Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

SEC-OGC Opinion No. 13-07
30 July 2013
Re: Retail Trade

Atty. Rosario S. Bernaldo
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Dear Madam;

This refers to your letter of 18 April 2013 requesting for confirmation that the sales of door control, automatic and revolving door, glass fittings and systems, room dividing systems, etc. to a real estate developer do not constitute retail trade/business pursuant to Section 4(c) of Republic Act No. 1180, as amended by Presidential Decree No. 714, otherwise known as the "Retail Trade Nationalization Law" (RTNL)[1]. The said provision excludes the sale of a manufacturer to industrial and commercial users or consumers who utilize the products purchased to render service to the general public and/or to produce or manufacture goods for sale in the purview of "retail business."

Please be informed that the RTNL has already been repealed by Republic Act No. 8762 or the "Retail Trade Liberalization Act of 2000" (RTLA) as of 25 March 2000.

Section 3(1) of the RTLA provides for the definition of "retail trade" which, though mirroring that of "retail business" in the RTNL, provides for a new enumeration of exceptions, to wit:

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[1] Section 4. As used in this Act, the term 'retail business' shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:

> (a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed, or produced by him if his capital does not exceed five thousand pesos.
>
> (b) a farmer or agriculturist selling the product of his farm.
>
> **(c) a manufacturer or processor selling to the industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or to produce or manufacture goods which are in turn sold to them.** (emphasis ours.)
>
> (d) a hotel-owner or keeper operating a restaurant irrespective of the amount of capital, provided that the restaurant is necessarily included in, or incidental to, the hotel business.

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"Sec. 3. *Definition.* - As used in this Act:

(1) *"Retail Trade"* shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but the restriction of this law shall not apply to the following:

(a) Sales by a manufacturer, processor, laborer, or worker, to the general public the products manufactured, processed or produced by him if his capital does not exceed One Hundred Thousand Pesos (P100,000.00);

(b) Sales by a farmer or agriculturist selling the products of his farm;

(c) Sales in restaurant operations by a hotel owner or inn-keeper irrespective of the amount of capital: *Provided,* that the restaurant is incidental to the hotel business; and

(d) Sales which are limited only to products manufactured, processed or assembled by a manufacturer through a single outlet, irrespective of capitalization.xxx"

The Rules and Regulations Implementing the RTLA (IRR) provides for an expanded list of exceptions as follows:

"Sec. 2. *Sales Not Considered As Retail.* – The following sales are not considered as retail:

(a) Sales of a manufacturer, processor, laborer, or worker of products manufactured, processed or produced by him to the general public whose capital does not exceed One hundred thousand pesos (100,000.00);

(b) Sales by a farmer or agriculturist selling the products of his farm, regardless of capital;

(c) Sales arising from restaurant operations by a hotel owner or inn-keeper irrespective of the amount of capital, provided, that the restaurant is incidental to the hotel business

(d) Sales through a single outlet owned by a manufacturer of products manufactured, processed or assembled in the Philippines, irrespective of capitalization;

(e) Sales to industrial and commercial users or consumers who use the products bought by them to render service to the general public and/or produce or manufacture of goods which are in turn sold by them; or (emphasis ours)

(f) Sales to the government and/or its agencies and government-owned and controlled corporations."

Notably, the particular business of the sale of door control, automatic and revolving door, glass fittings and systems, room dividing systems, etc. to a real estate developer falls within Sec. 2(e) of the IRR of the RTLA. The said section embodies the exception in Section

4(c) of the RTNL which was the subject of the ruling of the Supreme Court in the case of Marsman & Company, Inc. vs. First Coconut Central Company, Inc., G.R. No. L-39841, 20 June 1988 stating as follows:

> "That the sales to industrial or commercial users do not fall within the scope of the Retail Trade Nationalization Law is further confirmed by Presidential Decree No. 714 promulgated on May 28, 1975 amending said law when the latter provided in its preamble that 'whereas' it is believed to be not within the intendment of said nationalization law to include within its scope sales made to industrial or commercial users of consumers."[2]

Further, for a sale transaction to be considered as "retail", the following elements should concur:

1. The seller should be habitually engaged in selling;
2. The sale must be direct to the general public;
3. The object of the sale is limited to merchandise, commodities or goods for consumption.[3]

Citing, once more, the case of Marsman above-quoted, the Supreme Court defined and differentiated consumer goods from producer goods, to wit:

"...The last element refers to the subject of the retailer's activities or what he is selling, i.e., consumption goods or consumer goods. Consumer goods may be defined as "goods" which are used or bought for use primarily for personal, family or household purposes. Such goods are not intended for resale or further use in the production of other products. In other words, consumer goods are goods which by their very nature are ready for consumption."

"Producer goods have been defined as "goods (as tools and raw material) that are factors in the production of other goods and that satisfy wants only indirectly-called also auxillary goods, instrumental goods, intermediate goods." They are by their very nature not sold to the public for consumption. As such, the sale of producer goods used for industry or business is classified as a wholesale transaction. Wholesaling has been defined as "selling to retailers or jobbers rather than to consumers or a sale in large quantity to one who intends to resell."[4] Hence, tools and equipment which will be used for 'business purposes', not for personal, family or household purposes, are considered as 'producer goods', not as 'consumer goods.'"[5]

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[2] Marsman & Company, Inc. vs. First Coconut Central Company, Inc., G.R. No. L-39841, June 20, 1988, as stated in SEC Opinion dated 15 January 1996 addressed to Sycip Salazar Hernandez & Gatmaitan, and SEC Opinion dated 28 October 1998 addressed to Atty. Demosthenes B. Donato.

[3] SEC Opinion dated 15 January 1996 addressed to Sycip Salazar Hernandez & Gatmaitan, citing Marsman & Company, Inc. vs. First Coconut Central Company, Inc., G.R. No. L-39841, June 20, 1988.

[4] *Ibid* citing Marsman & Company, Inc. vs. First Coconut Central Company, Inc., G.R. No. L-39841, June 20, 1988.

[5] *Ibid*; SEC Opinion dated 22 February 2001 addressed to Atty. Remigio Noval and Atty. Ma. Georgina J. Soberano.

Pursuant to the foregoing, goods for consumption should be construed to refer to the final and end (uses) of a product which directly satisfy human wants and desires and are needed for home and daily life.[6] On the other hand, the products to be sold subject of this opinion - door control, automatic and revolving door, glass fittings and systems, room dividing systems, etc. – are producer goods which shall be used by the real estate developer in the construction of buildings and other infrastructure. Hence, the sale of such are not considered retail.

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.[7] If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[6] SEC-OGC Opinion No. 32-06 dated 02 August 2006 addressed to Cayetano Sebastian Ata Dado & Cruz.
[7] Paragraph 7, SEC Memorandum Circular No. 15, Series of 2003.