

The Mechanism of **Alternative Dispute Resolution** (ADR)

(Taxpayers' Facilitation Guide)

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Federal Board of Revenue
Government of Pakistan



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Our Vision

To be a modern, progressive, effective, autonomous and credible organization for optimizing revenue by providing quality service and promoting compliance with tax and related laws

Our Mission

To enhance the capability of the tax system to collect due taxes through application of modern techniques, providing taxpayer assistance and by creating a motivated, satisfied, dedicated and professional workforce

Our Values

Integrity
Professionalism
Teamwork
Courtesy
Fairness
Transparency
Responsiveness

For assistance and information on tax matters
Please contact our help line center through
Toll Free Telephone 0800-00-227
Telephone 051-111-227-227 or 051-111-227-228
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or

Visit our tax facilitation center (located in all major cities) or any tax office

or

Visit our website at www.fbr.gov.pk

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Introduction

This brochure explains the provisions of Federal Excise, Customs, Income Tax and Sales Tax, governing alternate dispute resolution mechanism, in a simple and common parlance.

It is intended largely for those who do not have professional knowledge/ advice in dealing with their tax affairs.

Disclaimer

This brochure is to assist the taxpayers and reflects the legal position at the time of printing. In case of any conflict, the legal provisions of the law shall prevail over the contents of this brochure.

Comments and suggestions

We welcome your comments about this brochure and your suggestions for future editions.

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Redressal of public grievances

Redressal of public grievances is the corner stone of judicial systems throughout the civilized societies. The more speedy the redressal, the more efficient a judicial system is known to be. For seeking the redressal, right of appeal has been bestowed upon every individual by almost all the constitutions of the world. The respect and regard accorded by the courts to this right of appeal is the main element that keeps public faith and hope alive in a judicial system.

Resolution of tax disputes

The right of appeal against tax disputes is also well recognized around the globe. Disagreement between the taxpayer and tax collectors are natural. Usually, an agreement is reached upon by correspondence or discussion and in most cases disputes are settled with the taxpayers at the initial level of Taxation Officer, Commissioner or Collector, saving time and trouble all around. However, there may be disagreements over facts, figures or interpretation of law between the taxpayer and the tax collectors that remain un-resolved at the initial level and generally, result into further duties or tax liability over and above the admitted liability.

What is “dispute resolution”?

To resolve disagreements that remain un-settled at the initial level, all tax laws lay down the procedure that gives the taxpayer right of taking up the contentious issues to the higher forums by way of appeals, etc., for appropriate redressal. This right, commonly known as right of appeal, is in fact the regular dispute resolution mechanism. This comprises of:

- First appeal before the respective Collector (Appeals) or Commissioner of Income Tax (Appeals) by the taxpayer;
- Second appeal before the Customs, Excise & Sales Tax Appellate Tribunal or Income Tax Appellate Tribunal, both by the taxpayer and the tax collector, as the case may be.
- Reference to a High Court and petition to the Supreme Court of Pakistan both by the taxpayer and the tax collector, as the case may be.

What is “Alternative Dispute Resolution Mechanism (ADR)”?

Alternative dispute resolution mechanism, **ADR** as the term denotes, is a system that operates side by side with the existing conventional appellate system but with simple procedures and lesser technicalities.

In other words, a simple system whereby the taxpayer can refer the contentious issues for consideration and recommendations of the independent experts on the subject and make an out of court settlement with the tax collector in the light of such recommendations.

Why ADR?

Right of appeal is one of the most important rights of taxpayer whereby he can prefer an appeal before Commissioner of Appeals or Collector (Appeals) against any order that he believes to be contrary to the facts or unjust in one way or the other.

After the decision by the first appellate authority, both the taxpayer and tax collector have a right of appeal before Appellate Tribunal and further right of reference on law points before a High Court. Petition can also be moved in the Supreme Court.

The existing conventional appellate system works within the framework of the technical language of the respective laws and facts of the case and it takes its own course and time. The result is that a considerable number of appeals continue pouring in for adjudication. The situation becomes messy with every passing day.

There is no denying the fact that the existing conventional appellate system is the only way under which the law itself develops and matures. But, on the other hand this is also a ground reality that majority of the taxpayers, only to lessen their cost of doing business, would love to have an alternate system as well.

Taking cognizance of this situation and realizing taxpayer's genuine problems the Government through Finance Act, 2004 extended the **ADR**, that was available only in Sales Tax, to Federal Excise, Customs & Income Tax as well.

The key objective of introducing the **ADR** is the expeditious resolution of contentious issues between the taxpayer and tax collector with no hardship to the taxpayers by independent experts free of cost.

Is ADR a substitution of the existing conventional appellate system?

ADR is not substitution of the existing conventional appellate system. In fact, it works side by side with the existing appellate system.

However, at any stage of the existing appellate system an issue/ dispute or cause of hardship can be referred to **ADRC** and it may also be referred back to the existing appellate system.

Provisions Pertaining To ADRC

Federal Excise

Section 38 of the Federal Excise Act, 2005 and Rule 53 of the Federal Excise Rules, 2005

Customs

Section 195C of Customs Act, 1969 and Chapter XVII of the Customs Rules, 2001.

Income Tax

Section 134A of the Income Tax Ordinance, 2001 and Rule 231 C of the Income Tax Rules, 2002.

Sales Tax

Section 47A of the Sales Tax Act, 1990 and Chapter X of the Sales Tax Rules, 2004.

What can be referred To Alternate Dispute Resolution Committee (ADRC)?

As a principle, any issue, dispute or cause of hardship pertaining to determination of liability of duties, taxes, additional duties/taxes, admissibility of refund or rebate, waiver or fixation of penalty or fine, confiscation of goods and relaxation of time limitations, procedural and technical conditions under the Federal Excise,

Customs, Income Tax or Sales Tax law can be referred to **ADRC for resolution.**

However, it is expected that generally such cases would be referred to **ADRC** wherein contentious issues or hardship:

- Arise as a result of any anomaly or lacuna in the law;
- Arise due to some misrepresentation of facts in the early stages of assessment and/or subsequent appeals; and
- Are expected to linger on in the existing conventional appellate system for one reason or another.

It is also expected that while applying for **ADR** the applicants will keep in mind the amount of revenue involved.

It should be clearly understood that interpretation of law is the sole domain of the existing appellate system, hence outside the scope of **ADR**.

In other words, the scope of **ADR** mechanism revolves mainly around the facts and circumstances of the case.

At what stage a matter can be referred for ADR?

A matter can be referred for **ADR** at either of the following stages:

- After adjudication or assessment, amendment by Taxation Officer/ Assistant Collector Customs, Sales Tax i.e.;
- During pendency of appeal before the Collector (Appeals) or Commissioner of Income Tax (Appeals);
- After decision of appeal by the Collector (Appeals) or Commissioner of Income Tax (Appeals), i.e.;
- During pendency of appeal before the Appellate Tribunal;
- After decision of appeal by the Appellate Tribunal, i.e.;
- During pendency of appeal before a High Court;

- After decision of appeal by a High Court, i.e.;
- During pendency of petition before the Supreme Court;

Past and closed transactions can not be referred to **ADRC**. Only those matters which are in dispute and cause of hardship can be referred to **ADRC, even if they** are pending before any appellate authority, tribunal or court.

Who can request for ADR?

Any aggrieved person i.e.,

In case of:

- | | |
|---------------------------|---|
| An individual | - The individual himself; |
| An association of persons | - Any partner or member of the association; |
| A company | - The principal officer of the company; |
| A trust | - Any trustee of the trust; |

In case of a deceased individual, the legal representative of the deceased and in case of an individual under legal disability or a non-resident person his/her/it's "representative", as defined in the respective law.

Are there any conditions for referring a matter to ADRC?

There is only one condition that the matter should be pending before any appellate authority, tribunal or court.

How to apply for ADR?

Application in writing

A taxpayer desirous of referring a matter for **ADR**, should submit an application in writing to the Chairman, Federal Board of Revenue in the format given at the end of this brochure at Annex I.

Nature of dispute or hardship

State the nature of dispute or cause of hardship as to why the applicant believes that there exists

a dispute or hardship. These are commonly known grounds for referring a dispute or hardship to **ADRC**.

The grounds should be:

- Serially numbered;
- Written in Urdu or English;
- Precise; and
- Stated separately and distinctly for each matter of dispute or cause of hardship.

Additional sheet for stating the grounds can be used.

Claim / pray

State the claim / pray, i.e., what is finally requested from the Chairman, Federal Board of Revenue to direct or order.

Prescribed fee

The Alternative Dispute Resolution (ADR) does not involve any fees, charges or costs.

Time limit

There is no time limit for applying for **ADR**. The application can be submitted any time during the pendency of the matter before any appellate authority, tribunal or court and that it should not be a past and closed transaction.

Documentation with application for ADR

It is necessary that all documents relied upon by the applicant are annexed with the application.

Does some one else is to be informed?

No.

However, it is advisable that the concerned Collector of Customs, Collector of Sales Tax & Federal Excise or Commissioner of Income Tax may be informed alongwith the concerned appellate authority, tribunal or court with whom the case was pending before applying for ADR.

Can an application requesting for ADR be submitted, once the limitation for filing an appeal or reference has expired?

It is well settled principal of law that once the period of limitation for filing an appeal or reference has expired it is a past and closed transaction. Moreover, only those cases would be entertained for ADR which are pending before any appellate authority, tribunal or court, no application for **ADR** is entertained once the period for filing of an appeal or reference has expired.

However, the appellate authorities, tribunal and courts have inherent powers for condoning the delay in exceptional circumstances after being satisfied that there was sufficient cause (good reasons) for the delay. Once such a delay is condoned and the matter becomes an issue pending before any appellate authority, tribunal or court, it can be brought for **ADR**.

However, if the matter or cause in it self is that of relaxation of time limitation, it can definitely be referred for **ADR**.

How the application for ADR is processed?

An application for **ADR** is examined in the Board to ascertain:

- That the matter is pending before any authority, tribunal or court;
- That it is not a past and closed transaction;
- That necessary documents for drawing up the case are attached; and
- That the matter is of a nature and volume that is appropriate for **ADR**.

Incomplete application is sent back to the applicant for doing the needful.

Applicant of an un-approved application is informed accordingly.

Once the application is approved, the next step is the formation of a Committee for **ADR**.

Who forms the committee and who are members of the committee?

The Board forms the committee, which comprises three members who are selected/nominated by the Board depending upon the facts and circumstances of each case and the nature of the dispute or hardship.

Each committee member is selected / nominated by the Board from amongst the following three categories:

- The Director General of the Large Taxpayer Unit, Collector of Customs, Collector of Sales Tax, Commissioner of Income Tax or any Officer of these departments,
- A fellow member of the Institute of Chartered Accountants of Pakistan or Institute of Cost and Management Accountants of Pakistan, an advocate, income tax practitioner or tax consultant.
- A reputed taxpayer.

The Board is also empowered to nominate one of the committee members to be the chairman of the **ADR** Committee.

The independence, integrity, relevant knowledge and professionalism of the members of the **ADR** committee are the prime consideration while selecting/nominating and constituting the committee for each case. Members of these committees are honorary and do not get any payment in return for this service.

How does the committee dispose off an application for ADR?

After the formation and notification of the committee for **ADR**, the members of the committee are informed, and the application of the taxpayer alongwith related documents is forwarded to all the members.

The committee members determine the issue(s) involved and make their recommendations on the matter referred to it by the Board.

What procedures, rules and regulations are in force to regulate the working of the ADR committee?

The committee is empowered to:

- Conduct inquiry in respect of the matter in dispute or cause of hardship;
- Seek expert opinion in respect of the matter in dispute or cause of hardship.
- Direct any officer of the Customs, Excise, Sales Tax or Income Tax or any other person to conduct an audit and make recommendations to the committee in respect of matter in dispute or cause of hardship and
- Provide the applicant an opportunity to represent and explain the point of view on the matter in dispute or cause of hardship;

The chairman of each committee is empowered and responsible to decide the procedures that will regulate the working of the committee.

In particular the chairman of each committee is:

- Empowered to decide:
 - The place of sitting of the committee;
 - The date and time for conducting the proceedings;
 - The mode of sending notices i.e., by courier, registered post or electronic mail;
- Responsible to:
 - Supervise the proceedings;
 - Requisition and enforce production of relevant records and witnesses.
 - Ensure the attendance of the applicant at the time of hearing either in person or through a representative
 - Consolidate the recommendations of the committee and submit a conclusive report to the **Federal** Board of Revenue;

Notice of proceedings

The chairman of the **ADR** committee, if necessary, will inform the applicant, normally seven (7) days before, of the place, day and time fixed for the proceedings of the committee.

Can the day of proceedings be changed or adjourned?

Yes, the committee may, at its discretion, change the day or adjourn the proceedings from time to time either on its own motion or on the request of the applicant keeping in view the facts, circumstances and merits of the case justifying the change of day or adjournment of proceedings.

Is the applicant required to attend and represent personally?

Not necessarily. The applicant has an option either, to attend and represent the application personally or through a representative.

How to make the submissions (verbally or in writing)?

There is no hard and fast rule for making the submissions (arguments / point of view / explanations etc.) verbally or in writing. It depends on the facts and circumstances of the dispute or cause and convenience of the applicant, his/her/its representative, advocate or tax consultant and members of the **ADR** committee.

However, it is advisable to make written submissions (arguments / point of view / explanations etc.) particularly where multiple disputes, causes or complex issues are involved, so that nothing is left un-attended.

Can any further documents, material or evidence be submitted in support of the dispute or hardship?

The chairman of each **ADR** committee is empowered to decide whether further documents, material or evidence should be accepted or not during the course of proceedings.

What will happen at the proceedings?

The applicant or the applicant's representative, advocate or tax consultant, or both, if required by the facts, circumstances, nature of matter in dispute or cause of hardship are given opportunity to make submissions (arguments / point of view / explanations etc.).

The burden of proof rests on the applicant to explain the matter in dispute or cause of hardship and prove that either the facts of the case are not properly appreciated or the law is incorrectly applied. The applicant has to state and explain quite clearly:

- What is already agreed;
- What is disputed;
- What evidence is being produced;
- What are the applicants contentions on the points of disagreement or disputes; and
- Why should, the matter be resolved in his/her favour.

The committee will its recommendations after considering the:

- Applicant's submissions (arguments, point of view / explanations etc);
- Relevant details, information and material;
- Results of inquiry;
- Experts' opinion;
- Recommendations of audit ordered; and
- Consulting the records.

The recommendations of the committee are communicated to the Board, the applicant and the concerned commissioner or collector simultaneously.

Can the ADR committee enhance the liability of tax or duty?

No, the **ADR** committee has no power to enhance the liability of duty or tax.

Is there any time limit for the ADR committee to give its recommendations?

Yes, the **ADR** committee is required to give its recommendations within thirty days of its constitution.

The Board on the request of the chairman of the committee dully supported by the reasons for the delay and after satisfying that there exists a valid reason for the delay, may extend the period of thirty days subject to such conditions and limitations, as it may deem proper.

Can the matter be taken further if the appellant disagrees with the recommendation(s) of the ADR committee?

The **ADR** committee is an advisory body. The recommendations are neither binding on the **Federal** Board of Revenue nor the taxpayer/applicant. Thus, no occasion of taking up the matter further arises.

In fact, the Board has to pass an order, as it may deem appropriate. The recommendations of the ADR committee are only guidelines for the Board for resolution of the dispute or the hardship.

Can the application for ADR be withdrawn?

Yes, the applicant can withdraw the application any time before the committee submits its recommendations to the **Federal** Board of Revenue.

Can the ADR committee rectify or review its recommendations?

The recommendations of the committee can be referred back by the Board on its own motion or on the request of the taxpayer/applicant for:

- Rectification of any mistake apparent from the record; or
- Re-consideration of any fact or law, which could not be considered earlier.

However, the committee has no powers to review its recommendations.

What happens after the receipt of recommendations of the ADR committee by the Board?

The recommendations of the **ADR** committee are examined at **Federal** Board of Revenue.

The Board may or may not agree with the recommendations of the **ADR** committee either in full or in part. However, in case of agreement the Board, at its discretion may pass an order, on the recommendations, as it may deem appropriate for the resolution of the dispute or hardship.

Generally, such an order is a mutually acceptable out of court settlement between the parties.

Copy of the order of the Board is sent to the taxpayer/applicant, Chairman of the committee and the concerned collector or commissioner.

Order by Chairman Federal Board of Revenue.

The Chairman Federal Board of Revenue may, on application of the aggrieved person, for reason to be recorded in writing, and being satisfied that there is an error in order or decision, pass such order as may be deemed just and equitable.

How the decision of the Board is implemented?

The order of the Board is communicated to the Appellate Authority, Tribunal or Court, with whom the case was pending before applying for ADR, for consideration and order as deemed appropriate by the said Appellate Authority, Tribunal or Court

What re-course is available if the decision of the Board is not acceptable to the taxpayer/applicant?

If the decision of the Board is not acceptable to the taxpayer, the matter reverts to the stage from where it was referred to **ADRC**.

In other words, referring a matter or cause to ADRC does not affect any of the rights already vested available with the taxpayer/applicant under the Federal Excise Act, 2005, Customs Act, 1969, Income Tax Ordinance, 2001 and Sales Tax Act, 1990 or Rules made there under.

Does the balance duty or tax is payable in the meantime?

Any duty or tax imposed under the Federal Excise Act, 2005, Customs Act, 1969, Income Tax Ordinance, 2001 and Sales Tax Act, 1990 or Rules made there under remains enforceable and recoverable unless any authority, tribunal or court stays the recovery thereof,

Merely, by applying for the **ADR**, recovery proceedings for the balance duty or tax liability do not stop.

It is, therefore, advisable to properly evaluate the undisputed and disputed portion of the duty or tax liability and the undisputed portion of the duty or tax liability be discharged / paid as early as possible to avoid the levy of **additional duty or tax (interest)**.

Does the additional duty or tax (interest) is payable?

Yes, additional duty or tax or default surcharge, as the case may be, is payable according to the applicable rates, from the date originally due till the date of actual payment irrespective of the fact that an appeal, reference or request for **ADR** has been made.

Even where under exceptional circumstances the recovery of duty or tax is stayed or allowed to pay in installments, the charge of additional duty or tax is mandatory.

However, when the duty or tax liability stands modified as a result of any decision including a decision of the Board under the **ADR**, the additional duty or tax (interest) also stands automatically modified and re-calculated on the revised duty or tax liability but from the date it was originally due and till the date it is actually paid.

Can the decision of the Board under an ADR be made a precedent?

No. The resolution of a dispute or hardship arrived at between a taxpayer and the Board is only for the tax year or tax years covered by the agreement. Any resolution of a dispute or hardship between a taxpayer and the Board cannot be quoted or used as a precedent in the same case or any other case.

Application Form For Alternate Dispute or Hardship Resolution

The Chairman,
Federal Board of Revenue,
Islamabad.

Dear Sir,

1. The undersigned, being duly authorized hereby apply for dispute or hardship resolution under:

(Please Mark ✓ in the relevant box

Section 38 of Federal Excise Act, 2005; or

Section 195C of Customs Act, 1969; or

Section 134A of Income Tax Ordinance, 2001; or

Section 47A Sales Tax Act, 1990.

2. Necessary details of the dispute or hardship are set out in the annexure to this application.

3. A request is made to constitute a Committee as provided under

(Please Mark ✓ the relevant box

Sub-Section (2) of section 38 of Federal Excise Act, 2005; or

Sub-Section (2) of section 195C of Customs Act, 1969; or

Sub-Section (2) of section 134A of Income Tax Ordinance, 2001; or

Sub-Section (2) of section 47A Sales Tax Act, 1990.

4. The following documents as are necessary for the resolution of the dispute or hardship are enclosed:

(a) _____

(b) _____

(c) _____

Yours faithfully,

Signature _____

Name of signatory _____

Designation of signatory _____

Name of Taxpayer/Applicant (if other than signatory) _____

Date _____

Annexure to the Application For Alternate Dispute or Hardship Resolution

1. Particulars of the taxpayer/applicant
 - a. Name of the applicant (in block letters) _____
 - b. National Tax No./Sales Tax Registration No. _____
 - c. Address of the applicant _____

 - d. Telephone _____
 - e. Fax _____
 - f. E-mail _____

2. Tax year/period to which the dispute or hardship relates _____

3. The Collector or Commissioner with whom a dispute relates. _____

4. Particulars of the case or statement of the relevant facts and law with respect to dispute or hardship having bearing on the question(s) on which the resolution is required _____

(Please annex extra sheet, if required) _____

5. Grounds or statement containing the applicant's interpretation of law or facts, as the case may be, in respect of question(s) on which resolution of the dispute or hardship is required _____

(Please annex extra sheet, if required) _____

6. The extent or the amount of duty or tax, additional duty or tax and penalties etc., which the applicant agrees to pay, if any. _____

7. Details of amount of duty or tax etc., already paid, if any _____

8. Particulars of the person who will represent the applicant _____

9. The undersigned, solemnly declares, that,-
 - a. full and true particulars of the dispute or hardship for the purposes of resolution have been disclosed and no material aspect affecting the determination of the application filed in this behalf has been withheld;
 - b. (i) that the above issue(s) is/are not pending before any]
appellate forum or court.]
 - OR**]
 - (ii) that the above issue(s) is/are pending before]

Strike out which ever is not applicable

(name of the appellate authority, tribunal or court)

Signature _____

Name of signatory _____

Designation of signatory _____

Date _____

Other Facilitation and Taxpayers' Education Material Produced by
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Publications

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Brochure – Business accounts, documents and records

Brochure – Taxation of income from salary

Brochure -- Frequently asked questions about Taxation of Salary

Brochure –Collection and deduction of tax at source

Brochure –Charitable Organizations

Brochure –Taxation of income from dividend

Brochure– The Mechanism of Alternate Dispute Resolution

Brochure –Taxpayers' Charter

Brochure –Import of vehicles

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