

PUMP COURT
TAX CHAMBERS

**ALTERNATIVE DISPUTE RESOLUTION
IN TAX DISPUTES**

Rule 3 – Practice Statement on the use of ADR
issued by Judge Sinfield on 15th June 2020

Peter Nias

Barrister and CEDR Panel Mediator

Rule 3, The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009

Alternative dispute resolution

"3(1) The Tribunal should seek, where appropriate –

- (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute, and*
- (b) if the parties wish and provided that it is compatible with the overriding objective, to facilitate the use of the procedure"*

Rule 3 Statement – Key Points

1. ADR can be used even after an appeal has been made to the Tribunal
2. At any stage of the proceedings, even after:
 - HMRC has served their Statement of Case
 - lists of documents and/or witness statements have been exchanged
3. Tribunal will grant a 150 day stay to facilitate use of ADR
4. If Hearing Date already set, parties need to satisfy Tribunal before stay granted that ADR will be completed in time not to delay Hearing
5. Applies to “standard” and “complex” cases, as categorised by Tribunal

Rule 3 Statement – HMRC implications

- Supported by HMRC ADR Unit
- Supported by HMRC Solicitors Office
- Further training and awareness already in progress
- HMRC website to be updated to bring it in line with Statement www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr

Rule 3 Statement - Significance

- Positive support for ADR
 - once appeal submitted and proceedings commenced
 - before litigation starts
- HMRC ADR Service
 - no requirement just to use HMRC trained facilitator
- Taxpayer appointed facilitator/mediator
 - alongside HMRC facilitator
 - co-mediator/facilitator
- “*Any appropriate alternative procedure*” Rule 3(1)(a)
 - mediation
 - facilitation
 - expert determination

Rule 3 Statement – Action Steps

- Take a fresh look at cases already under appeal
- Can any issue – fact or law – merit reconsideration?
- Are all issues amenable to ADR?
- Any “red line” or policy issues requiring judicial determination?
- Use catalyst of external mediation trained professional to:
 - bring fresh focus/view approach
 - identify and restate key questions to be resolved
 - advise on ADR application process
 - liaise with HMRC ADR team

Rule 3 Statement

- Any general questions to clerks@pumptax.com
- Any specific questions to me pnias@pumptax.com
- Q&As to be produced and posted on Chambers website

Thank you for your attendance