

Alternative Dispute Resolution (ADR)

CIOT/ATT Member Webinar
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Panel

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Introduction

This session will focus on Alternative Dispute Resolution (ADR), and how it can be used to resolve a dispute with HMRC, including:

- What ADR is, and what it can and can't be used for;
- When and how to apply for ADR;
- How the ADR process works.

Agenda

- Housekeeping
- “Resolving Disputes” – an introduction to ADR from HMRC
- Practical aspects for practitioners
- Question and Answer session
 - Election purdah

Housekeeping points

- Please email questions in as we go along
- Webinar will be available at the same link for 12 months
- Slides can be downloaded from our websites at the end of the webinar
- Follow up questions to technical@ciot.org.uk or atttechnical@att.org.uk

Resolving Disputes

Introducing Alternative Dispute Resolution (ADR)

Jim Benson and Jo Herring

HMRC



HM Revenue
& Customs

So, what is Alternative Dispute Resolution (ADR)?

ADR in HMRC is:

“A flexible process where an impartial HMRC mediator actively assists the parties in dispute work towards an agreement. The parties have ultimate control of any decisions taken in reaching that agreement”.

- Alternative to Tribunal
- Supported by Tribunal Rules
- Needs a collaborative approach



How ADR can help you

- Clarity
- Fresh perspective to look for a way forward
- Review strengths and weakness of evidence
- Value of Oral Testimony
- Restore positive communications
- Quicker resolution than litigation



When is ADR likely to be suitable?

Before an appealable decision has been issued by HMRC:-

- You and HMRC have different views on the facts
- Communication between yourself and HMRC has broken down, ie you have reached an impasse

After an appealable decision has been issued by HMRC:-

- Once an appeal has been accepted by HMRC
- Once an appeal has been accepted by Tribunal



Not all disputes are suitable for ADR

- ADR will only be used where there is a potential benefit from the start
- It will only be used if the Customer wants it
- It may not be appropriate if there is a need for a “test case”
- It may not be useful if the evidence provided requires verification at Cross Examination
- Certain areas of tax are currently not covered
- ADR will not be offered at the same time as a formal review



The ADR process....?

- Who makes the application?
- How is an application made?
- Who owns the ADR process?
- Who owns the final decisions – the outcomes?



The Application is in, what happens now?

- Discussions are held with both parties
- Decision on application is made within 30 days
- Acceptance/Rejection is notified
- Acceptance Letter and Memorandum of Understanding (MOU)



Mediation Day

- Preparation
- Opening Statements
- Joint and private discussion
- Test evidence/challenge views
- Open & Transparent
- Conclusion
- Record Agreements

ResolUtion



ADR Works!

- An alternative to litigation
- The parties have greater control over the outcome, than at Tribunal
- All discussions and meetings are conducted on a “without prejudice” basis
- The mediator involvement can add a different dynamic
- No loss of statutory rights to appeal or review
- If litigation is unavoidable, ADR can help both parties prepare



Summary

- You know within 30 days if the application is accepted or not
- We aim to conclude within 120 days of acceptance
- The mediator controls and leads the process
- All discussions and meetings during ADR are without prejudice
- ADR is an effective alternative to litigation
- If litigation is unavoidable ADR can help both parties prepare



Useful Information

For further information and to apply please visit:

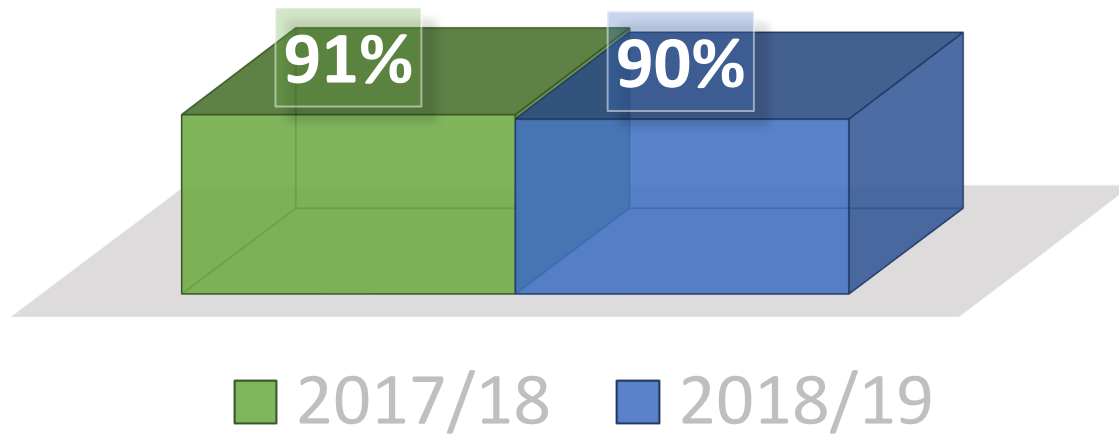
www.gov.uk – search 'ADR'

<https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr>

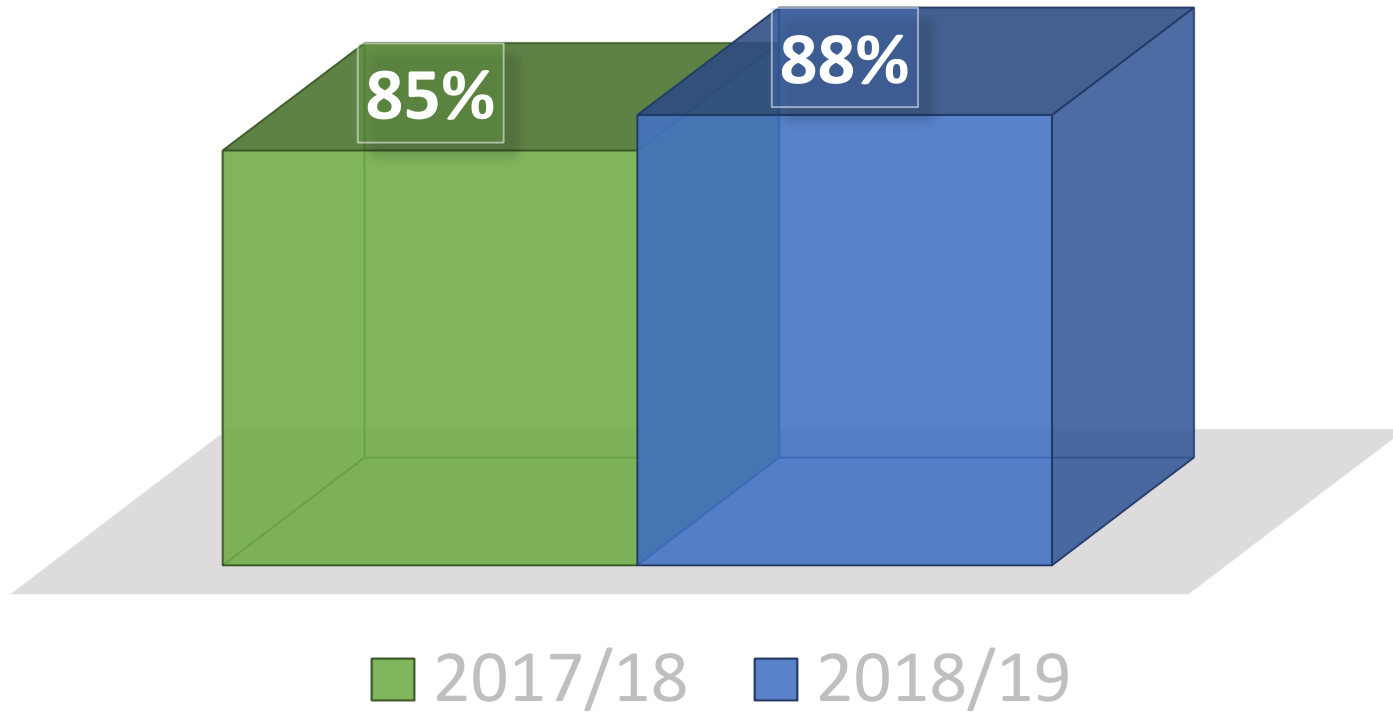


HM Revenue
& Customs

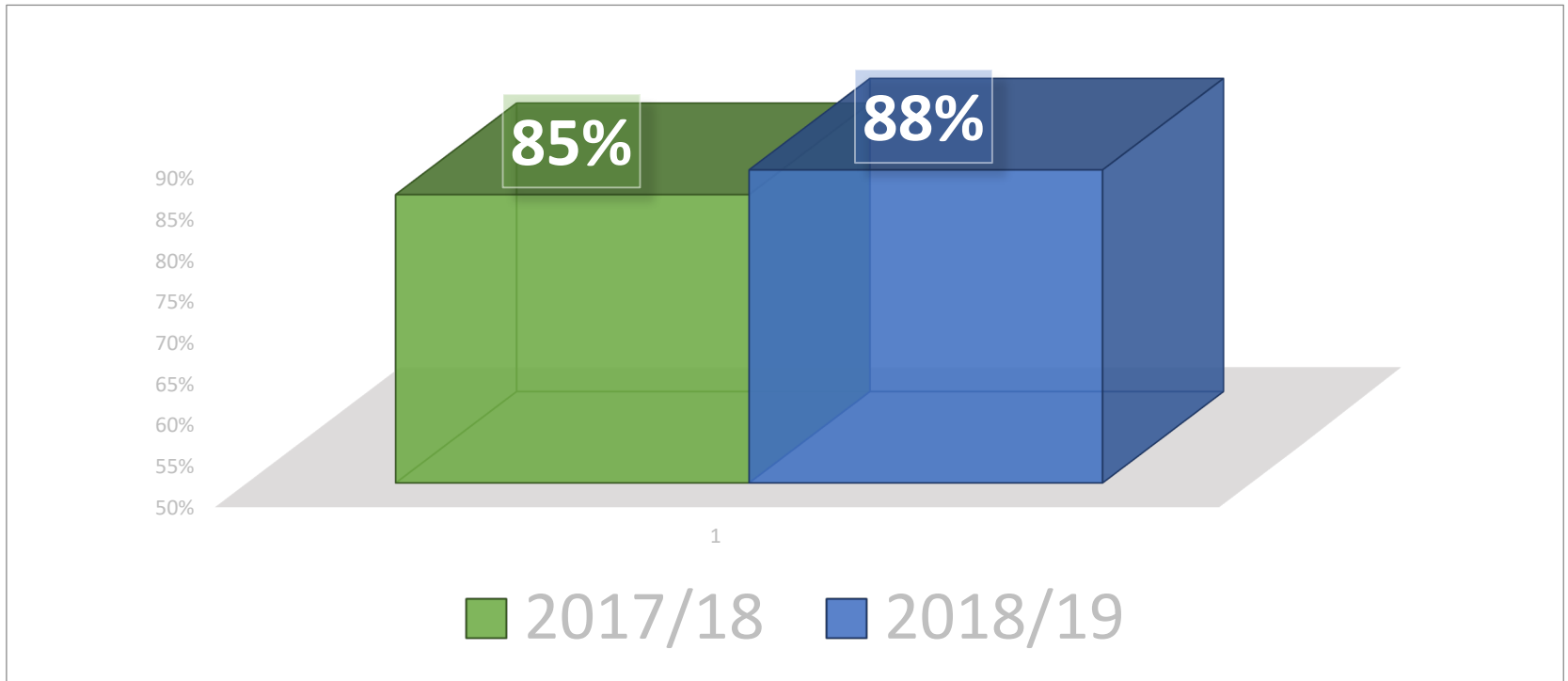
Application turnaround within 30 days



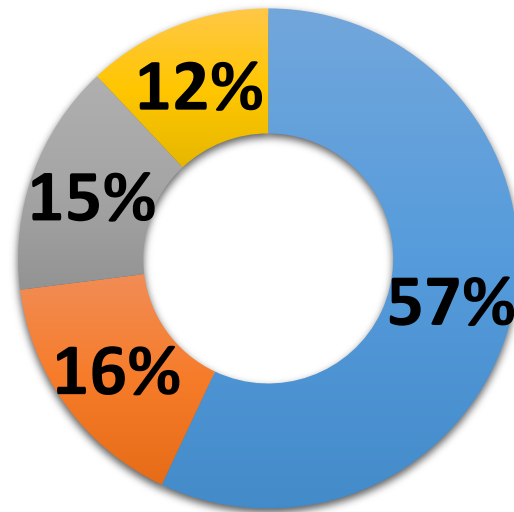
Cases closed within 120 days



Resolution Rate



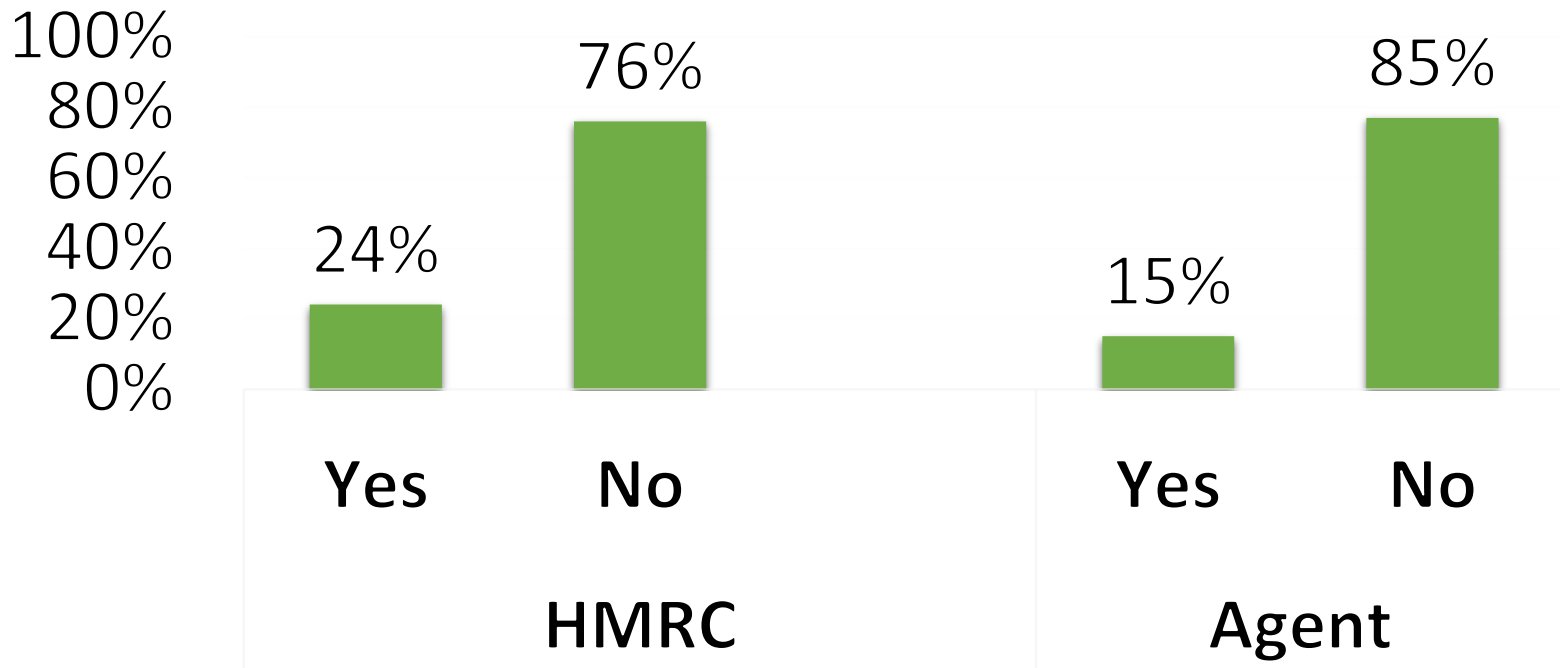
Resolution rate 2018/19



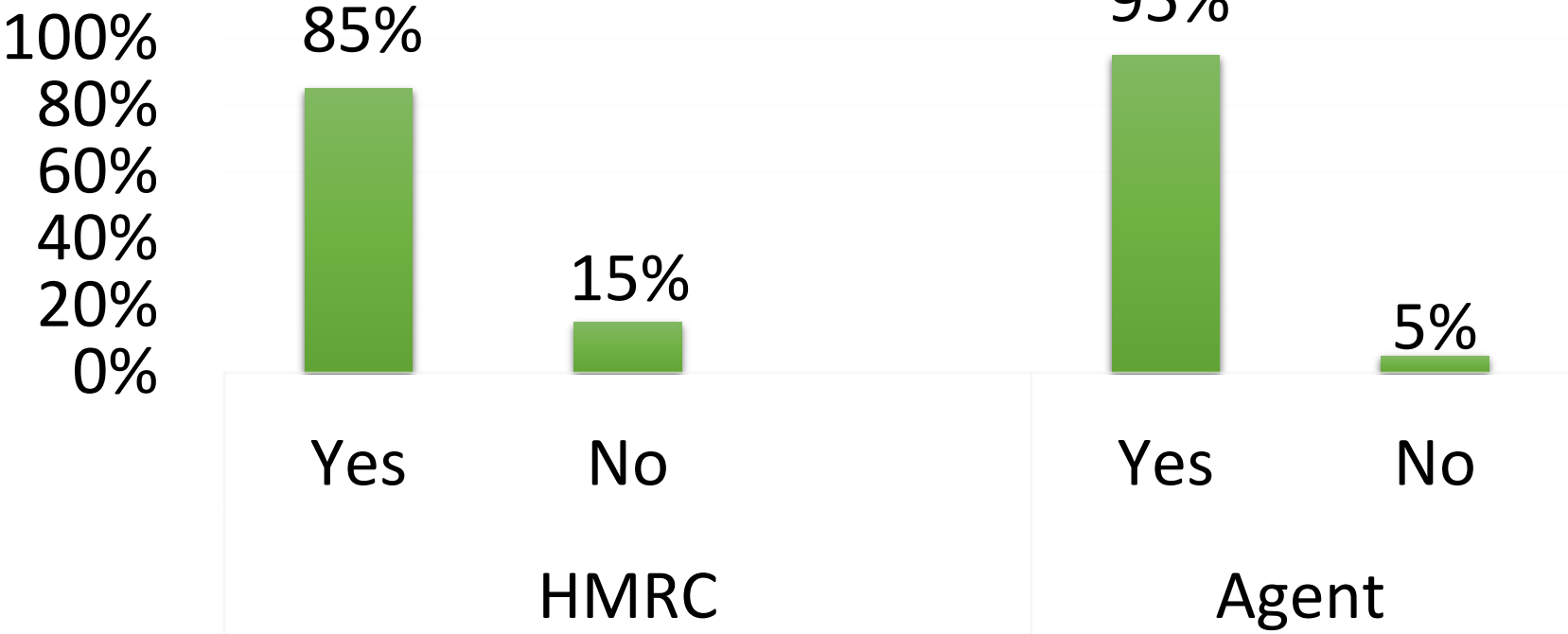
■ Full ■ Partial ■ Clarified ■ No resolution



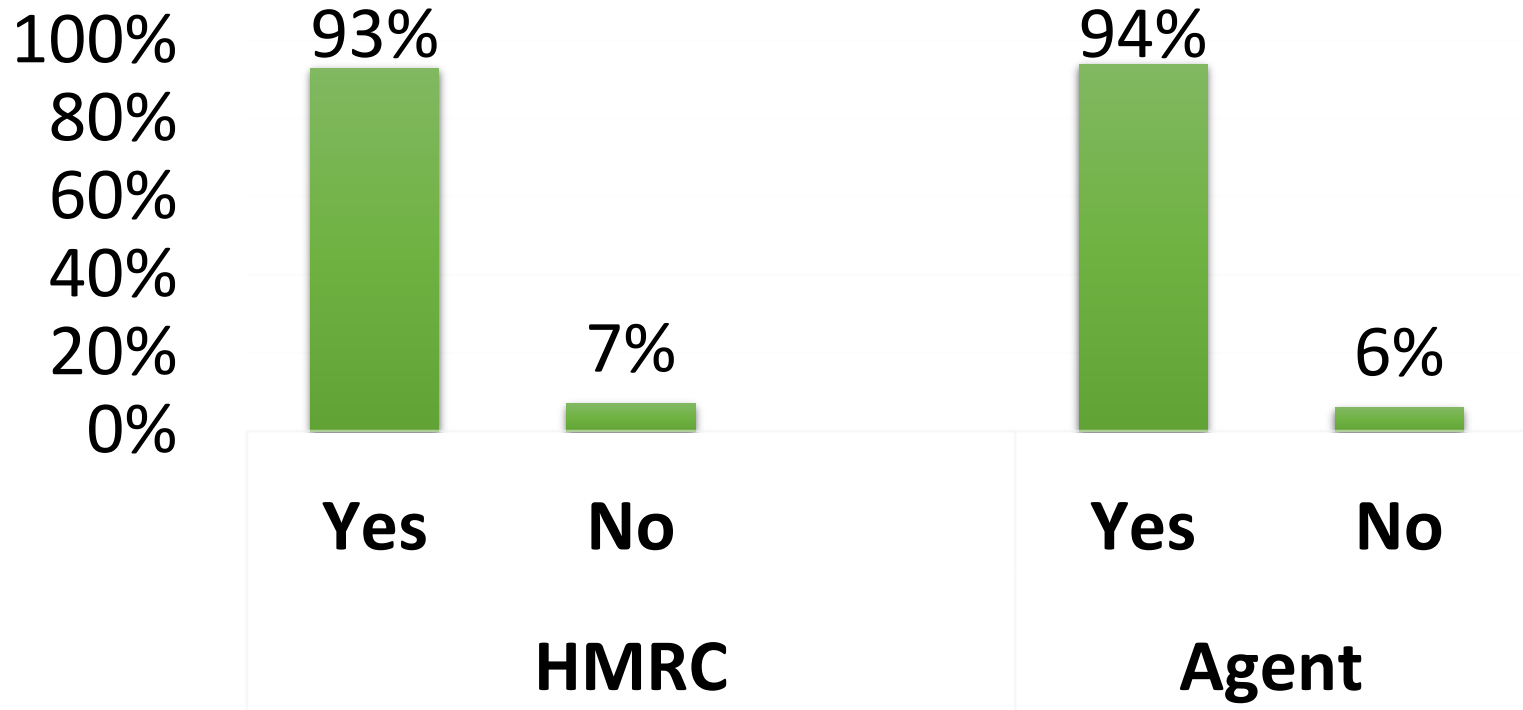
Would the dispute have settled without ADR



Would you recommend ADR



Satisfied/very satisfied with the ADR process



And finally....

In the summing up of the Stirling Jewellers (Dudley) Ltd First-tier Tribunal, Judge Christopher McNall stated:

“One famous person claims to have lost money on only two occasions: once when he lost a court case and once when he won a court case. In many court and tribunal cases, there is no winning, just different degrees of losing, because all costs of litigating are rarely recovered by the ‘winning’ party. Sometimes ADR has a part to play in dealing with HMRC and trying to avoid or minimise the significant time, cost and anxiety of a formal hearing.”



ADR: Practical Aspects for Practitioners

Hui Ling McCarthy QC

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SQUARE

When and how to apply?

- ▶ When?
 - ▶ Can be too early...
 - ▶ ... can't be too late (within reason)
- ▶ How to apply?
 - ▶ HMRC's online application form
 - ▶ DON'T focus on why you're right!
 - ▶ DO focus on why the dispute is suitable for ADR, e.g.
 - ▶ Complex facts
 - ▶ New information
 - ▶ Access to witnesses during ADR process
 - ▶ Narrowing factual dispute and issues
 - ▶ If applying late in the day, why is ADR nevertheless still appropriate?

Maximising the chances of success

- ▶ Preparatory stages are important too!
- ▶ What do you (realistically) hope to get out of the day?
 - ▶ “De-risk”: last chance to settle
 - ▶ Fully understand HMRC’s arguments - avoid surprises at trial
 - ▶ Test your case - and your witnesses!
 - ▶ Narrow the factual dispute / issues
 - ▶ **Manage client expectations**
- ▶ Other considerations:
 - ▶ Choice of mediator - HMRC / Joint / Independent / Expertise?
 - ▶ Involve counsel?
 - ▶ Make sure both sides have decision-makers available on the day
 - ▶ Do HMRC need TDRB sign-off?

Questions?



Disclaimer

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No responsibility can be accepted for the consequences of any action taken or refrained from as a result of these notes or the talk for which they were prepared.