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REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

10 November 2017

REVENUE MEMORANDUM CIRCULAR NO. 95-2017

SUBJECT: Providing Guidelines on the Tax Treatment of the Government Securities Repurchase Transactions Governed by the Global Master Repurchase Agreement (GMRA)

TO : All Internal Revenue Officers and Others Concerned

SECTION 1. *Purpose.* -

This Revenue Memorandum Circular is issued to provide guidelines on the proper tax treatment of the Government Securities Repurchase Program (GS Repo Program) governed by the Global Master Repurchase Agreement (GMRA).

Jointly spearheaded by the Bureau of Treasury (BTr), the Bangko Sentral ng Pilipinas (BSP) and the Securities and Exchange Commission (SEC), and supported by the Bankers Association of the Philippines (BAP) and the Money Market Association of the Philippines (MART), the GS Repo Program aims to contribute in building a deeper and more liquid bond market to further promote capital market development in the Philippines

SECTION 2. *Coverage.* -

1. The GS Repo Program will provide for the creation of an *Interdealer Government Bond Repo Market with counterparties to initially include Government Eligible Securities Dealers or GSEDs.* It shall be governed by the Operating Guidelines for Repo Transactions from the BAP and MART as duly authorized by the SEC.

2. Eligible securities for the GS Repo Program are Philippine Peso-denominated Treasury Bills and Treasury Bonds issued by the BTr, for and on behalf of the Republic of the Philippines.

3. SEC shall authorize a Self-Regulatory Organization (SRO) for the participant GSEDs of the GS Repo Program.

SECTION 3. *General Requirements.* -

1. The Repo shall be governed by the terms of the GMRA, which is a repo master agreement developed jointly by the Securities Industry and Financial Markets Association (SIFMA) and the International Capital Market Association (ICMA) and internationally accepted as the market standard in non-dollar markets.

2. Under the GMRA, a Repo transaction shall have the following salient characteristics:

a. The buyer or the seller shall deliver to the other party written confirmation of the transaction which shall include, among other things, the following details:

   i. Description of the purchased securities (including Committee on Uniform Securities Identification Procedures (CUSIP) or International Securities Identification Number (ISIN) or other identifying number or numbers, if any);

   ii. Buyer and Seller;

   iii. Purchase Date;

   iv. Purchase Price;

   v. Repurchase Date, unless transaction is terminable on demand;

   vi. Repurchase Price; and,

   vii. Applicable Repo Rate.

b. The parties shall execute and deliver all necessary documents and take all necessary steps to procure that all right, title and interest in any purchased securities shall pass from the transferor to the transferee, free from all liens, claims, charges and encumbrances; and

c. The buyer of the securities is free to utilize the securities as it sees fit (*i.e.* sell the securities outright or use them to enter into another Repo transaction) and would not be required to return the specific purchased securities at the repurchase date but only to transfer equivalent securities as defined under GMRA.

3. GSEDs intending to participate in the GS Repo Program shall be bound by the applicable SEC and BSP regulations, the Operating Guidelines of BAP and MART, and other rules and regulations issued for the purpose. Participating GSEDs shall likewise waive secrecy on investments in government securities pursuant to Republic Act No. (RA) 1405 in relation to their Repo transactions.

4. Participating GSEDs shall enter into a GMRA with its repo counterparty as the standard covering documentation for Repo transactions.

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5. Each of the participating GSED shall also execute an undertaking to consistently adhere to the terms of the GMRA prior to entering into any Repo transaction.

SECTION 4. *Registration Requirements.* -

Prior to entering into any Repo transaction, the participating GSEDs shall be required by the BTr to comply with the following registration requirements:

a. File with the Scripless Securities Registry Division (SSRD) of the BTr copies of the duly signed GMRAs and the individual undertaking executed by the GSEDs concerned; and

b. Formally transmit to the Law and Legislative Division of the BIR National Office copies of the duly signed GMRAs and respective undertaking from the GSEDs, which were previously stamped as received by the SSRD of the BTr.

SECTION 5. *Reportorial Requirements.* -

1. The BTr shall monitor transfers of government securities subject of the Repo Program through its Registry of Scripless Securities (RoSS) or successor systems;

2. Within thirty (30) days after the close of the taxable year, the participating GSEDs shall file with the Large Taxpayers Service (LTS) of the BIR through the Regular Large Taxpayers Audit Division 2 (RLTAD 2), an annual report - in soft copy - using the format provided in Annex "A," summarizing all Repo transactions for the taxable period, including subsequent sale, if any, of Repo Securities within the Repo Period, with the following information:

a. Description of the purchased securities (including CUSIP or ISIN or other identifying number or numbers, if any);

b. Principal Amount;

c. Currency;

d. Buyer and Seller;

e. Purchase Date and Price;

f. Repurchase Date and Price;

g. Applicable Repo Rate;

h. Interest Income on Repo transactions;

i. Mark To Market (MTM) Gain or Loss on subsequent sale of Repo Securities; and

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j. Other Income or Loss on Subsequent Sale of Repo Securities

Additional information may be included in the annual report in order to be aligned with the matters contained in the required reports to be submitted by participating GSEDs to BSP and/or SEC.

3. Upon request by the LTS, the BTr, in addition to other reports that it regularly submits to BIR, shall provide such records, documents, or information as may be relevant to the taxation of the Repo transaction/s of the specific participating GSED undergoing BIR tax audit. Such request shall be accompanied with photocopies of the Letter of Authority (LA), Tax Verification Notice (TVN), Audit Notice (AN), Letter Notice (LN), or other assessment notices, previously served with the participating GSED concerned.

4. The participating GSEDs shall copy furnished the BIR, in soft copies, of the relevant reports on Repo transactions entered into which, by existing regulations and issuances (like BSP Circular No. 923 dated 31 August 2016),[1] are required to be submitted to BSP and/or SEC.

SECTION 6. *Taxation.* -

The Repo transaction under the GS Repo Program, as contemplated under Section 199 (h) of the 1997 Tax Code, as amended, shall be exempt from Documentary Stamp Tax (DST).

The Repo rate, which is the difference between the original price and the repurchase price, and other interest income including interest accruing from the "cash margin", shall be subject to 20% final withholding tax (FWT) pursuant to Sections 27(D)(1) and 28 (A)(7) of the 1997 Tax Code, as amended, as well as to the applicable gross receipts tax (GRT) imposed under Section 121 or 122 of the same Code. However, any MTM gain or loss, and any other realized gain, arising from subsequent sale of Repo Securities within the Repo period, shall be subject to Thirty Percent (30%) Corporate Income Tax under Sections 27(A) and 28 (A) and GRT under Section 121 or 122 of the 1997 Tax Code, as amended.

SECTION 7. *Effectivity.* - This Circular shall take effect immediately.

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CAESAR R. DULAY
Commissioner of Internal Revenue

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[1] Report on Repurchase Agreements of Banks/Quasi Banks