Increasing the use of mediation in the civil justice system

Management of taxes

21 October 2022

The CIOT has responded to a recent consultation published by the Ministry of Justice looking at increasing the use of mediation in the civil justice system. The focus of our response is the alternative dispute resolution process, which can be used to resolve a tax disagreement with HMRC. In our response, we consider the benefits of increasing the use of mediation in tax disputes and making it more widely available.

The consultation is aimed at all those with an interest in the resolution of civil disputes in England and Wales. Whilst its focus is on defended small claims disputes in the first instance, there is a vision to embed mediation as an integral step in the court process more widely across the civil justice system.

In our response, we consider the number of appeals that are notified to the tax tribunals each year and the number of appeals ongoing at 31 March 2022, which are significant. It appears it will take the tribunal service many years to work through them. The latest statistics published in HMRC's Annual Report indicate that there were 15,613 appeals notified to the tax tribunal in the year 2021/22 and 36,500 appeals ongoing at 31 March 2022 (of which 16,000 were stood over). The number of appeals, the length of time it is taking to resolve them and the costs (preparatory and during the hearing) for both HMRC and taxpayers all feed into the cost of running HM Courts and Tribunal Service (which also administers the tax tribunals).

We also note the low number of applications made each year for alternative dispute resolution (ADR) compared to the much higher number of appeals to the tax tribunal. The numbers of rejections to ADR are increasing too. In 2021/22, there were 1,047 applications in total, with 283 cases rejected by HMRC's governance panel and 298 rejected as out of scope. We consider how the number of applications for ADR might be increased. In our view, the use of mediation to resolve tax disputes

can be very successful and its increased use could be effective at reducing the number of disputes reaching the tax tribunal, relieving the pressures on the Tribunal Service.

Our recommendation would be for HMRC to set up a focus group of relevant stakeholders to discuss what more could be done to encourage the use of mediation in tax dispute management, including:

- raising awareness of the process and greater publicity of the benefits of mediation;
- expanding the categories of cases in scope for ADR;
- increasing the transparency of HMRC's process for accepting (and rejecting) cases into ADR; and
- considering if its use should be made mandatory, with consequences for those who fail to engage with it without good reason.

We note that some cases involving HMRC do end up at the County Court, rather than at the tax tribunal. These are primarily cases involving smaller tax debts and cases where HMRC are applying to court to lodge a national insurance contributions debt. There are some cases here which might benefit from mediation; for example, where there is a complex dispute and the tax debt relates to that (and is under appeal).

We also provide a response to the questions posed in the consultation document on the subjects of accreditation and regulation of mediators, noting that there are CIOT members who are accredited mediators, and that tax mediation is different from standard mediation as the mediator needs to comprehend HMRC's Litigation and Settlement Strategy. We would not wish to see too much regulation of the civil mediation sector as applied to tax disputes, as it could limit the number of tax professionals who seek accreditation.

The CIOT's full response, which includes statistics on tribunal appeals and ADR applications from HMRC's Annual Reports, is at: www.tax.org.uk/ref1027.

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