

Federal Board of Revenue

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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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

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

Values

Integrity
Professionalism
Teamwork
Courtesy
Fairness
Transparency
Responsiveness

For assistance and information on tax matters

Telephone 051-111-772 772

Fax 051-9205593

E-mail helpline@fbr.gov.pk

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 Income Tax, Sales Tax, Customs and Federal Excise Duty (FED) Laws relating to the Alternative Dispute Resolution (ADR) mechanism in 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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Contents	Page
Introduction	1
Redressal of public grievances	2
Resolution of tax disputes	2
What is "dispute resolution"	2
What is "Alternative Dispute Resolution Mechanism"	2
Why ADR?	2
Is ADR a substitute of the existing conventional appellate system?	3
Provisions pertaining to ADR	3
What can be referred to Alternative Dispute Resolution Committee (ADRC)?	3
At what stage a matter can be referred for ADR?	4
Who can request for ADR?	4
Are there any conditions for referring a matter to ADR?	4
How to apply for ADR?	4
Prescribed fee.	5
Time limit	5
Documentation with application for ADR	5
Is someone else to be informed?	5
Can an application requesting for ADR be submitted, once the limitation for filing an appeal or reference has expired?	5
How is the application for ADR processed?	5
Who forms the ADRC and who are its members?	6
How does the ADRC dispose off an application for ADR?	6
What procedures, rules and regulations are in force to regulate the working of ADRC?	6
Notice of proceedings	7
Can the day of proceedings be changed or adjourned?	7
Is the applicant required to attend and represent personally?	7
How to make the submissions (verbally or in writing)?	7
Can any further documents, material or evidence be submitted in support of the dispute?	7
What will happen at the proceedings?	7
Can the ADRC enhance the liability of tax or duty?	8
Is there any time limit for the ADRC to give its recommendations?	8
What happens with the ADRC's recommendations.	8
Whether there is any recourse against the Board's order passed on the ADRC's recommendations?	8
Can the application for ADR be withdrawn?	8
Can the Board rectify its order passed on ADRC's recommendations	8
How is the Board's decision implemented?	9
Is the duty or tax payable during pendency of ADR proceedings?	9
Is the additional duty or tax (interest) payable?	9
Can the decision of the Board under an ADR be made a precedent?	9
Application Form for Alternative Dispute Resolution	10
Annexure to the Application for Alternative Dispute Resolution	11

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 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 and it comprises:

- First appeal before the respective Collector (Appeals) or Commissioner (Appeals) by the taxpayer;
- Second appeal before the Appellate Tribunals (Inland Revenue or Customs), 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 the taxpayer can prefer an appeal before Commissioner (Appeals) or Collector (Appeals) against any order that the Taxpayer 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 which entails extended time periods.

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 prefer 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** facility, which was available only in Sales Tax Law, to Federal Excise, Customs & Income Tax Laws 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 substitute of the existing conventional appellate system?

ADR is not a substitute 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 the facility of ADR can be availed by the aggrieved person without foregoing the right of appeal.

Provisions Pertaining To ADR

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.

Customs

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

Federal Excise

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

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

Section 134A of the Income Tax Ordinance, 2001

Any matter pending before an Appellate Authority, except where prosecution proceedings have been initiated or where interpretation of question of law having effect on identical other cases is involved.

Section 47A of the Sales Tax Act, 1990

Any dispute under litigation at any Court of law or an Appellate Authority pertaining to;

- (a) the liability of tax against the registered person, or admissibility of refunds, as the case may be;
- (b) the extent of waiver of default surcharge and penalty;
- (c) the quantum of input tax admissible in terms of sub-section (3) of section 7;
- (d) relaxation of any procedural or technical irregularities and condonation of any prescribed time limitation; and
- (e) any other specific relief required to resolve the dispute,

except in the cases where first information reports (FIRs) have been lodged or criminal proceedings initiated or where interpretation of question of law having larger revenue impact in the opinion of the Federal Board of Revenue is involved

Section 195C of the Customs Act, 1969

Any dispute pending in any Court of law or any Appellate Authority pertaining to liability of customs duty, admissibility of refund or rebate, waiver or fixation of penalty or fine, confiscation of goods, relaxation of any time period or procedural and technical condition, except in the cases where first information reports (FIRs) have been lodged or criminal proceedings

initiated or where interpretation of question of law having larger revenue impact in the opinion of the Federal Board of Revenue is involved.

Section 38 of the FED Act, 2005

Any dispute under litigation at any Court of law or an Appellate Authority pertaining to;

(a) the liability of excise duty against the registered person or, as the case may be, admissibility of refunds;

(b) the extent of waiver of default surcharge and penalty;

(c) the confiscation of goods;

(d) relaxation of any procedural or technical irregularities and condonation of any prescribed time limitation; and

(e) any other specific relief required to resolve the dispute,

except in the cases where first information reports (FIRs) have been lodged or criminal proceedings initiated or where interpretation of question of law having larger revenue impact in the opinion of the Federal Board of Revenue is 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 any stage during the pendency of appeal before any Court of law or an Appellate Authority.

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 ADR?

(i) The matter should be pending before any appellate authority, tribunal or court;

(ii) No prosecution/criminal proceedings have been initiated; and

(iii) No interpretation of law is involved.

How to apply for ADR?

Application in writing

An aggrieved person 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.

Is someone else 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?

No application for **ADR** is entertained once the period for filing of 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. Only those cases would be entertained for ADR which are pending before any appellate authority, tribunal or court.

How is the application for ADR 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 ADRC and who are its members?

After the receipt of application, the Board forms the ADRC within 60 days (for Income Tax cases) and within 30 days (for Sales tax, Customs and FED cases) comprising members selected/nominated by the Board depending upon the facts and circumstances of each case.

Each ADRC shall comprise:-

- One member from the department not below the rank of Collector of Customs or Commissioner Inland Revenue,
- Two members from a panel of Chartered or Cost Accountants, retired Judges of High Courts and Districts and Session Courts, an Advocate, Income Tax Practitioner, Tax Consultant, Representatives of Trade Bodies or Associations or any reputable taxpayer.

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

The independence, integrity, relevant knowledge and professionalism of the members of the **ADRC** 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 ADRC 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 ADRC?

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;
- And 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 **ADRC**, 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 the ADRC 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 **ADRC**.

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?

The chairman of each **ADRC** 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 make 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
- Material on records.

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

Can the ADRC enhance the liability of tax or duty?

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

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

Yes, the **ADRC** is required to give its recommendations within ninety days of its constitution.

If the **ADRC** is unable to give its recommendations within ninety days of its constitution the Board shall dissolve the **ADRC** and constitute a new committee which shall decide the matter within a further period of ninety days.

If after the expiry of the further period the dispute is not resolved the matter shall be taken up by the appropriate forum for decision where the appeal is pending.

What happens with the ADRC's recommendations?

The recommendations of the **ADRC** are examined at Federal Board of Revenue. The Board may or may not agree with the recommendations of the **ADRC** either in full or in part.

The Board may on the recommendations of the **ADRC** pass such order as it may deem

appropriate within ninety days of the receipt of **ADRC's** recommendations.

Copy of the order of the Board is sent to the aggrieved person, Chairman of the **ADR** committee and the concerned collector or commissioner.

If the Board does not pass an appropriate order within ninety days the **ADRC's** recommendations shall be treated to be an order passed by Board.

Whether there is any recourse against the Board's order passed on ADRC's recommendations?

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 to ADRC does not affect any of the rights already 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.

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 Board rectify its order passed on ADRC's recommendations?

The Chairman Federal Board of Revenue, on application by the aggrieved person, can pass a just and equitable order on being satisfied that there is an error in the order or decision passed earlier by the Board on **ADRC's** recommendations.

How is the Board's decision implemented?

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

Is the duty or tax payable during pendency of ADR proceedings?

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 payable tax/duty does not stop.

Is the additional duty or tax (interest) 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. 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.

Annex I

Application Form For Alternative Dispute Resolution

The Chairman,
Federal Board of Revenue,
Islamabad.

Dear Sir,

1. The undersigned, being duly authorized hereby apply for dispute 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 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 134A of Income Tax Ordinance, 2001; or
Sub-Section (2) of section 47A Sales Tax Act, 1990; or
Sub-Section (2) of section 195C of Customs Act, 1969; or
Sub-Section (2) of section 38 of Federal Excise Act, 2005.

4. The following documents as are necessary for the resolution of the dispute 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 Alternative Dispute Resolution

- 1. Particulars of the taxpayer/applicant
 - a. Name of the applicant (in block letters) _____
 - b. CNIC/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 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 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 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; and
 - b. that the above issue(s)/are pending before _____

(name of the appellate authority, tribunal or court)

Signature _____

Name of signatory _____

Designation of signatory _____

Date _____

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Brochure— Obligation to file Income Tax Declarations

Brochure— Taxpayers' Charter

Brochure— Income Tax Appeals

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Brochure— Tax Reductions, Rebates and Credits

Brochure— Final Tax and Fixed Tax

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Brochure— The Mechanism of Alternative Dispute Resolution

Brochure –Import of vehicles

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