



Alternative dispute resolution

June 2025

Guidance note

Introduction

1. Alternative dispute resolution (ADR) is an alternative to litigation before the First-tier Tribunal (FTT) (see Guidance note: Appealing a direct tax decision; Guidance note: Appealing an indirect tax decision; and Guidance note: Overview of the Tax Tribunals system).
2. The aim of ADR is to resolve the issues between the taxpayer and HMRC (or as many of them as possible) without recourse to litigation, and with a view to saving time and expense for all concerned.
3. ADR is not a statutory process, and both the taxpayer and HMRC have to be willing to engage in ADR before it can be adopted. Neither party can be compelled to participate in the ADR process if they do not wish to.
4. Provided that both HMRC and the taxpayer agree that the dispute is suitable for ADR, the parties can engage in it while an enquiry is in progress and once an appeal has been filed (in which case an appropriate direction for a stay of the appeal to enable the ADR process to take place can be sought from the FTT).
5. Rule 3(1) of the [First-tier Tribunal \(Tax Chamber\) Rules 2009](#), requires the FTT to “bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute” and, “if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure”.
6. It is important to note that HMRC does not have the same discretion as a commercial counterparty to a dispute in settling disputes. It is a public authority and must act in accordance with the principles of administrative law and its Litigation and Settlement Strategy (LSS) (See Guidance note: HMRC’s litigation and settlement strategy). This means that HMRC cannot simply “horse trade” or “split the difference”. That said, it is frequently possible to come to a principled settlement with HMRC that is consistent with the LSS.
7. Careful consideration should be given to the timing of any mediation. It might be in a taxpayer’s interest to offer to mediate before HMRC has taken advice from counsel and hardened its position. Conversely, it is important not to suggest ADR too soon as it is always possible that an enquiry will not turn into a full-blown dispute.

What is the ADR process?

8. An ADR involving a tax dispute with HMRC will generally take the form of a facilitated mediation. While other types of ADR (such as an expert determination, where a mediator makes a decision, or evaluative mediation, where an expert offers an opinion) are available and frequently used in a commercial context, in practice, facilitated mediation, where a neutral facilitator (or, sometimes, facilitators) attempts to bring the parties together on points of difference, is the form of ADR that is generally used in tax disputes.

What are the advantages of using ADR?

9. The taxpayer and HMRC may agree to ADR for one or more of the following reasons.
- **Cost** – although costs will be incurred in preparing for the mediation meeting, they are typically less than the costs incurred in conducting litigation.
 - **Speed** – it is not unusual for a substantive appeal hearing before the FTT to be held more than 12 months after the appeal was filed with the FTT whereas an ADR meeting can be held within a few months of the dispute being accepted within the ADR process.
 - **Confidentiality** – although in certain circumstances, HMRC might be obliged to act on disclosures that affect the amount of tax due made during the course of the mediation, in general the proceedings are subject to HMRC's statutory confidentiality obligations and contractual confidentiality arrangements made with the mediator. Details of the mediation will not be reported or publicised by HMRC. In contrast, proceedings before the FTT are in public and decisions of the FTT are reported.
 - **Control** – in a mediation, the parties can agree on a timetable between themselves and the mediator. Parties to litigation have less control of the timetable for a hearing and the eventual determination of the case by the FTT (or on appeal).

What are the disadvantages of using ADR?

- **Disclosure** – while there is a formal disclosure process in FTT proceedings, this is not the case for ADR, so it may not be appropriate for matters where HMRC has material that a taxpayer needs to see.
- **Evaluation of evidence** – where there is a dispute as to the quality of evidence being offered by one party, ADR may not be appropriate as it offers no means for evaluating the weight to be placed on the available evidence.
- **No costs regime** – typically, each side will bear its own costs of the ADR whether or not the dispute is resolved, whereas in litigation before the FTT it may be possible, in certain circumstances, for the successful party to recover at least some of its costs from the other party (see Guidance note: Costs in tax litigation).
- **No guaranteed result** – while at the end of FTT proceedings a determination (whether favourable or not) is guaranteed, there is no guarantee that a mediation will produce a useful result; it may be necessary to proceed to a hearing before the FTT. However, even where a total settlement has not been reached during the ADR process, the parties are frequently able to narrow the scope of the issues and facts between them.

When might ADR be appropriate?

10. ADR can be particularly effective where:
- HMRC appears to have dug its heels in and to be viewing the dispute as an “all or nothing” issue when in fact there is the potential for a facilitated discussion to break the dispute down into separate issues, making the issues (or some of them, at least) more susceptible to resolution under HMRC's Litigation and Settlement Strategy (see Guidance note: HMRC's litigation and settlement strategy)
 - the dispute might benefit from (or be resolved by) a broad, “without-prejudice” discussion of the issues
 - the facts underlying a dispute require clarification or narrowing, particularly where a dispute is fact-heavy, or particularly fact-sensitive

- there is a particular need for the dispute to be resolved quickly (it is often quicker to use ADR than to litigate before the FTT)
- there are evidential issues that would make proceeding to a hearing before the FTT challenging
- there is a desire to avoid the publicity that might follow a hearing before the FTT.

When might ADR be inappropriate?

11. HMRC states in its guidance that ADR is not available in the following types of disputes:
 - complaints and disputes concerning delay on the part of HMRC in using information or providing misleading advice
 - debt recovery or payment issues
 - disputes concerning tax credits
 - disputes concerning default surcharges
 - PAYE coding notices
 - extra statutory concessions
 - criminal investigations
 - pension liberation schemes
 - high income child benefit charges
 - national minimum wage
 - accelerated payment and follower notices
 - cases which the FTT has categorised as “paper” or “basic” cases.
12. In addition, ADR is unlikely to be suitable in the following situations:
 - where the dispute is an “all-or-nothing” dispute and the case turns on the technical interpretation of legislation (the facts not being in dispute). Such disputes are comparatively rare, as there is usually some additional element of dispute between the taxpayer and HMRC
 - where there are important policy considerations for HMRC, or where the issue in dispute applies to a large number of taxpayers. In such circumstances, HMRC may wish to obtain a decision from the FTT and/or the higher courts which would be in the public domain
 - where HMRC is being asked to depart from its established practice or view of the correct interpretation of legislation
 - where either party alleges, or suspects, that the evidence offered by the other is false or unreliable and where successful resolution of the dispute requires that evidence to be tested before the FTT.

Is ADR voluntary?

13. Both parties must agree to the use of ADR. A taxpayer who does not wish to use ADR cannot be forced to do so and similarly, HMRC cannot be compelled to participate in the ADR process if it does not wish to do so.

What is the process for seeking ADR in a tax dispute?

14. A taxpayer wishing to use ADR should apply using the application form available at www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr. They should also inform the relevant HMRC case officer that this is what they are intending to do.
15. If the application is accepted, the parties will be informed accordingly.
16. The role of the mediator is to identify areas where the parties may come to agreement, and to assist in the resolution of the dispute. They have a large degree of control over the way the mediation is conducted and must structure discussions so that they are fair to both HMRC and the taxpayer. They must remain impartial throughout the process.

17. HMRC will normally suggest the use of an appropriately trained member of HMRC staff, independent of the dispute, to act as mediator. Alternatively, an independent CEDR¹-accredited mediator might be used.
18. Careful thought should be given to the background of the proposed mediator. Depending on the nature of the dispute, it may be appropriate to appoint a mediator with a non-tax background.

Mediation in action – what happens?

19. Typically, both parties will be asked by the mediator to prepare a brief opening statement (generally no more than two sides of A4 paper) setting out the salient facts and how they believe the law applies to those facts.
20. The mediator will open the mediation and will generally invite each party to make an opening statement before inviting discussion on the statements.
21. The parties will break-off to discuss particular points and issues with their advisors. The mediator will “shuttle” between the parties’ rooms. Any offers or concessions are typically made through the mediator. The parties may return periodically to inter partes discussions.
22. At the end of the mediation meeting the parties will prepare and sign a document recording the outcome of the mediation.
23. Substantial settlements (£100m plus) will need to be approved by the Tax Assurance Commissioner.

What next?

24. If all points in dispute have been resolved by agreement, settlement documentation is prepared (either by way of an appropriate closure notice, if an enquiry is still in progress, or by way of a settlement agreement if litigation has already been commenced).
25. If points remain in dispute, the enquiry process will continue or a taxpayer can progress their appeal.

Top tips

- ADR can be used at any time during a tax dispute and there is no need to await a formal decision from HMRC before considering ADR.
- Even where a settlement is not reached as a result of ADR, mediation can be successful in resolving some of the facts and matters in issue between HMRC and the taxpayer and thereby narrow the dispute.
- Any settlement reached in ADR must be compliant with HMRC’s Litigation and Settlement Strategy; this will have a bearing on what HMRC can and cannot accept in terms of a settlement.
- It is important to spend time preparing your opening statement.
- It is crucial to ensure that the right decision-makers are in the room or, at the very least, available by telephone or video link throughout the day, and able to approve the document of record at the end of the day, in order to ensure that a settlement can be reached and to minimise the risk of either party “rowing back” on what has been agreed.
- The timing of a mediation is important. It may have more chance of success if approached at a relatively early stage, since HMRC may not have become entrenched in its position. However, much will depend on the way an individual case has been dealt with within HMRC. There are certain “pressure points” within the litigation process when HMRC might be more amenable to reaching a settlement through ADR and ADR should be considered at those critical time points.

¹ The Centre for Effective Dispute Resolution, an independent non-profit organisation that offers training and certification to dispute resolution professionals.

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