

Alternative Dispute Resolution (Lecture P1285 – 14.45 minutes)

HMRC's Alternative Dispute Resolution ("ADR") is a non-statutory process for resolving personal tax and business tax disputes between HMRC and a taxpayer. This session considers the process to follow, what disputes are suitable for ADR, and various practical issues.

What is Alternative Dispute Resolution?

Under ADR, a mediator (a trained HMRC officer not connected to the case) assists the taxpayer and the HMRC caseworker to resolve their dispute. Not all disputes are suitable for ADR, and each application is considered by HMRC on a case-by-case basis. As the process is not statutory, there isn't a right of appeal if HMRC rejects an application for ADR.

HMRC's current policy is that an application for ADR can be made at any stage of an enquiry, and an appealable decision is not needed, which is an advantage for the taxpayer.

How to apply for Alternative Dispute Resolution

Taxpayers wishing to use the ADR process need to apply online, although an adviser can make the application for their client. Where direct taxes are involved, and HMRC has made a decision, an appeal must be made to HMRC against the decision. In addition, where a statutory review has been requested or accepted, the taxpayer must wait for the conclusion of the review, and appeal to the tribunal (and have the appeal accepted) before applying for ADR. Where the offer of a statutory review has not been accepted, an appeal must be made to the tribunal (and have the appeal accepted) before the ADR application can be made.

In relation to disputes involving indirect taxes, the taxpayer must wait for the conclusion of the statutory review (where a review was offered), and appeal to the tribunal (and have the appeal accepted) before applying for ADR. Where a statutory review is not offered, the taxpayer must appeal to the tribunal (and have the appeal accepted) before the ADR application can be made.

The Alternative Dispute Resolution process

Once an application has been made, HMRC will usually give their decision within 30 days as to whether the case can be included in ADR. If the application is rejected, the taxpayer can refer the case to the tribunal, where there is an appealable decision, otherwise the adviser will need to consider other remedies to resolve the matter with HMRC.

If the application is successful, the mediator will liaise with the adviser and HMRC caseworker. Both parties are required to prepare statements of the matters in dispute, and the documents are exchanged prior to the mediation. The mediation hearing, which can take place by telephone, video or face-to-face meeting, is held within 90 days of confirmation that the application has been successful.

At the mediation hearing, there will be a mixture of joint sessions, where the mediator meets with HMRC and the taxpayer (and his adviser), and private sessions, where the mediator meets with each party separately. The role of the mediator is to facilitate discussion between the two parties, and for the HMRC officer and the taxpayer to reach a decision regarding the dispute, if possible. At the end of the meeting, which usually lasts one day, both parties agree the outcomes, which may require further action before the case can be concluded, where appropriate. If there are not any agreed outcomes, the dispute will proceed to the tax tribunal, where there was an appealable decision.

What disputes are suitable for Alternative Dispute Resolution?

Broadly, the following types of disputes can be dealt with through the ADR process, subject to HMRC's approval:

- When communications have broken down with HMRC
- When there are disputes about the facts
- When there has been a misunderstanding
- When the dispute relates to a technical point, or a point of law

What disputes are not suitable for Alternative Dispute Resolution?

HMRC do not accept the following types of disputes into ADR:

- Complaints and disputes about HMRC delays in using information or giving misleading advice
- Payment issues or debt recovery
- Application of HMRC's Extra Statutory Concessions
- Cases being dealt with by HMRC's criminal investigators
- Accelerated payments and follower notices
- Cases the First-tier Tax Tribunal have categorised as 'paper' or 'basic'

Other circumstances where ADR is not available are given in HMRC's factsheet, CC/FS21, which can be accessed on the following page:

<https://www.gov.uk/government/publications/compliance-checks-alternative-dispute-resolution-ccfs21> .

Practical considerations

When a dispute has been accepted into the ADR process, a successful outcome is dependent on the willingness of the parties to engage. It is important to ensure that your client is prepared to settle, which may mean that compromises have to be considered. An effective mediator is also needed. They should ensure that there is a HMRC decision-maker present at the mediation hearing, as well as the HMRC officer dealing with the case, if they are not able to make the decision for HMRC.

There can be significant time and cost savings over formal litigation, although sufficient time should be spent on preparation for the mediation, including providing guidance for the client on what to expect. There can also be benefits, even if agreement cannot be reached, as the ADR may help the client prepare for the tribunal hearing, if appropriate. If there is not a satisfactory outcome, the appeal can be heard at the tribunal, where there is an appealable decision.

A word of caution is required. Although ADR is a confidential process, and conducted on a 'without prejudice' basis, there are circumstances in which information may be disclosed by the mediator and used in formal proceedings. This includes, but is not restricted to, information which provides evidence of criminality.

In my opinion, ADR should be a consideration for advisers when their clients have a dispute with HMRC, and the process should be combined with statutory review (which is covered in a separate session), where available. Advisers may want to seek specialist advice before embarking on the ADR route. They may find that the specialist adviser is able to engage with HMRC to avoid the need to make an ADR application.

Contributed by Phil Berwick, Director at Berwick Tax