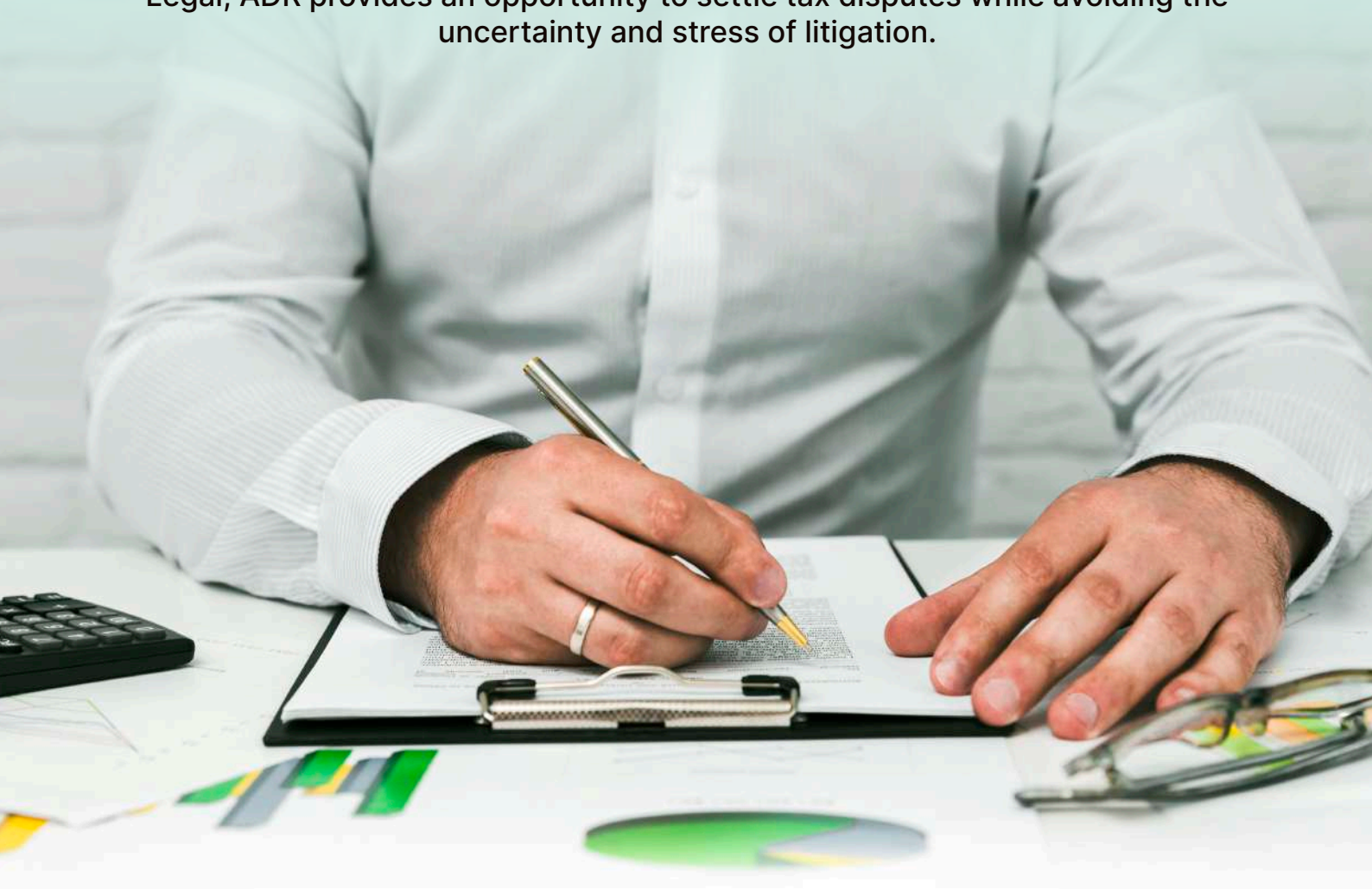


A Guide to Alternative Dispute Resolution (ADR) in HMRC Disputes

This guide explains the main ADR options available for tax disputes, the potential advantages ADR offers, key factors to consider, and how the processes work with HMRC. With expert guidance from our lawyers at Go Legal, ADR provides an opportunity to settle tax disputes while avoiding the uncertainty and stress of litigation.



We are here to help you. Free Consultation. Start your HMRC tax appeal today!

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1 Get in touch with us for a Free Consultation

We are here to help you every step of the way!

Go Legal is a leading City of London law firm dedicated to providing exceptional legal representation and strategic counsel to businesses and individuals. We specialise exclusively in commercial litigation and dispute resolution, and are an adviser of choice in England & Wales for HMRC tax disputes for many clients.

We are dedicated to your tax dispute with HMRC and obtaining the best outcome. With our extensive experience, deep understanding of legal issues and our client's business needs, we strive to achieve successful outcomes for our clients.

We pride ourselves on our client-centric approach, tailoring our strategies against HMRC and solutions to meet the unique commercial needs and goals of each client.

Our network of lawyers are recognised by the Legal 500 and Chambers Guide amongst the best in England & Wales every year. Our award winning-lawyers have regularly been asked to write authoritative publications for the Financial Times, Law Society and LexisNexis and have been quoted in the Law Society Gazette, The Student Lawyer, New Law Journal, Litigation Futures, and the Financial Times.

We work nationally across the UK – with an extensive UK and international client base. Our specialist tax team is Partner-led with the aim of working for clients to provide clear guidance, strategy and advice on your matter at the very outset.

We regularly represent our clients at mediations with HMRC often leading to early settlements. A number of our lawyers are also trained mediators and are also registered members of the Chartered Institute of Arbitrators (CIArb) and the International Mediation Institute (IMI).

Our award-winning specialist tax team is committed to providing you with careful, straightforward, honest and strategic advice. We will determine the merits and prospects of tax dispute with HMRC and provide you with a clear strategy at the outset to obtain optimal outcome and at minimum cost.

Unlock the potential for success with our experienced professional negligence lawyers by your side. Whether you are an individual, a small business, or a multinational corporation, we are here to provide unwavering support and exceptional legal services to get you the compensation you deserve.



2 What is mediation?

Mediation is a confidential and voluntary form of alternative dispute resolution, in which a neutral third party (the mediator) assists the disputing parties to work towards a negotiated settlement of the dispute. The parties should attend the mediation themselves and are usually accompanied by their lawyers. The disputing parties retain control of the decision as to whether to settle and, if so, on what terms.

Mediation provides a private forum in which the taxpayers and HMRC can better understand each other's position and then work together (with the assistance of the mediator) to explore options for settling the dispute. The most common type of mediation is facilitative mediation. In this type of mediation, unlike a judge or an arbitrator, the mediator will not decide the case on its merits.

Instead, the mediator will work to facilitate agreement between the disputing parties. Another type of mediation is evaluative mediation, in which the mediator is called upon to evaluate the case and its strengths and weaknesses. However, this type of mediation is less prevalent than facilitative mediation.

As part of the mediation process, there will be a mediation agreement that the disputing parties need to enter into beforehand. This will usually require the parties to treat all discussions and documents involved with the mediation as being confidential and without prejudice.

Therefore, it is usually the case that whatever is said or takes place during the mediation cannot be used in any tax appeal proceedings if the mediation does not settle (although HMRC often try to use what is said in mediation against taxpayers in any ongoing tax appeal). Therefore, the upmost care must be taken to ensure that the mediation agreement is properly drafted and agreed by the parties.

Considerations when assessing if ADR could successfully resolve a tax dispute include:

- **Likelihood of achieving better outcome than litigation** - does the case favour compromise?
- **Importance of flexibility in settlement terms** - is creative problem solving needed?
- **Saving time and costs are imperative** - is the urgency and expense of litigation disproportionate?
- **Privacy is essential** - are public proceedings unacceptable?
- **The high risks of litigation** - are the costs of losing unbearable?
- **Maintaining relationships with tax authorities** - is future engagement important?
- **Similar cases have resolved via ADR** - precedents increase HMRC willingness.
- **HMRC is indicating cooperation and reasonableness** - positive responses improve prospects.



STEP 1 - Application to HMRC for Mediation

We will apply to HMRC for mediation; it may be that the application is accepted if they consider your tax dispute suitable for mediation or it may be rejected. For the mediation process to work effectively, the parties must have confidence and trust in the agreed mediator.

When making arrangements for mediation, it is important to ensure that an adequate amount of time is set aside for the mediation. Many mediations last no longer than one day, and so the mediation venue will need to be booked for the entire duration of the mediation.

The mediation should take place at a neutral location convenient for all parties, with one room for a joint session between the parties as well as a private room for each party. Food and refreshments should be available for the entire duration of the mediation, which may continue late into the evening. It is increasingly common to have online video mediation and this can work well (and also save costs associated with venue hire, travel, food and refreshments).

STEP 2 - Assembling a mediation team

If HMRC accept your application for mediation, it is strongly recommended that you be present at the mediation as you will be needed to consider and approve any settlement proposal that is made during the mediation.

It is usual for us to attend the mediation (if instructed to do so), unless it is a low value claim and costs are an issue. Solicitors can serve a useful role in advising you on settlement proposals, which is particularly important in larger and more complex claims.



If a barrister had been involved in your case, then it would be usual for the barrister to attend the mediation with your solicitors. Barristers can serve a useful role in advising you on settlement proposals and drafting any settlement agreements, which is important in larger and more complex claims.

In some cases, it may be necessary for the parties or the mediator to discuss a particular issue with an expert in order to try and identify or narrow a point of dispute between the parties. If this is likely, then an expert should be instructed to attend the mediation and there should be a

discussion with the mediator about the exact scope of the role of the expert in the mediation.





STEP 3 - Preparing for a mediation

In advance of mediation, it is useful for your solicitors to have pre-mediation contact with the mediator (which is usually done via telephone) in order to:

- Provide an opportunity for the mediator to explain the mediation process and to highlight the main ground rules;
- Establish a rapport with the mediator and understand the mediator's style and personality;
- Highlight on a confidential basis any issues that the mediator should be aware of; and
- Discuss how best to structure and approach the mediation.

Before mediation takes place, each party will prepare a position statement that will be sent to the other party and to the mediator. The position statement will usually be prepared by your solicitors and your barrister (sometimes, where required, with the involvement of an expert) and will be approved by you before distribution.

The position statement is useful because it provides the opportunity to brief the mediator by identifying the main issues between the parties and the background to any settlement discussions that have taken place to date. The position statement is also an important tactical document because it informs the other party about the strengths of the case against them and what you hope to achieve from the mediation.

What happens at a typical mediation?

There may be four different stages in a typical mediation:

- The opening phase;
- The negotiation phase; and
- The exploration phase;
- The settlement phase.

However, mediation is a flexible process.

The opening phase

Once the parties have arrived at the mediation venue and have had a chance to meet the mediator and prepare themselves, the mediator will usually convene a joint session at which the mediator will make an opening statement, following which each of the parties could put forward their perspective on the dispute.

The joint session is important because it provides an opportunity for each party to present its position and it may be the first time that all the parties have assembled.

The joint session will start with a statement by the mediator that will usually:

- Explain the flexible and voluntary nature of the mediation process;
- Remind the parties that they are in control of the outcome of the mediation process;
- Emphasise the neutrality of the mediator;
- Stress the private and confidential nature of the mediation;
- Outline the various phases of the mediation process;
- Emphasise the importance of active participation and encourage the parties to ask any questions; and
- Forewarn the parties that settlement will not be straightforward, and that the parties should expect some difficulties, but explain that the mediator's role is to help them with working through the mediation process.

Each party will then make their opening statement. We will, subject to your instructions and strategy, usually be involved in making the opening statement.

The exploration phase

Following the opening phase, the mediator will have private meetings with each party, which are entirely confidential. These private meetings are useful because they:

- Allow the parties to explore the issues and discuss settlement proposals with the mediator without the other party being present;
- Allow the mediator to find out more about the parties' needs and motivations;
- Allow the parties to share confidential information with the mediator without disclosing that information to the other party;
- Allow the parties to give their reactions to the joint session; and
- Allow the parties to conduct a robust assessment of their case without losing face in front of the other party.





The negotiation phase

Negotiation during mediation will tend to involve the mediator shuttling between the parties and conveying offers and counter-offers between them. This can be an effective method of advancing the negotiations between the parties, particularly as the mediator may be able to provide an unemotional explanation of each party's position.

In order to move negotiations forward, the mediator will often need to assist the parties and their advisers to break the deadlock. This can sometimes involve the mediator convening a joint session of all participants in order to summarise the respective positions, review progress and help to put the negotiations in context.

The settlement phase

If the parties have agreed terms of settlement, it is important to record the agreement during the mediation in order to avoid any later dispute about what was agreed or the risk of the parties changing their minds.

Maximising Prospects of Successful ADR Outcomes

To maximise the chances of effective dispute resolution through ADR:

- Take advice from our highly experienced and specialist tax solicitors at Go Legal. We are experts in mediation and several of our lawyers are qualified mediators as well.
- **Thoroughly assess if ADR is appropriate for the dispute** - consider all pros, cons and key factors.
- **Initiate ADR as early as possible before positions harden** - this makes settlement easier but leveraging your position is important in order to obtain the best outcome. Therefore, this may mean submitting detailed and strong submissions on your behalf challenging HMRC's decision.
- Gather and submit the strongest evidence supporting your position to shape perceptions of the merits.
- Demonstrate willingness to compromise and be creative regarding possible settlement terms.
- **Deploy tact and emotional intelligence during negotiations** - relationships matter.
- **Remain poised and professional if challenging issues surface** - cool heads prevail.





If you think you have received an assessment or penalty from HMRC it is important to obtain legal advice immediately, you only have 30 days within which to appeal the assessment. We have an excellent track record of winning against HMRC and obtaining costs for our clients.

Please contact us and we will confidentially discuss your tax issue.



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