

Alternative Dispute Resolution Pilot

HMRC is testing a new way to resolve tax disputes known as the Alternative Dispute Resolution (ADR).

This is a pilot scheme operating within the SME sector whereby a third person (the “facilitator”), who has not been involved before in the dispute, is brought in and works with the parties to the dispute to try to agree a way to reach agreement without going to Tribunal.

The facilitator is from within HMRC and works with the taxpayer and / or their representative and the HMRC officer responsible for the case. The facilitator will try to ensure that both parties have a clear understanding of the issues and of each other’s contentions in the hope of brokering further discussion. The aim is to resolve the dispute by agreement more quickly, easily and in a more cost effective way than by taking the formal route.

Suitable cases will be selected by HMRC from cases already within the internal review process, but consideration will also be given to requests from taxpayers or their advisers that their case be included in the pilot. Participating in the ADR extends the normal internal HMRC review period by two months, but this can be extended further if both sides agree. However, there is no obligation on either side in the dispute to take part in the ADR.

Taking part in the ADR does not affect the taxpayer’s right to have their case reviewed internally or to take an appeal to Tribunal. If the ADR fails to find an agreement between the parties, the case goes back to the original review team to complete their review. Then, if necessary, it can go on to Tribunal.

Commentary:

Think marriage guidance counselling via HMRC. On the plus side, if the officer handling your case is being unreasonable, it could be worth seeking inclusion of your case in this pilot. However, HMRC are not obliged to agree to take part in the ADR. I have seen one case where the taxpayer’s agent asked to be included in the ADR, the ADR team were happy to broker discussions but the HMRC officer handling the enquiry refused to take part! If the case were then to go to Tribunal, this would be a strong point to bring out from a tactical point of view.

Further Reading:

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<http://www.hmrc.gov.uk/news/adr-pilot.pdf>