Tax ADR
Alternative methods for resolving tax disputes – an outlook for tax mediation in Poland
In Poland, changes in this regard, proposed by the Ministry of Finance, include, amongst others, introducing a general tax avoidance clause, the joint and several liability of the buyer in respect of goods and services tax and taxing the income of controlled foreign corporations. In this report, we draw attention to the possibility of introducing solutions which could make the resolution of tax disputes quicker, simpler, more effective and, as a result, less expensive both for the State and the taxpayer.

One of the characteristic features of the legal systems of developed countries is the existence of amicable (conciliatory) methods for resolving legal disputes. With growing institutionalization and their increasingly extensive application, such solutions, initiated in the United States, have been labelled “alternative dispute resolution” (ADR). The availability of amicable resolutions leads to a reduction in the number of cases brought before the courts, which is meant to limit the judiciary’s role to the position of guardian of the agreements concluded by parties and a source of resolutions in matters in which agreement proves impossible to reach, e.g., due to discrepancies in the interpretation of regulations or due to the antagonistic attitude of the parties.

We understand ADR as all procedures which are aimed at reaching a settlement binding on the parties without taking the traditional legal action or by means of limited involvement of the court. In a broader sense, ADR procedures could also mitigate the risk of disputes arising a priori by providing mechanisms which make it easier for the parties to cooperate.

Using ADR in the tax law which, at least in the continental legal systems, assumes an unequal, authoritative relationship of the tax authority with the taxpayer is a fairly new trend. However, the benefits of introducing procedures aimed at avoiding an appeal being filed by the taxpayer against the authority’s decision, call for the introduction of such solutions in many tax jurisdictions.

In our opinion, the merits of ADR are also worth considering on the grounds of tax disputes in Poland.

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1 Assumptions for a draft amendment to the act – the Tax Code and certain other acts, draft of 9 September 2013.
2 The Act of 26 July 2013 on the amendment to the Act on goods and services tax and certain other acts, Journal of Laws of 2013, item 1027.
4 I.e. as opposed to the system of Anglo-Saxon common law.
In presenting this report, we hope to initiate a discussion among the interested circles on the introduction of ADR into the Polish tax law. The aim is to provoke a debate focused on working out solutions which will constitute a useful and realistically available alternative to the traditional method of resolving tax disputes (including filing an appeal against the tax authority’s decision with the administrative court).

In our report, we present a description of ADR drawing on the provisions and experience of tax jurisdictions in which the amicable methods for settling cases function nowadays. We present our justification for the proposed introduction of tax ADR in Poland. In the appendix to this report, we take a quick look at selected countries and the ADR procures which function in these countries. In the last section of the report, we have formulated proposed assumptions for a legislative project consisting of incorporating the ADR in the Tax Code.5

We would like to emphasize that our report does not offer any ready-made solutions and does not constitute a uniform legislative demand. However, should our assumption that the Polish tax procedure needs a true alternative to a legal-and-administrative dispute receive the support of representatives of taxpayers, the judiciary, tax authorities, and advisory and legal circles, we hope that our publication will offer arguments to all parties to the debate which will lead to creating a mechanism that will be useful to the interested parties, and also in line with the idea of ADR.

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Alternative dispute resolution is a body of mechanisms which lead to the taxpayer and tax authorities working out a common position. They consist of:

- **Mechanisms which lead to resolution before a dispute arises**
  - *ADR ex ante*
  
  ADR mechanisms with a “preventive” effect are all procedures for consultations on the interpretation of regulations or for making arrangements with the authorities regarding the measures planned by the taxpayer.

- **Mechanisms which lead to a resolution after a dispute has arisen**
  - *ADR ex post*
  
  This is a category of mechanisms for the amicable settlement of disputes sensu stricto, which includes, in particular, negotiation (proceedings in which only the parties to a dispute participate) and mediation (proceedings with the participation of an independent arbiter).

ADR techniques and measures are to support the functioning of the judicial system and to lighten its burden where it is plausible and advisable to do so. The concept of using ADR methods does not undermine the role of the courts in meting out justice, but, at the most, modifies their proper place in this process.

Such solutions are being used and popularized in many jurisdictions, both in the European Union and outside it. We believe that introducing such a procedure is reasonable on the grounds of the realities of Polish tax law.
**Benefits of ADR functioning in tax law**

1. **Prompt settlement of cases.**

   The available statistics\(^6\) suggest clearly enough that, in a given system, waiting for the final decision of the relevant court or tribunal takes far more time than reaching an agreement by way of mediation or negotiation. Prolonged legal disputes with the tax authorities may have considerable implications for the taxpayer’s operations, sometimes even for an enterprise’s liquidity.

2. **Lower service costs.**

   This benefit is the direct result of shortening the duration of proceedings. Both for the taxpayer and the tax authority, reaching a resolution more promptly means less use of human resources and lower expenses related to bringing a case before the court.

3. **Lightening the courts’ burden.**

   Although, as mentioned above,\(^7\) dissuading taxpayers from taking their cases down the legal-and-administrative path is not ADR’s chief merit, it should not be underestimated. Increasing the capacity of the courts, allowing the period of waiting for a decision to be shortened, in cases where an amicable resolution has not been reached, generally makes the judiciary more effective.

4. **Building relationships and increasing trust in the authorities.**

   In the course of dispute proceedings, the parties present arguments trying to reach a favourable decision, sometimes presenting not only material arguments, relating to the essence of the dispute, but also formal ones, where all errors made by the persons responsible for handling the parties’ affairs are emphasized. It is worth bearing in mind that a dispute in progress is frequently only one of the links for contacts between representatives of the parties. Enabling them to reach a mutually favourable agreement takes into account the human aspect of cooperation between taxpayers and the authorities.

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\(^6\) In particular, the data published by the British tax authorities following an ADR pilot programme: “Alternative Dispute Resolution for the Mass Market – Pilot Evaluation Report”.

\(^7\) See: “ADR – what it is and what forms it takes on” above.
Mediation before the administrative courts in Poland

In the Polish model of the two-instance administrative judiciary, mediation proceedings constitute one of the specific procedures in proceedings before the Voivodeship Administrative Court. The legislator regulated the issue of mediation in Chapter 8 of Section III (Articles 115-118) of the Act of 30 August 2002 – Law on proceedings before administrative courts.8

According to Article 116 of the l.p.a.c., the aim of mediation is to explain the background and legal status of a given case and make mutual arrangements as to the method for settling it in accordance with the law. According to the position of the Supreme Administrative Court,9 determining the actual circumstances of a given case or the legal status in which the authority took action may be the subject of mediation.

Mediation is allowed only in the event of an appeal being filed with the administrative court. The basic principle is to conduct mediation at the request of the complainant or the authority. However, mediation may also be instituted ex officio. A request that mediation be conducted may be included as one of the elements in an appeal, a reply to an appeal or in a separate pleading. The request must meet all the formal requirements for a pleading. The moment a date is set for a hearing is the final deadline for filing a request for mediation effectively.

The principal element of mediation proceedings is a meeting during which arrangements are to be made between the parties. The principle of mediation before the Voivodeship Administrative Court is that it be conducted during a single court session. However, a mediation session may be adjourned. A mediation session may end in failure when the parties fail to agree on a common position. In such situation, the case will be considered following the standard procedure, i.e. it will be referred to a hearing by order of the court.

When a dispute is positively resolved as a result of mediation, two situations are possible. In the former case, as a result of mediation the appeal is withdrawn and the case is referred to a closed door hearing in order to discontinue court proceedings. The latter possibility is to include an obligation for the administrative authority to verify its decisions in the mediation arrangements. The contents of the arrangements made do not determine the technical contents of the measures taken by the authority as a result of such arrangements, but they constitute a basis for reconsidering the case – in accordance with the general principles.10

The complainant has no direct impact on the manner in which the administrative authority puts the mediation arrangements into practice. However, it has the right to appeal to the Voivodeship Administrative Court against the act or measure taken as a result of the mediation within 30 days.

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9 Supreme Administrative Court, Informacja o działalności sądów administracyjnych w roku 2004 [Information about the operations of the administrative courts in 2004], Warsaw 2005
10 Hauzer R., Sporów o dwuinstancyjne sądownictwo administracyjne ciąg dalszy [Dispute over the two-instance administrative judiciary continued], PIP 2003
The institution of mediation proceedings was not used extensively in the administrative judiciary. In 2012, a mere four cases were settled following the mediation procedure (all of them before the Voivodeship Administrative Court in Wrocław). Detailed data about cases subject to mediation proceedings is presented in the table below.\(^\text{11}\)

Compared with the number of appeals filed with the voivodeship administrative courts, mediation proceedings represented 0.4% to 0.03% thereof.

According to the information presented by the Supreme Administrative Court, mediation proceedings were conducted for two principal groups of issues, i.e. the tax law and customs law. The lack of more extensive use of mediation proceedings in disputes with the public administration authorities may be due to the following reasons:

1. The administration authorities perform their tasks mainly through authoritative forms of action, and in making their decisions they do not try to cooperate with the entities being administered.

2. The administration system is a hierarchical structure, with the dominating principle of subordinating and binding the authorities and authorities’ employees by their subordinates’ position. Such a structure often makes it impossible to undertake mediation.

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<td>57%</td>
<td>38%</td>
<td>19%</td>
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<td>14%</td>
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\(^{11}\) Supreme Administrative Court, Informacja o działalności sądów administracyjnych w roku 2012 [Information about the operations of the administrative courts in 2012], Warsaw 2013
Feasibility study – the key elements of ADR procedures

1. Selecting the cases.

There is no doubt that not every dispute can be resolved amicably. Disputes in which the interpretation of the applicable regulations rather than the interpretation of facts is the essence of the problem should remain under the jurisdiction of administrative courts. However, it is worth noting that background-related issues also come up before the administrative courts. Introducing ADR mechanisms would allow negotiations to be conducted between taxpayers and the tax authorities, over the materiality of the elements of a given case’s background. In practice, the system’s assumption of an ideal explanation of the background is frequently impossible to attain due to differences in the parties interpretation of the significance of elements of the background and their impact on the interpretation of the legal regulations. As a result, a dispute over the background is transferred before the administrative court through a charge of violation of the regulations governing evidentiary proceedings. Introducing an ADR mechanism would allow the differences in the interpretation of the tax regulations to be explained and applied to the background of a case already at the stage of negotiation/mediation between the parties. The freedom of choice of the type of proceedings is also a necessary element. Joining the ADR procedure must be dictated by the willingness (of both the authority and taxpayer) to resolve a dispute amicably.

2. Identification of the objectives.

The ADR process must have a clearly defined cause for dispute subject to negotiation or mediation. The ADR procedure must not be aimed at the broadly understood reaching of an agreement but at solving specific issues which stand in the way of the parties’ coming to a consensus over opinions. Orienting the ADR procedure in this way guarantees that it is performed swiftly and allows the parties’ satisfaction to be increased thanks to making their expectations more precise.

3. Reducing formalism.

The main element which speeds up the operation of ADR procedures is the elimination of time-consuming formal issues. This factor is particularly significant to taxpayers who, in order to complete dispute-related formalities, are often forced to use long-term professional support which may generate considerable costs.

4. Direct presentation by the parties.

Based on the experience of most tax jurisdictions, both negotiations and mediation assume that representatives of the parties have the chance to meet face to face in order to present their positions. Such exchange is profitable due to gaining an understanding of the opposing party’s motivation and identifying the dispute’s priorities, and helps to reduce formalism.

5. The human/personnel aspect.

In practice, the effectiveness of any mechanism is determined by the human factor. If the person who is conducting negotiations on behalf of the tax authority or the designated mediator is well prepared (both in terms of having a knowledge of the regulations and skills in working out a common position) and strong enough to make a procedure bind the parties, there is a chance that the procedure will be effective, and its results will be satisfactory for the parties. The lack of any of these elements in the mediator’s preparations may cast doubt on the legitimacy of the entire enterprise.
Feasibility study – anticipated difficulties in Polish realities of proceedings

Differences in the precise form of ADR procedures undoubtedly arise from the local conditions in the tax jurisdictions in which given procedures are used.

In the context of formulating assumptions for a Polish tax ADR procedure, we should bear in mind the particular conditions which exist in Poland and which should be taken into account in order for the new procedure to be effective.

1. Belief in the need for the procedure.

Undoubtedly, the parties (the taxpayer and tax authority) must believe an amicable settlement of the case to be to their advantage to even consider deciding not to follow the “traditional” legal-and-administrative procedures. Although the argument concerning bringing forward and reducing the cost of proceedings seems to be sufficient to encourage the taxpayer to participate in an ADR procedure, the practice of conducting proceedings in Poland may suggest that the tax authorities could focus on the value of a dispute without paying attention to its costs.

The grounds for using ADR procedures may be demonstrated by verifying the cost of conducting legal-and-administrative proceedings and making the efficiency of holding disputes a criterion for assessing both the work of individual officials, individual tax authorities, and the entire tax administration. Publishing statistics illustrating the amounts adjudged to the Minister of Finance compared to the cost of holding disputes, both across the entire country and for individual tax authorities, would be an opportunity to encourage the tax authorities to seek the savings offered by ADR procedures.

2. Mandate of a tax official using ADR.

Depending on the specific form of an established procedure (e.g., whether through negotiation or mediation), an official who is about to follow an amicable procedure must have an authorization which is strong enough, on the one hand, to encourage the taxpayer’s trust in the effectiveness of this procedure and, on the other hand, to offer the said official enough comfort with making decisions as to the contents of the settlement. By accepting the possibility that the process of issuing a decision or reaching an agreement may be extended, the taxpayer must not put himself at risk that the arrangements made in the course of the talks will be subsequently rejected by his interlocutor’s superiors.

Apart from providing incentives that would encourage the entire tax administration to use ADR procedures, this problem may be resolved by positioning an official using ADR in such a manner as to authorize him to represent the authority (competence equal to signing decisions on the authority’s behalf).

3. Independence of the tax official using ADR.

Another fairly obvious element of the ADR procedure is the need to ensure that the person responsible for conducting negotiations/mediation is not related organizationally to the persons involved in running the proceedings (irrespective of the stage) or the possible preparation of the decision.

This problem may be resolved by setting up a separate organizational unit within the tax administration (in the form of an independent body responsible for ADR or by specifying the departments in charge of ADR proceedings within the tax authorities or the Ministry of Finance) or designing a process as part of which the employees of one body would be seconded to amicably settle a dispute which has arisen from
a decision issued by another body. The second solution seems to be less advantageous organizationally, where the person in charge of mediation is torn away from his/her daily duties for the duration of the activities undertaken as part of the ADR procedure. Moreover, such solution increases the risk of occurrence of the “mutual support” mechanism within the bodies, which might lead to mutual agreement to support the position of the issuer of the decision being the subject of the dispute to the taxpayer’s disadvantage. Another solution might be the possibility of appointing mediators from among trusted institutions, e.g., scientific organizations.

4. **Trust in the effectiveness of the agreement.**

The procedure must result in concluding an agreement which is binding on both parties, of legal significance equal or similar to that of the authority’s final decision. An agreement reached in this manner, in writing, and signed by the persons representing both parties, guarantees the stability of the arrangements.

5. **Counteracting the abuse of a hearing.**

Due to the freedom allowed for joining in the ADR procedure, it is necessary to enable the parties to withdraw from the procedure at any given moment. After withdrawing from the ADR procedure, the taxpayer should retain the right to file an appeal and the tax authority – to sustain the decision being questioned. However, such freedom gives rise to the risk that the parties will be able to propose joining in the ADR procedure in bad faith, e.g., to delay the issuance of a decision.

This problem may be resolved by registering the course of the procedure and by submitting the question of whether a party was acting in bad faith subject to a sanction or reimbursement of the costs of the ADR procedure to the court for assessment.

6. **Counteracting abuse.**

All mechanisms based on the agreement of parties within the State Budget area give rise to the risk of a corruptive factor arising. The necessary confidentiality of amicable proceedings may lead to, e.g., concealing elements of the background which are material to the case.

A possible solution would be to register the entire course of the ADR procedure. Recording negotiations or mediation is a standard solution in many countries. In the event of a well-founded suspicion that abuse or a conspiracy occurred in the process, the law enforcement bodies will be able to analyze the course of the ADR procedure and use it as evidence in criminal proceedings in the event of corruption charges being filed.
Proposed preliminary assumptions for a draft tax ADR procedure

It should be emphasized that the proposed suggestions are based on our opinions on this matter and are meant to serve as a starting point for discussion about proper solutions. The formulated assumptions, although they may seem appropriate from the perspective of, e.g., a tax advisor, may certainly require modifying in the opinion of the courts or tax authorities.

1. ADR procedure.

We suggest that the procedure for the amicable settlement of tax disputes in Poland should take on the form of mediation. In our opinion, the negotiating procedure, which has to be conducted by the same official who issued a disputed decision, would ill serve the conciliatory nature of the process. In mediation, the official may be presenting the authority’s arguments, whereas a mediator, being a third party, has no system-based interest in preferring either party.

2. Instituting the procedure.

The procedure should be initiated on the initiative of one of the parties, i.e., both at the taxpayer’s request and in the form of a decision issued by the authority setting the taxpayer a deadline for taking a position on the proposal for joining in the mediation procedure.

• Contents of the request/decision. The request being submitted by the taxpayer should contain a description of the background of the disputed matter and identify the disputed issue, the resolution of which may affect the result of the proceedings. The authority’s decision should have similar contents.

• Moment of filing the request/issuing the decision. It should be possible to present the taxpayer’s request and the authority’s decision to a party in the course of the proceedings, prior to issuing the decision that would end these proceedings.

• Deadline for taking a position. From the moment a request is filed with the relevant authority for instituting a mediation procedure, the authority should take a position on the taxpayer’s request within a set deadline. Should the request be granted, the authority should issue a decision that a mediation procedure be instituted. Similarly, before expiration of the deadline specified in the authority’s decision, the taxpayer should take a position in writing on the proposal for mediation in the contents of the decision. When rejecting the taxpayer’s request in the form of a decision, the tax authority must present the grounds for its decision. When taking a negative position on the authority’s proposal, the taxpayer need not justify its decision. The taxpayer’s failure to take a position within a set deadline is tantamount to rejecting the authority’s proposal for a mediation procedure.

• Agreement on joining in mediation. Should both parties announce their intention to join in the mediation procedure, the authority should set a deadline for appearing at its registered office in order to write up an agreement for conducting mediation proceedings.
3. Setting the framework for mediation proceedings.

A written agreement for instituting a mediation procedure should contain the following:

- specification of the parties to the mediation proceedings;
- specification of the issue being disputed and the reasons for which its resolution may affect the course of the matter, and:
- specification of the mediator appointed by the parties;
- signatures of the representatives of the parties to the mediation proceedings.

The agreement should be accompanied by each party’s description of the background and their positions on the matter. A copy of this set of documents making up the agreement should be given to each party to the mediation proceedings and the mediator designated by the parties.

4. Mediator.

We suggest that officials nominated by the Minister of Finance and appointed by name and surname should be the mediators. The Minister of Finance may authorize the Directors of Tax Chambers to appoint the mediators. A list of mediators, including the cities in which their registered offices are located, should be publicized. At the mutual request of the parties, it should be possible to dismiss a mediator and appoint a new one in the course of the mediation proceedings.

5. Course of the proceedings.

The exact course of the proceedings should be determined by the mediator in consultation with the parties to the mediation proceedings, in compliance with the applicable legal regulations, within the deadlines specified by law. The proceedings require that the parties should meet at least once in the presence of the mediator.

6. Deadlines. The Act specifies in detail the following deadlines:

- for taking a position on the taxpayer’s request for instituting mediation proceedings or the authority’s decision setting the deadline for taking a position on the proposal for joining in the mediation proceedings. The suggested deadline is seven days in both cases.
- the maximum deadline for the parties signing an agreement for instituting mediation proceedings. The suggested deadline is seven days.
- the period from the date of concluding the agreement for instituting proceedings to the date of concluding an agreement on the essence of the dispute. The suggested period is 30 days.
- the deadline for the agreement on the essence of the dispute coming into force. The suggested deadline is 30 days.

Tax ADR
7. **Agreement on the essence of the dispute.**

As a result of conducting mediation proceedings, the parties should agree in writing the contents of the agreement on the essence of the dispute subject to the mediation (the suggested legislative terms are “Mediation outcome” or “Mediation agreement”).

The agreement should contain the following:

- specification of the parties to the mediation proceedings;
- specification of the mediator;
- specification of the subject of the dispute;
- the sentence;
- the basis for the agreement presenting the scope of the arrangements made in the course of the mediation proceedings;
- specification of the implications of concluding the agreement;
- signatures of the representatives of the parties to the agreement and the mediator’s signature.

8. **Possible implications of the agreement.**

We believe that the parties should shape the scope of the proceedings and the implications of the agreement freely, in compliance with the applicable legal regulations. The possible subjects of mediation proceedings are:

- taking a common position on the disputed element of the background for the purposes of continuing the proceedings;
- determining the amount of a tax liability in the event of a dispute over the background of the proceedings;
- explaining the differences in the interpretation of the tax regulations and their application to the background being the subject of the dispute;
- determining the method of payment of tax, e.g., by breaking it up into instalments.

9. **Control over the legitimacy of agreements.**

The supervision over the legitimacy of agreements being concluded should be exercised by the administrative courts. Gross violation of the law by an agreement or circumstances constituting the grounds for resuming the proceedings should be the basis for declaring an agreement null and void. The parties to the proceedings, as well as the prosecutor and the Ombudsman should have the right to appeal against an agreement.
Where, due to the nature of the dispute, legal action may be replaced with an ADR procedure, resolutions are achieved within less time and less expenditure, and they also make the courts’ work less intensive.

Tax ADR procedures take on various forms – both preventing disputes and reducing their frequency and scope. In Poland, there are a number of mechanisms which help reduce the number of tax disputes over tax assessment, but our legal systems lacks an effective tool for the amicable settlement of disputes arising between the taxpayer and tax authority. The procedure provided for in Article 116 l.p.a.c. has failed to play this role, which is demonstrated by the fact that its use is marginal.

Therefore, we should conclude that that there are grounds for considering the introduction of a mechanism in Poland which would allow the number of legal-and-administrative disputes with the tax authorities to be reduced by enabling mediation already at the stage of the tax proceedings or after a decision has been issued. Introducing such solution will present considerable difficulties, in particular with regard to the system integration of mediation proceedings to achieve the objectives set for the tax administration.

We hope that our suggestions and observations will contribute to considering the possible solutions in this regard.

The experience of developed countries points to numerous benefits of the functioning of amicable dispute resolution methods in their tax law systems.
**Australia**

The annual compliance agreements (“ACA”) used in Australia assume that the tax risk identified by the taxpayer is to be consulted with the Australian tax authorities (Australian Taxation Office, “ATO”). The assumption behind the programme, which is currently limited to the top 50 listed companies in Australia, is to enable the tax authorities to audit and reconcile the acceptability of transactions exposed to an increased tax risk, presented by taxpayers, in return for showing a higher degree of tolerance to less controversial transactions than in the absence of ACA.1

**France**

The ADR mechanisms adopted in France are focused on preventive measures. The emphasis has mainly been placed on holding consultations about interpretations of the tax regulations. The French regulations provide for the possibility of enterprises obtaining interpretations of the tax regulations (French rescrits) with regard to particular issues (e.g., the taxation of a production plant2 or circumventing the law3).

**Netherlands**

The institution of “enhanced relationship” or “horizontal monitoring” functioning in the Netherlands assumes in-depth cooperation between the taxpayer and tax authorities.4 It practically boils down to making the books available to the tax authorities on a permanent basis and indicating all tax issues which arise when doing business. In return, the tax authorities offers individual advice on the implications of the measures being taken by the taxpayer in the short term, allowing the taxpayer’s decision-makers to take account of the tax issues in making strategic decisions. As emphasized in the publications describing this mechanism, using this method requires a change of mentality both on the part of the authorities and the taxpayer. As a result of the popular success of this method, this solution will be extended onto other taxpayers.

In addition, the Dutch regulations also provide for the possibility of conducting mediation between the parties to a dispute. This procedure is aimed at working out a common position without the participation of the court. If an agreement is reached thanks to mediation, the parties sign a settlement whose provisions are binding on both parties.

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1 Cf. Your guide to dispute resolution, National Alternative Dispute Resolution Advisory Council, Australia 2012.
2 Cf. the official information from the website of the French tax administration, [http://www.impots.gouv.fr/portal/dgi/public/popup;jsessionid=URXDHYEKSRYVQFIEPSFFA?expId=2&expTypePage=exp02&docId=d=documentstandard_5754](http://www.impots.gouv.fr/portal/dgi/public/popup;jsessionid=URXDHYEKSRYVQFIEPSFFA?expId=2&expTypePage=exp02&docId=d=documentstandard_5754)
3 Ibid., [http://www.impots.gouv.fr/portal/dgi/public/popup;jsessionid=JEIRWIRNQHORFQ76IEQCFEY?expId=2&expTypePage=exp02&docId=d=documentstandard_5757](http://www.impots.gouv.fr/portal/dgi/public/popup;jsessionid=JEIRWIRNQHORFQ76IEQCFEY?expId=2&expTypePage=exp02&docId=d=documentstandard_5757)

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**Review of ADR procedures in selected tax jurisdictions**

The broadly understood alternative dispute resolution methods are used on a varied scale in the jurisdictions of individual countries. Below we present selected examples of ADR solutions in tax disputes.
Canada

A Canadian taxpayer who disagrees with the amount of tax assessed has two ADR procedures at his disposal, which may be used to bring about a satisfactory change in the tax authorities’ position:

- The Settlement Process for Appeals is a form of negotiations. After receiving information about the amount of tax assessed the taxpayer may raise his objections. Once his objections have been considered, the Appeals Branch within the Canada Revenue Agency (CRA) is authorized to confirm, revoke or change the amount of tax assessed. The taxpayer may begin negotiations with the CRA. Should a solution be reached which is satisfactory for both parties, an agreement is signed under which the taxpayer renounces the right to appeal to the Tax Court of Canada.

- The Mediation Process for Appeals is more formalized than the settlement process. The taxpayer files a request with the Appeals Branch for the commencement of mediation. Next, a written agreement is concluded, specifying the issues subject to mediation. An independent third party is the mediator. The process is not binding. Should it lead to an agreement, it is written up in contractual form, and if not, the CRA has the power to change or sustain the original tax assessment against which an appeal may be filed with the court.

Neither of the above procedures has any grounds in the applicable rules of procedure but has been worked out through the CRA’s practice. The authority encourages taxpayers to share their doubts before filing a request for instituting either procedure. As stated in a CRA information leaflet: “Many misunderstandings arise from miscommunication or lack of information. That’s why we say: «Talk to us.».”

Germany

Germany has a wide range of ADR mechanisms focused mainly on issuing protective opinions for the taxpayer, concerning the described background or the subject of an inspection.

The German tax law system also provides for a mechanism relating to disputes which have already arisen. The institution of final determinations (German Tatsächliche Verständigung) in the form of a settlement which is binding on both parties to a dispute, in spite of not being incorporated directly in legal regulations, has been admitted to use in the case-law of the administrative courts. The Federal Ministry of Finance also confirmed the possibility of using this ADR mechanism in a decree of 2008.

This mechanism is used if the determination of the background of a case by the tax authorities would require disproportionately large expenditure in comparison with the value of a dispute. All doubts arising in the course of the proceedings may be included in a settlement which is binding on both parties to the dispute.

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**United States**

The USA has a number of mechanisms aimed at reducing the number of tax disputes which are taken to court. Such solutions include both preventive ADR mechanisms and the amicable settlement of cases after a dispute has already arisen.

The preventive mechanisms include the Pre-filing Agreement Program (PFA) which consists of the taxpayer submitting voluntarily to an inspection before the tax return is filed, as well as Industry Issue Resolution (IIR) which is a mechanism that leads to the issuance of guidance by the US Internal Revenue Service (IRS), concerning a selected tax issue which may be of interest to groups of taxpayers, e.g., functioning in a given market.

The solutions of the second type, i.e., the ones regulating the methods for resolving disputes with the authorities include the Fast Track Settlement Program which is aimed at referring for mediation those issues which have not yet been put under court jurisdiction, thus reducing the length of the proceedings.

**Turkey**

Turkey has an elaborate system of using ADR mechanisms in tax proceedings. The taxpayer may take advantage of a tax settlement which may be concluded during a tax inspection and after its completion. In the former case, the settlement is concluded at a meeting with the inspectors conducting the inspection, whereas in the latter case it may be concluded within 30 days from completion of the inspection. The meeting about the settlement is then held with representative of a settlement committee in an Inland Revenue office or the Ministry of Finance.

**Great Britain**

Her Majesty’s Revenue & Customs ("HMRC") is an institution which stresses its willingness to settle tax issues effectively and amicably. Based on the practice of holding disputes with HMRC, the vast majority of tax issues in which there is any interaction (in addition to the taxpayer filing a tax return) between the taxpayer and HMRC end in concluding an agreement. Tax decisions are issued by HMRC only in the event of a dispute with a taxpayer, in order to provide a legal basis for filing a complaint/an appeal with the First-Tier Tribunal, Tax Chamber.

The procedure is instituted at the taxpayer’s request. A pilot programme covering the introduction of an ADR procedure in 2012 was addressed to small and medium-sized enterprises. At present, the programme is fully operational and also available to large companies. Once an appropriate form had been filed, the taxpayer would receive information that his case had been put under an ADR procedure or refused within 30 days. ADR has the nature of mediation. An HMRC official trained in mediation techniques, a facilitator, is the person responsible for conducting the procedure.

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7 [http://www.irs.gov/Businesses/Pre-Filing-Agreement-Program](http://www.irs.gov/Businesses/Pre-Filing-Agreement-Program)
8 [http://www.irs.gov/Businesses/Pre-Filing-Agreement-Program](http://www.irs.gov/Businesses/Pre-Filing-Agreement-Program)
ADR ma charakter mediacji. Osobą odpowiedzialną za przeprowadzenie procedury jest mediator. The average duration of the procedure is 56 days. However, in the majority of cases the actual mediation measures are limited to a one-day meeting. There is no pre-defined agenda – the facilitator is a moderator who acts in accordance with the list of stages presented by HMRC. The standard order of the day is presented by HMRC as follows: the procedure begins with short (ten-minute) presentations of the parties’ positions. At an early stage of the meeting, the facilitator also conducts short interviews with each party separately in order to identify the key issues for either party and the points which are of most importance to either party. At a later stage, a moderated discussion is held between the parties.

The participation of plenipotentiaries in the procedure is standard practice.

The manner in which ADR is presented by HMRC places emphasis on the high level of freedom of participation – the taxpayer has the right to withdraw from participation in the procedure at any given moment. The confidentiality of the information provided in the course of the procedure is also emphasized.

HMRC explains that ADR is meant to be applied only to some disputes. Examples of the issues which are pointed to by the authority as issues which may effectively be put under the said procedure include the following:

- explaining the complexity of the background;
- obtaining a better picture of the evidence in a given case;
- issues which may be subject to a compromise – e.g., complex tax structures, where there are issues relating both to indirect taxes and income tax, and
- gaining a better understanding of the opposing party’s arguments.

We should conclude that the primary assumption behind ADR in Great Britain is to facilitate communication between the taxpayer and the tax authority.

**Italy**

The Italian legal system provides for the use of ADR mechanisms which allow taxpayers to lighten their tax burden and promotes such measures by reducing the amount of interest charged on overdue tax liabilities. Depending on the stage at which a settlement is signed, the taxpayer may reduce the amount of interest charged on the amount of a liability.

A settlement may be concluded between the taxpayer and tax authorities when the taxpayer’s liabilities are large and he files a request for instituting a settlement procedure. If the parties succeed in working out a common position, an official report on the negotiations is drawn up, and the amount of default interest is reduced to 1/4 of the base amount. A settlement may also be concluded at the legal action stage – in this case interest is reduced to 1/3 of the base amount.

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