Audit (COA) to discuss the current auditing practices on government data. However, during the 9th MSG
38 meeting, the body agreed to wait for the results of the scoping study before determining the need to engage
39 COA.

1 3.3. *Whether service contracts should be part of the waiver:* It was reported that this matter is still pending
2 with the legal department of the Department of Energy.

3
4 The DOE representative stated that as far as the disclosure of the service contracts is concerned, there is no
5 legal impediment to the disclosure as the service contracts are public documents. This is according to the
6 legal opinion secured by the DOE last year.

7
8 At this point, the Chair reiterated the reason for the discussion, that there are revenue streams from the oil
9 and gas sector which are supposed to be part and parcel of the scoping study and the EITI report, and the
10 data should come from the DOE. The MSG is therefore asking whether or not the DOE can disclose the
11 information without violating any of the provisions of the contracts.

12
13 According to the DOE representative the Department has no issue with the disclosure of the service
14 contracts; however disclosing the collection of revenue needs to be further clarified. He requested an
15 additional two weeks to secure a legal opinion regarding the latter issue.

16
17 3.4. *Offer of Timor Leste to conduct a training for the PH-EITI MSG on the Petroleum Fund process:* The
18 Secretariat mentioned that this item is also dependent on the availability of the MDTF.

19
20 3.5. *Bureau of Internal Revenue (BIR) waiver:* The Secretariat shared that as of 6 March 2014, sixteen (16)
21 Chamber of Mines of the Philippines (COMP) members, three (3) non-members of COMP and three (3) oil
22 and gas companies have submitted their signed waiver.

23
24 It was mentioned that the secretariat conducted a briefing with the remaining companies who have not yet
25 executed the waiver. Updates regarding the outcome of the briefing will be discussed later in the meeting..

26
27 3.6. *Incentive regime for mining:* It was recalled that the Board of Investments (BOI) was invited to attend
28 the last Technical Working Group meeting on February 6, 2014 to present the incentive regime for mining.
29 However, during the said meeting, the BOI representative stated that the incentive regime is covered by the
30 confidentiality clause under the law. The Secretariat requested the BOI to make another presentation
31 without necessarily disclosing the companies who have availed of these incentives, but to just focus on
32 presenting the regime itself. Unfortunately, the BOI was not available for the day's meeting.

33
34 3.7. *Subnational transfers:* It was mentioned that the Secretariat was tasked to invite BIR and Department of
35 Budget and Management (DBM) to discuss how the collections are allocated to the Local Government Units
36 (LGUs). The presentation of BIR and DBM representatives is part of the main business of the meeting.

37
38 3.8. *List of host LGUs:* It was reported that the MSG members asked the Union of Local Government
39 Authorities (ULAP) to submit the official list of LGUs that are hosting mining and oil and gas operations. The
40 Secretariat shared that the said list was already submitted by ULAP.

1 The body was also informed that the official lists of companies that should be included in the EITI report
2 were submitted by DOE and Mines and Geosciences Bureau (MGB) to the Secretariat.

3
4 3.9. *Selection of Non-COMP representative*: The Secretariat shared that the election of non-COMP
5 representative to the MSG is still pending.

6 7 **4. Updates on Scoping Study (2nd report)**

8
9 4.1. The body was informed that the scoping study consultants who were scheduled to present their second
10 output during the meeting requested for a postponement.

11
12 4.2. The members of the MSG agreed to the following:

- 13 1. The next presentation of consultants will be on March 19, 9:00 am at the Department of Finance
14 (DOF).
- 15 2. The consultants should revise their first draft based on the comments and the revised report should
16 be submitted to the MSG before the next presentation.
- 17 3. In the next presentation, tables and matrices should be shown before the narrative.
- 18 4. The MSG (thru the secretariat) will send the consultants a list of what they expect to see in the
19 contextual information.
- 20 5. The review committee of the MSG will meet the consultants before their presentation on March 19,
21 2014.

22
23 4.3. The Secretariat also shared that the World Bank has requested the MSG to provide its recommendation
24 as basis for subsequent progress payments of the consultants.

25
26 4.4. Since the scoping consultants failed to deliver their output to the satisfaction of the MSG, the body
27 agreed to recommend that their services be discontinued.

28 29 **5. Presentation by the Department of Budget and Management**

30
31 5.1. Director Carmencita Delantar of DBM presented how the collections are allocated to the LGUs.(A
32 transcript of the presentation is hereto attached as Annex A)

33
34 5.2. An MSG representative questioned the need for a separate appropriation law when the amount to be
35 allocated to the barangays, municipalities and provinces has already been prescribed under existing laws. It
36 was stated that this could be another source of delay.

37
38 5.3. Director Delantar was asked to identify which sections of the appropriation law detail the share in
39 national wealth.

40
41 5.4. According to Director Delantar, only general terms can be found in the law. As in the case of national

1 wealth, this information is in sections 290, 291, 292 and 293. It was explained that the law does not specify
2 how much the share for the year is. Thus, there is a need for a certification.

3
4 5.5. With regard to the constitutional provision, the DBM representative elaborated that any amount leaving
5 the coffers of the Treasury has to be covered by an appropriation and this is where the enactment by
6 Congress comes in.

7
8 5.6. The body was informed that in the General Appropriations Act (GAA), the LGU share of national wealth
9 is indicated in the Allocation to Local Government Units (ALGU) section. However, it was noted that the
10 individual shares of the LGUs are not determined in the ALGU since the allocation has yet to be subjected to
11 a certification during the budget preparation stage. At this point, it is a lump sum appropriation which is
12 considered part of the special purpose fund.

13
14 5.7. A representative from the Civil Society Organization (CSO) then inquired whether DBM provides the
15 LGUs with additional information with respect to the sources of the funds they are receiving. It was cited
16 that based on the local government code, 80% of the shares from energy extraction should be allotted for
17 electrification. Thus, the LGUs should be aware of how much of their share comes from mining and how
18 much comes from energy.

19
20 5.8. Director Delantar confirmed that once the DBM makes the release, it indicates how much came from
21 mining, energy, etc. Using the same example, it was explained that it is already the responsibility of the
22 implementing LGU to make sure that 80% of the shares from energy extraction is to be used in lowering the
23 cost of electricity in the area where the energy source is situated.

24
25 5.9. It was clarified that DBM does not have the figures and these figures will ultimately be based on the
26 certification. The ones who compute for the figures are the authorized collecting agencies.

27
28 5.10. The representative from ULAP inquired regarding the discrepancies between the reports generated by
29 the BIR and the Bureau of Treasury (BTr). It was stated that ULAP encourages LGUs to utilize revenue from
30 extractive industries for poverty alleviation and environmental protection; however the LGUs say that they
31 are unable to come up with programs as they are not informed on when they will receive the money.

32
33 5.11. Director Delantar stated that during the budget preparation, the allocation to LGUs is a lump sum
34 amount. It was further explained that the lump sum amount will be based on the submission of collecting
35 government agencies regarding amount of shares and the entitled LGUs. It is only during the budget
36 execution phase where the individualized release to specific LGUs with the corresponding amounts can be
37 identified. The Director also mentioned that the LGUs are given autonomy to identify for what particular
38 programs and projects the funds will be used.

39
40 5.12. It was discussed that as for the case of the funds from the energy source, the LGUs should be asked to
41 report the use and utilization of the shares, and mention for example how much of the 80% was used in

1 lowering the cost of electricity in their areas. It was reiterated that for this function, accountability rests on
2 the implementing LGUs.

3
4 5.13. The Chair asked the DBM representative to identify the release documents given to the LGUs.

5
6 5.14. Director Delantar explained that at the national level, the Special Allotment Release Order (SARO) is
7 addressed to the agencies or the department down the line. In the case of the LGUs and Government-
8 Owned and Controlled Corporations (GOCCs), DBM is the fund administrator. Thus, the SARO and the Notice
9 of Cash Allocation (NCA) are addressed to DBM; what goes to the LGUs are the funding checks. Since there
10 are 43,052 LGUs, DBM releases the funding checks to the 16 regional offices. Upon receipt of the SARO and
11 the NCA, these regional offices will in turn issue individual funding checks to the bank accounts of the
12 individual LGUs. Director Delantar clarified that DBM deals with LGUs through the banking system.

13
14 5.15. The Chair asked whether or not DBM identifies how much comes from mining and other industries in
15 the funding checks it releases to the different LGUs.

16
17 5.16. Director Delantar responded that they do identify through the Notice of Funding Cheque Issue (NFCI),
18 which is addressed to the Local Chief Executive. Moreover, it was mentioned that DBM does not make
19 releases that come from different sources. As an example, if the release is for mining tax, the entire release
20 will be for mining tax.

21
22 5.17. It was also shared that beginning 2014, DBM will not issue funding checks and will instead employ the
23 Authority to Debit Account (ADA) system.

24
25 5.18. A CSO representative inquired whether copies of certification of collection can be obtained from the
26 DBM office.

27
28 5.19. Director Delantar remarked that when it comes to the certification of collections, one has to visit the
29 regional offices of the authorized collecting agencies. For releases, on the other hand, one can go to the
30 regional offices of the DBM. It was pointed out that the DBM main office only receives the final version of
31 the release while it is the regional offices who actually execute the releases.

32
33 5.20. The same CSO representative then inquired if the said documents are already in electronic copies or in
34 a spreadsheet format for easier computing.

35
36 5.21. Director Delantar responded that during the last hearing that DBM had with the Senate, each of the
37 laws had their own tax bases. DBM, therefore, spends much time computing and re-computing. Because of
38 this, DBM has requested that the tax bases be simplified. It was shared that in a circular issued in 2011, the
39 DBM has requested each collecting agency to post this information on their respective websites.

40
41 5.22. Another CSO representative asked regarding Director Delantar's earlier statement about "all
42 collections by the collecting agencies should be remitted" – an example was cited wherein the provincial

1 treasurer was requested to submit the collections that the province received from a small-scale mining
2 operation. It was mentioned that according to the provincial treasurer, only the share of the national
3 government is being remitted. The province pays the barangay and then subsequently keeps their share
4 from the collection. The CSO representative clarified if the province committed a violation by doing so.
5

6 5.23. In response, Director Delantar clarified there are different types of ALGUs, some of which, like those
7 made through action of legislature, no longer pass through DBM. One example is the Ecozone where the
8 shares of the LGUs are forwarded directly to them. Director Delantar stated that DBM only implements the
9 law.
10

11 **6. Presentation by the Bureau of Internal Revenue**

12

13 6.1. Assistant Commissioner Misajon of the BIR also presented the process flow for allocation of LGU shares
14 on excise tax collections from minerals, mineral products & quarry resources(the presentation material is
15 attached as Annex B, and the transcript of the presentation is attached as Annex C).
16

17 6.2. One concern that was raised by the ULAP representative is the incompleteness of the information
18 during the receiving process, causing difficulty in identifying to whom the LGU share should be. It was noted
19 that once a payment is made, the payor has to be properly identified.
20

21 6.3. According to Assistant Commissioner Misajon, with the excise tax return itself, the information is being
22 provided by the payor which is the mining company. It was stated that when a particular mining company
23 fails to indicate certain information, the BIR would have to communicate again to the respective Revenue
24 District Offices (RDOs) to request for the correct information from the mining companies and this causes the
25 delays in the certification.
26

27 6.4. A representative from the Business Sector then inquired if the MSG will be able to retrieve information
28 on taxes paid by small-scale mines from BIR offices.
29

30 6.5. Assistant Commissioner Misajon replied that this information can be made available by the Revenue
31 Accounting Division of the BIR through an official request.
32

33 6.6. A representative from the CSO then asked if the said information can be made available without a
34 waiver.
35

36 6.7. The Chair then clarified that without a waiver, the BIR can only give aggregated data.
37

38 6.8. Another CSO representative remarked that the aggregated information will suffice to get a rough
39 collection estimates per province.
40

41 6.9. Regarding the level of detail available in the documents, a question was raised whether specific amount
42 of shares for a barangay will be listed and if the purpose will also be identified.

1 6.10. The BIR representative explained that the purpose for which the amount shall be spent is not
2 indicated. The BIR only submits to the DBM the joint certification as to the amount.
3

4 6.11. A member of the MSG further clarified if the amount will be identified as taxes from mining in the
5 municipality. Assistant Commissioner Misajon confirmed this.
6

7 6.12. One representative from the Business Sector then asked Assistant Commissioner Misajon for the
8 number of joint certifications that the BIR issued in 2012.
9

10 6.13. Assistant Commissioner Misajon expressed that he is not aware of the exact number of joint
11 certifications as the revenue accounting division is not under his office. However, the body was assured that
12 there is rigorous audit being done not only for the BIR's accredited agent banks but also with the revenue
13 officials. Assistant Commissioner Misajon added that the BTr also has to certify that the money is indeed
14 available.
15

16 6.14. A representative from the Business Sector asked regarding the oversight for fund utilization, as there
17 are specific uses for excise tax at the LGU level.
18

19 6.15. Assistant Commissioner Misajon replied that this function does not fall under the BIR.
20

21 The Chair also expressed that this does not fall under the mandate of the collecting agency but should fall
22 under the LGUs.
23

24 6.16. The BIR representative also clarified that the Revenue Accounting Division located at the national
25 office of BIR, is in charge of computing the shares as this particular.
26

27 6.17. As for the utilization at the local level, it was mentioned that the MSG can inquire with the Department
28 of the Interior and Local Government (DILG).
29

30 6.18. A representative of the CSOs mentioned that the MSG can look at the expenditure report of local
31 government, check the amount coming from national wealth and compare this to the proportion of their
32 spending for social development.
33

34 6.19. Another concern that was raised is on the 4th quarter excise tax since most companies will pay this in
35 the succeeding year. The BIR was asked whether they have a mechanism for reconciliation to capture the
36 said tax.
37

38 6.20. Assistant Commissioner Misajon recalled that based on the presentation of DBM representative, the
39 last quarter taxes are being estimated for the purposes of expediting the release of the funds and
40 reconciliation will come in later.

1 **7. Other Matters**

2
3 **Updates on the BIR Waiver**

4
5 7.1. The Secretariat informed the body that a second briefing with oil and gas companies, together with non-
6 members of COMP was conducted on March 6.

7
8 7.2. The body was informed that questions were raised regarding the necessity of executing the BIR waiver.
9 It was also mentioned that there were suggestions regarding the wording of the BIR waiver.

10
11 7.3. According to the Secretariat some of the companies who attended the briefing proposed that the
12 document be called an authorization rather than a waiver.

13
14 7.4. As for the wording of the waiver, there was also a proposal to delete the phrase “and related
15 information available in the possession of the Bureau of Internal Revenue” in the paragraph quoted below:
16

17 “Freely consents and allows the Commissioner of Internal Revenue (*the “Commissioner”*) and her duly
18 authorized representatives to disclose, supply, and/or furnish the Extractive Industries Transparency
19 Initiative (“EITI”), financial information on taxes paid by the Company, based on the information contained
20 in the Company’s tax returns, audited financial statements and related information available in the
21 possession of the Bureau of Internal Revenue”.

22
23 7.5. The Secretariat mentioned that some companies wanted to delete the said phrase since they think this
24 is a catch-all phrase and it might give the BIR a very wide discretion on which to disclose.

25
26 7.6. It was shared that the companies were asked to communicate with the Secretariat whether they will be
27 signing the waiver or not. The body was also informed that during the briefing, the Chair made it clear that
28 for those who do not want to sign the waiver, the EITI will not be imposing any sanctions. However, the
29 names of the companies that did not execute the waiver will be stated in the EITI report.

30
31 7.7. Another point that was raised is that some companies are willing to unilaterally disclose their payments
32 and at the same time do not want to execute a waiver. Consequently, the information will be provided by
33 the companies but the counter checking with the BIR will not be done since they will not be executing the
34 waiver.

35
36 7.8. The representative of the industry sector noted that since the 60% government share includes the
37 income tax payments, then the disclosure of this payment confirmed by DOE would be what EITI wants to
38 have.

39
40 7.9. One MSG member responded that unilateral disclosure will be an incomplete application of EITI since
41 the point of EITI is not just to compute how much they the companies are actually paying but to also

1 validate how much the government actually received. And in this case, if the BIR will not be allowed to
2 disclose how much they received then it will be an incomplete application of EITI.
3
4 7.10. The industry sector representative again pointed out that under normal service contracts, DOE
5 receives the 60% share of the government and DOE remits the taxes to the BIR.
6
7 7.11. The Chair explained that assuming it is correct that DOE files the tax in behalf of the companies, DOE is
8 just a withholding agent and the return is still with the BIR. Thus, the EITI still needs the data of BIR in order
9 to validate if the amount that is being remitted is the same to the amount that is being paid. Hence, the
10 need for the waiver.
11
12 7.12. On the basis that EITI is after physical payments, another MSG member stated the disclosing party
13 from the government should be the DOE not the BIR. This is because the companies pay the income tax
14 which is part of the 60%, to the DOE.
15
16 7.13. The Chair pointed out that there is also need to detail the revenue streams and that the 60% of
17 government share is a mix of government share of royalty and the income tax. Thus, the MSG needs also to
18 know how much of the 60% is for income tax and how much for the government share/royalty.
19
20 7.14. One member of the MSG argued that the practice by which the data can be disclosed is the one in
21 question and not the physical payment. It was reiterated that DOE is only a withholding agent of the tax
22 payments.
23
24 7.15. Going back to what the EITI requires, the Secretariat elaborated that for the taxes, the reporting entity
25 should be the BIR since taxes are within their jurisdiction and for that, the waiver is necessary. But, as to the
26 share that goes to DOE that is no longer remitted to BIR, the rules on confidentiality should be looked into.
27 This was suggested because that component of the 60% that remains with the DOE will also need to be
28 disclosed by DOE as the ultimate repository of that payment.
29
30 7.16. The DOE representative reiterated that as to the disclosure of the contract, they have already secured
31 the legal opinion that contracts can be disclosed. However, the disclosure of the actual payments is a
32 different issue altogether.
33
34 7.17. At this point, a representative of the industry sector stated that it is important to know how much
35 government receives. But, going into details like disaggregated payments, the possibility is that the MSG
36 may not be able to meet the deadline. It was also mentioned that if the data of diversified companies is not
37 yet disaggregated then it will take a long time for the Independent Administrator (IA) to disaggregate it and
38 come up with an accurate report.
39
40 7.18. Another member of the MSG responded that disaggregation is now a requirement of the EITI. It was
41 also stated that incentives should also be reported.

1 7.19. In addition, the Secretariat explained that the IA will not be tasked to disaggregate. The IA will report
2 whatever is the current state of the data, so this should not hinder the MSG from producing a report and
3 going through with the process.
4

5 7.20. Going back to the wording of the waiver, the BIR representative noted that the phrase “and related
6 information” is still covered by the confidentiality rule. This means that they will only disclose data that are
7 officially requested by the EITI.
8

9 7.21. The BIR representative added that the BIR is more comfortable with the word “waiver” than using
10 “authorization”.
11

12 7.22. Considering the foregoing discussion, the body agreed not change the taxpayer’s waiver. The
13 secretariat should therefore send the waiver as presently worded to the companies for signing.
14

15 **Inclusion of coal in the first report**

16

17 7.23. The Secretariat shared that there are 25 operating coal companies in the country. However, it was
18 pointed out that Semirara Mining Corporation covers 96% of the total coal production.
19

20 7.24. A representative of the CSOs then suggested to include coal, specifically Semirara, in the EITI report.
21

22 The body agreed.
23

24 7.25. DOE representative volunteered to contact Semirara and set a meeting with the Chair.
25

26 **Updates on the procurement of the Independent Administrator**

27

28 7.26. The body was informed that two (2) companies, Punongbayan & Araullo and Isla Lipana & Co., have
29 submitted their intent to bid.
30

31 7.27. The Secretariat also mentioned that the auditing firms will submit their final bid on March 11, after
32 which the Technical Working Group (TWG) of the Bids and Awards Committee (BAC) will be evaluating the
33 bids.
34

35 7.28. It was further mentioned that the target date of the execution of the contract is March 31, 2014.
36

37 **Financial statement for January-February**

38

39 7.29. The Secretariat shared that the total budget for the current year is ₱10.9 Million. It was reported that
40 11.48% or ₱1.2 Million of this budget have already been spent, generating a balance amounting to ₱9.7
41 Million.
42

1 7.30. It was clarified that from the said balance, ₱4 million is already reserved for the IA while certain
2 amount is for trainings and MSG meetings. However, the bulk of this amount is for the salaries of the
3 secretariat personnel.
4

5 7.31. Since the percentage of expenditures is included in the financial report, one member of the MSG
6 suggested that the percentage of the balance be also identified.
7

8 **Upcoming activities** 9

10 7.32. The Secretariat informed the MSG that the presentation of the scoping study will be on March 19,
11 2014.
12

13 7.33. It was noted that there will be a workshop for National Government Agencies (NGAs) on March 21
14 wherein the Secretariat will be getting the confirmation and inputs of the relevant agencies on the
15 preliminary template that will be drafted.
16

17 7.34. The body was also reminded that the next MSG meeting is scheduled on April 4. The Secretariat
18 explained that this is a whole day meeting since there will be a number of matters to be decided. It was
19 elaborated that there are contents of the report that are merely encouraged and that the MSG has to decide
20 whether to include these or not. The MSG agreed, however, that instead of conducting a whole day
21 meeting, the regular half day schedule should be followed since some of the matters have been already
22 discussed in the meetings.
23

24 7.35. One of the MSG members pointed out that the critical part is the contextual information. It was then
25 suggested that representatives of the CSO and industry sector submit what they expect in terms of the
26 content of the contextual information and task the secretariat to reconcile. CSO and industry sector agreed
27 to have a pre-meeting session.
28

29 7.36. During the discussion, it was again clarified that contract disclosure will now be part of the EITI report.
30

31 7.37. As for the earmark spending, the Secretariat shared that there were previous discussions with COA
32 wherein Commissioner Heidi Mendoza recommended that the MSG work with the resident COA auditors of
33 the reporting government agencies. In connection with this, the Secretariat invited the resident COA
34 auditors in the March 21 workshop to discuss on how earmark spending can be included.
35

36 7.38. A representative of the CSO pointed out that the MSG should already decide to incorporate earmarked
37 expenditure so that the members can already decide on how to include it.
38

39 The body formally decided to include earmarked expenditures in the EITI report.
40

41 7.39. Going back to the workshop with NGAs, the Secretariat was tasked to send the workshop materials to
42 the MSG members beforehand.

1 7.40. The Secretariat added that a National Conference with Open Government Partnership (OGP) and
2 Template Workshop will be conducted on May 15 to 16. However, it was mentioned that the details for
3 these activities are not yet final since these are subject to the availability of funds from World Bank.

4

5 **ADJOURNMENT**

6

7 There being no other matters to discuss, the meeting was adjourned at 11:45 PM.

11th MSG Meeting
March 7, 2014 (9:00-12:00NN)

DBM PRESENTATION

42:40

Thank you very much! Madame Chair, colleagues, ladies and gentlemen. Well thank you of support for this opportunity to clarify and to update some development and it came I don't if you can recall that we are in the peak of budget prep.

43:20

First and foremost, what we can do is at this time, we did not bring the soft copy but we'd rather take this opportunity to listen from you after we give a very short briefing on the procedures and the process involved. Now we hope our oversight partner but maybe next time the BIR if they could also be here so that more or less we could -- ah! Yes sir, Yes sir. Okay, okay po. Thank you very much!

Now the process starts with first of course the legal basis. Now, in the local government code that's Republic Act No.7160 we have sections 290,291,292, and 293 of the local government code which lays the background we will first go into the national wealth and among the four cards of national wealth which are number 1-Mining Taxes with BIR as the authorized collective agency, number 2-We have Mineral Reservation with the MGS (Mines and Geosciences) as the authorized collecting agency, then we have Forestry Charges with DENR as the authorized collecting agency and the Energy Source, sources, with Department of Energy as the collecting agency.

45:07

The tax base is immediate proceeding year. So if, for this year the general appropriations act that we have for 2014, that will be the funding source in the release of the shares of the LGUs for collections made in 2013, okay. Now other than these two, other than the tax base, we now come to the procedure. First and foremost DBM is the last in the line now.

So at first, the reaction of it "Ay! Ang bagal ni DBM in releasing", no! It's because we do not have the figures. Under the article 290 of RA7160 which is the IRR implementing the local government code, this particular article provides, that it is the responsibility of the authorized collecting agencies to submit a certification to the DBM, annually. That certification cites 3 important aspects.

First, is the amount of collections, second identified beneficiary LGUs. So we do not know who are the beneficiary LGUs, unless the authorized collecting agency indicate it in the certification. And third and the most important, the share of the entitled LGUs. How much should the entitled LGUs receive also comes from and it's computed by the authorized collecting agencies.

So it is only when we receive the certification, then the only then, we can say "Now, we have a basis for processing"; but these are among the developments through the years. What about the requirements or the requisite documents, are there any requirements from the entitled or beneficiary LGUs? None at all! So if there's anybody who will tell you, well you have to course it to me because we are influential with DBM because they will not release it, "NO that is a fault statement" there is nothing that is required of the LGUs.

Wait, there is only one requirement. In the past many many summers ago 2000's and 1990's there were six requirements, a certification from COA, a certification from the accredited bank, a certification from the BIR, and so forth and so on. But it was all through down to only one, and that is the certification of the authorized collecting agency. Now, then many LGUs would come to the center, the central office telling "Ma'am, according to the revenue district officer they have already forwarded their reports of collections to the RAD (Revenue Accountancy Office or Division) of the BIR. And it is that certification of the RAD of the central BIR that is used as the basis in the processing. So there is a point of consolidation. However, there is one, a oversight agency that comes into the picture. If this is the amount of collections made by the authorized collecting agencies, how much went to the treasury? So that is another point of reconciliation because in most cases, due to the time element involved the figures differ, the cut of base differs.

So, in the 2011 issuance that we had, we had every year ladies and gentlemen we go through a lining procedures just to find out where and how we can expedite the release to a point that the under 2011 we even asked the involved oversight agencies to specify the number of processing docs and we place it, "Ahhh...Jojo is aware of this". We place it in our circular. How many numbers of days will it take BIR, Treasury, DBM to process but in 2006 we cut off all the six requirements to just one.

And because of the need to reconcile because even if we received the authorized collecting agencies certification, if it doesn't tally with the treasurer's report and here we go again. Either we return it if it is substantive, now do we do "Why we have to return", first the beneficiary LGUs. What was submitted to us were Sitios not Barangays, the ones entitled are the PPM, with barangays and not the Sitios. So, now look, how that can be facilitated?

Ladies and gentlemen we told the LGUs. The DILG is the keeper and custodian of the official list of the LGUs. And the DILG has a web, they input the number of official listing of LGUs in their website. And we indicated this in our circular that first, DILG must see to it that they have updated the list in the roster of LGUs at a basis for the BIR, DOE, DENR, and the MGB to check, to avoid the papers coming back and forth.

Second, the reconciliation between the collecting agencies and the bureau of the treasury, so what we did was to adopt a format this time no longer asking BIR individual certification, but a

joint circular, so there will be two signatories to avoid the pre-consignation once the BIR...I'm taking the sample of Mining taxes...once the BIR submits the certification to the center, and the center gives it to the DBM then the LGUs takes, that's it, and DBM will process now.No to the reconciled with the treasury support. So, How to do it? Push the two of them as the signatories of only one certification, and that is the present fact this up to now. Because before what we do is that whenever there is such a differences "kami na ang nag referee" we call a meeting we do not wait for the two to meet. No, come to DBM office sit down, reconcile. That is only in paper but we need authorized signatories, so we ask them, we made now a requirement a joint certificate between the collecting agency and the Bureau of Treasury.

And lately, that was I think 2 years ago, we came up with again this additional measure that before the LGUs come to the center please coordinate with the revenue district offices of the BIR with the regional offices of PENRO / CENRO that's of the DENR, the MGB, the DOE regional offices before coming. There was a time they find out they're here already hoping to receive their shares well in fact the reports are still being consolidated at the center. So these are some of the cases and then we will go the funding this time we will identify the concept. Now, how is the procedure in laying out the appropriation cover no moneys of the government can get out without an appropriation cover that is in the constitution.

54:17

Okay, during the budget preparation, we are in the budget preparation at this stage in time, okay. All the authorized collecting agencies submit the projected, estimated collections. So by April 15, that's in local government code, the authorized collecting agency submits the projected estimates, DOF as the mother head of BIR, Treasury also has a report to a physical planning center, we have counter party in one unit or division or bureau in the oversight agencies also has counterpart in the DBM so we work through them to get the estimated or the earmark or we called them "ear marked revenues" and that becomes a basis for inclusion in the national expenditures program. The national expenditure program is submitted to congress every 3rd Monday of July. That's the first bill submitted to congress. So since we are not acting as the legislator then we submitted it in the form of national expenditure program so that basis is the estimated projection, so that once enacted by congress that becomes now the appropriation cover and that becomes now the basis for processing what we called the allotment the cash.

56:05

Now, DBM initiated what we call the documents or the release is the GAA, particularly the share that's already being implemented but for the lump sum amount like the IRA (Internal Revenue Allotment) the special shares one of which is the national wealth, another among the special shares is the value added tax then we have the tobacco excise tax, then other than that we also have franchise, we also have the taxes from locators in economic zones, to name these are some of the special shares so these are still done through a SARO because they are not someat

the time of budget preparation lump sum po, while yun from the nine (9) items like the roads, bridges, school buildings, these are the special specified from the time of budget preparation of the week we still have lump sum under the school building program and calamities fund, miscellaneous narrative fund, contingency funds, these are lump sums, so for these lump sums which we still have to use the SARO but for the others what is in the GAA that's it.

That's becomes now the basis for obligations, for contracting and awarding, okay. Now, doing that, so what happens to, we are now in the funding or the executions week so during the budget preparation the estimated collections that is submitted by the authorized becomes now the basis for setting up an appropriation cover and that is why through the EITI we will appreciate it because in the past, in the past, there were some cases wherein nag over-estimate, there were also cases nag-under estimate so what happens during the year LGUs, o why did LGU-A receive, what about LGU-B, bakit hindi? Why? The appro cover is already deflated because that appropriation is based on the certification submitted by the collecting agencies, now, but if it that alone tapos na dyan, no, we always set-up an amount for what we call prior years obligations so if it cannot be paid during the if immediate preceding year ang tax base eh then that amount will still be released in the following year we set it up.

Okay now, let's proceed now to the execution phase, so come execution phase, ahhh... ma'am ang yong data base natin as to the number of mining companies, the number of geothermal, the number of mini-hydro all of these I think this is the one item that has to be clarified or rather dapat yong data base natin talaga is updated, okay, now the next, during the budget execution phase here is now the point wherein the actual collections is being now submitted in a certification so that's becomes our basis for the release.

59:50

However considering that the tax base of the national web is only immediate preceding year what is done usually is the first quarter based on the actual collection and the last three (3) quarters are based on estimation or estimated collection. Still we entertain that and we no longer wait for it to be submitted to us annually, no more. Even if it is in local government code, Annually, NO! If it is already completed, na reconcile na, na its already here at the center, all that they need to do is to submit it to DBM. We also do not wait until the end of the year. If the documents are complete, fully authenticated, then we release it on a quarterly basis.

Our... Sir, this is what ..that what, is the currently practiced. We do not wait for the annual sophistication what is available and reconciled forward it to the DBM. So, that is also the procedure that

Is followed as far as the energy sources but the vouch of which we received is the mining taxes and we do it also for PENRO/CENRO only we tell because there were instances I think that was over 5 years ago PENRO and CENRO the provincial environment they used to spend to us, no, there has a point of consolidation because we want also the center, the central office of DENR to validate, so when we received individual certifications we return it to the center so that the

center can consolidate them and validate. This is the normal procedure and this is the process that is being followed.

Now we always, hmmm.... there are cases queries that we received queries and letters about the computation please coordinate with the authorized collecting agency. DBM does not complete. We are in the last line but if there are queries, that's why we advise the LGUs to coordinate, there are there in the regions to coordinate closely with the regional district revenue offices in the region before coming here because at this stage they can get the information when where do the reports from the regions elevated to the center. So ladies and gentlemen that is the procedure and process.

Chair: Thank you Ma'am.

Speaker: Thank you, Madame Chair.

BIR PRESENTATION

Asec. Habitan: Ok so next is the presentation of BIR. And we have Comm. Misajon with us. Thank you.

Asst. Comm. Misajon: Good morning ladies and gentlemen, I have a very short presentation to make and this will only validate what Dir. Delantar said a while ago. Start. Now this refers to the LGU share on the excise tax collections from mineral, mineral products and quarry resources. There are two entities that are very important here, the large taxpayer service and the revenue district offices.

The large taxpayer service monitors the collection of the excise taxes from the large scale mining companies, whereas the revenue district offices monitors collections from the small scale mining taxpayers. Usually in the large taxpayer service we only caters to the payment of the large taxpayers through the accredited agent banks, whereas the revenue district offices of the BIR, this numbers is around 116 so far, the payments are coursed through the accredited agent bank or if there are no accredited agent bank in the certain municipalities, they are collected through or manually through the RORs or the revenue official receipt.

Now, these two entities reports collections to the revenue accounting division of the Bureau of Internal Revenue scheme. In the revenue district office there are still activities that are being performed for the audit of this RORs because this is the most vulnerable types of collection because this are manually collected so usually audit our collection based on this at the list of the deposited collections with the banks with corresponding deposit slips which are being done or deposited with the government banks like the Land bank, PNB or DBP.

Now, in the revenue accounting division, the administrative unit of that division to receive schedules and certification for regular stock service maybe RDOs and then allotment unit is the very critical unit of the revenue accounting division because it is here where the chair of the local government units are being computed. The allotment unit of the RAD or the Revenue Accounting division verifies still the payments that are made through the integrated bank system for payments made through accredited agent banks, and the list of deposit collections and deposit slips for payment made through the revenue official receipts and finally, tinitignan din namin kung magkano yung nacredit dun sa Bureau of Treasury through there Journal Entry Voucher.

And then of course, if there are discrepancies we prepare letters to the Revenue District Officers or the Regional Finance Division of those revenue district offices to explain if ever there are discrepancies and the submit supporting documents for it. It is unit also that we prepare the joint certification for the 40% share of the LGUs which is based on the DOF, DBM, DILG, DENR Joint Circular No. 2009-1 dated March 31, 2009 from the Mining or Excise Tax Collections. And after this Joint Certification is forwarded to the Bureau of Treasury for further verification or validation and for approval purposes. The BTR upon receipt of the Joint Certification confirms or approves the Joint Certification of the Tax Remittances and ultimately this forwarded to the DBM which receives the Joint Certification. Next. Here's the share of the various LGUs for this mining taxes. The legal basis of course as what was stated was Article 290 of Republic Act No. 7160, the Joint Circular, and of course the Revenue Memorandum Order No. 75-2010 which operationalizes the Joint Circular and the Republic Act. The computation is 40% of the total excise mining taxes collected. The beneficiary where are the natural resources are located at the provinces, the province receives 20%, the city or municipality receives 45% and the barangay 35%. Provided that the natural resources are located in two or more provinces, or in more component cities or municipalities, or in two or more barangays, their respective share shall be computed in the basis of population 70% or land area 30%. Next.

However, the case of highly urbanized or independent component cities, the city receives 65% whereas the barangays receives 35%. Provided further that if there are multiple location on the natural resources that were extracted, then the formula will be based on the population and land area. We have here the sample computation of how its derived assuming there is only one province, there is only one municipality, there is only one barangay.

"It's pretty cold here, so, maybe I'm getting old." Ok. Anyway. Assuming Company X the date of payment is a April 15, 2013, of course the busiest number is the internal document by the banks. The assuming the amount is P10,702,000.00, now 40% of that is P4,281,000.00. The province of Z which is 20% equivalent to P856,000.00, the municipality of A receives 45% which is P1,926,000.00 and barangay 1 receives 35% which is P1,498,000.00. This is the 20%, 45%, 35% which constitute 100% which is taken from the 40%. Okay. Next. Here's the sample computation for those collection arising from multiple multiple barangays. So we have the 40% share, share of the province, the share of municipality, the share of the barangay,

assuming there are six barangays that are involved. So this is the computation which is, next slide please, this is now the basis of the computation, the land area, the population and the relative share of each factor the land area and population which is 30% for land area and 70% based on population. So that's it, so it's ratio. Now I have some notes here that are worth mentioning in basis of two or more provinces or barangays.

1. If the breakdown of excise tax due as to barangay or municipality is identifies by the mining company based on the volumes and values extracted.

a. Certification from the mining company indicating there in the exact location of the mining/quarry/extraction site and breakdown of excise tax dues as to barangays and municipalities. This are clearly shown in the excise tax returns that are being submitted to us.

b. Memorandum of Agreement or the (MOA) on the sharing scheme, if any, between barangays or municipalities.

2. If the breakdown of excise tax due as to barangay or municipality is not identified, then the basis on the updated master list of the land area officially issued by the Land Management Bureau and updated census of population officially issued by the National Statistics Office.

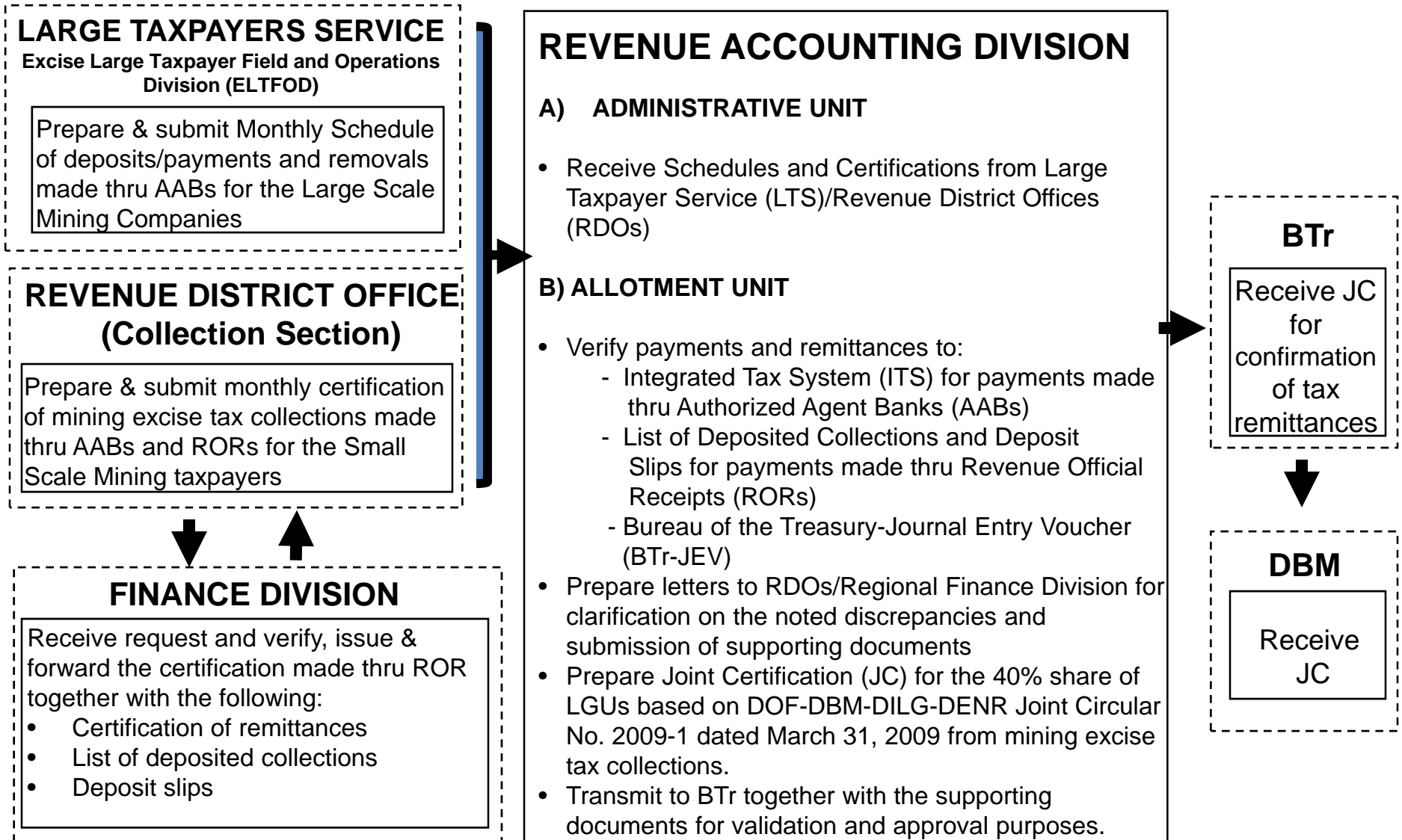
So more or less this are the activities or the methods in which the Bureau computes the relative share of the LGUs. So if there are questions...

Asec. Habitan: Questions. Thank you Asst. Comm. Misajon. (clap) Any questions from the MSG member?



Process Flow

LGUs SHARE ON EXCISE TAX COLLECTIONS FROM MINERALS, MINERAL PRODUCTS & QUARRY RESOURCES





philippines
pay taxes

SPECIAL SHARE	LEGAL BASES	DISTRIBUTION		
		COMPUTATION	BENEFICIARY	%
MINING TAXES	<p>Article 290 of Republic Act No. 7160</p> <p>DOF-DBM-DILG-DENR Joint Circular No. 2009-1 dated March 31, 2009</p> <p>Revenue Memorandum Order No. 75-2010</p>	40% of the total excise mining taxes collected	<p>a) Where the natural resources are located in the provinces:</p> <p>Provinces City/Municipality Barangay</p> <p>Provided that where the natural resources are located in two or more provinces, or in more component cities or municipalities or in 2 or more barangays, their respective shares shall be computed on the basis of:</p> <p>Population - 70% Land Area - 30%</p>	<p>20%</p> <p>45%</p> <p>35%</p>



i philippines
pay taxes

SPECIAL SHARE	LEGAL BASES	DISTRIBUTION		
		COMPUTATION	BENEFICIARY	%
MINING TAXES	<p>Article 290 of Republic Act No. 7160</p> <p>DOF-DBM-DILG-DENR Joint Circular No. 2009-1 dated March 31, 2009</p> <p>Revenue Memorandum Order No. 75-2010</p>	40% of the total excise mining taxes collected	<p>b) Where the natural resources are located in highly-urbanized or independent component city:</p> <p>City Barangay</p> <p>Provided that where the natural resources are located in such two or more cities, the allocation of shares shall be based on the formula on population and land area</p>	<p>65%</p> <p>35%</p>



Sample Computation

COLLECTION FROM MINING (EXCISE) TAXES
LT / Revenue District Office
2nd Quarter 2013

BRGY. GINTO'T PILAK, PAGHUHUKAY, PAGBABAHAGI

NAME OF TAXPAYER	DATE OF PAYMENT	BCS-A NO.		AMOUNT
Company X	04/15/13	A-56570	P	10,702,912.82
TOTAL			P	10,702,912.82

TOTAL GROSS COLLECTION		P <u>10,702,912.82</u>
40% SHARE OF LGUS		<u>4,281,165.13</u>
PROVINCE OF Z	20%	856,233.03
MUNICIPALITY OF A	45%	1,926,524.31
BARANGAY 1	35%	<u>1,498,407.79</u>
		P <u>4,281,165.13</u>



Sample Computation

COLLECTION FROM MINING (EXCISE) TAXES
 LT / Revenue District Office
 2nd Quarter 2013

PAGHUHUKAY, PAGBABAHAGI

NAME OF TAXPAYER	DATE OF PAYMENT	BCS-A NO.		AMOUNT
Company A	04/15/13	A-56570	P	10,702,912.82
TOTAL			P	10,702,912.82

TOTAL GROSS COLLECTION		P	<u>10,702,912.82</u>
40% SHARE OF LGUS			<u>4,281,165.13</u>
PROVINCE OF Z	20%		856,233.03
MUNICIPALITY OF A	45%		1,926,524.31
BARANGAY*	35%		<u>1,498,407.79</u>
		P	<u>4,281,165.13</u>

DISTRIBUTION:

1	375,216.66
2	173,859.11
3	349,305.41
4	225,623.43
5	209,591.72
6	164,811.46
	<u>1,498,407.79</u>



Sample Computation

*SHARE OF BARANGAYS

1,498,407.79

BARANGAY	LAND AREA	POPULATION	30% SHARE BASED ON LAND AREA	70% SHARE BASED ON POPULATION	TOTAL SHARE
TOTAL	5005.9445	20679	449,522.34	1,048,885.45	1,498,407.79
1	464.0111	6576	41,667.13	333,549.53	375,216.66
2	41.0473	3355	3,685.95	170,173.16	173,859.11
3	1641.246	3981	147,380.13	201,925.28	349,305.41
4	1299.8411	2147	116,722.75	108,900.68	225,623.43
5	874.4702	2584	78,525.42	131,066.30	209,591.72
6	685.3288	2036	61,540.96	103,270.50	164,811.46



Provided that where the natural resources are located in two or more provinces, or in more component cities or municipalities or in two or more barangays:

1. If the breakdown of excise tax due as to barangay or municipality is identified by the mining company based on the volumes and values extracted:
 - a. Certification from the mining company indicating therein the exact location of the mining/quarry/extraction site and breakdown of excise tax dues as to barangays and municipalities.
 - b. Memorandum of Agreement (MOA) on the sharing scheme, if any, between the barangays or municipalities.
2. If the breakdown of excise tax due as to barangay or municipality is not identified:
 - a. Updated Masterlist of Land Area officially issued by the Land Management Bureau (LMB); and
 - b. Updated Census of Population officially issued by the National Statistics Office (NSO).