



## ADR (Alternative Dispute Resolution) Under the Income tax Ordinance 1984 Chapter XVIII B Sections 152F-152S

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The process of Alternative Dispute Resolution (ADR) has been introduced in the fiscal year 2011-2012 effective from 1st July 2011 vide insertion of a new Chapter XVIII B in the Income Tax Ordinance 1984 and adding Sections 152F to 152S thereto.

The objectives of the ADR is to settle the pending disputes on tax matters by an agreement through the mediation of Facilitator appointed by the Board with a view to lessening expenses and shortening the time normally taken in the settlement of the cases.

The idea was thought of by the relevant authority in the back ground of huge accumulation of pending cases lying under different Income tax Appellate authorities, Income Tax Tribunal and with the "High Court Division" and "Appeal Division" of the Supreme court of Bangladesh. It is emphasized that the dispute shall be resolved within 2 months from the end of the month of application made for ADR.

For implementation of the process ways and means have been drawn up as per Alternative Dispute Resolution Rules 2012 effective from 5th March 2012 along with Schedules marked as Schedule to Schedule 14 under the Rules. As per notification of the NBR the process is

applicable to all categories of assessee throughout the whole of Bangladesh.

### The scope of the ADR process

An assessee can avail the facilities offered by ADR in respect of disputes as defined by section 152 H sub-section (e) regarding assessment of income by DCT or other assessing officer over income declared by the assessee in his return for the relevant year or regarding order of an appellate authority like Appellate Joint Commissioner of Taxes or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals), or Taxes Appellate Tribunal, or in cases referred to the High Court Division as well as Appellate Division of the Supreme Court of Bangladesh.

### Mode of Application for ADR

Notwithstanding the right of filing appeal against the assessment orders and appeal orders an aggrieved assessee may, pending the option of filing the appeal and subject to stay of the proceeding in case of pending appeals at an appellate authority or Taxes Appellate Tribunal or reference at High Court Division/Appellate Division, apply for resolution of dispute through ADR process.



The application for ADR shall have to be made to Board on prescribed form as per Alternative Dispute Resolution Rules 2012 and schedules marked as schedule 1, 6 and 7 there/under accompanied by such fees and verified by the assessee in such manner as may be prescribed.

For filing the application for ADR to the Board, permission from the concerned Tax Authority where the disputes are lying, shall have to be obtained on application to the respective Appellate Joint Commissioner of Taxes, or Appellate Additional Commissioner of Taxes, or Commissioner of Taxes (Appeals) or Taxes Appellate Tribunal, as the case may be.

In case of pending reference case of Tax matters with either division of the Supreme Court like High Court Division and Appellate Division, the assessee shall have to obtain the permission of the relevant authority of the court prior to filing the application to the Board for resolution of the dispute through the ADR process.

In respect of pending appeals of DCT with Income tax Appellate Tribunal

and reference case by Commissioner of Taxes Pending with High Court Division, the proceeding of such appeal or reference shall remain stayed till disposal of the application for ADR.

### **Appointment of the Mediator titled Facilitator**

After receiving the application of assessee duly verified as per rules and granting the same for resolution under the ADR process, the Board may select or appoint Facilitator and determine his fees, duties and responsibilities by rules and as per schedule 8. The Facilitator shall be appointed by the Board from among the persons as listed on rule 10 of the ADR Rules 2012.

### **Eligibility, Rights & Duties of the Assessee for ADR**

An assessee shall not be eligible for application to ADR, if he fails to-

- i) Submit the return of income for the relevant year or years; or
- ii) Fails to pay tax payable under section 74. In the eligible cases the assessee applying for ADR shall be allowed to negotiate

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## **Nomination and responsibilities of the Commissioner's Representative**

The Commissioner of the concerned dispute shall nominate his representative from among the officials subordinate to him but not below the rank of DCT, to represent him in the negotiation process of the ADR.

The representative so nominated by the respective Commissioner shall attend the meetings of the ADR negotiation process and sign the agreement resulting from such negotiation.

## **Procedures of disposal of disputes by ADR**

Upon receiving the application of ADR from an assessee, the Facilitator shall forward a copy of such application to the respective DCT for his comments and opinion on the grounds of the applicant and also as to the fulfillment and compliance of the conditions referred in sections 152F and 152J relating to the filing of application for ADR and regarding the eligibility of the assessee in the matter. If the DCT fails to give his opinion sought on the matter within 5 days from the date of receiving the copy of the said application as sent to him, the Facilitator may deem that the required conditions have been fulfilled.

Thereafter the Facilitator shall notify the applicant assessee and the concerned Commissioner or the Commissioner's representative to attend the meetings for settlement of disputes on a date mentioned in the notice and he can adjourn such meeting from time to time. The Facilitator shall call for records of evidences from

himself personally or along with an Authorized representative with the representative of the Commissioner for the concerned dispute under the facilitation and supervision of the Facilitator appointed by the Board. However, the Facilitator may exempt the applicant assessee from personally attending the negotiation process and in that case the assessee may be allowed to represent himself by an authorized representative, if he has sufficient reasons for his absence.

While submitting application for ADR the applicant assessee shall submit all related papers and

documents and shall disclose all issues of law and matters of facts.

The applicant assessee shall be co-operative, fair and bona-fide while negotiating for the resolution. If the applicant assessee makes any untrue declaration, submits any false documents and obtains order or assessment on that basis such order or assessment shall be set aside and in that connection appropriate legal action shall be initiated against him.

In the course of the negotiation whatever tax is determined to pay, shall be paid within the frame work of time as decided in the ADR.



Decision of the ADR

DCT or from the applicant assessee before or at the meeting, with a view to settling the dispute, Before disposing the dispute the Facilitator may cause such an enquiry on the matter concerned by any income tax authority as he thinks fit. In the course of the ADR process the Facilitator will assist the applicant assessee and the Commissioner's representative so they may agree on resolving the dispute or disputes through consultations and meetings. The whole procedures of disposal of disputes are done under Rule 11 and the supporting schedules marked as Schedule 9, 10 & 11.

### **Decision of the ADR**

A dispute under the ADR process is finally resolved by both the disputant parties under the

initiative of Facilitator by an agreement wholly or in part after taking into account the question of law and facts involved in the dispute.

Once the parties reach to a point of agreement either wholly or in part, the subject matter of the agreement is recorded by the Facilitator. In the said agreement the details of the sum due for tax payable or refund, shall be recorded and the manner in which it will be effective shall also be mentioned. The said agreement shall be signed by tripartite namely, the applicant assessee, the Commissioner's representative and the Facilitator. However, if it is detected that the whole resolution was concluded by fraud or misrepresentation of facts, it will be void and unenforceable.

Where no agreement whether wholly or in part has been reached or the whole process of the dispute resolution has ended in disagreement between the applicant assessee and the concerned Commissioner's representative for non-co-operation of either of the parties, the Facilitator shall communicate in writing with the reasons for disagreement within 15 days from the date of disagreement to the applicant assessee, to the Board, the concerned court, Appellate Tribunal, concerned Appellate authority, income tax authority, as the case may be, about such unsuccessful dispute resolution.

When the Facilitator fails to reach to an agreement on exhaustion of the whole procedures of the ADR within 2 months from the end of



the month in which the application was filed, it will be deemed to have reached to no agreement.

On compliance of the whole formalities when there is a successful agreement, the Facilitator shall communicate a copy of the agreement to all the parties involved in the dispute, within 15 days from the date on which the Facilitator and the parties involved have signed the agreement. In such a situation when there is a successful conclusion of the resolution of the dispute, the Facilitator shall communicate the matter to the applicant assessee, and to the concerned Deputy Commissioner of Taxes, to comply with the terms of the agreement as to the payment of tax dues and refund of, if any, in compliance of the provisions of the Income tax ordinance 1984. In the conclusion of the decision of the ADR, the provision as per Rule 11 supported by Schedule 12, 13, & 14 shall be followed.

### Effect of Agreement

When there is an agreement on successful completion of the whole process of ADR, it is binding on both the parties of the concerned dispute and it is unchallengeable in any authority, Tribunal or court either by the applicant assessee or any other income tax authority involved in the dispute. Since the matter concerned under the agreement is conclusive and unchallengeable it will not be re-opened in any proceeding except otherwise as per provisions of Income tax Ordinance 1984.

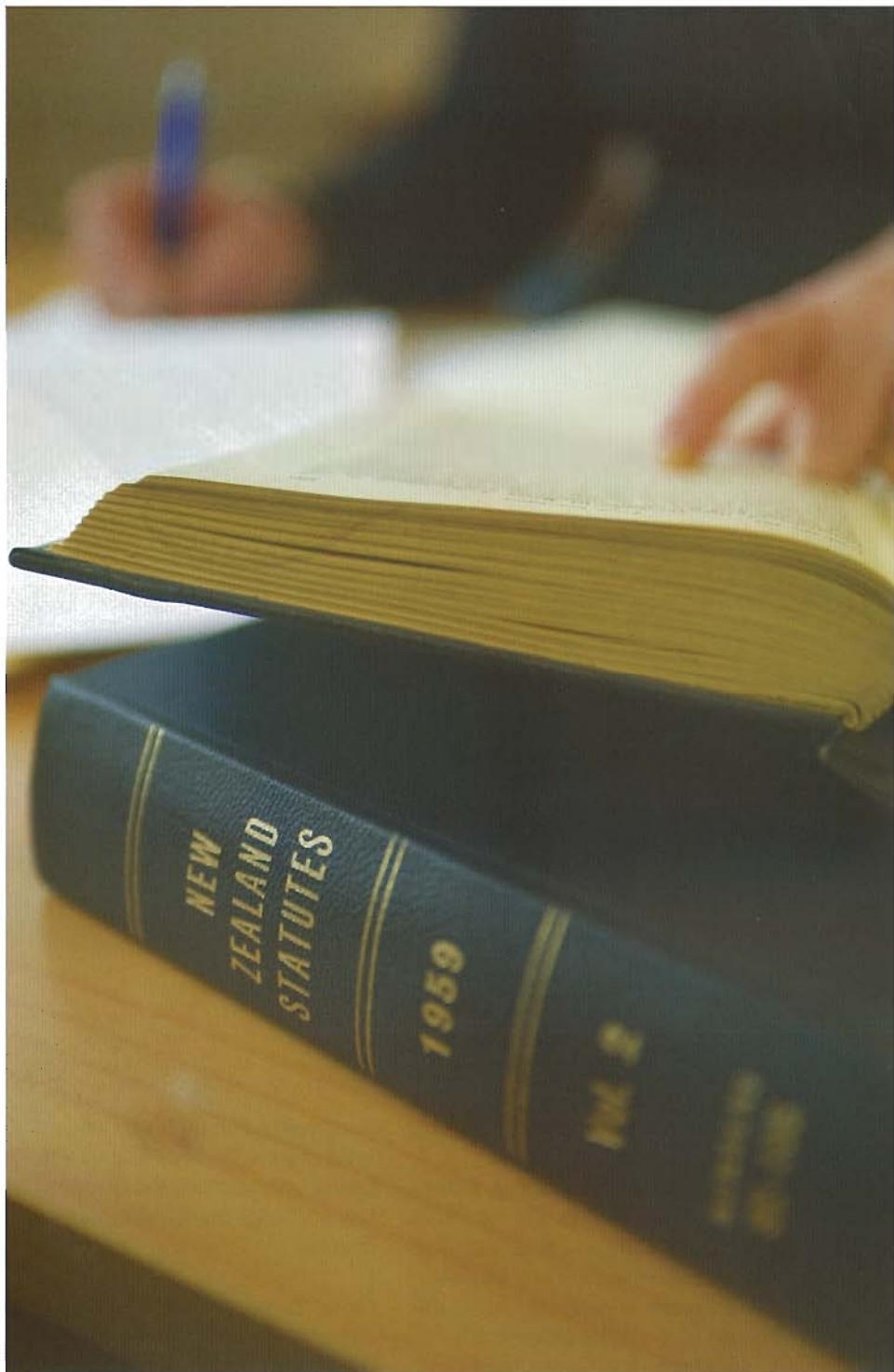
### Limitations for appeal where agreement is not concluded

Where no agreement on ADR has been reached either wholly or in part as per provisions of the

chapter XVIII B, the matter of dispute shall be eligible for appeal and reference as per chapter XIX. Under such a situation the time elapsed in the process of ADR on the dispute, shall be excluded from the total period allowable for filing an appeal with the relevant authority.

For filing an appeal within the rest of the allowable period as noted above it is prescribed as follows:

- a) The assessee may prefer an appeal to the appellate Joint commissioner of Taxes, or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals), as the case may be, where the dispute arises out of an order of a DCT;
- b) The assessee may prefer an appeal to the Taxes Appellate Tribunal where the dispute in question arises out of an appeal





order of the Appellate Joint Commissioner of Taxes, or Appellate Additional Commissioner of Taxes or Commissioner of Taxes (Appeals) as the case may be;

- c) The assessee may prefer an appeal to the respective appellate authority or court from where the assessee applicant got permission to apply for ADR.

### **Post verification of the agreement**

The Board may monitor the progress of disposal of the application for ADR in the manner as may be prescribed and ensure necessary support and co-ordination services on closing of all procedures of ADR, copies of all agreement, if any or matter of disagreement in the case of failure to come to an agreement by the disputant parties, shall be sent by

the Facilitator to the respective Commissioner and Board for their verification and ascertainment of whether the agreement is legally and factually correct. After receiving the copy of such agreement or matter of disagreement, if it appears to the Board that alleged agreement is obtained by fraud misrepresentation or concealment of fact and thereby causing loss of revenue, then such agreement shall be treated as void and the matter shall be communicated to the concerned authorities, Tribunal or court for taking necessary action against the person proved guilty for such irregularities.

### **Bar on suit or prosecution**

No civil or criminal action shall lie against any person involved in the ADR process before any court, tribunal or authority for any action taken in the Course of proceeding of ADR or for any agreement

reached in good faith, in that connection.

### **Conclusion**

The process of ADR has now-a-days achieved popularity and is gaining success in resolving long outstanding tax matters through the initiative of a Facilitator appointed by NBR. The process has been appreciated by Foreign Investors who often complain about the Complex tax laws of Bangladesh and the said process is building confidence in such foreign investors whose active participation in the economic activities of the country is very much needed in the light of country's aspiration to become a nation of middle income status by 2021.

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