

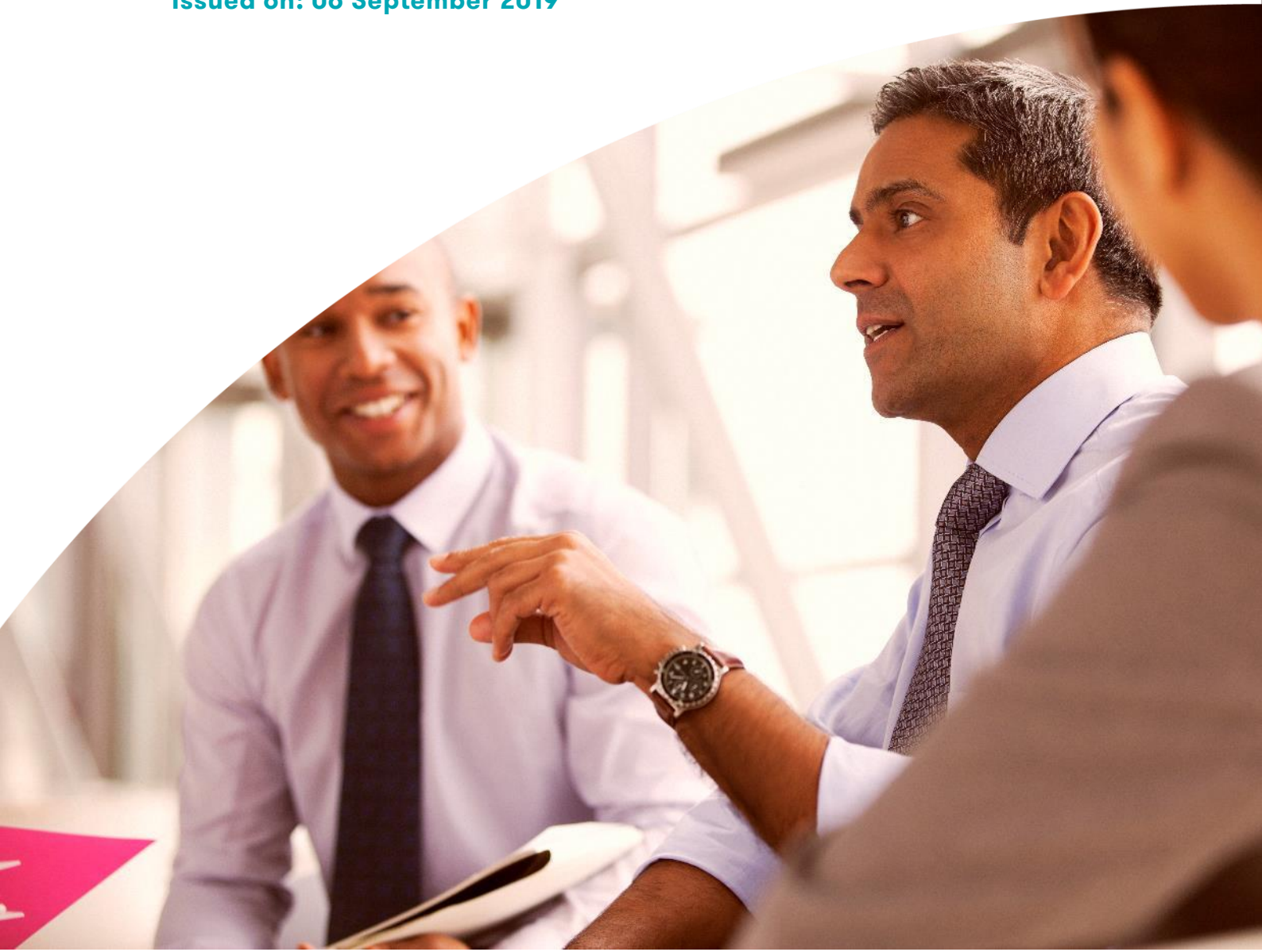


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# **Tax alert: Services to demat account holder against interest-free deposit constitute 'supply' and notional interest constitutes 'consideration'**

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## Summary

The Gujarat Authority for Advance Ruling (AAR) in a recent case<sup>1</sup> has held that services provided to demat account holders against interest-free refundable security deposit amount to 'supply' and are chargeable to tax in the hands of the applicant. The AAR further held that the notional interest/monetary value of the act of providing such deposit would constitute a 'consideration' for services provided by the applicant.

## Facts of the case

- The Applicant<sup>2</sup> is a multi-state scheduled co-operative bank providing various services under the category of financial and related services.
- Amongst other services, the Applicant provides services for operation of demat account to various account holders as well as to persons who intend to operate only their demat account.
- The demat account holders get some free services by virtue of depositing a specified amount as a refundable interest-free deposit.
- The Applicant is of the view that such refundable interest-free deposit or free services being provided are not chargeable to GST and has, therefore, approached the AAR for obtaining a ruling on the following issues:
  - **Question 1:** Whether a refundable interest-free deposit received could be treated as Supply under GST law and chargeable to tax in the hands of the Applicant.
  - **Question 2:** Whether the amount of INR 2,500 being refundable as an interest-free deposit, which allows the depositor some benefits, would attract GST.
  - **Question 3:** Whether the first 10 free transactions subject to maximum of INR 5 lakh allowed to the demat account holder depositing a refundable interest-free deposit would attract GST.

## Applicant's contentions

- **Free supply not leviable to GST:** The Applicant submitted that under the GST law, free supply of goods or services is not leviable to tax.
- **Absence of a consideration:** In order to attract GST, the transaction should be treated as supply<sup>3</sup> and one important criteria is that there should be a consideration for such supply. The Applicant submitted that the refundable interest-free deposits received is not a consideration for allowing any benefit under the said scheme in as much as the said amount is refundable at any time. However, while refunding such amount, some amount is deducted towards processing charges on which the Applicant is discharging GST.

<sup>1</sup>Gujarat AAR No. GUJ/GAAR/R/9/2019 dated 15 May 2019

<sup>2</sup> M/s. Specs-makers Opticians Private Limited

<sup>3</sup> As defined u/s 7 of the CGST Act, 2017

- **Transaction does not qualify as supply under GST:** The Applicant contended that only the supplies without consideration specified<sup>4</sup> under the GST laws would fall within the scope of ‘supply’ and shall be chargeable to tax. The transactions in the instant case are not covered under the provisions of the GST law<sup>5</sup> and hence cannot be treated as supply. Consequently, such transactions shall not be liable to GST.

## Gujarat AAR’s observations and ruling

- **Notional interest treated as consideration:** The AAR rephrased the question before it to examine “whether refundable interest-free deposit can be treated as ‘consideration’ for the services provided by the Applicant to its demat account holders”.  
  
The AAR observed that ‘deposit’ is excluded from the definition of ‘consideration’<sup>6</sup>. However, the notional interest/monetary value of the act of providing a refundable interest-free deposit will be treated as consideration and it is covered in both the limbs of the definition of ‘consideration’.
- **Additional commercial consideration:** The AAR further observed that refundable interest-free deposits are an additional commercial consideration to cover the risk of the demat account. Also, the main purpose of the deposits is not only security but also collection of capital.
- **Reliance on chargeability under erstwhile service tax regime:** The AAR stated that it is also not out of place to mention that the said services were chargeable to service

tax under the erstwhile provisions of the Service Tax Act. GST-related provisions are also broadly pari materia so far as services are concerned.

- In view of the above observations, the AAR held as under:

Question	Ruling
<b>Question 1</b>	The monetary value of the act of providing a refundable interest-free deposit is the consideration for the services provided by the Applicant and therefore the services provided by the Applicant can be treated as supply and chargeable to GST in the hands of the Applicant.
<b>Question 2</b>	The amount of INR 2,500, being the deposit value, will not attract GST unless the supplier applies such deposit as consideration.
<b>Question 3</b>	The first 10 free transactions allowed to the demat account holders are in the nature of discount and will not attract GST subject to the fulfilment of the conditions prescribed <sup>7</sup> .

<sup>4</sup> Specified under Schedule I to the CGST Act, 2017

<sup>5</sup> Schedule I to the CGST Act, 2017

<sup>6</sup> Proviso to Section 2(31) of CGST Act, 2017

<sup>7</sup> U/s 15(3) of the CGST and GGST Acts

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## **Our comments**

This ruling provides the required clarity in case of tax treatment under GST laws on interest-free deposits and notional interest/monetary value of the 'act of providing refundable interest free deposits'. The ruling also reiterates that transactions in the nature of discount will not be covered within the ambit of GST as long as the specified conditions are met. The Maharashtra AAR had pronounced a similar ruling in the case of E-Square Leisure Pvt. Ltd.

Though the AAR's decision is applicable only to the Applicant, it acts as a guiding tool for other taxpayers with similar services/issues.

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