

A woman with long dark hair, wearing a bright red coat, is seen from behind, holding a large white document or map. She is looking towards a lush green garden with a stone path. A solid red vertical bar is positioned on the left side of the image.

BDO TAX MEDIATE

Using Alternative Dispute Resolution
to resolve Tax Disputes

IDEAS | PEOPLE | TRUST

BDO

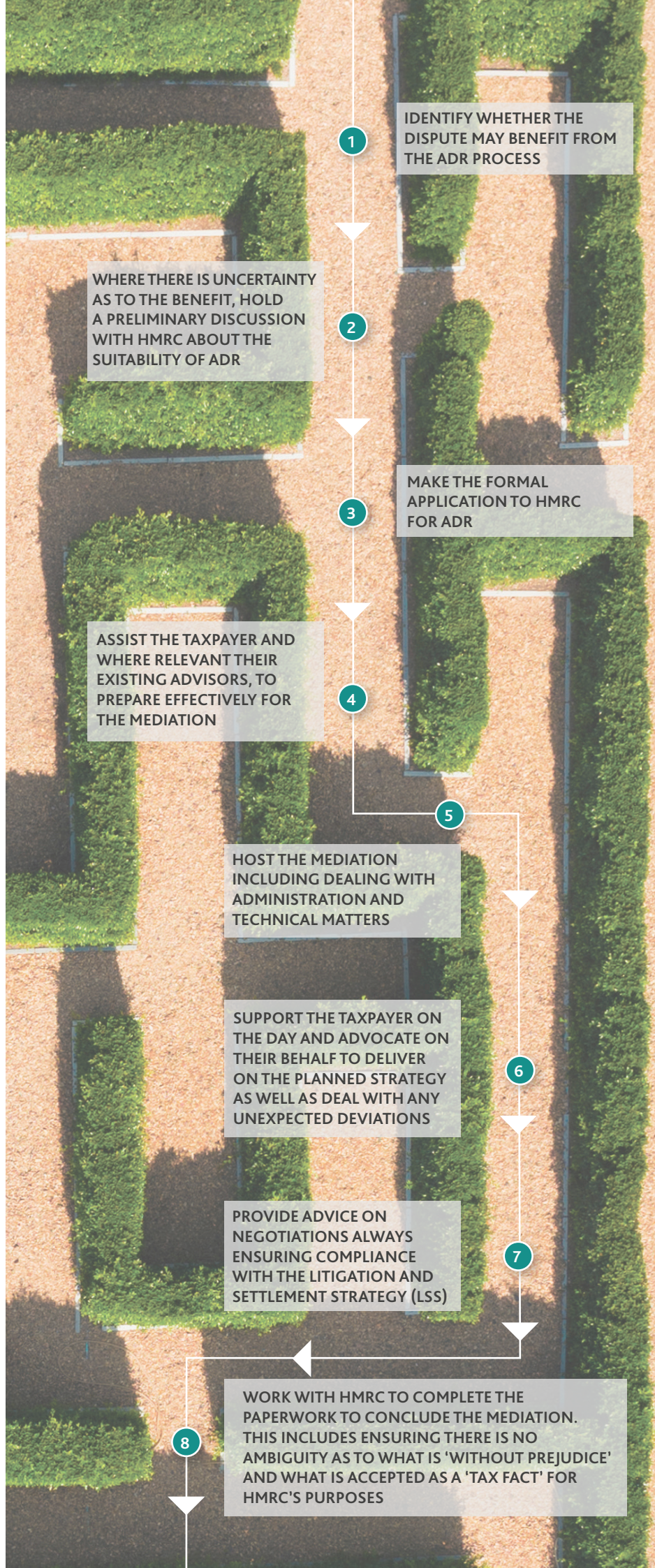
BDO TAX MEDIATE

WE GUIDE YOU THROUGH THE MAZE

BDO Tax Mediate is a mediation support service harnessing the power of Alternative Dispute Resolution (ADR) to accelerate resolution of long running or stalled tax disputes.

BDO Tax Mediate is delivered by experienced accredited mediators.

BDO Tax Mediate has a fixed starting cost for fixed services providing taxpayers more certainty as to costs and timescales from the outset.



1 IDENTIFY WHETHER THE DISPUTE MAY BENEFIT FROM THE ADR PROCESS

2 WHERE THERE IS UNCERTAINTY AS TO THE BENEFIT, HOLD A PRELIMINARY DISCUSSION WITH HMRC ABOUT THE SUITABILITY OF ADR

3 MAKE THE FORMAL APPLICATION TO HMRC FOR ADR

4 ASSIST THE TAXPAYER AND WHERE RELEVANT THEIR EXISTING ADVISORS, TO PREPARE EFFECTIVELY FOR THE MEDIATION

5 HOST THE MEDIATION INCLUDING DEALING WITH ADMINISTRATION AND TECHNICAL MATTERS

6 SUPPORT THE TAXPAYER ON THE DAY AND ADVOCATE ON THEIR BEHALF TO DELIVER ON THE PLANNED STRATEGY AS WELL AS DEAL WITH ANY UNEXPECTED DEVIATIONS

7 PROVIDE ADVICE ON NEGOTIATIONS ALWAYS ENSURING COMPLIANCE WITH THE LITIGATION AND SETTLEMENT STRATEGY (LSS)

8 WORK WITH HMRC TO COMPLETE THE PAPERWORK TO CONCLUDE THE MEDIATION. THIS INCLUDES ENSURING THERE IS NO AMBIGUITY AS TO WHAT IS 'WITHOUT PREJUDICE' AND WHAT IS ACCEPTED AS A 'TAX FACT' FOR HMRC'S PURPOSES

ADR QUESTIONS AND ANSWERS



WHAT IS ADR?

ADR can be used by all taxpayers with a historic tax dispute. This includes individuals, large multinationals or small businesses, trusts or charities.



WHO CAN USE ADR?

ADR can be used by all taxpayers with a historic tax dispute. This includes individuals, large multinationals or small businesses, trusts or charities.



HOW DOES ADR COMPARE TO COMMERCIAL MEDIATION?

Like commercial mediation, ADR follows a formalised process managed by an independent mediator. Decision makers on both sides attend the day so an agreement in principle can be reached.

Unlike Commercial mediation, HMRC's decision making is bound by a specific HMRC framework known as the Litigation and Settlement Strategy (LSS). Any agreements reached at ADR are documented in a Record of Outcome.



AT WHAT POINT IN A TAX DISPUTE CAN YOU USE ADR?

A taxpayer can apply for ADR at any stage in a dispute either pre-decision, post-decision or during the Tribunal process itself. If pre-decision, HMRC may consider that the dispute is not sufficiently advanced and defer acceptance into the process until additional relevant information is provided.



WHO IS THE MEDIATOR?

For straightforward cases the mediator is an HMRC officer with specific mediation training for which there is no charge.

For complex cases an external mediator may be appointed at the taxpayers discretion to work alongside the HMRC mediator. The external mediator costs are met by the taxpayer.



WHAT HAPPENS BEFORE THE MEDIATION DAY?

Once HMRC accepts a case into ADR, an HMRC mediator is appointed and a date for the mediation is agreed by the parties.

Both sides prepare their strategies and evidence so they can discuss the issues as well as bring solutions at mediation. All open matters can be addressed including, where relevant, penalties plus time to pay proposals.



WHAT TYPE OF DISPUTE?

ADR may be used to resolve potentially any tax matter with only a number of specific exclusions including, automatic fixed penalties, complaints and cases dealt with by HMRC's Criminal Investigators. Ultimately a case will be accepted into ADR if HMRC consider that the ADR process will add value in accelerating resolution.



ADR – WHAT IS IT AND WHY IS IT USEFUL?



WHAT TYPE OF TAX DISPUTE MAY BE SUITABLE FOR MEDIATION?

- ▶ Where there is some uncertainty over the facts, the result might turn on oral evidence or it is felt that HMRC have not fully considered/ understood the information presented to them
- ▶ Where the dispute has a range of possible outcomes or different valuations as there is limited documentary evidence or verifiable facts
- ▶ Where positions are entrenched based on early conclusions or assumptions
- ▶ Where litigation is unlikely to offer a cost-effective or efficient resolution of the dispute, perhaps due to the facts /background or because it is unlikely to create a precedent
- ▶ Where there is a lack of understanding and/or articulation of the parties' respective technical analyses.



WHAT ARE THE ADVANTAGES OF MEDIATION?

- ▶ It re-establishes communication
- ▶ It can be used to narrow the issues in dispute between the parties so if litigation is needed it will be more focused and cost-effective
- ▶ It may allow both parties to withdraw from previously held views and move towards a workable and mutually acceptable solution
- ▶ It can accelerate resolution. The ADR process is structured and has a tight timetable. HMRC look to complete the process within 120 days of acceptance
- ▶ It provides focus allowing the parties to identify the real reason for a dispute. An agreement can then be reached through the facilitated discussions
- ▶ There is no obligation on either side to settle if they are unhappy with what is on offer. The taxpayer and HMRC are the decision makers, not the mediator or a judge.



POINTERS FOR A SUCCESSFUL MEDIATION

- ▶ **Be clear as to purpose:** why is mediation valuable to this dispute (this is a key component of the ADR application)
- ▶ **Be prepared:** ensure all evidence is to hand that may affect tax and penalties
- ▶ **Know your limits:** what is the cost of not settling on the day and what is the scope for a monetary settlement
- ▶ **Be clear as to roles:** this includes everyone attending both on the taxpayer and HMRC's side
- ▶ **Get off to a positive start:** first impressions count so be constructive and positive during the opening meeting
- ▶ **Trust the process:** mediators are trained to use specific techniques to explore issues, consider alternatives for settlement, help parties consider the other side's view and make constructive proposals to resolve the dispute
- ▶ **Give it time:** being in too much of a hurry to close a deal may result in no solution at all
- ▶ **Have clear conclusions:** use the Record of Outcome to document agreed actions and timescales even where full or partial resolution is not yet agreed.

CASE STUDIES

01

INDIVIDUAL

CASE

HMRC enquired into the capital gains tax position on the sale of a property that had, at various times, been the client's home or let to third parties. Gaps in the available documentation and uncertainties over facts meant that after 2 years of enquiries no agreement had been reached and relationships between the taxpayer and HMRC were strained.

HOW WE HELPED

BDO's team represented the client for the mediation which was facilitated by an HMRC mediator. The team made constructive suggestions, evaluated HMRC's comments and offers, successfully defended against a tax geared penalty, and agreed a time to pay arrangement as part of the overall settlement.

OUTCOME

The client was delighted with the settlement terms and that they had a written agreement in principle with computations of tax and interest.

02

COMPANY

CASE

The key issues remaining after 3 years of enquiries included whether the company was trading, whether expenses were private, deductibility of expenses, lack of evidence and changing explanations.

HOW WE HELPED

BDO successfully applied for ADR and represented the client on the mediation day. An independent BDO joint mediator was also appointed. Discussions were held in private and joint meetings with the mediators. The mediation enabled both sides to find out more about the other party's risks and concerns and evaluate their own position on each issue.

OUTCOME

A settlement in principle was reached leading to a very significant saving taking account the tax, interest and penalties.

03

VAT

CASE

Rather than take the case to Tribunal, ADR was suggested to resolve an enquiry on which progress had ceased leaving two issues unresolved.

HOW WE HELPED

BDO represented the client during the mediation. The two main issues of dispute were discussed at length on the day, both together and in private rooms, with the client present. The dispute relied heavily on an understanding of the facts and agreeing their relevance to the technical analysis. The mediation created an environment where both the taxpayer and HMRC could fully engage, with the right focus and mindset to understand each other's positions and move towards defining solutions.

OUTCOME

The basis for settlement was agreed on the mediation day and a final agreement was signed within 2 weeks. The client was happy with the outcome and found it a worthwhile use of time and money.

04

OWNER MANAGED BUSINESS

CASE

HMRC's enquiries lasted for several years and included a business records check at the company's premises. Both sides held entrenched views with no likelihood of resolution. The key issue was whether the remuneration paid to the Directors' wives over several years was excessive and disallowable for corporation tax purposes.

HOW WE HELPED

BDO applied for ADR. BDO represented the client, who was also present, throughout the day. The mediation was facilitated by an HMRC mediator.

OUTCOME

The Directors were relieved that a favourable settlement was reached within an acceptable range and with no penalties.

05

R&D

CASE

HMRC and client had differing views on the technical position of a R&D claim made, which resulted in HMRC refusing to make a payment of an R&D credit.

HOW WE HELPED

We successfully applied for ADR. BDO represented the client on the mediation day, discussed the issues in private and joint meetings with the mediators. The mediation day provided a platform to set out the nature of the R&D claim as well as industry and business context. Whilst the information was not new the level of detail and opportunity to answer technical product questions led to better understanding and ultimately movement away from entrenched positions.

OUTCOME

Following the mediation day, HMRC accepted that the expenditure was qualifying R&D and the claim was valid. HMRC paid the client the full R&D credit.

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