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Regulatory

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Draft Regulations and Master Direction – Export and Import of Goods and Services

Snapshot

The Reserve Bank of India (RBI) has released draft regulations and a master direction on the export and import of goods and services for public feedback. These new documents aim to simplify existing rules and delegate more responsibility to Authorized Dealer (AD) Banks, allowing them to draft and implement processes for foreign exchange transactions. The regulations reduce detailed guidelines and merge separate documents for export and import into a single, streamlined directive.

Key changes include broader guidelines for AD Banks to handle export and import transactions, the merging of export and import directions into one document, declaration of export of services, stricter rules for caution-listing exporters with overdue realizations etc. The RBI's focus is shifting from detailed operational guidance to providing broad parameters, with AD Banks expected to create their internal policies for day-to-day management of foreign trade transactions.

Brief Evaluation of the Draft Regulations and Master Direction on Export and Import of Goods and Services

Reserve Bank of India ("RBI") is the principal regulatory body for regulating and monitoring the foreign exchange transactions between India and the rest of the world. Over the years, the Reserve Bank of India has been delegating the powers for monitoring various foreign transactions to Authorized Dealer Banks so as to move away from routine regulatory matters to providing broad directions and framing the contours within which the smooth functioning of foreign exchange transactions can take place.

In this context, Reserve Bank of India has released two important documents namely, *Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2024 and Master Direction on Export and Import of Goods and Services* in its draft form for comments and feedback from the Authorized Dealer banks and the public at large.

In this context, we have tried to evaluate the draft Regulations pertaining to Export and Import of Goods and Services along with the draft Master Direction which combines both the Export and Import of goods and services to understand the changes proposed and the likely ramifications of the same going forward for importers and exporters in India. Given the large exposure that today's businesses have with outside world, no entity remains insulated from the provisions of Foreign Exchange Management Act, 1999 and its relevant rules and regulations.

It is with this objective that we have provided our comments against the revised / amended provisions pertaining to export and import of goods and services proposed and put forth by the Reserve Bank of India.

Sr. No.	Particulars	Extant Regulations / Master Direction on Export of Goods and Services	Draft Regulations / Master Direction on Export of Goods and Services	KCM Remarks
1	Governing Rules and Regulations	<p>Export - Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with FEMA Notification No.23(R)/2015-RB dated January 12, 2016</p> <p>Import - Foreign Exchange Management (Current Account Transaction) Rules, 2000</p>	<p>Export - Foreign Exchange Management (Current Account Transactions) Rules, 2000, read with Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2024</p> <p>Import - Foreign Exchange Management (Current Account Transaction) Rules, 2000 read with Foreign Exchange Management (Export and Import of Goods and Services) Regulations, 2024</p>	<p>The extant Foreign Exchange Management (Current Account Transactions) Rules, 2000 notified by the Government of India continue with the introduction of Regulations covering Import and Export of Goods and Services.</p> <p>The important point to observe here is that the Draft Regulations are greatly reduced in their form and substance, with the objective for Authorized Dealer Banks to draft and implement the necessary processes and procedures for import and export of Goods and Services. This implies that powers are being delegated by AD Banks to decide and implement the FEMA provisions for import and exports within the broad contours framed by the Reserve Bank of India.</p>
2	Master Direction	<p>Export - Master Direction – Export of Goods and Services <i>vide</i> RBI/FED/2015-16/11 FED Master Direction No. 16/2015-16 dated January 1, 2016, as amended from time to time</p> <p>Import - Master Direction – Import of Goods and Services <i>vide</i> RBI/FED/2016-17/12 FED Master Direction No. 17/2016-17 dated January 1, 2016, as amended from time to time</p>	Draft Directions to Authorized Dealers on Export and Import of Goods and Services	The two separate Master Direction documents giving guidance on Export and Import of Goods and Services have been merged into one single Master Direction document for ease of understanding.

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3	Chronological Sequence of Information in Master Direction	<p>Export - Master direction was bifurcated into 4 different parts starting with Part A - General Provisions, giving the introduction and provisions of realization and repatriation of export proceeds; Part B - provided explanation on EDF / SOFTEX Form and the exemptions from Declaration; Part C - explained the Obligations on AD Bank, including process for extension in time, reduction in invoice value and setting off of receivables and payables and Part D - provided information on remittances toward exports such as commission on exports and refund of export proceeds.</p> <p>Import - Master direction had three parts, with Part I providing the introduction, Part II explaining the General guidelines such as time for settlement of import payments and third-party payments etc. and Part III provided the Operational Guidelines including advance payment process, documentation and Merchanting Trade</p>	<p>Master Direction split into two major heads with Annex I providing operational guidelines for both Import and Export of goods and services and Annex II giving the list of superseded Circulars.</p> <p>Annex I is further divided into four portions with Part 1 providing details of applicable Rules and Regulations governing Export and Import, Part 2 providing General directions to AD Banks, Part 3 giving the detailed explanation on timelines for export and import of goods and services, extension of time, set off, caution listing and advance payment for import / export etc. , Part 4 giving guidelines to AD Bank for drafting policy for monitoring and handling transactions for import and export.</p>	<p>The key points to be noted here are that RBI has prepared a generalized version of the Master Direction while giving more powers to AD Banks to frame the processes and procedures for monitoring and handling various trade transactions in foreign currency. Thus the onus now lies on AD Banks to ensure that foreign trade transactions are being undertaken as per the broad guidelines provided by RBI. Furthermore caution listing has reared its ugly head once again wherein AD banks have been instructed to caution list all exporters whose receivables are outstanding in excess of two years. Master Direction has also specified export transactions where export advances have been received but no export has been undertaken within the specified time frame, such transactions may be referred to and covered under the Trade Credit / ECB Regulations.</p>
4	Definitions	Definition in FEMA (Export) Regulations, 2016 included definition of "Export", "Export Value", "Software" etc.	No specific definitions included for Export of goods and services in the draft Regulations	Final Regulations may contain more definitions else there is a possibility of differed interpretations based on each AD Bank's internal policy

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5	Realization and repatriation of export proceeds / import payments	<p>For Imports - within six months from date of shipment</p> <p>For Exports - within nine months from date of export; export to a warehouse established outside India - within fifteen months from date of shipment of goods</p>	<p>For Imports - as per the terms of contract</p> <p>For Exports - within nine months. No separate provision for warehouse exports</p>	Detailed explanation provided in the Master Direction for both import and export of goods and services has been drastically truncated.
6	Advance receipts for Export of Goods & Services and Advance Payments towards Import of Goods and Services	<p>Advance Receipt against Export - Indian supplier was mandated to export within a period of one year from receipt of advance and in case of inability to export, refund beyond one year was only with prior permission of RBI.</p> <p>In case of advance payment against import, the Indian customer was mandated to obtain an irrevocable L/C or guarantee from foreign bank if such advance exceeded USD 0.2 million.</p>	<p>In case of inability to undertake the export as per contractual terms, export advance has to be immediately refunded unless extension in time sought from AD Bank.</p> <p>AD Bank granted powers to undertake assessment of the importer client before permitting advance remittance, with the instructions to AD for rigorous follow up for import to take place as per terms of contract or the advance made shall be returned immediately unless extension in time sought from AD Bank</p>	<p>Advances received towards export as well as advance paid by customers towards import have always been a point of contention since the actual delivery or receipt of goods is to take place at a later date but consideration against the same has been received prior to the activity having taken place.</p> <p>RBI has tried to ensure that the export / import takes place as per contractual terms and not be treated as a short-term financial activity by the exporter / importer as the case may be.</p>

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7	One form for export of goods, services, and software	<p>In respect of export of services, no forms were specified, and the exporters were allowed to export without furnishing any declaration.</p> <p>Software exporters were to declare exports in SOFTEX Form.</p>	<p>Exporter of goods, services as well as software are required to file form EDF.</p> <p>AD banks shall enter details of service exports in EDPMS, on the same day of receipt of documents.</p>	<p>The draft regulations provide for declaration of export of services which was not required under current directions.</p> <p>Separate SOFTEX Form for declaration of export of software has been done away with and the export of software is proposed to be declared in EDF form itself.</p>
8	Exemption from declaration	Regulations provided for export of goods / software without declaration in certain cases which included goods sent outside India for testing subject to re-import into India, goods imported free of cost on re-export basis etc.	No such exemption provided from declaration of exports	The final regulations and master direction may provide for certain exemptions as provided in the current regulations
9	Third party payments for export / import transactions	Master Direction on Export of goods and services provided for the procedure for receipt of proceeds from third party / payment to third party for imports	No reference for third party receipts given in either the Draft Regulations or the Draft Master Direction. However, the EDF form provided in Master Direction contains reference to third party name / proceeds	Details pertaining to third party payments for exports / imports may be included in the final draft of the Master Direction.
10	Reduction and Write Off of Export Bills	<p>Many conditions and sub conditions prescribed for reduction up to 25% of value of invoice.</p> <p>Detailed process provided in Master Direction for write off of export receivables with prescribed limits for self / AD Bank write off.</p>	<p>Reduction in value has been liberalized and AD Bank permitted for reduction in full export value, subject to Board approval, in case reduction in excess of 25%.</p> <p>No reference or details provided in the draft Direction on write off</p>	<p>Finer points and modalities for reduction in invoice value may be incorporated in the final Master Direction to be issued by RBI.</p> <p>Could it be inferred that reduction in invoice would be treated as write off or details will be provided in the Final release?</p>

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11	Set off of Export receivables against Import payables	Detailed process provided in Master Direction for set off of receivables against payables	Set off of payables against receivables permitted but no modalities or process specified in draft Direction.	<p>Powers seems to be granted to AD Bank to undertake the set-off process subject to proper diligence.</p> <p>Restriction to setoff export receivables for goods against import payables for services and vice versa has been continued in the current draft Direction.</p>
12	Exporters Caution Listing	Caution listing was made discretionary, and powers were granted to AD Banks to review the customers track record before caution listing	RBI has taken a hardline stance by insisting on Caution Listing of exporters where amounts of export realization are overdue for more than two years.	<p>This mandatory caution listing of exporters on exceeding two years will be extremely detrimental as there are various technical and system issues with AD banks resulting in non-clearance of export outstanding in the EDPMS, even in cases where export proceeds have been duly realized.</p> <p>This provision needs to be seriously evaluated as exporters will face considerable operational issues in case this step is implemented.</p>
13	Project Export	Master Direction had a separate detailed explanation on the Project export along with documentation as prescribed in revised Memorandum of Instructions on Project and Service Exports (PEM-July 2014).	The onus has been shifted to AD Banks to monitor the Project exports and ensure due diligence of contracts for Project exports.	It seems that the PEM has been discontinued and AD Banks' will have to respectively frame guidelines and process for such Project exports.
14	Merchanting Trade Transactions ("MTT")	<p>Existing provisions as per Master Direction on Import of goods and services state that the MTT should be completed within an overall period of nine months with an outlay not extending in excess of four months.</p> <p>There were guidelines on other issues like advance payment by merchant traders for import leg, merchant traders liable for caution listing etc.</p>	<p>Draft Master Direction has provided that the period between outward remittance and inward remittance of a merchanting trade should not exceed six months.</p> <p>The other detailed guidelines for MTT have not been provided in the draft directions.</p>	Whether the period of six months to be considered as extension of current outlay period of four months or the overall period of nine months has been reduced to six months is a matter which may be clarified in the final directions.

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15	International Trade Settlement in INR	Detailed and elaborate explanation was provided in the Master Direction on Export of Goods and Services for settlement in INR.	Draft Regulations have not provided any explanation on the same but have referred to vide A.P. (DIR Series) Circular No.10 dated July 11, 2022, on International Trade Settlement in Indian Rupees (INR) for necessary clarity.	Master Direction is moving from explanatory document to more of a reference document wherein the direction is given to the relevant Rules / Regulations Circulars / Notifications for understanding and clarity.
16	Export receipts and Import payments through Online Payment Gateway Service Providers ("OPGSP")	Detailed explanation on the process for receipt and payments against export and import through online mode was provided in both the Master Directions	Draft Regulations have not provided any explanation on the same but have referred to Regulation of Payment Aggregator – Cross Border (PA - Cross Border) dated October 31, 2023, for payments and receipts in online mode.	As explained above, the Master Direction is becoming less of an elaborate explanatory document to a terse reference document wherein the reader is directed to the relevant provisions in the Rules / Regulations / Circulars and Notifications to find the suitable answers.
17	Import of gold and silver	Detailed guidelines for import of gold as well as import of gold by qualified jewellers as notified by IFSCA was provided in the Master Directions	Draft regulations have provided that no advance remittance allowed for import of gold and silver unless approved by RBI. Further, for import of gold and silver through International Bullion Exchange, AD banks have been guided to refer to the guidelines issued by IFSCA in this regard	Reference has been made to IFSCA guidelines for import through IIBX, however no specific guidelines mentioned for import of gold otherwise. In the erstwhile regulations, there was no clear guidance on allowability for advance remittance on import of gold other than through IIBX. Furthermore, since the draft regulations have specified for obtaining RBI approval for advance remittance does that apply to import through IIBX as well?

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18	Board Approved Policy	RBI in the past had been closely monitoring the modalities with respect to import and export of goods and services, hence was providing detailed explanation in form of Master Direction, which was a detailed explanation to the Rules and Regulations pertaining to the said transactions.	<p>RBI has merged Master Direction pertaining to both import and export of goods and services to one single extremely shortened document.</p> <p>Furthermore, RBI has instructed each AD Bank to frame their internal policy documents to monitor the transactions under the broad framework provided by the RBI.</p>	<p>The truncated draft Regulations on Export of goods and Services along with the draft Master Direction combining both import and export of goods and services seems to clearly highlight that RBI is moving away from the operational level of guidance and primarily focusing on providing broad parameters.</p> <p>The operational activities for ensuring smooth functioning of the trade transactions for both import and export are being left to AD Banks' who at the ground level are more attuned to the requirements and practical aspects of handling customer demands.</p>

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For further analysis and discussion, you may please reach out to us.

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