

31st. August, 2024

To,
Mr. Puneet Pancholy
Chief General Manager
Reserve Bank of India
Foreign Exchange Department
Central Office,
Mumbai

Respected Sir / Madam,

Sub : Representation on Draft Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2024 ('the Draft Regulations') and Draft Directions on Export and Import of Goods and Services ('the Draft Directions') – Press Release: 2024-2025/615

The Chamber of Tax Consultants, established in 1926, is one of the oldest non-profit organizations of tax practitioners, having Advocates, Chartered Accountants and Tax Practitioners as its members spread across Pan India. The Chamber is on the cusp of its Centenary year which will be commencing from July 2025. Many senior tax professionals who regularly appear before ITAT, High Courts and the Supreme Court are its Past Presidents. The Chamber has been making regular representations before various government agencies. The Chamber regularly takes up initiatives to act as a bridge between stakeholders and concerned regulatory bodies in order to convey and help in resolving genuine grievances or effectively implement the laws.

(A) Comments and suggestions on the Draft Regulations

Sr. No.	Subject	Proposed Regulations	Suggestions and rationale
1	Regulation 1(ii)	Regulation 1(ii) stipulates that the Regulations shall come into force from the date of publication in the official gazette	It is submitted that coming into force on the date of gazette notification could create several challenges e.g. export of services cannot be credited unless declared earlier, etc. Further, the final Regulations/ Guidelines may be different than the draft Regulations / Directions due to inputs from various stakeholders. It is therefore requested that the New Regulations be enacted from the 1 st Day of second month following the month of Notification / start of the new financial year. This will allow Exporters/ Importers and AD Bank to put in place the necessary mechanism to comply with the same and also avoid undue

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			<p>complications.</p> <p>Further, a transitional provision be introduced that exports/ imports covered under the erstwhile Regulations/ Directions be covered by the earlier provisions or the new Regulations/ Directions whichever are more beneficial.</p>
2	Regulation 3(i)	Declaration of Export of Goods and Services	<p>There does not seem to be any threshold for Exporters to file this Form and such a threshold is absolute relevant for Exporters of Services. Else, even small value export of services invoices e.g. USD 500 or so by one time exporter individual / proprietor may require this compliance which could be disproportionately burdensome. Further, sending of gifts etc or items for personal use may also be subject to declaration. Items listed as exempt from declaration in current export regulation have not been included in the proposed regulation and are requested to be incorporated suitably.</p> <p>It is also suggested that Declaration for services / software be exempted for small business up to specified export turnover in the preceding year i.e. say USD 200,000. Exemption should also be given to Micro, Small Enterprises and Medium Enterprises under the MSME Act irrespective of their size/ turnover.</p> <p>Alternatively, MSMEs engaged in export of services be permitted to submit a quarterly or half-yearly or quarterly statement of export invoices, exports advance and realization together.</p>
3	Regulation 3(ii)	The Exporter of Goods/ Services are required to submit the documents of exports to AD Bank within 21 days from the date of invoice in case of services.	<p>An exporter of services unlike exporter of goods could be raising bills on a daily basis. Thus, the Exporter of services / software will need to file some documents with the AD Bank every day and this would be very burdensome and create several implementation issues and challenges.</p> <p>It is suggested that Exporter of services be mandated to file all the export invoices once in a month within seven days from the end of the month or so (like GST returns). This periodic reporting instead of invoice-wise reporting would ease administrative compliance burden significantly. It is also suggested that electronic filing through DSC certified documents be accepted by AD Banks as against physical filing.</p>
4	Regulation 7	Project Exports seems	Project Exports are generally subject to competitive

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		to require prior approval from AD Banks in all cases	<p>bidding and terms dictated by overseas party / law/ government requirement including signing of contract post award. Thus, seeking prior approval in all cases of project exports would increase compliance burden and create serious challenges from business perspective.</p> <p>It is suggested that AD Bank be guided by the prevalent PEM guidelines for post award approvals and the cases where Project Exporters do not require prior approval at bid / offer stage if the conditions stipulated in this regard are complied.</p> <p>The timeline for seeking such approval by Project Exporters from AD Bank can be 30/45 days from the signing of the contract.</p>

(B) Comments on the Draft Directions

Sr. No.	Subject	Proposed Directions	Suggestions and rationale
1	Para 2(ii)/(iii) – EDPMS / IDPMS	Right to use and monitor the EDPMS/ IDPMS seems to be allowed only to AD Banks	It is suggested that Exporters / Importers be given login id and suitable rights to minimum view their details on the EDPMS / IDPMS portal. The Exporters / Importers be also allowed to put in their comments on deficiencies and correction required in the portal for AD Banks to note and take corrective measures. The right to accept / reject and finalize the submitted details by Exporters / Importers can continue to lie with AD Bank in all scenarios. This would ease compliance and also help Exporters / Importers in reconciling their Portal records on their own without inputs/ dependency on AD Banks. It will also allow resolution of discrepancies much easily and also through online correspondence.
2	Para 3.1 (i) – Declaration of Exports to be made first for credit of export proceeds to Exporters	Para 3.1 (i) requires AD banks to verify and ensure that exports are duly declared by exporter before crediting the payment to the exporter's account.	<p>This requirement creates undue hardship especially where the time to submit the Export Form to AD bank has not expired or there is backlog where AD Bank has not uploaded the Forms in the EDPMS portal but export proceeds have been realized.</p> <p>In above and similar type of circumstances, AD banks would not credit export remittance to the exporter's bank account for no fault of the Exporters.</p>

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			<p>It is suggested that AD banks may be allowed to give credit for all export realization / receipts and ensure submissions of Form and closure of entries be mandated within a stipulated period within 45 days from realization of export proceeds.</p> <p>We also suggest that the AD Banks be also authorized to formulate operational policy for cases such as (i) Change in AD Bank; (ii) Allowing Export/ Import Reporting by one AD bank, and the receipt / payments of funds and closure of entries by another AD Bank subject to agreement / exchange between the two AD Banks.</p>
3	Para 3.1 (ii) of the Directions - Declaration of Exports	Para 3.1 (ii) requires AD banks to enter details of service exports in EDPMS, as declared and submitted by their customers only, on the same day of receipt of documentary evidence.	<p>It is suggested that the EDPMS entry for export of services may be permitted only on the basis of invoice and Export Declaration Form. The AD Bank can then examine and call for any other documents that may be required in due course.</p> <p>Please also refer to our suggestions relating to periodic filing of invoices above.</p>
4	Para 3.2(i) – Realization of export proceeds	AD Bank to ensure realization of export proceeds within the time period specified	As mentioned in the Export Declaration Form, the AD Banks be permitted to allow export realization from third party subject to underlying documentation between the parties involved i.e. Exporter, Overseas Customers and third party. This should be allowed in all scenarios even where the Third Party realization was not envisaged or could not be mentioned or was not agreed at the stage of Export Declaration Form.
5	Para 3.2 (ii) / (iii) of the Directions – Timelines for import payments	<p>Para 3.2.(ii) requires AD banks to follow up with an importer to ensure that payment for imports is completed within the period specified in the contract between the importer and overseas seller.</p> <p>Para 3.2 (iii) requires AD bank to be guided by the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018</p>	<p>It is suggested that AD Bank be allowed to frame their board approved policy for allowing delayed payments for imports beyond the time limit specified in the contract for genuine reasons such as financial difficulties, disputes, delay in supply, etc. Further, RBI to direct the AD Banks that the board approved policy to be made publicly available or made available to customers on demand.</p> <p>It is also suggested that recourse by AD Banks to the Foreign Exchange Management (Borrowing and Lending) Regulations, 2018 is unwarranted for every case of delay in payment of imports. These Regulations can be applied only for significant cases of delays such as more than three years.</p> <p>It is suggested that AD Bank be allowed to make</p>

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			payment to overseas agents / third party for import transactions subject to suitable documentation between the parties i.e. Importer in India, overseas supplier and third party.
6	Para 3.5 – Reduction in realizable value of exports	AD Banks are permitted to allow reduction of full value of realizable value of exports	<p>It is not clear whether reduction in full value of realizable exports cover cases also of full write-off of Exports dues. It is suggested that it be clarified to cover all types of write-off cases also.</p> <p>Further, the AD banks obligation to put up all cases of reductions of more than 25% in the full export value of exports to its Board for post facto ratification be relaxed for smaller export invoices such as USD 25,000 or its equivalent.</p>
7	Para 3.6 (iii) of Directions – Advance receipt for export of goods and services	Para 3.6 (iii) states that in case the exporter is unable to meet the export obligation as per the terms of contract, the advance received shall be refunded immediately or extension of time shall be sought for the completion of the export obligation as per para 3.3 of Directions.	<p>It is suggested that many times advance received for an export is proposed to be adjusted against other exports where the original contract cannot be fulfilled or undergoes change for bonafide business reasons.</p> <p>The AD Bank should accordingly be authorized to permit such adjustments for Exports and vice versa for imports. It is submitted that these adjustments are permissible even under the extant Regulations / Guidelines as well.</p> <p>At time, Indian Exporter wants to forfeit the advance where the overseas customers issues notice to cancel the contract, etc. In such or similar cases AD Bank may be empowered by RBI to permit write-on of the Export Advance Received by the Exporter subject to underlying documents supporting the same. Further, if such forfeiture is reversed in arbitration / award by any Authority or Court then Export Advance be allowed to be refunded in accordance with the order in this regard.</p>
8	Para 3.7 – Advance payment for import of goods and services	AD banks permit advance payment for import of goods and services subject to their satisfaction of track record of importer	<p>We suggest a threshold be introduced up to which the AD Bank be allowed to extend import advance without any requirement / restriction of checking the track record of the Importer. This threshold can be USD 200,000 or its equivalent.</p> <p>Further, Import advance be allowed without any limit or track of Importer in specified cases e.g. there is letter of credit / bank guarantee. Apart from the Importer's track record, his financial standing or that of its Parent/Subsidiary, size of business and other relevant parameters should also</p>

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			<p>be considered by the AD Bank.</p> <p>The AD Bank be authorized to permit advance on the basis of reputation, financial standing and track record of the overseas supplier / party receiving the advance as well.</p>
9	Para 3.8 – EDPMS/ IDPMS	AD banks obligation to report on EDPMS/ IDPMS on the same day of receipt of documents from Customers	As mentioned above, this is going to be practically impossible to implement especially for exports/imports of services. It is submitted that reasonable time be allowed by AD Bank for trade transactions with respect to services, say all transactions reported in a week to be updated by the end of the following week.
10	Para 3.9 – Caution listing of Exporters in EDPMS	Outstanding in EDPMS for a period of more than two years from the due of realization / including extension period requires AD Bank to flag the exporter as “caution listed” in EDPMS	The inclusion in caution list should not be made where the Exports to be realized are below certain percentage of total export realization in the preceding and current year say 5% or 10% of total exports.
11	Para 3.14 – Merchanting Trade Transactions (MTT)	Inward remittance to be received from overseas buyer and outward remittances to overseas seller and criteria of EEFC	<p>It is submitted that inward remittances in the cases of MTT be allowed from any overseas party subject to suitable documentation between the parties. Similarly, the outward remittances be allowed to third party subject to suitable documentation between the Parties.</p> <p>It is also submitted that where inward remittance is received before outward remittance then the obligation of the receipts to be deposited in EEFC be relaxed especially in cases where Exporters has adequate balance in EEFC to pay for the outward remittance.</p>
2	Powers with the AD Bank		<p>We suggest that AD Bank be expressly authorized and asked to formulate their own policy for various cases of Exports covered under the extant provisions:</p> <ol style="list-style-type: none"> 1. EDF waiver cases 2. Cases of Exemption from Export Declarations 3. Setting up overseas offices /including representation agent. 4. Consignment exports 5. Opening / hiring of warehouses abroad 6. Factoring of export invoices 7. Dispatch of documents through AD Bank/ direct 8. Refund of exports proceeds due to quality, etc.

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			<p>We also suggest that AD Bank be authorized and ask to formulate their own policy for various cases of Imports covered under the extant provisions:</p> <ol style="list-style-type: none"> 1. Remittance against replacement imports 2. Import of Equipment by Business Process Outsourcing (BPO) Companies for their Overseas Sites 3. Evidence of imports especially for non-physical imports.

We look forward to your kind consideration of the suggestions made. We shall be pleased to explain the suggestions personally if we are given an opportunity for the same.

Yours Sincerely,

For **The Chamber of Tax Consultants**

Sd/- _____ **Sd/-** _____ **Sd/-** _____ **Sd/-** _____

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