

# Refundable interest-free security deposit not chargeable to GST: Maharashtra AAR

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## Summary

The Maharashtra Authority for Advance Ruling (AAR) in a recent decision<sup>1</sup> has held that returnable interest-free security deposits could not be treated as a 'consideration' for renting of immovable property and hence they are not leviable to GST. Consequently, it refrained from answering the query as to whether GST would be levied on 'notional interest' computed on such security deposit. The AAR further clarified that the amount forfeited (if any) at the time of completion of lease tenure would nevertheless be subject to GST.

## Facts of the case

- The applicant<sup>2</sup> is engaged in the business of renting of immovable property for commercial purpose. It discharges its GST liability on the rent received by it.
- The applicant also takes interest-free security deposits from the lessees on a returnable basis as security against damages, if any, caused to the furniture, equipment, fittings supplied along with the premises or any damage done to the properties, to be returned on completion of the lease tenure.
- The applicant sought an advance ruling in respect of the following issues:
  - Whether GST would be applicable on interest-free security deposit and notional interest if any
  - In case GST is applicable, what would be the value of notional interest for levy of GST

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<sup>1</sup> Maharashtra AAR No. GST-ARA-76/2018-19/B-172 dated 29 December 2018

<sup>2</sup> E-Square Leisure Private Limited

- Before the AAR, the tax officer conceded that GST is not applicable to such security deposits unless it is adjusted against consideration. Further, the tax officer also submitted that GST shall not be leviable on notional interest as well.

## **Maharashtra AAR's observations and ruling**

- The Maharashtra AAR observed that the deposit given in respect of supply of goods/services/both shall not be considered as payment made for such supply unless the supplier appropriates such deposit as consideration<sup>3</sup> for the said supply. Accordingly, the AAR observed that the payment received will not be treated as consideration if there is no direct link between the payment and supply.
- The AAR further observed that the security deposit taken by the applicant acts as a guarantee as per the terms of agreement against damages to the properties. Thus, the AAR held that as the entire amount is to be returned to the lessee, such deposits cannot be considered as consideration for supply of services and will not be leviable to GST.
- In light of its ruling of non-applicability of GST on security deposit, the AAR refrained from answering the question on the taxability and valuation of notional interest.
- However, the AAR has clarified that if the entire deposit or part thereof is withheld/not returned as a charge against damages etc. at the time of completion of the lease tenure, then at that stage such amounts not returned back will become liable to GST.

## **Our comments**

While the ruling of the AAR is in line with the legal provisions under both the GST regime and the erstwhile service tax regime, it is imperative on the part of the taxpayer to ensure that interest-free refundable deposits taken by it are in line with commercial practices and hence have not resulted in a reduction of rent so as to avoid undue litigation.

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<sup>3</sup> Section 2(31) of the CGST Act, 2017

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