



Republic of the Philippines
DEPARTMENT OF FINANCE

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DOF OPINION NO. 012-2022-A

HON. ROMEO D. LUMAGUI, JR.

Commissioner

Bureau of Internal Revenue
BIR National Office Building, BIR Road,
Diliman, Quezon City

**SUBJECT: RESOLUTION TO MOTION FOR RECONSIDERATION OF
DEPARTMENT OF FINANCE (DOF) OPINION NO. 012-2022**

Dear **Commissioner Lumagui, Jr.:**

This resolves the Motion for Reconsideration filed before this Office requesting that DOF Opinion No. 012-2022¹ issued in favor of Rolex Centre Phil Limited (Rolex) be reversed and set aside, and another opinion be issued confirming the original BIR Ruling No. M-208-2021.²

At the outset, this Office notes that pursuant to Section 5 of DOF Department Order No. 007-02, the reversal or modification of the Commissioner of Internal Revenue's ruling shall terminate its effectivity upon the earlier date of the receipt of written notice of such reversal by the taxpayer or by the BIR. That sound fiscal policy dictates that the Secretary of Finance's (SOF) decision is final and binding upon the Bureau.

This Office notes the Bureau's request to once again consider its position that the 2nd item of Section 150(a) of the NIRC³ can be any goods and does not necessarily have to be considered "jewelry" before it can be subjected to an excise tax as long as it is "made of, or ornamented with precious stones/metals". On the other hand, this Department in DOF Opinion No. 012-2022 looked at the

¹ Issued on 29 June 2022, which ruled in substance that goods subject to excise tax under Section 150(a) of the National Internal Revenue Code (NIRC) covers only non-essential goods such as jewelry, hence, watches and clocks are excluded from its application.

² Dated 02 December 2021, which subjected Rolex's importation of wristwatches made of precious stones/metals to excise tax under Section 150(a) of the NIRC.

³ goods made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical and dental instruments, silver-plated wares, frames or mountings for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting the teeth).

whole paragraph as referring to all articles commonly or commercially known as jewelry as thoroughly described therein including opera glasses and lorgnettes which are jewelries themselves. In concluding that wristwatches and clocks are not jewelries despite being made of or ornamented with precious stones/metals, the SOF relied on the legislative history of Section 150(a) of the NIRC – a section devoted for imposition of excise tax on Jewelry, Automobile, Perfumes and others.

The imposition of percentage tax on watches and clocks was removed by Presidential Decree No. 1994.⁴ Subsequent laws/issuances⁵ amending the provisions of NIRC did not include wristwatches and clocks in its coverage for purposes of imposing excise tax on non-essential goods under Section 150 of the NIRC. Thus, it was explained that following the rules on statutory construction,⁶ the inclusion of watches and clocks could not have been contemplated on articles considered as non-essential goods because where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.⁷

Furthermore, the SOF opined that it is the function of the object that principally determines whether it is non-essential or semi-essential. For this reason, since watches and clocks allow the wearer to keep track of time, the same are considered semi-essential, while jewelry solely used for personal adornment is classified as non-essential.

Taking into consideration the arguments above, this Office finds the SOF's position in DOF Opinion No. 012-2022 more in accord with historical rules in the imposition of applicable taxes under Section 150(a). Indeed, the exclusion of watches and clocks from the coverage of Section 150(a) of the NIRC is anchored not only on the fact that legislative history treated these articles as semi-essential goods but also that goods subject to the 20% excise tax are confined

⁴ Took effect on 01 January 1986, effectively repealed Section 197 of the NIRC and discontinued the imposition of percentage tax on certain semi-essential articles, including watches and clocks.

⁵ Such as: (a) Executive Order (EO) No. 36 dated 30 July 1986, expanding the coverage of non-essential goods subject to 30% percentage tax; and (b) EO No. 273 dated 25 July 1987, subjecting non-essential goods to an excise tax of 20%, trimming down its coverage into jewelry, perfumes and toilet waters, and yachts and other vessels intended for pleasure or sports, and renumbering Section 163 of the NIRC to what we have now as Section 150.

⁶ "*Expressio unius est exclusion alterius*" – the express mention of one person, thing, act, or consequence excludes all others.


⁷ *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, March 13, 2018.

to all articles commonly or commercially known as jewelry as thoroughly described therein. Thus, we find no reason to reverse and set aside DOF Opinion No. 012-2022.

In view of the foregoing, this Office resolves to deny the Motion for Reconsideration filed before this Department and accordingly directs the BIR to accord full respect to DOF Opinion No. 012-2022 issued in favor of Rolex.

Thank you.

Very truly yours,


BENJAMIN E. DIOKNO

Secretary of Finance

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 **DEPARTMENT OF FINANCE**
Republic of the Philippines



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