

**MSP
#15****ALTERNATIVE DISPUTE RESOLUTION (ADR): The IRS Is Failing to Effectively Use ADR As a Means of Achieving Mutually Beneficial Outcomes for Taxpayers and the Government****RESPONSIBLE OFFICIALS**

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TAXPAYER RIGHTS IMPACTED¹

- *The Right to Challenge the IRS's Position and Be Heard*
- *The Right to Appeal an IRS Decision in an Independent Forum*
- *The Right to Privacy*
- *The Right to a Fair and Just Tax System*

DEFINITION OF PROBLEM²

Alternative dispute resolution (ADR) is the process of resolving a dispute through non-judicial means, typically by placing the case in non-binding mediation or in binding arbitration.³ These proceedings are generally conducted by neutral parties, such as mediators, administrative law judges (ALJs), or ombudsmen. Researchers, commentators, and stakeholders have published substantial in-depth analysis regarding the effectiveness and flexibility of ADR in a variety of contexts. Further, studies in this area demonstrate that efficient ADR can have a beneficial impact on tax compliance and tax administration.⁴

The IRS itself has acknowledged that ADR can play a useful role within its operations. “A primary objective of the [IRS] is to resolve tax controversies at the lowest level without sacrificing the quality and integrity of those determinations. [ADR], or mediation programs achieve this objective.”⁵ Additionally, the IRS has expressed the view that at least some aspects of ADR can successfully be used “[t]o promote issue resolution at earlier stages and decrease the overall time from return filing to ultimate issue resolution.”⁶

1 See Taxpayer Bill of Rights (TBOR), www.TaxpayerAdvocate.irs.gov/taxpayer-rights. The rights contained in the TBOR are now listed in the Internal Revenue Code (IRC). See Consolidated Appropriations Act, 2016, Pub. L. No. 114-113, Division Q, Title IV, § 401(a) (2015) (codified at IRC § 7803(a)(3)).

2 Volume 3 of the 2016 Annual Report to Congress contains an extended literature review related to this topic. Literature Review: *Options for Alternative Dispute Resolution (ADR)*, vol. 3, *infra*.

3 Throughout this Most Serious Problem, alternative dispute resolution (ADR) will be used as a collective term referring both to mediation and arbitration. More specific terms will be adopted where distinctions among the various forms of ADR become relevant.

4 See, e.g., Melinda Jone and Andrew J. Maples, *Mediation as an Alternative Option in Australia's Tax Disputes Resolution Procedures*, 27 *AUSTL. TAX F.* 525 (2012); Amy S. Wei, *Can Mediation Be the Answer to Taxpayers' Woes?: An Examination of the Internal Revenue Service's Mediation Program*, 15 *OHIO ST. J. ON DISP. RESOL.* 549, 549 (2000).

5 Internal Revenue Manual (IRM) 8.26.3.1(1), *Objective and Authority for Fast Track Mediation (FTM)* (Dec. 5, 2014).

6 Rev. Proc. 2003-40, 2003-25 I.R.B. 1044.

Nevertheless, the IRS is underutilizing this potentially valuable tool and is administering ADR in a way that is unattractive to taxpayers. For example, taxpayers and their representatives could reasonably question the accessibility, cost effectiveness, and impartiality of ADR proceedings.⁷ These doubts likely help to explain why during fiscal year (FY) 2016, the IRS reported only 306 ADR case receipts—less than one-half of one percent of the total Appeals case receipts for the year.⁸

ADR, if thoughtfully and creatively implemented, could substantially increase the efficiency and timeliness of case resolutions. In turn, an effective ADR program would protect taxpayer rights, reduce taxpayer burden and cost, encourage voluntary compliance, and economize scarce IRS resources. The IRS can take important initial steps toward building ADR into a highly useful mechanism for administrative dispute resolution by remedying existing problems, such as:

- The narrow scope of ADR, which excludes a wide range of cases, including controversies flowing from most Campus Collection actions;
- The effective veto power possessed by the IRS over all potential ADR proceedings; and
- The practice of staffing ADR programs with Appeals Officers, who may not be perceived by taxpayers as neutral parties.

ANALYSIS OF PROBLEM

The IRS Could Benefit Substantially From ADR Lessons Learned From Commentators, Businesses, Various Federal Agencies, and Tax Authorities of Certain Foreign Countries

ADR finds longstanding precedent throughout history, including application among Phoenician merchants, use by Alexander the Great's father, and inclusion in George Washington's will.⁹ Specifically, "... ADR techniques can be placed on a continuum, ranging from left to right in complexity from simple two-party negotiations to mediation to binding arbitration, with an unlimited number of hybrid techniques in between."¹⁰

The private sector has been quick to understand and seek the benefits of ADR, particularly arbitration. According to the RAND Institute for Civil Justice (RAND), some studies have indicated that over 70 percent of consumer contracts possess arbitration clauses.¹¹ Likewise, the majority of corporate counsels

7 IRS personnel generally serve as the "neutral" party in ADR proceedings. See e.g. IRM 8.26.3.1(2), *Objective and Authority for Fast Track Mediation (FTM)* (Dec. 5, 2014).

8 Fiscal year (FY) 2016 data provided by Appeals (Oct. 19, 2016).

9 Ji Hun Kim and Nicholas M. McGrath, *Mediation: Can't We All Just Get Along?*, 30 Sept. AM. BANKR. INST. 52, 52 (2011); R. Jeff Knight, *Alternative Dispute Resolution in Tax Cases* (Jan. 23, 2013), <http://ccintranet.prod.irs.counsel.treas.gov/OrgStrat/Offices/sbse/Presentation%20Materials>; A.B.A., Sec. of Disp. Resol., *Benefits of Arbitration for Commercial Disputes*, http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/arbitration/arbitrationguide.authcheckdam.pdf (last visited Mar. 8, 2016).

10 Steven C. Wrappe, *Advance Pricing Agreements: The IRS Rediscovered Alternative Dispute Resolution*, 63 TAX NOTES 1343, 1345 (June 6, 1994).

11 Douglas Shontz, Fred Kipperman, and Vanessa Soma, RAND Inst. For Civ. Just., *Business-to-Business Arbitration in the United States: Perceptions of Corporate Counsel*, 2 (2011). See also Mandy Walker, *The Arbitration Clauses Hidden in Many Consumer Contracts*, CONSUMER REPORTS (Sep. 29, 2015), <http://www.consumerreports.org/cro/shopping/the-arbitration-clause-hidden-in-many-consumer-contracts>.

surveyed by RAND believe that contractual arbitration is better, faster, and cheaper than litigation.¹² Moreover, according to studies cited by the American Bar Association Section of Dispute Resolution:

- 80 percent of attorneys and 83 percent of business people report that arbitration is a fair and just process;
- 86 percent of corporate counsels are satisfied with international arbitration; and
- Over 90 percent of parties involved in arbitration voluntarily comply with the outcome.¹³

Likewise, some federal agencies, such as the Environmental Protection Agency (EPA), the United States Air Force (Air Force), and the Social Security Administration (SSA) have used ADR to great advantage. For example, issues resolved via ADR within the EPA demand less than 50 percent of the time from staff leads than would be required in more contentious traditional proceedings.¹⁴ Eighty-seven percent of the staff leads surveyed by the EPA with respect to their particular cases believed that ADR “was a good investment for EPA.”¹⁵

The Air Force reports that large disputes that took an average of five years to resolve through litigation are now being resolved by the use of ADR in an average of just over 12 months.¹⁶ According to the Air Force, it has avoided paying over \$275 million in contractor claims since the “ADR First” policy was instituted in 2000.¹⁷

Where SSA is concerned, ADR is conducted by ALJs who are provided free of charge and who are housed in a wholly independent unit from other SSA groups. Of the approximately 700,000 ALJ decisions rendered each year, only approximately 16,000 (less than 3 percent) are appealed to federal courts.¹⁸

Recognizing the benefits of ADR, the tax authorities of several foreign countries have also sought to institute a range of ADR programs. For example, Hong Kong utilizes an appeals system incorporating aspects of binding arbitration in which taxpayers can bring cases before a Board of Review comprised of a chairman with legal training and at least two members with expertise in other professions.¹⁹ In Australia, the government and taxpayers are encouraged to pursue ADR by a legal requirement that

12 Douglas Shontz, Fred Kipperman, and Vanessa Soma, RAND Inst. For Civ. Just., *Business-to-Business Arbitration in the United States: Perceptions of Corporate Counsel*, ix (2011).

13 A.B.A., Sec. of Disp. Resol., *Benefits of Arbitration for Commercial Disputes*, http://www.americanbar.org/content/dam/aba/events/dispute_resolution/committees/arbitration/arbitrationguide.authcheckdam.pdf (last visited Mar. 8, 2016).

14 Conflict Prevention and Resol. Ctr., U.S. Envtl. Protection Agency, *FY 2014 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ*, 18-19 (Feb. 17, 2015).

15 *Id.* at 19-20.

16 Off. of the Att’y Gen., *Report for the President on the Use and Results of Alternative Dispute Resolution in the Executive Branch of the Federal Government*, 155 (Apr. 2007).

17 The Air Force ADR Program, *Report to the Secretary of the Air Force on the Air Force Alternative Dispute Resolution Program*, 1 (Dec. 2012).

18 *Information About SSA’s Office of Disability Adjudication and Review*, https://www.ssa.gov/appeals/about_odar.html (last visited Mar. 16, 2016). Note that SSA has been criticized for the backlog of cases awaiting administrative law judge (ALJ) hearings and at least one Congressional committee has questioned whether ALJs allow too many claims in order to clear dockets quickly. These caseload issues, however, do not appear inherent to Social Security Administration’s (SSA) ADR design, but rather to ALJ understaffing and documentation requirements. See *generally Systemic Waste and Abuse at the Social Security Administration: How Rubber-Stamping Disability Judges Cost Hundreds of Billions of Taxpayer Dollars: Hearing Before the H. Comm. on Oversight and Govt. Reform*, 114th Cong. (2014). David Fahrenthold, *The Biggest Backlog in the Federal Government*, WASH. POST, Oct. 18, 2014, <http://www.washingtonpost.com/sf/national/2014/10/18/the-biggest-backlog-in-the-federal-government/>.

19 *Tax Dispute Resolution: A New Chapter Emerges, Tax Administration Without Borders*, Ernst & Young, 2010; *Tax Disputes: Alternative Dispute Resolution (ADR), Functions and Procedures*, Board of Review (Inland Revenue Ordinance) (Mar. 15, 2016), www.info.gov.hk/bor/en/functions-procedures.htm (on file in TAS archives).

Alternative Dispute Resolution (ADR), if thoughtfully and creatively implemented, could substantially increase the efficiency and timeliness of case resolutions. In turn, an effective ADR program would protect taxpayer rights, reduce taxpayer burden and cost, encourage voluntary compliance, and economize scarce IRS resources.

they file a “genuine steps” statement outlining the attempts they made to avoid litigation before court proceedings can begin.²⁰ Although relatively new, Australia’s ADR procedures appear to be producing good results in achieving resolutions more frequently and earlier in the objection and appeals process.²¹ Likewise, ADR implemented by Her Majesty’s Revenue and Customs (HMRC) in the United Kingdom seems to be working well, with some data suggesting that ADR resolutions can be achieved approximately seven times faster than litigation decisions.²² Further, the HMRC’s 2013 ADR Project Evaluation Report indicates that 58 percent of all cases selected for ADR were fully resolved, while a further eight percent were partially resolved.²³

A Quality ADR Program Can Be an Important Contributor to Successful Tax Administration

When implemented effectively, ADR can have a particularly salutary effect on tax compliance and the voluntary tax system.²⁴ Its flexibility and participatory nature increase perceptions of equity and procedural justice.²⁵ In turn, such perceptions can positively impact tax compliance behavior in the future.²⁶

Specifically, “the tax compliance literature identifies that factors associated with tax disputes resolution procedures can influence taxpayers’ level of compliance.”²⁷ Of the various factors influencing tax compliance behavior, quality of contact with the tax authorities and taxpayers’ perceptions of fairness are particularly strengthened or diminished by an effective ADR program.²⁸ Generally, people who feel they have been treated in a procedurally fair manner by an organization are more likely to trust that organization and are more willing to accept even a negative outcome.²⁹ Further, “people value respectful treatment by authorities and view those authorities that treat them with respect as more entitled to be obeyed.”³⁰ ADR done well can help generate the types of interactions and perceptions that will perpetuate the compliant behavior necessary to the success of the voluntary tax system.

20 *Tax Disputes and Controversy Update—Focus on Alternative Dispute Resolution*, KPMG, (Aug. 5, 2014), <https://home.kpmg.com/xx/en/home/insights/2014/08/focus-on-alternative-dispute-resolution.html>.

21 *Id.*

22 Hui Ling McCarthy, *Tribunal Fees—A Tax on Justice*, (Jan. 1, 2016), <http://www.taxadvisermagazine.com/article/tribunal-fees-%E2%80%93-tax-justice>.

23 *Id.*

24 Melinda Jone and Andrew J. Maples, *Mediation as an Alternative Option in Australia’s Tax Disputes Resolution Procedures*, 27 *AUSTL. TAX F.* 525 (2012); Amy S. Wei, *Can Mediation Be the Answer to Taxpayers’ Woes?: An Examination of the Internal Revenue Service’s Mediation Program*, 15 *OHIO ST. J. ON DISP. RESOL.* 549, 549 (2000).

25 Tonya M. Scherer, *Alternative Dispute Resolution in the Federal Tax Arena: The Internal Revenue Service Opens Its Doors to Mediation*, 2 *J. OF DISP. RESOL.* 215 (1997).

26 Marjorie E. Kornhauser, *A Tax Morale Approach to Compliance: Recommendations for the IRS*, 8 *FLA. TAX REV.* 599 (2007); John Hasseldine and Peggy Hite, *Key Determinants of Compliance and Non-Compliance*, 2007 *TNT* 205-40, 379 (2007).

27 Melinda Jone and Andrew J. Maples, *Mediation as an Alternative Option in Australia’s Tax Disputes Resolution Procedures*, 27 *AUSTL. TAX F.* 525, 528 (2012).

28 *Id.*

29 *Id.* at 525, 531.

30 *Id.* at 525, 531.

The IRS Is Failing to Utilize the Potential Advantages ADR Offers

The IRS acknowledges the various benefits conferred by ADR. Despite operating a range of ADR programs, the IRS underutilizes this tool for achieving cost-effective, mutually desirable negotiated settlements.

The IRS offers the following ADR options:³¹

- Fast Track Settlement (FTS) — available to taxpayers in Large Business and International (LB&I), Small Business/Self Employed (SB/SE), and Tax Exempt and Government Entities (TE/GE) when issues are fully developed by Compliance; applicable to factual and legal disputes and eligible for Hazards of Litigation settlement; standard appeal rights still available if no agreement reached.³²
- Fast Track Mediation – Collection (FTM) — available for Offer-in-Compromise or Trust Fund Recovery Penalty cases involving fully developed factual or legal issues; otherwise-applicable appeal rights retained if no agreement reached.³³
- Post Appeals Mediation (PAM) — available for Non-Collection and Collection cases with respect to factual or legal disputes where no settlement has been achieved with Appeals; ability to litigate retained if no agreement reached.³⁴

These ADR programs, however, accounted for only 306 case receipts during FY 2016—less than one half of one percent of the total Appeals case receipts for that same year.³⁵ Moreover, only 251 cases were actually resolved through a negotiated settlement during FY 2016. This ADR activity is shown in the following figure:

31 Fast Track Settlement cases are separately tracked based on the Operating Division from which they originate: Large Business and International (LB&I), Small Business/Self-Employed (SB/SE), and Tax Exempt and Government Entities (TE/GE). However, this discussion aggregates Fast Track Settlement cases for the sake of simplicity. Post-Appeals Mediation (PAM) for Non-Collection and Collection cases likewise are discussed in the aggregate for the same reason. Further, Appeals sometimes characterizes Appeals proceedings overall, as well as related programs such as Collection Due Process (CDP) appeals, the Collection Appeals Program (CAP), and Early Referral to Appeals as all constituting aspects of ADR. While all of these programs involve some degree of review and dialogue, they do not present meaningful alternatives to the IRS's current tax controversy process and therefore are not characterized as ADR for purposes of this discussion.

32 Rev. Proc. 2003-40, 2003-25 I.R.B. 1044; IRM 8.26.1 (Sep. 24, 2013); IRM 8.26.2 (Oct. 1, 2012); IRM 8.26.7 (Mar. 28, 2014).

33 Rev. Proc. 2016-57; IRM 8.26.3 (Dec. 5, 2014); *Id.*

34 Rev. Proc. 2014-63, 2014-53 I.R.B. 1014; IRM 8.26.5 (Aug. 17, 2015); IRM 8.26.9 (Mar. 16, 2015).

35 FY 2016 data provided by Appeals (Oct. 19, 2016).

FIGURE 1.15.1³⁶

ADR Program	Receipts	Settlements	Settlement Percentage	Average Days to Settlement
Fast Track Settlement – LB&I	65	70	108%	72
Fast Track Settlement – SB/SE	142	105	74%	51
Fast Track Settlement – TE/GE	17	11	65%	55
Fast Track Mediation	0	0	n/a	n/a
Post Appeals Mediation – Non-Collection	68	9	13%	59
Post Appeals Mediation – Collection	14	2	14%	124
Total	306	197	64%	60

The settlement percentages in those relatively few cases pursued by taxpayers and accepted by the IRS appear to be positive, at least in the case of the FTS program. Nevertheless, the overall aggregate case receipts of the IRS's ADR program have been steadily declining over the last three years.³⁷ This drop can be seen in the following figure:

FIGURE 1.15.2³⁸

Fiscal Year	Receipts	Settlements	Settlement Percentage
2014	413	310	75%
2015	383	232	61%
2016	306	197	64%

Many reasons contribute to the underutilization of ADR within the IRS. Initially, ADR is excluded in a wide range of circumstances, including cases that the IRS interprets as being subject to controlling precedent and most Campus Collection cases.³⁹ Moreover, it is only available where the IRS agrees to pursue it, effectively giving the IRS a strategic veto over all potential ADR proceedings.⁴⁰ If the IRS offered ADR on a broader scale with fewer limitations, ADR likely would be used more often and would become an option with which taxpayers and their representatives are increasingly well-versed.

Another inherent problem with ADR, as currently administered by the IRS, is that potential participants are not yet convinced that they will recognize enough meaningful time or cost savings to induce them

36 FY 2016 data provided by Appeals (Oct. 19, 2016). "Settlement percentage" is calculated by dividing the number of settlements by the number of receipts. This comparison is illustrative rather than exact, as occasionally, cases received in one year are settled in a subsequent year, which, among other things, can result in a settlement percentage in excess of 100 percent. The term "days to settlement" refers to the actual average number of days elapsed between the time a case is accepted into the ADR program and the time the parties reach an agreed settlement. Cases that are not successfully settled are excluded from this average. Appeals prefers the term "agreed closures" to the term "settlements" that has been adopted for purposes of this comparison.

37 Appeals response to TAS information request (Jun. 6, 2016), as supplemented by FY 2016 data provided by Appeals (Oct. 19, 2016).

38 *Id.*

39 Rev. Proc. 2003-40, § 3.03, 2003-25 I.R.B. 1045; Rev. Proc. 2016-57, § 3.04.

40 See, e.g., Rev. Proc. 2014-63, § 7.01, 2014-53 I.R.B. 1016.

to move beyond the standard tax controversy procedures with which they are most comfortable.⁴¹ As discussed above, the experiences of other governmental agencies and certain foreign tax authorities indicate that ADR flourishes once parties become convinced that an equitable outcome can be obtained more quickly and cheaply than through standard administrative and judicial channels. The IRS has yet to design an ADR system possessing sufficient volume and efficiency to persuasively make such a case.

Additionally, acceptance of ADR within the IRS may well be inhibited by the perception, deserved or not, that the “neutral facilitator” lacks independence. In commercial ADR, external neutrals, completely unassociated with the interested parties, act as facilitator. In the case of many successful government ADR programs, such as that developed by SSA, the neutral may technically be part of the agency, but the neutral is housed in a separate group within the agency and generally has no duties other than working in the ADR program.⁴² By contrast, the IRS uses Appeals Officers as neutrals who are drawn from the Office of Appeals and who are not solely dedicated to ADR cases. When not involved in an ADR proceeding, these neutrals generally work the standard Appeals docket. As a result, taxpayers contemplating ADR may question whether they are receiving a truly independent neutral and whether the outcomes produced by ADR would be any more advantageous than what would be generated via a standard Appeals proceeding.

The IRS Can Transform Its ADR Program into a Valuable Component of Tax Administration

In order to reverse the relative unpopularity of its ADR program, the IRS must institute some systemic improvements. As a threshold matter, the scope of ADR availability should be substantially increased and the effective IRS veto power removed. ADR should generally be available to all taxpayers upon request.⁴³ If the IRS wishes the program to succeed, it must allow taxpayers to choose when ADR would be beneficial.

As part of this expansion, the IRS should employ ADR actively at the Compliance level as well as at the Appeals stage. As has been suggested by the Canadian Tax Mediation Association, ADR during the examination process can help the parties better understand the issues and reach agreement on disputed facts.⁴⁴ This clarification of positions early on can often resolve cases much sooner in the proceedings than would otherwise occur and can help minimize the tendency of the parties to become entrenched in their arguments.⁴⁵ Moreover, even if resolution is not achieved, a facilitated dialogue can narrow and develop the issues so that time and resources can be more effectively focused later in the administrative process.

In order for taxpayers to embrace a voluntary program, they must be persuaded that it will produce beneficial, cost-effective outcomes. As a result, the IRS must expand the program, publicize its availability, and encourage its use through effective communications to taxpayers automatically generated

41 Brittany Horth, Ladun Omideyi, and Mike Werner, *Internal Revenue Service Office of Appeals' ADR Programs*, Harvard Negotiation and Mediation Clinical Program Project, slide 59 (2012) (on file in TAS archives).

42 SSA, *Hearing and Appeals*, https://www.ssa.gov/appeals/hearing_process.html (last visited Mar. 16, 2016).

43 Reasonable exceptions to this general availability would include frivolous requests intended to delay or impede tax administration.

44 Canadian Tax Mediation Association, *Tax Mediation: An Innovation Promoting Transparent Exchanges Between Tax Authorities and Taxpayers* (2015) (on file in TAS archives).

45 See, e.g., Brittany Horth, Ladun Omideyi, and Mike Werner, *Internal Revenue Service Office of Appeals' ADR Programs*, Harvard Negotiation and Mediation Clinical Program Project, slide 74 (2012) (on file in TAS archives).

by procedural triggers.⁴⁶ As part of this effort, the IRS should publish evaluative statistics, such as the percentage of settled ADR cases and the average hours spent to resolve an ADR case versus average hours to resolve standard cases. If this data is positive, that information will go a long way toward building the popularity of ADR programs. On the other hand, if the information is less-than-compelling, the IRS must figure out why and take decisive steps to make meaningful changes in its ADR program. Until quantifiable statistics indicating an effective and desirable program are presented, taxpayers' interest in ADR likely will remain tepid.

The average hours to resolution measure is particularly significant in that the time spent to resolve a case directly correlates to costs incurred by both taxpayers and the IRS. Effective ADR programs generally can demonstrate that the hours required to resolve an ADR case are substantially fewer than those spent to resolve standard administrative or judicial proceedings.⁴⁷ While expanding its ADR program, the IRS should, at the same time, reexamine applicable procedures in light of this principle and take all possible steps to streamline the efficiency and timeliness of case resolution. Among other things, this streamlining can be achieved by improving the scheduling process, reducing related paperwork, increasing accessibility to ADR personnel, and allowing video conferencing where requested by the parties.⁴⁸ As part of this fundamental redesign of its ADR program, the IRS should also consider circumstances in which a revised and improved arbitration offering could supplement mediation as an attractive and efficient alternative to litigation.

Likewise, to perpetuate the independence (both actual and perceived) of neutral facilitators, the IRS should establish a separate unit housing neutrals assigned solely to the IRS's ADR program. This reorganization would increase the trust of taxpayers that a neutral was indeed neutral and would further taxpayers' *right to a fair and just tax system*. Additionally, it would allow IRS personnel assigned to this unit to focus on refining their skills and enhancing their performance as ADR facilitators and, where applicable, decision-makers.

46 Brittany Horth, Ladun Omideyi, and Mike Werner, *Internal Revenue Service Office of Appeals' ADR Programs*, Harvard Negotiation and Mediation Clinical Program Project, slide 62 (2012) (on file in TAS archives).

47 See, e.g., Conflict Prevention and Resol. Ctr., U.S. Evtl. Protection Agency, *FY 2014 Environmental Collaboration and Conflict Resolution (ECCR) Policy Report to OMB-CEQ*, 18-19 (Feb. 17, 2015). One of the reasons the IRS excludes most Campus Collection cases from ADR may be because these cases are already designed for quick resolution by virtue of minimal direct contact with taxpayers and limited issue development. Nevertheless, higher levels of taxpayer satisfaction and increased long-term tax compliance could be achieved by making Campus cases eligible for ADR. Further, the refusal to do so raises an access to justice issue for lower-income taxpayers, who have a large portion of their cases routed to Campuses. While lower-income taxpayers without representation may be less likely to initiate ADR proceedings than other taxpayers, they can obtain assistance from Low Income Tax Clinics (LITCs), which operate in a similar fashion to Legal Aid Societies in SSA ADR hearings. First, however, they must be informed by Appeals that LITCs exist and that LITCs can assist them in the ADR process.

48 Brittany Horth, Ladun Omideyi, and Mike Werner, *Internal Revenue Service Office of Appeals' ADR Programs*, Harvard Negotiation and Mediation Clinical Program Project, slide 20 (2012) (on file in TAS archives).

CONCLUSION

ADR has been widely embraced by businesses, various federal agencies, and tax authorities of certain foreign countries. Moreover, studies in this area demonstrate that efficient ADR can have a positive impact on tax compliance and tax administration. The IRS has acknowledged the benefits of ADR but has yet to capitalize on ADR's vast potential for increasing the quality of tax administration. Throughout FY 2016, the combined IRS ADR program generated less than 306 case receipts.

The IRS can realize the advantages of a quality ADR program by implementing a series of systemic changes, such as expanding the scope of its ADR program, publishing applicable ADR data, and establishing a separate ADR unit. Improving and expanding ADR would require a short-term investment but would yield long-term cost savings for both the IRS and taxpayers. It also would improve taxpayer satisfaction and thereby contribute to voluntary tax compliance.

RECOMMENDATIONS

The National Taxpayer Advocate recommends that the IRS:

1. Expand ADR to all taxpayers upon request, including at the Compliance level, as well as at the Appeals stage.
2. Publish quarterly data relating to the settlement percentages and the cost-effectiveness of ADR.
3. Reduce the administrative burdens surrounding ADR, allow video conferencing where desired by the parties, and examine scenarios in which a redesigned arbitration option can represent an attractive alternative to litigation.
4. Establish a separate unit to house IRS personnel assigned exclusively to the ADR program.