

An approach to Alternative Dispute Resolution (ADR) - Pilot for Small and Medium Enterprises customers

Background

In 2011, HM Revenue & Customs (HMRC) carried out a pilot to trial ADR, aimed at improving the way HMRC resolve tax disputes for Small & Medium Enterprises (SME) customers.

During the pilot, cases were selected from those which had gone for internal HMRC Review and looked to be headed for Tax Tribunal. The results were encouraging and suggested that ADR may work well at an earlier stage in the Compliance Check Process. 60 per cent of the disputes which entered the pilot were either fully or partially resolved and the overwhelming majority were fully resolved to the satisfaction of both the customer and HMRC.

The pilot was well received by both customers and their representatives, who welcomed the opportunity to use ADR as a means to resolve disputes with HMRC.

'A very useful service and my advice to anyone who has a dispute is to use this free service as you would find it valuable to talk to someone who is both very knowledgeable and impartial to either party' – Mr B, self employed and an unrepresented customer

'[The HMRC facilitator was] down to earth in approach – communicating in an understandable way'. – Mr W, customer.

What's new about the ADR process in SME?

ADR involves appointing a trained HMRC 'facilitators' to compliance checks which have reached 'impasse'. The facilitator works with the customer and/or their representative and the original HMRC caseworker to try to reach an agreement and resolve the dispute. In all cases the facilitator is completely independent of the dispute in question and has had no prior involvement in the case. Their role is to objectively assist discussions between both parties.

External representative bodies have attested to the impartiality of the ADR facilitators.

Extending the pilot in SME

Building on the success of the initial pilot, HMRC now plans to test ADR more widely among SME customers. Because HMRC wish to test the success of ADR at an earlier stage in the compliance check process, HMRC is restricting availability of ADR **to cases where an appealable tax decision or assessment has not been made**. Where a customer and/or his representative believes that ADR may speed up resolution of their dispute with HMRC, they can make application via this [link](#) to be included in the pilot

HMRC will advise customers and/or their representative, whether a case has been accepted for ADR within 30 days of receipt of the request.

Demand for ADR in SME

During the extended phase, HMRC has a small team dedicated to this work. In order to manage demand for ADR, the pilot will initially only be available to SME customers the North West, South West, Wales and London. HMRC may have to prioritise those disputes where, based on experience of the original pilot phase, HMRC believes there is the greatest chance of resolution.

Cases potentially suitable for this pilot may involve any of the following features:

- facts which are capable of further clarification
- disputes that may benefit from obtaining more suitable evidence
- fact and/or technical matters in which there is legitimate scope for any party to obtain a better understanding of the other's arguments
- issues which are capable of further mediation and settlement by agreement within the framework of the Litigation and Settlements Strategy ([LSS](#))

Examples of suitable cases for the pilot can be found in [Appendix A](#).

Cases not suitable for this pilot may involve any of the following features:

- Cases which cannot be legitimately settled within the parameters of the LSS other than by litigation.
- Issues which require clarification in the wider public interest. These might include matters of industry wide application.
- Issues linked to or involving co-ordinated appeals issues ('Stood behind' cases) for example, 'Compound Interest' type disputes.
- Cases that could only be resolved by an HMRC departure from its established technical or policy view.

Where the case falls within the appropriate criteria, the facilitator will contact the customer or their representative to explain the process, and ask for the completion of a simple Memorandum of Understanding to confirm the customer's participation in and commitment to ADR. Similar agreements are a feature common to Dispute Resolution in all areas of dispute, not just tax.

The facilitator will then work closely with the customer and/or their representative and the HMRC officer who has been dealing with the case, in an open, flexible and objective way to see whether progress can be made towards resolving the tax dispute.

Customer's views (and those of their representatives) are critically important to judge whether ADR is an effective means by which to resolve disputes in SME. At the end of the facilitation process HMRC will ask participating customers and their representatives for feedback on how well the process has, or hasn't, worked. HMRC will monitor the outcomes of each case to look for opportunities to improve the process and to see whether ADR could be made available more widely in the future.

Taking part in the pilot in no way prejudices a customer's case and it does not affect their right to have an internal review or to take their appeal to Tribunal. The facilitator will not be called as a witness by HMRC or be involved in the appeal.

Further information

If you would like a case to be considered for the ADR process, please complete the application form available through this [link](#). Your application will be considered, and you will hear back from

HMRC within 30 days. If there are exceptional circumstances which prevent you from applying online, please contact Carrol O'Neill on 01452 397088, who process your request.

For further information please see [Frequently Asked Questions](#). For information on the first stage of the ADR Trial which ran between February and September 2011 please see the [Evaluation Report](#).

General background information about the pilot may also be obtained by contacting the ADR Pilot Manager, David Croad, on Tel 0117 372 2264 or email david.croad@hmrc.gsi.gov.uk.