



Republic of the Philippines  
**DEPARTMENT OF FINANCE**  
Roxas Boulevard Corner Pablo Ocampo, Sr. Street  
Manila 1004

DOF OPINION NO. 012.2022

**ATTY. ALONZO Q. ANCHETA**  
**A.Q. ANCHETA & PARTNERS**  
Suites 1008-1010 Paragon Plaza  
162 EDSA cor. Reliance St.,  
Mandaluyong City 1550

**SUBJECT: Request for Review of Bureau of Internal Revenue Ruling  
No. M-208-2021 dated 02 December 2021**

Dear **Atty. Ancheta**:

This refers to the subject letter dated 03 January 2022 ("Request for Review"), which you filed with this Department requesting the review of Bureau of Internal Revenue ("BIR") Ruling No. M-208-2021 dated 02 December 2021, which ruled that Rolex wristwatches are subject to excise tax under Section 150(a) of the Tax Code.

**BACKGROUND**

Rolex is a corporation duly organized and existing under the laws of Hong Kong. It has a branch office in the Philippines under Securities and Exchange Commission ("SEC") license no. AF096-019 issued on 18 February 1996. Rolex is engaged in the importing, wholesaling, servicing, and repairing of Rolex wristwatches.

On 07 November 2019, Rolex, through counsel, filed with the BIR, a request for BIR interpretation/confirmatory ruling that wristwatches made of precious metals are not included in the coverage of Section 150(a) of the National Internal Revenue Code of 1997, as amended ("Tax Code"). As such, Rolex argued that the wristwatches it imported for sale in the Philippines are not subject to excise tax at 20%.

On 20 December 2021, Rolex received from the Commissioner of Internal Revenue (CIR) BIR Ruling No. M-208-2021 dated 02 December 2021 ruling

that wristwatches made of precious metals are subject to excise tax under the 2nd paragraph of Section 150(a):

“It is in fact the Bureau’s position that Section 150(a) should be taken as a whole. Thus, the 2nd item of Section 150(a), even though preceded by a semicolon, does not have to be the same subject matter of that which precedes it. It is clear that the 2nd item does not have to be considered jewelry, because the 3rd item or “opera glasses and lorgnettes” is also not considered jewelry. Obviously, the items in Section 150(a) were placed under such subsection to logically separate them from perfumes and yachts and other vessels.

xxx

Based on the foregoing, a wrist watch (considered as “goods”) made of precious metals, is subject to excise tax under Section 150(a) of the Tax Code.”

The Commissioner concluded that the three (3) phrases therein are separate enumerations of taxable items subject to excise tax at 20%. He opined that since the 3<sup>rd</sup> phrase which pertains to “opera glasses and lorgnettes” are not considered jewelry, only the first phrase of Section 150(a) pertains to jewelry. In fine, the 2<sup>nd</sup> phrase which pertains to ‘goods made of, ornamented, mounted or fitted with precious metals or ivory, can cover the wristwatches imported for sale by Rolex in the Philippines.

Rolex appealed the BIR ruling to the Secretary of Finance arguing that, following the rule on statutory construction, the phrase “goods made of, ornamented, mounted or fitted with, precious metals or imitations thereof or ivory...” should not be considered as a separate taxable item apart from the matter that precedes it. Hence, the said phrase is a mere extension or further explains the concept of “All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof”.

Rolex further contends that the excise tax at 20% may not be imposed on the wristwatches they imported on the basis that there appears a doubt on whether Section 150(a) covers the same.



## DISCUSSION

***The subject Request for Review was filed within the prescribed reglementary period.***

We examined the subject Request for Review's compliance with the implementing rules on the exercise of the power of review by the Secretary of Finance under the first paragraph of Section 4 of the NIRC, as amended.

Pursuant to Section 3 of DOF Department Order No. 007-02, a taxpayer who receives an adverse ruling from the CIR may, within thirty (30) days from the date of receipt of such ruling, seek its review by the Secretary of Finance. The request for review should be in writing and under oath. The Secretary of Finance may dismiss with prejudice a request for review that fails to comply with the requirements.

On 20 December 2021, a copy of BIR Ruling No. M-208-2021 dated 02 December 2021 was received by A.Q. Ancheta & Partners on behalf of Rolex giving the Company until 19 January 2022 to file a request for review as prescribed in DOF Department Order (DO) No. 007-02<sup>1</sup>. On 13 January 2022, Rolex, through counsel, submitted its Request for Review with the DOF but it failed to attach the required authenticated and certified duplicate copy of the records on file with the BIR pertaining to the subject request under DO No. 007-02. Nevertheless, this Department sent a letter dated 19 January 2022 informing Rolex to submit the required records on file with the BIR relative to its Request for Review within 15 days from receipt of the letter.

On 25 January 2022, Rolex, through counsel, submitted the required certified duplicate copy of the records on file with the BIR or within the 15-day period. The subject Request for Ruling was given due consideration accordingly.

### ***Legislative History of Section 150(a) of the Tax Code***

At the outset, this Department disagrees with the Commissioner's ruling. A closer look at the legislative history of this provision shows that subparagraph (a) had in fact covered non-essential goods such as jewelry, automobiles, toilet preparations and others. On the other hand, watches and

---

<sup>1</sup>Dated 07 May 2002



clocks were classified and taxed separately from jewelry and other non-essential articles or goods in earlier legislation until the imposition of percentage tax thereon (on watches and clocks) was removed by Presidential Decree No. 1994 in 1985.

In the case of Commissioner of Internal Revenue v. SM Prime Holdings, Inc., et al<sup>2</sup>, the importance of legislative history was underscored in determining the proper interpretation of a tax provision, to wit:

When the intent of the law is not apparent as worded, or when the application of the law would lead to absurdity or injustice, legislative history is all important.

In the aforementioned Court case, the Supreme Court looked at the legislative history of Section 108 of the Tax Code to determine whether exhibition of motion pictures or films are subject to value-added tax (VAT) given that the enumeration of those considered “sale or exchange of services” are not exhaustive.

We proceed to discuss below how the imposition of percentage taxes on jewelry and watches/clocks evolved, from the 1939 Tax Code up to the 1997 Tax Code, as amended.

This Department notes that Section 184 of Commonwealth Act (CA) No. 466, otherwise known as the “National Internal Revenue Code” dated June 15, 1939, had the heading, “Jewelry, Automobiles, Toilet Preparations, and Others” as subject to **10%** percentage tax, and then provided a listing of items under said general classification, to wit:

**SECTION 184.** Percentage Tax on Sales of **Jewelry, Automobiles, Toilet Preparations, and Others.** – There is levied, assessed and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to **ten per centum** of the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer, or importer: Provided, That where

---

<sup>2</sup>G.R. No. 183505, 26 February 2010





the articles are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: And provided, further, That where the articles herein mentioned are consigned abroad by the manufacturer or producer thereof, the shipment shall be subject to the tax established in section 187 and not to the tax imposed by this section:

- (a) All articles commonly or commercially known as **jewelry**, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical instruments or silver-plated ware, or frames or mountings for spectacles or eyeglasses); opera glasses; and lorgnettes.
- (b) **Automobile** chassis and bodies, the selling price of which exceeds two thousand five hundred pesos each. A sale of automobile shall, for the purposes of this section, be considered to be a sale of the chassis and of the body together with parts and accessories of which the same are usually equipped,.
- (c) **Perfumes, essences, extracts, toilet matters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, and any similar substance, article, or preparation**, by whatsoever name known or distinguished, except tooth and mouth washes, dentifrices, tooth paste, and talcum or medicated toilet powders; and any of the above which are used or applied or intended to be used or applied for toilet purposes: Provided, That the tax herein imposed shall not apply to toilet preparation on which the specific tax established in section 127 has been paid.



In the same law, watches and clocks were subject to a lower **5%** percentage tax under Section 185 thereof, to wit:

**SECTION 185. Percentage Tax on Sales of Automobiles, Sporting Goods, Refrigerators, Musical Instruments, and Others.** – There is levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles herein below enumerated, a tax equivalent to **five per centum** of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer, producer, or importer: Provided, That where the articles are manufactured out of materials subject to tax under this section and section 186 the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of the manufactured articles: And provided, further, That where the articles herein mentioned are consigned abroad by the manufacturer or producer thereof, the shipment shall be subject to the tax established in section 187 and not to the tax imposed by this section:

(a) xxx

(b) **Watches** and **clocks**, the value of which exceeds twenty pesos each, marine glasses, field glasses, binoculars, cameras, camera lenses, and cinematographic films of not more than sixteen millimeters in width;

xxx xxx."

In Republic Act No. 6110 dated August 4, 1969 – (An Act Amending Certain Provisions of the National Internal Revenue Code, as amended), the percentage tax rates were increased to **70%** and **40%** for Sections 184 and 185, respectively, but notably retained the heading "Jewelry, Automobiles, Toilet Preparations and Others" while also providing subparagraphs thereunder to describe particular goods or articles in support of the general classification subject to percentage tax, thus:



**Section 30.** Section one hundred and eighty-four of the same Act is hereby amended to read as follows:

"Sec. 184. Percentage tax on sales of jewelry, automobiles, toilet preparations and others. There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable considerations intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to **seventy per centum** of the gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer or producer: *Provided*, That where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles."

- "(a) Automobile chassis and bodies, the selling price of which does not exceed ten thousand pesos shall be taxed at the rate of one hundred per centum of such selling price: xxx  
xxx.
- "(b) All articles commonly or commercially known as jewelry, whether real or imitation; pearls, precious and semi-precious stones, and imitations thereof; articles made of, or ornamented, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical 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 of the teeth); opera glasses, and lorgnettes. The term "precious metals" shall include platinum, gold, silver, and other metals of similar or greater value. The term "imitations thereof" shall include platings and alloys of such metals.
- "(c) Perfumes, essences, extracts, toilet waters, cosmetics, petroleum jellies, hair oils, pomades, hair dressings, hair restoratives, hair dyes, aromatic cachous, toilet powders,



and any similar substance, article, or preparations by whatsoever name known or distinguished; xxx xxx.

**Section 31.** Section one hundred and eighty-five of the same Act is hereby amended to read as follows:

"Sec. 185. Percentage tax on sales of sporting goods, and others. There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction intended to transfer ownership of, or title to, the articles hereinbelow enumerated, a tax equivalent to **forty per centum** of the gross selling price or gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer: *Provided*, That where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deductible from the gross selling price or gross value in money of such manufactured articles.

- "(a) Luggage, trunks, valises, traveling bags, suitcases, satchels, overnight bags, hat boxes for use of travelers, beach bags, bathing suit bags, brief cases made of leather or imitation leather, and salesman's sample and display cases; purses, handbags, pocketbooks, wallets, billfolds, and card, pass, and key cases; toilet cases and other cases, bags and kits (without regard to size, shape, construction, or material from which made) for use in carrying toilet article or articles of wearing apparel;
- "(b) Watches and clocks and cases and movements therefor;
- "(c) Fishing rods and reels;

xxx xxx."

Under this latest amendment to Sections 184 and 185 of the Tax Code, a request for a BIR ruling was filed to clarify the correct rate of advance sales



tax applicable on the importation of steel and gold watches. The clarification was sought in view of the position taken by the Bureau of Customs at the Manila International Airport that gold watches are subject to the 70% tax imposed in Section 184(b) of the Tax Code. In this unnumbered BIR Ruling dated 22 November 1971 issued to New Geneva Enterprises, the BIR ruled:

'In reply, I have the honor to inform you that under Section 185(b) of the Tax Code, watches and clocks are subject to the 40% tax therein imposed. Such being the case, the Rolex watches imported by you which are made of stainless steel are subject to the 40% advance sales tax, based on the landed cost thereof, plus 50% mark-up, pursuant to Section 183(b) in relation to Section 185(b), both of the Tax Code. Moreover, it appearing in the invoice that the gold watch imported by you are not the expensive or luxury type, they are also subject to the 40% tax prescribed in Section 185(b) of the Tax Code. (BIR Ruling dated September 22, 1954)'

The subsequent amendment to Section 184 by Presidential Decree No. 69 dated November 24, 1972, created a subparagraph 184-A for automobiles but retained unamended Section 184 covering jewelry, toilet preparation and others, thus:

Sec. 184. Percentage tax on sales of jewelry, toilet preparation and others. There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to **seventy per centum** of the gross value in money of the articles so sold, bartered, exchanged, transferred, such tax to be paid by the manufacturer or producer; Provided, further, That, where the articles enumerated hereinbelow are manufactured out of materials subject to tax under this section, the total cost of such materials, as duly established, shall be deducted from the gross selling price or gross value in money of such manufactured articles:

- (a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls,



precious and semi-precious stones, and imitations thereof; articles made of, or enumerated, mounted or fitted with, precious metals or imitations thereof or ivory (not including surgical 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 of the teeth); opera glasses, and lorgnettes. The term "precious metals" shall include platinum, gold, silver, and other metals of similar or greater value. The term "imitations thereof" shall include platings and alloys of such metals.

xxx xxx."

There was also no amendment made to Section 185 covering the imposition of percentage tax on sales of sporting goods and others (including watches and clocks).

Subsequently, Presidential Decree (PD) No. 1158-A dated June 3, 1977 entitled "Amending Certain Sections of the National Internal Revenue Code of 1939 for Incorporation in the Consolidation and Codification of All Existing Revenue Laws under Presidential Decree No. 1158", amended Section 183, thus:

Section 12. Section 183 of the National Internal Revenue Code is hereby amended by adding a new paragraph (c) to read as follows:

"(c) Flexibility clause. In the interest of the national economy and the general welfare, and subject to the limitations herein prescribed, the President upon recommendation of the Secretary of Finance and the National Economic Development Authority is hereby empowered to revise the rates of percentage taxes, including any necessary change in the classification of the articles enumerated in sections 194, 195, 196, 197, 198, 199 and 201. The existing rates may be





increased by not more than 50% or decreased by not more than 10%.

xxx xxx."

Presidential Decree (PD) No. 1358 dated April 21, 1978 further amended Section V of the National Internal Revenue Code of 1977 and reflected the percentage taxes imposed earlier under Sections 183, 184 and 185 as Sections 193, 194 and 197, respectively, to wit:

Section 1. Certain sections of Title V of the National Internal Revenue Code as amended, are hereby further amended to read as follows:

**"Sec. 193. Payment of percentage taxes. (a) xxx."**

(c) Flexibility Clause. In the interest of the national economy and general welfare, and subject to the limitations herein prescribed, the President, upon recommendation of the Secretary of Finance and the National Economic and Development Authority, is hereby empowered to:

- a. Revise the rates of percentage taxes;
- b. Change the classification of the articles enumerated in Sections 194, 195, 196, 197, 198, 199 and 201; and
- c. Revise the taxable base levels in Sections 195 and 197.

The existing rates may be increased by not more than 50% or decreased by not more than 10%. The existing price levels may be increased or decreased by not more than 50%.

xxx xxx."

**Sec. 194. Percentage tax on sales of non-essential articles.**

There shall be levied, assessed and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated a tax equivalent to **fifty per centum** of the gross value in money of the articles so sold, bartered, exchanged or



transferred, such tax, to be paid by the manufacturer or producer:

- "(a) all articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; articles 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 mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metals used in filling, mounting or fitting of the teeth); opera glasses, and lorgnettes. The term "precious metals" shall include platinum, gold, silver, and other metals of similar or greater value. The term "imitation thereof" shall include plating and alloys of such metals.
- "(b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, except tooth and mouth washes, dentrifices, tooth paste, talcum and medicated toilet powders, hair oils and pomades.
- "(c) Dice, mahjong sets and playing cards.
- "(d) Juke boxes.
- "(e) Similar or analogous articles, substances or preparations to those enumerated above as determined by the Secretary of Finance upon the recommendation of the Commissioner of Internal Revenue based on the inherent essentiality of the product.

xxx xxx."

**Sec. 197. Percentage tax on sales of certain semi-essential articles.** There shall be levied, assessed, and collected once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles hereinbelow enumerated, a percentage tax to be paid by the manufacturer



or producer determined in accordance with the following schedules:

I. Locally Manufactured

A. Fountain pens and ball pens:

xxx

C. **Watches, clocks**, cases and movements therefore:

If the gross selling price does not exceed P200, the tax shall be 10% of such selling price; if it exceeds P200 but does not exceed P300, the tax shall be P20 plus 15% of the excess over P200;

If it exceeds P300 but does not exceed P400, the tax shall be P35 plus 20% of the excess over P300;

If it exceeds P400, the tax shall be P55 plus 25% of the excess over P400.

In the above amendment, Section 194 no longer carried the heading "Jewelry, Toilet Preparations and Others" in general, but rather provided the headings which describe their respective general classifications. The imposition of **percentage taxes** by classifying non-essential items (jewelry, etc.) and semi-essential items (watches and clocks) that are subject to percentage taxes was introduced.

Presidential Decree No. 1994 dated November 5, 1985 renumbered Section 194 as Section 163, thus:

**Section 23.** Section 194 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:

"Sec. 163. Percentage tax on sale of **non-essential articles**. - There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer ownership of, or title to, the articles herein below enumerated



a tax equivalent to **50%** of the gross value in money of the articles so sold, bartered, exchanged or transferred, such tax to be paid by the manufacturer or producer:

"(a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones, and imitations thereof; articles 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 mounting for spectacles or eyeglasses, and dental gold or gold alloys and other precious metal used in filling, mounting or fitting of the teeth); opera glasses, and lorgnettes. The term "precious metals" shall include platinum, gold, silver, and other metals of similar or greater value. The term "imitations thereof" shall include plantings and alloys of such metals.

xxx xxx."

Please note, however, that PD No. 1994 repealed Section 197 and discontinued the imposition of the percentage tax on certain semi-essential items, including watches and clocks.

In 1986, then President Corazon C. Aquino issued Executive Order (EO) No. 36 dated July 30, 1986 and EO No. 273 dated July 25, 1987, further amending the National Internal Revenue Code of 1977.

EO No. 36 expanded the coverage of non-essential articles subject to percentage tax, as follows:

SECTION 2. Section 163 of the National Internal Revenue Code, as amended, is hereby further amended to read as follows:

"Section. 163. **Percentage tax on original sales of articles.** – There shall be levied, assessed and collected, once only on every original sale, barter, exchange, or similar transaction for nominal or valuable consideration intended to transfer



ownership of, or title to, the articles herein below enumerated a tax based on the gross selling price or gross value in money of the articles so sold, bartered, exchanged, or transferred, such tax to be paid by the manufacturer, producer or importer:

(1) Thirty per cent (30%), on the following non-essential articles:

- (a) All articles commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; articles 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 metal used in filling, mounting or fitting of the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The term 'imitations thereof' shall include platings and alloys of such metals.*
- (b) Perfumes, essences, extracts, toilet waters, cosmetics, hair dressings, hair dyes, hair restoratives, aromatic cachous, toilet powders, (except tooth and mouth washes, dentifrice, talcum and medicated toilet powders, hair oils and pomades).*
- (c) Dice, mahjong sets and playing cards.*
- (d) Jukeboxes.*
- (e) Automobiles (except motor vehicles classified as trucks, jeeps and utility vehicles). A sale of an automobile shall, for purposes of this section, be considered as a sale of the chassis and of the body, together with parts and accessories with which the same is usually equipped, including the other parts and accessories permanently attached thereto at the time of the original sale.*
- (f) Parts and accessories of automobiles which are primarily for ornamentation or embellishment.*



- (g) *Yachts and other vessels intended for pleasure or sports.*
- (h) Harpsichords, accordions, pianos and electric or electronic musical organs.
- (i) Firearms and cartridges or other forms of ammunition.
- (j) Household-type electric vacuum cleaners or polishers.
- (k) Washing machines, clothes dryers and combination washing machine and clothes dryers of all types.
- (l) Textiles wholly or in chief value of silk, wool, or linen; nylon or other synthetic and/or chemical fabrics not intended for clothing; wool and silk hats; and furs and manufactures thereof.
- (m) Electricity and/or battery operated beauty equipment and accessories.
- (n) Electricity and/or battery operated toys.
- (o) Television sets, phonographs or gramophones, combination radio-phonograph sets, tape recorders, video tape recorders, tape decks, car stereos, cassette radios, and similar articles for reproducing and/or recording music, sound and images and any combination thereof.
- (p) Air-conditioning units
- (q) Similar or analogous articles, substances or preparations to those enumerated above as determined by the Commissioner of Internal Revenue based on the essentiality of the articles.

Any material, part or accessory of the abovementioned articles shall be taxed under this section.

Notably, the expanded enumeration of non-essential goods in EO No. 36 did not include watches and clocks.

Moreover, under the amendments introduced to Section 163 of the Tax Code in EO No. 273, the **non-essential items** were subject to an **excise tax of 20%**. Not all articles in Section 163 of EO 36, however, were included in the list when this section was renumbered to Section 150. Only those covered under





subparagraphs for (a) jewelry, (b) perfumes and toilet waters and (g) yachts, and other vessels intended for pleasure or sports, were retained therein:

Sec. 16. Paragraphs (1) (a), (b) and (g) of Section 163 of the National Internal Revenue Code are hereby renumbered and amended to read as follows:

SEC. 150. **Non-essential goods.** – There shall be levied, assessed and collected a tax equivalent to **20%** based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties; net of excise tax and value-added tax, of the following goods:

- "(a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; 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 of the teeth); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver, and other metals of similar or greater value. The terms 'imitations thereof' shall include platings and alloys of such metals;
- "(b) Perfumes and toilet waters;
- "(c) Yachts and other vessels intended for pleasure or sports.

xxx xxx."

RA 8424, December 11, 1997 – An Act Amending the National Internal Revenue Code, as Amended, and for Other Purposes (1997 Tax Code, as Amended) retained the imposition of excise tax at 20% on non-essential goods, as follows:



**Section 150. Non-essential Goods.** - There shall be levied, assessed and collected a tax equivalent to twenty-percent (20%) based on the wholesale price or the value of importation used by the Bureau of Customs in determining tariff and customs duties, net of excise tax and value-added tax, of the following goods:

- (a) All goods commonly or commercially known as jewelry, whether real or imitation, pearls, precious and semi-precious stones and imitations thereof; 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); opera glasses and lorgnettes. The term 'precious metals' shall include platinum, gold, silver and other metals of similar or greater value. The term 'imitations thereof' shall include platings and alloys of such metals;
- (b) Perfumes and toilet waters;
- (c) Yachts and other vessels intended for pleasure or sports.

As you may note, all that is left in the current provisions is an **excise tax** on Non-essential goods. We further note that the same provision was adopted in Republic Act (RA) No. 8502, otherwise known as the Jewelry Industry Development Act of 1998 dated February 13, 1998, to provide excise tax exemption incentives to qualified jewelry enterprises (QJEs) on jewelry mentioned in Section 150(a) of the 1997 Tax Code, as amended, thus:

**Section 3. Development incentives.** – The following incentives shall be available to qualified jewelry enterprises in the jewelry industry:

- a) xxx
- b) Exemption from the imposition of excise tax on all goods commonly or commercially known as jewelry, whether real or imitation pearls, precious and semi-precious stones and imitations thereof; all goods made of, or ornamented, mounted or fitted with



precious metals or imitations thereof, as specifically mentioned in Sec. 150(a) of the National Internal Revenue Code of the Philippines, as amended;

***Wristwatches and clocks are not considered non-essential goods under Section 150(a)***

A perusal of how the Tax Code defined non-essential goods was by providing an enumeration of goods deemed falling within its category or classification. For instance, in Section 194 of PD 1358 dated April 21, 1978, when the classification **non-essential goods** was first introduced, the said provision enumerated jewelry, automobiles, toilet preparations and others, as those subject to percentage tax. It appears that wristwatches and clocks were not at all considered in the Sections for Jewelry, Automobile, Perfumes and Others. In fact, when the imposition of percentage taxes on Section 197 (wristwatches and clocks) was discontinued in PD 1994, the subsequent law amending Section 194 (into Section 163) which was EO No. 36, also did not include wristwatches and clocks in the expanded coverage of non-essential goods subject to percentage tax. Thus, it is clear that when Section 163 (renumbered as Section 150) of EO No. 273 was carried forward as Section 150 of the 1997 Tax Code for the purposes of imposing excise tax at 20%, the enumeration therein did not contemplate the inclusion of wristwatches and clocks.

Moreover, the mere fact that the tax on semi-essential goods such as watches was repealed does not automatically mean that those goods classified therein would change characterization from semi-essential to non-essential. This Department believes that it is the function of the object that principally determines whether it is non-essential or semi-essential. Further, it should be noted that the price or value of the items do not necessarily dictate whether certain goods are non-essential or semi-essential. In fact, Section 150(a) specifically subjects to excise tax even imitation jewelry precisely because they are non-essential. The same is true for opera glasses and lorgnettes. A watch is a semi-essential device which allows the wearer to keep track of time. Jewelry, on the other hand, is solely for personal adornment and, thus, is classified as non-essential.

In view of the foregoing, this Department reverses the Commissioner's ruling subjecting wristwatches made of precious metals to excise tax at 20% under Section 150(a) of the Tax Code.



In view of the foregoing, this Office grants the request for review. The Commissioner's ruling is reversed accordingly. This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

Thank you.

Very truly yours,

  
**CARLOS G. DOMINGUEZ**  
Secretary of Finance

JUN 29 2022



**CC Hon. Caesar R. Dulay**  
Commissioner  
Bureau of Internal Revenue  
BIR National Office Building  
BIR Road, Diliman, Quezon City



**DEPARTMENT OF FINANCE**  
Republic of the Philippines

