

Options for Alternative Dispute Resolution (ADR)

INTRODUCTION

Alternative dispute resolution (ADR) is the process of resolving a dispute through non-judicial means, typically by placing the case in non-binding mediation or in binding arbitration.¹ These proceedings are generally conducted by neutral parties, such as mediators, administrative law judges (ALJs), or ombudsmen. As will be developed in this literature review, researchers, commentators, and stakeholders have published substantial in-depth analysis regarding the effectiveness and flexibility of ADR in a variety of contexts. Studies in this area demonstrate that efficient ADR can have a beneficial impact on tax compliance and tax administration. Moreover, ADR has been widely embraced by businesses, various federal agencies, and tax authorities of certain foreign countries.

Likewise, the IRS itself has acknowledged that ADR can play a useful role within its operations. “A primary objective of the Internal Revenue Service is to resolve tax controversies at the lowest level without sacrificing the quality and integrity of those determinations. Alternative Dispute Resolution (ADR), or mediation programs achieve this objective.”² Further, the IRS has expressed the view that at least some aspects of ADR can successfully be used “[t]o promote issue resolution at earlier stages and decrease the overall time from return filing to ultimate issue resolution.”³

Nevertheless, the IRS is underutilizing this potentially valuable tool and administering ADR in a way that is unattractive to taxpayers. For example, taxpayers and their representatives could reasonably question the accessibility, cost effectiveness, and impartiality of ADR proceedings.⁴ Perhaps as a result of such considerations, ADR opportunities within the IRS are infrequently embraced by taxpayers. During fiscal year (FY) 2016 the IRS had only 306 ADR case receipts.⁵

The IRS is failing to take advantage of a highly useful mechanism for administrative dispute resolution. ADR, if thoughtfully and creatively implemented, could substantially increase the efficiency and timeliness of case resolutions. In turn, an effective ADR program would protect taxpayer rights, reduce taxpayer burden and cost, encourage voluntary compliance, and economize scarce IRS resources. The IRS could benefit substantially from the ADR lessons learned by commentators, businesses, various federal agencies, and tax authorities of certain foreign countries.

1 Throughout this literature review, ADR will be used as a collective term referring both to mediation and arbitration. More specific terms will be adopted where distinctions among the various forms of ADR become relevant.

2 Internal Revenue Manual (IRM) 8.26.3.1(1), *Objective and Authority for Fast Track Mediation (FTM)* (Dec. 5, 2014).

3 Rev. Proc. 2003-40, 2003-25 I.R.B. 1044.

4 IRS personnel generally serve as the “neutral” party in ADR proceedings. See, e.g., IRM 8.26.3.1(2), *Objective and Authority for Fast Track Mediation (FTM)* (Dec. 5, 2014).

5 Fiscal Year (FY) 2016 data provided by Appeals (Oct. 19, 2016).

DISCUSSION

ADR finds longstanding precedent throughout history, including application among Phoenician merchants, use by Alexander the Great's father, and inclusion in George Washington's will.⁶ Specifically, "... ADR techniques can be placed on a continuum, ranging from left to right in complexity from simple two-party negotiations to mediation to binding arbitration, with an unlimited number of hybrid techniques in between."⁷

The private sector has been quick to understand and seek the benefits of ADR, particularly arbitration. According to the RAND Institute for Civil Justice (RAND), an analysis of data from 21 large public corporations indicated that over 70 percent of consumer contracts possess arbitration clauses.⁸ Likewise, the majority of corporate counsels RAND surveyed believe that contractual arbitration is better, faster, and cheaper than litigation.⁹ Moreover, according to studies cited by the American Bar Association Section of Dispute Resolution:

- 80 percent of attorneys and 83 percent of business people report that arbitration is a fair and just process;
- 86 percent of corporate counsels are satisfied with international arbitration; and
- Over 90 percent of parties involved in arbitration voluntarily comply with the outcome.¹⁰

Likewise, some federal agencies, such as the Environmental Protection Agency (EPA), the United States Air Force (Air Force), and the Social Security Administration (SSA) have used ADR to great advantage. For example, issues resolved via ADR within the EPA demand less than 50 percent of the time from staff leads than would be required in more contentious traditional proceedings.¹¹ Eighty-seven percent of the staff leads the EPA surveyed with respect to their particular cases indicated the belief that ADR "was a good investment for EPA."¹²

The Air Force reports that large disputes that took an average of five years to resolve through litigation are now being resolved by the use of ADR in an average of just over 12 months.¹³ According to the Air Force,

6 Ji Hun Kim & Nicholas M. McGrath, *Mediation: Can't We All Just Get Along?*, 30 AM. BANKR. INST. J. 52 (Sept. 2011); R. Jeff Knight, *Alternative Dispute Resolution in Tax Cases* (Jan. 23, 2013), <http://ccintranet.prod.irsconcounsel.treas.gov/OrgStrat/Offices/sbse/Presentation%20Materials> (on file in TAS archives); *Benefits of Arbitration for Commercial Disputes*, A.B.A. Sec. of Disp. Resol., http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/arbitration/arbitrationguide.authcheckdam.pdf (last visited Mar. 8, 2016).

7 Steven C. Wrappe, *Advance Pricing Agreements: The IRS Rediscovered Alternative Dispute Resolution*, 63 TAX NOTES 1343, 1345 (June 6, 1994).

8 Douglas Shontz, Fred Kipperman & Vanessa Soma, RAND Inst. for Civ. Just., *Business-to-Business Arbitration in the United States: Perceptions of Corporate Counsel*, 2 (2011). See also Mandy Walker, *The Arbitration Clauses Hidden in Many Consumer Contracts*, CONSUMER REPORTS (Sep. 29, 2015), <http://www.consumerreports.org/cro/shopping/the-arbitration-clause-hidden-in-many-consumer-contracts>.

9 Douglas Shontz, Fred Kipperman & Vanessa Soma, RAND Inst. for Civ. Just., *Business-to-Business Arbitration in the United States: Perceptions of Corporate Counsel*, ix (2011).

10 *Benefits of Arbitration for Commercial Disputes*, A.B.A. SEC. OF DISP. RESOL. 8, http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/arbitration/arbitrationguide.authcheckdam.pdf.

11 Conflict Prevention & Resol. Ctr., U.S. Envtl. Protection Agency, *FY 2014 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ* (Feb. 17, 2015).

12 *Id.*

13 Off. Att'y Gen., *Report for the President on the Use and Results of Alternative Dispute Resolution in the Executive Branch of the Federal Government*, 155 (Apr. 2007).

it has avoided paying over \$275 million in contractor claims since the “ADR First” policy was instituted in 2000.¹⁴

Where the SSA is concerned, ADR is conducted by administrative law judges (ALJs) who are provided free of charge and who are housed in a wholly independent unit from other SSA groups. Of the over 700,000 ALJ decisions rendered each year, only approximately 16,000 (less than 3 percent) are appealed to federal courts.¹⁵

Recognizing the benefits of ADR, the tax authorities of several foreign countries have also sought to institute a range of ADR programs. For example, Hong Kong utilizes an appeals system incorporating aspects of binding arbitration in which cases can be brought by taxpayers before a Board of Review (BOR) comprised of a chairman with legal training and two members with expertise in other professions.¹⁶ In Australia, the government and taxpayers are encouraged to pursue ADR by a legal requirement that they file a “genuine steps” statement outlining the attempts they made to avoid litigation before court proceedings can begin.¹⁷ Although relatively new, Australia’s ADR procedures appear to be producing good results in achieving resolutions more frequently and earlier in the objection and appeals process.¹⁸ Likewise, ADR implemented by Her Majesty’s Revenue and Customs (HMRC) in the United Kingdom seems to be working well, with some data suggesting that ADR resolutions can be achieved approximately seven times faster than litigation decisions.¹⁹ Further, the HMRC’s 2013 ADR Project Evaluation Report indicates that 58 percent of all cases selected for ADR were fully resolved, while a further eight percent were partially resolved.²⁰

When implemented effectively, ADR can have a particularly salutary effect on tax compliance and the voluntary tax system.²¹ ADR’s flexibility and participatory nature increase perceptions of equity and procedural justice.²² In turn, such perceptions can positively impact tax compliance behavior in the future.²³

Specifically, “the tax compliance literature identifies that factors associated with tax disputes resolution procedures can influence taxpayers’ level of compliance.”²⁴ Of the various factors influencing tax compliance behavior, quality of contact with the tax authorities and taxpayers’ perceptions of fairness

14 The Air Force ADR Program, Dep’t of the A.F., *Report to the Secretary of the Air Force on the Air Force Alternative Dispute Resolution Program*, 1 (Dec. 2012).

15 SSA, *Hearings and Appeals*, https://www.ssa.gov/appeals/about_odar.html (last visited Nov. 3, 2016).

16 Ernst & Young, *Tax Dispute Resolution: A New Chapter Emerges, Tax Administration Without Borders*, 1, 37 (2010).

17 KPMG, *Tax Disputes and Controversy Update — Focus on Alternative Dispute Resolution* (Aug. 5, 2014), <https://home.kpmg.com/xx/en/home/insights/2014/08/focus-on-alternative-dispute-resolution.html>.

18 *Id.*

19 Hui Ling McCarthy, *Tribunal Fees — A Tax on Justice*, *TAX ADVISOR* (Jan. 21, 2016), <http://www.taxadvisermagazine.com/article/tribunal-fees-%E2%80%93-tax-justice>.

20 *Id.*

21 Melinda Jone & Andrew J. Maples, *Mediation as an Alternative Option in Australia’s Tax Disputes Resolution Procedures*, 27 *AUSTL. TAX F.* 525 (2012); Amy S. Wei, *Can Mediation Be the Answer to Taxpayers’ Woes?: An Examination of the Internal Revenue Service’s Mediation Program*, 15 *OHIO ST. J. ON DISP. RESOL.* 549, 549 (2000).

22 Tonya M. Scherer, *Alternative Dispute Resolution in the Federal Tax Arena: The Internal Revenue Service Opens Its Doors to Mediation*, 2 *J. OF DISP. RESOL.* 215 (1997).

23 Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 *FLA. TAX REV.* 599 (2007); John Hasseldine & Peggy Hite, *Key Determinants of Compliance and Non-Compliance*, 2007 *TAX NOTES TODAY* 205-40.

24 Melinda Jone & Andrew J. Maples, *Mediation as an Alternative Option in Australia’s Tax Disputes Resolution Procedures*, 27 *AUSTL. TAX F.* 525, 528 (2012).

are particularly strengthened or diminished by an effective ADR program.²⁵ Generally, people who feel they have been treated in a procedurally fair manner by an organization are more likely to trust that organization and are more willing to accept even a negative outcome.²⁶ Further, “people value respectful treatment by authorities and view those authorities that treat them with respect as more entitled to be obeyed.”²⁷ ADR done well can help generate the types of interactions and perceptions that will perpetuate the compliant behavior necessary to the success of the voluntary tax system.

LITERATURE REVIEW

Tax, Academic, and Related Publications

1. **Amy S. Wei**, *Can Mediation Be the Answer to Taxpayers' Woes?: An Examination of the Internal Revenue Service's Mediation Program*, 15 OHIO ST. J. ON DISP. RESOL. 549, 550 (2000).

“This Note will provide a critical overview of the present IRS mediation program, examine the benefits brought to the IRS and taxpayers by the program, and suggest areas that the IRS may want to examine to increase the program’s success potential. Specifically, Parts II and III of this Note will examine the development of mediation in the IRS and provide a brief description of its present mediation pilot program. Finally, Part IV compares other state governments’ and federal agencies’ mediation procedures with the IRS program and suggests areas that the IRS may examine in order to increase the effectiveness of its program.”

2. *Benefits of Arbitration for Commercial Disputes*, A.B.A. SEC. OF DISP. RESOL. 2, http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/arbitration/arbitrationguide.authcheckdam.pdf.

This publication defines arbitration in a commercial context, concluding that “it has many advantages over litigation in court, such as party control of the process; typically lower costs and shorter time to resolution; flexibility; privacy; awards which are final and enforceable; decision makers who are selected by the parties on the basis of desired characteristics and experience; and broad user satisfaction.” The publication contains more detailed discussions of each of these advantageous aspects.

3. **Div. for Pub. Educ.**, A.B.A., *How Courts Work: Mediation*, https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/mediation_advantages.html (last visited Jan. 19, 2016).

This article provides a general summary of mediation and its advantages. These advantages include lowered cost and increased speed of proceedings.

4. **Ji Hun Kim & Nicholas M. McGrath**, *Mediation: Can't We All Just Get Along?*, 30 AM. BANKR. INST. J. 52 (Sept. 2011).

This article discusses the benefits of mediation for limiting litigation regarding bankruptcy proceedings. “The U.S. economic downturn has brought about an increase in both large and

25 Melinda Jone & Andrew J. Maples, *Mediation as an Alternative Option in Australia's Tax Disputes Resolution Procedures*, 27 AUSTR. TAX F. 525, 528 (2012).

26 *Id.*

27 *Id.*

small bankruptcy filings, with numerous opportunities for bankruptcy practitioners to utilize the benefits of mediation to maximize time, money and value to the estate. With the economy far from stabilized, increased bankruptcy filings, overwhelmed dockets and unpredictable results, bankruptcy mediation provides an expeditious and cost-effective way to avoid some of the typical pitfalls of bankruptcy.”

5. **John Hasseldine & Peggy Hite**, *Key Determinants of Compliance and Non-Compliance*, 2007 TAX NOTES TODAY 205, 205.

“Policymakers will find it difficult to evaluate new enforcement initiatives without understanding these behavioral responses and addressing these both strategically and operationally ... We outline the salient outcomes of prior tax enforcement research in terms of compliance/non-compliance determinants based on theoretical, archival, survey, and lab studies. In addition, we discuss further issues such as sanctions and citizenship approaches within the context of prior field experiments in tax enforcement. We also speculate on factors such as tax attitudes, framing effects and publicity, and large business before offering some final remarks.”

6. **Marjorie E. Kornhauser**, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 FLA. TAX REV. 599 (2007).

Kornhauser outlines the various factors involved in tax morale, which is defined as the internal motivation for compliance, and formulates a series of recommendations for the IRS with the goal of increasing voluntary tax compliance among individuals. These recommendations include establishing a department to research tax morale and implement its findings, adopting a tax morale approach to tax compliance that accounts for individual situations and the impact of interactions with institutions like the IRS itself, and designing ongoing educational and media efforts to promote tax morale.

7. **Melinda Jone & Andrew J. Maples**, *Mediation as an Alternative Option in Australia's Tax Disputes Resolution Procedures*, 27 AUSTL. TAX F. 525, 525 (2012).

“In 2011 the [Australian] Inspector-General of Taxation announced the terms of reference of a review into the ATO's utilisation of early and alternative dispute resolution. Against this background, this article considers mediation as an alternative method in resolving tax disputes. Specifically, this article looks at how mediation is utilised in the tax disputes resolution procedures in the United States and in Australia by the Administrative Appeals Tribunal and Federal Court of Australia. It provides recommendations on what the ATO and Australian policymakers can learn from these experiences in order to enhance the use of tax mediation in the disputes resolution process in Australia.”

8. **R. Jeff Knight**, *Alternative Dispute Resolution in Tax Cases* (Jan. 23, 2013), <http://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/sbse/Presentation%20Materials> (on file in TAS archives).

This article briefly overviews the history of ADR, followed by an in-depth discussion of each type of ADR available in U.S. tax disputes, such as Fast-Track Settlement and Fast-Track Mediation. The article concludes that the IRS has made positive steps in implementing ADR and that the benefits of further expanding ADR programs are numerous and clear.

9. **Steven C. Wrappe**, *Advance Pricing Agreements: The IRS Rediscovered Alternative Dispute Resolution*, 63 TAX NOTES 1343, 1343 (June 1994).
“Wrappe reports that the IRS has received acceptance of the Advance Pricing Agreement (APA) Program, an alternative dispute resolution (ADR) technique dealing with transfer pricing issues. This article attempts to explain the APA Program’s success and explore the potential for other ADR techniques to resolve transfer pricing and other difficult factual issues.”
10. **Tonya M. Scherer**, *Alternative Dispute Resolution in the Federal Tax Arena: The Internal Revenue Service Opens Its Doors to Mediation*, 1997 J. OF DISP. RESOL., 215.
Scherer analyzes the early stages of the IRS’s ADR programs, including their promising early results in terms of participant satisfaction. The discussion focuses particular attention on mediation programs. Scherer concludes that the present evidence is strongly in favor of these programs and that the IRS should be proactive in implementing widespread ADR for all taxpayers.

The Private Sector Has Been Quick to Understand and Seek the Benefits of ADR

11. **Douglas Shontz, Fred Kipperman & Vanessa Soma**, RAND Inst. for Civ. Just., *Business-to-Business Arbitration in the United States: Perceptions of Corporate Counsel*, ix (2011).
“Proponents of commercial, or business-to-business (B2B), arbitration point to its potential benefits for domestic dispute resolution compared with traditional litigation, including reduced congestion and costs for the courts, as well as expedited and less costly outcomes. However, a recurring complaint in the press and academic literature is that arbitration has become as costly and time-consuming as litigation, with sharp increases in pre-hearing discovery and motion work ... In this study, we set out to learn what a subset of corporate counsel think about the relative benefits of litigation and arbitration in resolving domestic B2B disputes.”
12. **Elizabeth S. Strong**, *Some Reflections from the Bench on Alternative Dispute Resolution in Business Bankruptcy Cases*, 17 AM. BANKR. INST. L. REV. 387, 387-88 (Winter 2009).
“The fact is, as a bankruptcy judge, I see more, not fewer, reasons for counsel, clients, and parties to consider ADR tools and techniques, including facilitated negotiations and mediation, to resolve and even to avoid disputes. The purpose of this article is to revisit some of the topics from ten years ago with the additional perspective of the bench, and to consider how these topics apply in the simultaneously broad and specialized context of dispute resolution in business bankruptcy cases.”
13. **Ellen Taverna**, *You’ve Got No Rights*, NAT’L ASS’N CONSUMER ADVOCATES (Aug. 7, 2014), <http://www.consumeradvocates.org/blog/2014/you%E2%80%99ve-got-no-rights>.
This article raises concerns about the increased use of mandatory arbitration clauses in contracts between businesses and consumers. According to the author, the same aspects of arbitration that make it appealing for disputes between equal parties, such as its confidentiality, can be detrimental for consumers. Further, mandatory arbitration clauses often require the consumer to forgo the right to a class action lawsuit, one mechanism for accountability between businesses and consumers.

14. **Kevin R. Casey**, *Alternative Dispute Resolution and Patent Law*, 3 FED. CIR. B. J. 1 (Spring 1993).
Casey argues that the complexity and technicality of patent law, combined with the high stakes for the parties involved, make it well-suited to ADR. ADR allows parties to save time and money, as well as to select a neutral who has expertise in the relevant industry, all of which can lead to more agreeable outcomes.

15. **Mandy Walker**, *The Arbitration Clauses Hidden in Many Consumer Contracts*, CONSUMER REPORTS (Sept. 29, 2015), <http://www.consumerreports.org/cro/shopping/the-arbitration-clause-hidden-in-many-consumer-contracts>.

This article details the types of arbitration clauses, often mandatory, preferred by many businesses in their dealings with consumers. The article concludes that due to the uneven relationship between many such businesses, *e.g.*, Comcast or AT&T, and their consumers, mandatory arbitration clauses are not the most favorable in terms of consumer protections, although they may save businesses time and money.

Some Federal Agencies Have Also Been Successful in Using ADR

16. **The Air Force ADR Program**, Dep't of the A.F., *Report to the Secretary of the Air Force on the Air Force Alternative Dispute Resolution Program*, 1 (Dec. 2012).

This report provides a detailed description of the Air Force's ADR programs, policies, and results, concluding that "utilizing ADR processes continues to resolve and close workplace disputes more quickly and inexpensively, and at the appropriate organizational level. Contract disputes continue to be resolved by ADR in roughly half the time required for traditional litigation, saving money and avoiding program disruption. Through ADR, the Air Force has avoided paying over an estimated \$275 million in contractor claims since the AF 'ADR First' policy was instituted over a decade ago."

17. **Conflict Prevention & Resol. Ctr.**, U.S. Envtl. Prot. Agency, *FY 2014 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ* (Feb. 17, 2015).

This report analyzes the outcomes of EPA's newly implemented ADR program, known as ECCR, in depth and by using a variety of metrics. The report concludes that ECCR produces substantial time- and cost-savings compared with traditional dispute resolution, as well as improvements in more subjective areas, such as greater collaboration and greater control over proceedings. ECCR also led to better relationships between participants.

18. **David C. Batson, Barbara Gunner & Leslye M. Fraser**, *At the Forefront of Environmental Litigation—Effective Use of ADR in Environmental Administrative Proceedings*, A.B.A Environmental Litigation Conference (July 23, 2015).

This panel discussion provides an overview of the uses of ADR in EPA proceedings, with attention to the specifics of EPA policy. The discussion is aimed at encouraging litigators to use ADR in environmental disputes where one party is EPA. EPA has adopted a policy of encouraging ADR as a means of preventing and resolving disputes in all Agency activities, ranging from rulemaking to policy development to administration of contracts and grants.

19. **Dep't of the A.F.**, AFI 51-1201, *Conflict Management and Alternative Dispute Resolution in Workplace Disputes*, 3 (Mar. 17, 2014).

These Air Force Instructions update older instructions regarding the Air Force's ADR program. Generally, they support the Air Force policy "to voluntarily use ADR and other conflict management processes ... to the maximum extent practicable and appropriate to prevent or collaboratively resolve workplace disputes at the earliest stage feasible, by the fastest and least expensive method possible, and at the lowest possible organizational level."

20. *Disability Judges: Administrative Law Judge Case Statistics*, DISABILITYJUDGES.COM, <http://www.disabilityjudges.com/state> (last updated Sept. 7, 2016).

This webpage provides aggregate data by state on the SSA's ADR program. This includes the length to resolution of cases through SSA's ADR program, the number of offices and judges, and the percentages of cases approved, denied, or dismissed, and is produced using data publicly available from the SSA.

21. *Hearings and Appeals*, SSA.GOV, https://www.ssa.gov/appeals/hearing_process.html (last visited Mar. 16, 2016).

This webpage provides an outline of the SSA's ADR program, which is known as the Office of Disability Adjudication and Review (ODAR). This office uses ALJs as neutrals who conduct informal hearings on disability claims, at no cost to the claimant.

22. **Memorandum from Office of Mgmt. & Budget/Council on Env'tl Quality**, Exec. Office of the President to Sec'y/Admin. of EPA, 1 (Sep. 7, 2012) (on file in TAS archives).

This memorandum builds on a 2005 memorandum to EPA, directing the Secretary of EPA to increase and expand its ADR programs, known as ECCR, to resolve disputes more efficiently. "With the magnitude of environmental challenges facing the nation, coupled with the need for careful stewardship of tax dollars and budgets, Federal departments and agencies should leverage all environmental collaboration and conflict management techniques to improve environmental governance."

23. **Off. Att'y Gen.**, *Report for the President on the Use and Results of Alternative Dispute Resolution in the Executive Branch of the Federal Government*, 1 (Apr. 2007).

This report provides a summary of each ADR program within the Executive Branch of government. "The Report outlines the significant growth that has occurred in federal use of alternative dispute resolution since 2000. It also describes the positive results of federal alternative dispute resolution, including cost savings, increased workforce productivity, and the promotion of the efficient delivery of services. Finally, the Report discusses opportunities to further develop the full potential of federal alternative dispute resolution."

24. **Terry Morgan-Besecker**, *Social Security Disability Approvals Decline*, THE TIMES-TRIB. (Dec. 1, 2013), <http://thetimes-tribune.com/news/social-security-disability-approvals-decline-1.1593772>.

This article describes a trend in SSA's ADR program toward an increasing number of denials of claims, which could result in decreased interest in the program. The article suggests that factors involved may be an increased total number of claims putting pressure on ALJs, as well as the fact that many of SSA's ALJs are former SSA employees, which could represent a conflict of interest for a supposed neutral.

The Tax Authorities of Some Other Countries Have Taken Active Measures to Incorporate ADR As an Element of Their Tax Controversy Process

25. **Board of Review (Inland Revenue Ordinance)**, *Functions & Procedures*, www.info.gov.hk/bor/en/functions-procedures.htm (last visited Nov. 2, 2016).

This webpage outlines the specific circumstances in which a taxpayer in Hong Kong may appeal a tax determination. The webpage also designates particulars such as the parties who must be present for such a proceeding and the forms that must be provided for review.

26. **Ernst & Young**, *Tax Dispute Resolution: A New Chapter Emerges, Tax Administration Without Borders*, 1, 4 (2010).

“Taxpayers are seeking, and expecting, that tools to resolve or avoid controversy be made available. Fortunately, tax administrations are also recognizing that costly litigation is not in the best interest of the government, taxpayers or the public at large, if it can be avoided... The result of our analysis is a report in which we look at the key features of ADR ... We also provide summary information on the available ADR processes in more than 20 countries.”

27. **Hui Ling McCarthy**, *Tribunal Fees — A Tax on Justice*, *TAX ADVISOR* (Jan. 21, 2016), <http://www.taxadvisermagazine.com/article/tribunal-fees-%E2%80%93-tax-justice>.

This article discusses proposed new fees for U.K. tax tribunals, which taxpayers would have to pay in many cases in order to receive a hearing of their tax dispute. The author proposes an expansion of ADR as a possible way to alleviate unnecessary cost burdens on taxpayers.

28. **KPMG**, *Tax Disputes and Controversy Update — Focus on Alternative Dispute Resolution*, (Aug. 5, 2014), <https://home.kpmg.com/xx/en/home/insights/2014/08/focus-on-alternative-dispute-resolution.html>.

KPMG describes and compares the ADR offerings of the U.S., the U.K., Australia, and Germany. While few statistics are provided, the analysis is favorably inclined toward these programs.

29. *Tax Disputes: Alternative Dispute Resolution*, *GOV.UK*, <https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr> (last updated Feb. 3, 2016).

This U.K. government website describes the types of ADR available in tax disputes, as well as the types of disputes ADR may be helpful in resolving, such as disputes in which communication between a taxpayer and the taxing authority has reached an impasse. It offers specifics for taxpayers to request and initiate ADR.

30. *Tax Mediation: An innovation promoting transparent exchanges between tax authorities and taxpayers*, Tax Mediation Ass'n, 2015.

This proposed Canadian pilot program aims to introduce ADR at the earliest possible point in the tax controversy process. The description of the program cites many advantages of ADR, such as its time- and cost-savings, as good reasons to implement a mediation program for tax disputes. The authors also suggest that ADR proceedings can lead to better relationships between parties, in this case taxpayers and the taxing authority, which can in turn lead to greater compliance.