

HMRC's approach to Collaborative Dispute Resolution

DAVE HARTNETT
Permanent Secretary for Tax, HMRC

Tax disputes

- Resolving disputes effectively (right tax) and efficiently for HMRC and customer
- Litigation and Settlement Strategy
- Collaborative approach
- Alternative Dispute Resolution

Some facts and figures on HMRC tax disputes

• Total number of tax disputes (2009/10 figures)

- Smaller taxpayers 300,000
- Larger businesses 17,000

• Most settled by agreement, with only

- 8,500 subject to HMRC review (3%)
- 3,300 appealed to the tribunal (1%)

• Compliance yield (2008/09 figures)

- Total HMRC compliance yield £12bn
- Yield: staff ratio (Local Compliance) 10:1
- Yield: staff ratio (Large Business Service) 62:1

Illustrative elapsed time to resolve tax disputes

Disputes resolved by agreement

- Small taxpayers 65 days
- Larger taxpayers 100 days
- Large businesses 300 days

Disputes under HMRC review have a decision within 50 days

Disputes in litigation

- Fastest cases are resolved on an average of 100 days
- Average time for litigation 2 years
- Litigation of complex/ avoidance issues 5 - 6 years

(2009/10 figures)

Litigation and Settlement Strategy

- Timetables/ targets for dispute resolution
- Listen, understand, engage
- Embed collaborative mindset in standard disputes processes
- Collaborative mindset needs to be shared by customers/ agents

Collaborative approach

- Aimed at most efficient route to right result
- Collaborative/ cooperative/ non-confrontational
- No package deals/ splitting the difference
- Test whether 'all or nothing'
- Balance HMRC Strategy objectives
- Aim is to *resolve* dispute

Alternative dispute resolution for tax disputes

- We expect ADR to bring benefits
- Pilot in small number of cases
- HMRC and customer remain in control
- HMRC positions remain subject to LSS
- ADR does not displace improvements in standard processes for dispute resolution

ADR for tax disputes – selected international comparisons

- Australia – ADR in ATO disputes and litigation (from 1991)
- United States – IRS ADR programs (from 1998; updated 2009)
- Netherlands – tax mediation scheme (from 2005)

Australia – ADR in ATO Disputes and Litigation

Practice Statement Law Administration 2007/23

ADR may be appropriate for ATO disputes if ...

- *the dispute may be able to be resolved by having a **wide ranging discussion of the issues** on a non-prejudicial basis.*
- *a **narrowing or clarification of the facts or issues** in the dispute is warranted, for example to reduce the scope and cost of subsequent litigation.*
- *it is likely to result in a **quicker and therefore more cost effective resolution** of the dispute or part of the dispute..*
- ***evidentiary difficulties** for one or both parties increase the risks of proceeding to hearing.*
- *complex or unique facts or issues in the dispute make a potentially costly and time-consuming judicial determination of the dispute of **little utility** to the Commissioner or other taxpayers.*
- *resolution of the dispute may facilitate a certain and/or an **earlier payment of any tax**..*
- ***building an improved ongoing relationship** between the ATO and the other party to the dispute is likely to improve their compliance with their taxation obligations.*

Generally facilitative/ advisory mediation with third party ADR practitioner (costs shared)

United States – IRS Alternative Dispute Resolution programs

- Fast Track Settlement programs (large/ mid-size division taxpayers - <120 days; small business/ self-employed - <60 days; tax exempt and government entities - <60 days)
- Fast Track Mediation (small business/ self-employed) – <40 days
- Post Appeals Mediation (Revenue Procedure 2009-44)
 - for cases in which a limited number of legal and factual issues remain unresolved following settlement discussions in Appeals
 - Uses IRS mediator (at IRS expense) with option for non-IRS co-mediator (at taxpayer's expense)
 - Mediator has no settlement authority – the parties remain in control
- Arbitration (Revenue Procedure (2006-44))
 - for resolution of factual issues while case is in Appeals, or following settlement discussions in Appeals
 - Arbitrator may be from IRS Appeals or from non-IRS roster
 - Parties agree to be bound by Arbitrator's findings on the specified factual issues

Netherlands – mediation of tax or customs disputes

- Piloted in 2004 and introduced in 2005
- Normally uses internal Revenue service mediator
- Either when taxpayer objects to Revenue service decision, or when taxpayer disagrees with outcome of objection procedure

“The mediator tries to find out what the dispute is essentially about. He identifies the issues that need to be resolved and the factors that have stood in the way of a solution until now. He then guides both parties in finding a solution. You are both encouraged to view the situation from each other's perspective, so as to have a better understanding of the other party's interests.

Mediation often provides more creative solutions than those generated by strictly businesslike, legal proceedings, without detracting from the statutory correctness of the result. The mediator does not impose the result: the parties themselves determine the solution. Sometimes this solution concerns mutual communication, while at other times it is purely a business solution.”