



Mediation can get things moving

An alternative approach to resolving
tax disputes

Usually taxpayers and HMRC work together to ensure that the right tax is paid, but where there are strongly held differences as to what the right tax is, this can degrade and litigation can appear to be the only option for resolution. There is another way forward – Alternative Dispute Resolution.

Alternative Dispute Resolution

Alternative Dispute Resolution is a flexible process which has been introduced by HMRC in an attempt to resolve tax disputes more effectively. Mediation, which is also commonly referred to as 'facilitation' by HMRC, falls under the Alternative Dispute Resolution umbrella and has become increasingly popular and successful as a cost effective, consensual and efficient means of resolving tax disputes.

Mediation allows the parties to work collaboratively, with the aid of a trained mediator, to reach a mutually acceptable solution. The process is now being used by HMRC to resolve a wide range of tax disputes, with full or partial resolution achieved in the majority of cases, and it offers a viable alternative to litigation.

Unlike arbitration, mediation does not involve the mediator imposing a binding decision on the parties; instead the mediator works with both parties to encourage the parties themselves to find a solution. In common with mediation in a civil disputes context, tax mediation is a 'without prejudice' and confidential process, designed to save both parties the time and expense normally associated with litigation.

HMRC commitment to Alternative Dispute Resolution

Tax mediation

Following the success of an HMRC pilot to test the mediation process for a variety of different tax disputes, covering both direct and indirect tax issues, HMRC is firmly committed to mediation and is embedding the mediation process in its own procedures. HMRC has made a significant investment in mediation, training its own people from a variety of tax disciplines, and has over 50 internally trained facilitators and externally CEDR¹ accredited mediators.

In addition, HMRC has its own dedicated Resolution Strategy and Policy Team based in London, which oversees tax mediation, policy and the associated Litigation and Settlement Strategy².

HMRC has made Alternative Dispute Resolution available to all taxpayers including large business, SMEs and individuals, for both direct and indirect taxes.

1. CEDR – The Centre for Effective Dispute Resolution – the organisation which has developed the mediation model most often used in civil litigation disputes and adopted for use in tax disputes
2. This is the framework within which HMRC seeks to resolve tax disputes through civil procedure

Preparation for mediation

The mediator's role is to challenge assumptions and strengths/weaknesses of positions held by both parties, to help to clarify the parties' interests and needs underlying the negotiating positions, and to provide a channel of communication.



The mediation process usually begins with a meeting held between the taxpayer and an accredited mediator to explore the dispute, run through how the process works and discuss whether the dispute may be suitable for mediation.



Deloitte's Alternative Dispute Resolution team consists of CEDR accredited mediators who can assist with the mediation application process and will liaise with the appropriate HMRC dispute resolution team.



Often a taxpayer appointed CEDR trained mediator works with an HMRC trained mediator in a "joint facilitation".



Although no two mediations are the same, it is normal for a mediation to take place on a single day, but the process remains flexible and can be tailored to the needs of the specific case. Deloitte can advise on the most suitable approach.



Members of Deloitte's Alternative Dispute Resolution team can assist by using their experience of the tax mediation process to provide guidance as to where most effort should be focused. It is possible that the mediation day can be halted if both parties agree that third party advice or clarification needs to be sought.



Following the mediation, Deloitte will work with the taxpayer to effect the settlement, or to advise on possible next steps if settlement is not reached on the day. Even where a resolution is not achieved on the day of the mediation itself, in our experience the process helps to move the dispute forwards and often a resolution may materialise outside of litigation.

Deloitte's Alternative Dispute Resolution team can work with the taxpayer to prepare the case for mediation and advise on the appropriate strategy.

How a typical mediation day unfolds ...

1

Plenary opening statements are made from both sides.

2

Brief responses to opening statements are given.

3

The parties go to separate rooms and the mediator(s) hold separate sessions with both parties, alternating between the two.

4

Any offers or steps towards resolution are usually communicated via the mediator to the other party. Each party's conversations with the mediator are confidential and the mediator does not relay any position to the other party without express permission.

5

The parties come together in plenary when both sides are ready to talk face to face – this is usually at the stage when agreement in principle is reached/imminent.

When an agreement has been reached, it is documented and signed by the parties immediately.

Could mediation work for you?

Mediation can be relevant across a wide range of taxes and for many organisations. It can apply to complex and multi-faceted disputes where the parties have become entrenched and sometimes where the dispute appears to be 'all or nothing'.

HMRC will only reach an agreement where it complies with HMRC's Litigation and Settlement Strategy, so it is important to understand the suitability of your matter and the range of settlement outcomes which could be achieved. Deloitte's Alternative Dispute Resolution team can advise more fully to meet your needs.

Deloitte has a team of CEDR trained and accredited mediators who can advise you of the process and whether your dispute with HMRC may be suitable for mediation.

All disputes can be considered for Alternative Dispute Resolution at any stage of a dispute, even where litigation proceedings have been commenced.

Mediation can 'kick start' the process to resolution and can often result in previously unforeseen solutions.

Mediation can also be considered even if the parties believe that the dispute turns exclusively on points of law, and, although these cases are not always suitable, we have found that successful results can be achieved.

Deloitte has been involved in mediating a range of issues covering both direct and indirect taxes. We would be happy to discuss your specific case.

Mediation should be considered in all cases where discussions have become protracted or cases are heading towards litigation. More specifically, where any of the following apply there is usually a role for mediation.

- There is difficulty in pinning down the fundamental points of disagreement between the parties.
- There is uncertainty over the facts, or over which facts are relevant to the dispute.
- There is a lack of clarity/understanding of the parties' respective technical positions.
- A narrowing/clarification of the facts or issues in the dispute is needed.

Advantages of Alternative Dispute Resolution

- Confidentiality.
- Potential cost savings.
- Resolution outside litigation.
- Opportunity to explore facts and the dispute in a facilitated environment.

Meet the team

If you would like more information on the mediation process or an informal discussion to see if it could work for you, please get in touch.

Contacts



Glen Harling
Partner
+44 (0)20 7303 8687
gharling@deloitte.co.uk



Annis Lampard
Director
+44 (0)20 7007 3159
alampard@deloitte.co.uk



Mark Howard
Director
+44 (0)20 7303 8102
markhoward@deloitte.co.uk



Nicole Faith
Consultant
+44 (0)161 455 6447
nkfaith@deloitte.co.uk

Deloitte.

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