



**BOMBAY  
CHARTERED  
ACCOUNTANTS'  
SOCIETY**

Date: 1<sup>st</sup> September 2024

To,  
The Chief General Manager,  
Foreign Exchange Department,  
Trade Division,  
Mumbai.

Dear Sir,

**Re: Feedback on draft regulations and directions on export and import under FEMA**

We refer to the Draft Regulations and Directions on Export and Import under FEMA issued by RBI vide press release dated 2<sup>nd</sup> July 2024. We congratulate RBI for the liberalised draft rules and regulations which show a strong focus on Ease of Doing Business.

BCAS is India's largest and oldest voluntary professional body of Chartered Accountants, since 1949. It has been dedicated to empowering Chartered Accountants with knowledge, resources, and a strong professional network for the last 75 years. With over 10,500 members across 350+ cities and towns, we've strived to be a driving force for advocacy, excellence, fostering continuous learning and ethical practices. BCAS has also been proactive in educating and creating awareness amongst the CAs and the general public about new policies and regulations under the Income Tax Law. It has been one of the torch-bearers for placing representations before the Finance Ministry.

We submit our suggestions on some specific issues for your consideration as per Representation attached with the cover email.

We will be glad to elaborate or discuss the above matters personally.

CA Anand Bathiya  
President

Chetan Shah  
Chairman

Rutvik Sanghvi  
Co-Chairman  
International Taxation Committee of the  
BCAS.

**Representation to the RBI on Draft FEM (Export and Import of Goods and Services) Regulations, 2024**

Sr. No.	Reference to Reg./ Direction	Issue & Rationale	BCAS' Comments / Suggestions
1	3(i) - FEM (Export and Import of Goods and Services) Regulations, 2024	<p><b><u>Declaration applicable on ALL exports:</u></b></p> <p>Every exporter shall furnish to the specified authority, a declaration in the Form annexed to these Regulations, specifying the amount representing the full export value of the goods or services.</p> <p>We have no objection to this declaration, however some banks are not able to update EDPMS / IDPMS even for existing transactions. If AD Banks have to update the transactions for all service exports, we are not sure whether all banks will be able to do it.</p> <p>Unlike goods, service exports can be very small in value. To report all the transactions will consume huge amount of time and create a lot of compliance burden.</p>	<p>a. This provision for services should be deferred till all AD banks are ready with the systems to update EDPMS / IDPMS in time bound manner.</p> <p>b. Further, there should be some threshold below which no reporting should be required. We suggest a limit of Rs. 10 lakhs below which no reporting should be required. This limit can be gradually reduced and then removed completely.</p> <p>c. Kindly also see para 9 below for online filing of EDF.</p> <p>d. For past few years, banks in large cities ask for disposal instructions for remittances received. (To our knowledge it does not happen in all cities.) It will be helpful if Reserve Bank of India ('RBI') could suggest to the banks that they can combine disposal instructions and EDF into one document.</p>
2	2, 3(i) - FEM (Export and Import of Goods and Services) Regulations, 2024	<p><b><u>Export and Import of Software</u></b></p> <p>FEMA 23R had definition of software. Further the draft regulations as well as AP (Dir) Circular refer to export of goods and services and does not carry any reference to software as a separate category.</p> <p>However, Form EDF does carry reference to Software in column – 'Type of Export'.</p> <p>Thus an issue arises - whether software is still a separate category from other goods and services.</p>	<p>To address this issue, we request the RBI to provide explicit guidance on whether software still remains as a separate category and to rationalise the regulations and the export declaration form so that both would be in sync.</p>



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3	Several regulations	<p><b>Services of AD Banks:</b></p> <p>It is good that for many transactions one will have to go through the AD Banks. However we have some concerns for this.</p> <p><b>There are several cases where the banks have not updated the EDPMS / IDPMS system for exports and imports for years. This has resulted in situations where it appears that exporters have not received the export proceeds after exporting, or having received export advance goods have not been exported, etc.</b></p> <p><b>For some applications, it has taken a humungous amount of time to even consider the application by the AD. Forwarding the application to RBI has taken even more time.</b></p> <p><b>The cases have gone to investigation agencies due to bank's faults leading to a lot of difficulties for the exporters.</b></p> <p>One can argue that the exporter can go to a bank which gives proper services or file a complaint about the lack of proper services. However that can be known only after going to the bank and encountering deficient service. Irrespective of customer service, all banks should have full systems to complete the statutory compliances as required by the rules. However, till then exporters / importers should not face penal consequences due to substandard services provided by some AD Banks.</p>	<p>We suggest that there should be a mechanism where if the exporter / importer has submitted documents to the bank, then its responsibility is over. Para 3.8 of directions does state that AD should make the entries in the EDPMS / IDPMS on the same day. We appreciate.</p> <p>However our concern is that if banks don't do it for several years, then what should be done?</p> <p>Automatic marking of exporters as "caution listed" should not be permitted.</p> <p>The draft regulations do provide for exporters being given an opportunity before caution listing for <b>delay in realising export proceeds</b> (Reg. 5(i)). However if systems are not in place, this regulation of RBI will not help. The exporter / importer cannot do anything.</p> <p><b>There should be a mechanism to escalate the matters to RBI in case of such actions or inactions by the AD Banks.</b></p>



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<b>4</b>	4 - FEM (Export and Import of Goods and Services) Regulations, 2024	<b><u>Third Party Receipts and Payments</u></b> Third party payment – Regulation 4 of draft regulations do not prescribe anything for third party payment.  Form EDF refers to Third party payment for exports, but there is no mention either in the Regulations nor the Directions.	We request RBI to issue express provisions on permissibility of third party payments in case of export and import of goods and services.
<b>5</b>	6 - FEM (Export and Import of Goods and Services) Regulations, 2024	<b><u>Purpose Code for Advance against export of services</u></b> At present there is no inward remittance code for advance against export of services. Advance against exports is treated as advance against export of goods and AD always insist upon shipping bill.	We therefore request RBI to provide for a separate inward remittance code for – Advance against Export of Services.
<b>6</b>	8 - FEM (Export and Import of Goods and Services) Regulations, 2024 read with para 3.9 of Directions	<b><u>Caution Listing of Exporters</u></b> Reg. 8 read with para 3.9 of directions provide for caution listing of exporters in case they do not realise the exports for more than 2 years.  Para 3.9(ii) of directions provide that before caution listing – i) exporter is duly informed, and ii) opportunity for being heard is given to the exporter by the AD.	i) Opportunity for being heard should be provided at least <b>30 days before the two year period is to expire.</b>  ii) After hearing, the exporter should be informed at least <b>15 days before the two year period is to expire.</b>  Such time limits may be specified in the regulations / directions.  Further, we request RBI to provide uniformity of guidelines to be followed to add / remove exporters from caution list. In case, the AD bank is permitted set their own board policy for removal from caution list, the same should be made available in the public domain.



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7	3.4(i)- Directions on export and import of goods and services.	<p><b><u>A. Set-off of export receivables against import payables with Group Company</u></b></p> <p><i>AD banks may allow set-off of export receivables against import payables in respect of the <b>same counterparties</b>, if they are satisfied that the grounds for such requests are legitimate and justifiable.</i></p> <p>The AP (DIR Series) Circular No. 8, dated December 4, 2020, was a progressive step that allowed exporters to offset their outstanding export receivables against import payables within their overseas group or associated companies. This provision was particularly beneficial for managing cash flows and streamlining financial operations within multinational corporate groups. However, the proposed new guidelines suggest that such set-offs may only be permitted with the same counterparties, which could potentially limit the flexibility and efficiency previously afforded.</p> <p><b><u>B. Explicit timelines for Set-off of export receivables against import payables with Group Company</u></b></p> <p>Under the current regulations, set-offs are allowed only between export and import transactions occurring within the same calendar year. However, the proposed guidelines lack specific terms and conditions regarding the set-off process.</p>	<p>A. RBI can reaffirm and explicitly allow set-offs within group companies, as originally introduced in AP (DIR Series) Circular No. 8, dated December 4, 2020.</p> <p>B. In this regard, we request that the RBI or AD Banks provide clear and explicit guidelines to facilitate the set-off process. Such guidance would be beneficial for both importers and exporters, ensuring clarity and consistency in the application of these regulations.</p>



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8	3.1(iii),3.3(i), 3.3(ii), 4.1- Directions on export and import of goods and services.	<p><b>AD Bank Internal Policies</b></p> <p>Under the proposed guidelines, the RBI has granted AD Banks the discretion to handle certain matters based on their internal policies. While this delegation allows for flexibility, it also has the potential to create inconsistencies. Each AD Bank may form and implement its own set of rules and practices, which could lead to variations in how similar requests are handled by them. As a result, exporters and importers might experience differing levels of service and processing times depending on which AD Bank they are working with. This can lead to AD Bank-shopping whereby Banks woo customers based on differentiation points of their policies.</p>	<p>To address this potential inconsistency, we suggest that the RBI establish a set of overarching standards or a unified framework. Such standards would help ensure a consistent approach across all AD Banks, promoting fairness and transparency in the handling of requests. This would reduce discrepancies and help maintain a consistent level of services for all parties involved.</p> <p>Alternatively, RBI should provide for a mechanism where inconsistent policies of differing banks can be flagged off to RBI to highlight the issue to RBI.</p> <p>Additionally, we humbly suggest that the AD Banks make their internal policies publicly accessible to benefit exporters and importers by ensuring clear and consistent practices.</p>
9	3(i) - FEM (Export and Import of Goods and Services) Regulations, 2024	<p><b>Export Declaration Form:</b></p> <p><b>A. Transactions in INR</b></p> <p>As per notification no. 14(R) on Manner of receipt and payment, transactions are <b>now permitted in INR</b> as well as foreign currency. This is line with the objective of encouraging INR in international trade.</p> <p>EDF in para 4 (declaration) however states in second sentence – “I/We undertake that I/we will deliver to the authorised dealer bank named above the <b>foreign exchange</b> .....”.</p> <p><b>B. Online Filing</b></p> <p>There are banks where forms filed are just not available after some time.</p>	<p>A. EDF in para 4 (declaration) should states in second sentence – “I/We undertake that I/we will deliver to the authorised dealer bank named above the “foreign exchange / <b>Indian rupees...</b>”.</p> <p>B. It is urged that <b>online filing</b> should be made possible. Further the <b>exporter / importer should be provided EDPMS / IDPMS entry details</b> (just as we have detailed profile report for Overseas Investment, or Entity Master details for FDI). The parties</p>





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		<p><b>C. Exemption from filing EDF</b> Reg. 4 of existing regulations provide for situations where there is no need to file the Declaration (in case of samples etc.). Such a provision is not there in the proposed draft rules or directions. We could not find any other regulation / direction authorising the AD to exempt filing of EDF. Clause 4.2 of directions provide that the Board approved policy should be comprehensive enough to consider all aspects of foreign trade. However the policy cannot travel beyond rules and regulations (if there is no exemption from Reg. 4 for filing EDF, the AD Board policy cannot consider it). Without this, it appears that EDF has to be filed for all exports – whether it is sale or not.</p>	<p>will know what is updated and what is not on the EDPMS and IDPMS.</p> <p>C. Kindly provide for power to AD to grant exemption from filing EDF especially where there are no sales and no foreign exchange is to be received.</p>