



Tax Flash News



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The Reserve Bank of India releases draft export & import regulations and directions under FEMA, 1999 for public comments

Executive summary



In continuation of efforts to progressively liberalise and rationalise the Policies / Regulations / Directions that cover export and import transactions under the Foreign Exchange Management Act, 1999 (FEMA) and its Rules / Regulations, the Reserve Bank of India (RBI) on 2 July 2024¹ placed on its website two documents for public comments i.e. (i) Draft Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2024 (the draft Regulations); and (ii) Draft Directions on Export and Import of Goods and Services (the draft Directions). These draft documents are as announced by RBI in the Statement on Developmental and Regulatory Policies of June 2024².

The RBI has invited comments / feedback from all stakeholders on the aforesaid draft documents on or before 1 September 2024.

The proposed regulations are intended to promote ease of doing business, especially for small exporters and importers. They also further empower Authorised Dealer (AD) Bank(s) to provide quicker and more efficient service to their foreign exchange customers.

This Flash News endeavors to highlight some of the key changes and points in the draft Regulations and Directions.

¹ RBI Press Release dated 2 July 2024

² Statement on Developmental and Regulatory Policies issued vide RBI's Press Release dated 7 June 2024

Key highlights



(a) Enhanced clarity on applicability of Regulations / Directions for services

The draft Regulations / Directions contain improved clarity and uniformity concerning the applicability of various provisions for 'service' exports and imports as compared to existing framework.

(b) AD Bank(s) to have Board Approved Policy in place for handling foreign trade transactions

The AD Bank(s) will be required to put in place a comprehensive and well-documented Board approved Policy within six months of issuance of final Regulations / Directions for handling payment transactions related to export / import of goods and services and merchanting trade. The Policy must cover all aspects relevant to foreign trade.

(c) Key changes in timelines for export realisation and import payments

The full value of export of goods and services continues to be obliged for realisation and repatriation to India within nine months from the date of shipment for goods and date of invoice for services.

As compared to the current period of six-months, the payments for imports can now be completed within the timeframe specified in the contract between the importer and the overseas seller. In case of delayed payments, AD Banks to be guided by Foreign Exchange Management (Borrowing and Lending) Regulations 2018 (as amended from time to time).

(d) Common Export Declaration Form introduced for both goods, services and software

A unified Export Declaration Form (EDF) is proposed to be introduced, which exporters must file for both goods and services, including software exports. The current Export Regulations / Directions do not mandate any filing or reporting for 'service' exports. AD Banks to enter details of services exports in EDPMS on same day of receipt of documentary evidence from their customers.

(e) Liberalisation of advance receipts / payments for goods and services

Under the draft Regulations / Directions, advance payments for export and import of goods and services can be received in accordance with the conditions stipulated and the terms of the contract agreed between the parties. Any advance for exports not in compliance with the draft Regulations / Directions will be subject to Foreign Exchange Management (Borrowing and Lending) Regulations 2018 (as amended from time to time).

The advance payments for imports will be additionally be subject to internal assessment of AD Bank(s), the proven track record of the importer, and any other conditions that the AD Bank(s) may specify.

(f) Delegation of powers for extension of time for export realisation, import payments and advance payments

The AD Bank(s) would have additional delegated powers to grant extension of time for export realisation and import payments in accordance with the AD Bank Policy and the Directions issued by the RBI.

Further, in case of advances payments, where the exporter is unable to fulfill the export obligation or in case of non-import within the contracted period, it is proposed that such advance should be refunded, unless extension has been granted by the AD Bank(s).

(g) Reduction in realizable value of exports

The AD Bank(s) would be permitted to allow reduction in the full export value upon the exporter's request subject to the bonafide test. Any reductions exceeding 25 percent in the full export value will be subject to post facto ratification of AD Bank's Board.

(h) Liberalised framework for set off of export receivables against import payables

The AD Bank(s) to be authorized to allow set-off of export receivables against import payables (goods against goods and services against services) in respect of the same counterparties, if they are satisfied that the grounds for such requests are legitimate and justifiable. The existing conditions for the export and import legs taking place within the same calendar year and various other conditions seem to have been relaxed.

The draft Regulations / Directions continue to disallow the set-off of export receivables for goods against import payables for services, and vice versa.

(i) Caution listing of exporters

The powers to include or remove the name of the exporter in caution list would be delegated to AD Bank(s). Accordingly, AD Banks obligated to include the name of the exporter in the caution list if the export amount is outstanding in EDPMS for a period of more than two years from the due date of realization (including extensions, if any).

An exporter who has been caution listed can undertake export only against receipt of advance payment in full or against an irrecoverable letter of credit, to the satisfaction of the AD Bank(s). The AD Bank(s) to remove the Exporter name from caution list once all outstanding exports proceeds are realized.

(j) Project exports

The export of goods or services on deferred payment terms or in execution of a turnkey project or a civil construction contract, the exporter to obtain prior approval from AD Bank(s) by submitting a proposal before entering into any such export arrangement.

(k) Simplified framework for Merchanting trade payments

The draft Regulations / Directions adopt a simplified approach to deal with Merchanting trade transactions (MTT) with emphasis on limited conditions such as allow MTT payments for goods permitted under the current Foreign Trade Policy, ensuring genuineness of the transaction, routing of all payments through the same AD Bank, etc.

It is further stated that payments will not be permitted if the period between the outward and inward remittance of a merchanting trade exceeds six months. Further, no payments are to be made or received from any other counter party.

(l) Tracking of 'service' exports through Export Data Processing and Monitoring System (EDPMS) and Import Data Processing and Monitoring System (IDPMS)

Under the draft Regulations / Directions, the tracking of 'service' exports and imports will be facilitated through the EDPMS and IDPMS. This is a significant shift from the existing Regulations / Directions, which did not provide for the tracking of 'service' exports. This move seeks to establish parity in the tracking mechanisms between exports / imports of 'services' and 'goods' fostering a more balanced and comprehensive monitoring system.

Conclusion



In essence, the draft export and import Regulations and Directions proposed by the RBI, do represent significant liberalizing and rationalizing of existing Policies related to export and import transactions. The proposed changes should benefit all particularly for small exporters and importers and also bring in clarity and transparency in dealing with several matters.

Under the draft Regulations / Rules the AD Bank(s) to have more delegated powers and responsibilities and certain aspects are subject to their Board approval and / or ratification as well.

The introduction of a unified Export Declaration Form, the delegation of powers for extension of time for export realization and import payments, and the tracking of 'service' exports through EDPMS and IDPMS are among the key changes proposed which businesses needs to gear up to comply with. The timelines for filing the declaration to the AD Banks for services and other modalities are not clear and need to be specified in due course.

It is expected that several representations would be made to the RBI by various stakeholders till 1 September 2024. Post this date, it would be useful if RBI were to clarify the expected date of release of the final Regulations and guidelines in this regard.



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