



# Alternative Dispute Resolution and Judicial Review

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Andrew R. Roberson

KPMG National Tax, Tax Controversy & Dispute Resolution Services

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# US Income Tax Reporting and Compliance

- US self-reporting regime
  - Taxpayer files return with the Internal Revenue Service (IRS)
  - Tax on return is self-assessed and any amounts due after withholdings, credits, etc. are generally paid by the taxpayer
- IRS may select the tax return for audit
  - Random
  - Flagged based on key indicators
  - Certain large taxpayers under continuous audit
- IRS audit
  - Examination Stage: fact-finding by IRS followed by any proposed adjustments
  - Appeals Stage: settlement negotiations with independent IRS Officer
  - Litigation Stage: US Tax Court, US District Court, or US Court of Federal Claims
- Alternative dispute resolution (ADR) options available prior to filing and during all three stages listed above

# Pre-Filing / Pre-Audit ADR Options

- Private Letter Ruling (PLR) / Determination Letter
- Pre-Filing Agreement (PFA)
- Advance Pricing Agreement (APA)
- Compliance Assurance Process (CAP)
- Industry Issue Resolution (IIR)

# Post-Filing ADR Options

- Mutual Agreement Procedure (MAP) / Accelerated Competent Authority Procedure (ACAP)
- Accelerated Issue Resolution (AIR)
- Fast Track Settlement (FTS)
- Traditional Appeals Process
- Early Referral to Appeals
- Rapid Appeals Process (RAP)
- Post-Appeals Mediation (PAM)

# Judicial Review ADR Options

- Tax Court Voluntary Mediation
- Tax Court Voluntary Arbitration
- Mandatory Non-Binding Mediation at US Courts of Appeal
- Other options?
  - Tax Court Calendar Call program
  - IRS Settlement Days

# Fast Track Example

- Mediation between taxpayer and exam team with independent IRS Appeals Officer serving as mediator
- Allows Exam team to consider hazards of litigation, which it is normally prohibited from doing
- Mediator allowed to talk to both sides together and separately to try and broker a deal
- Finality – generally results in a closing agreement
- Fast – must be completed within 120 days (Traditional Appeals can take months / years)
- Another “bite at the apple” – Traditional Appeals is still an option if FTS is unsuccessful

# Observations

- Most ADR options are geared toward large corporate taxpayers
- Individual taxpayers (and many practitioners) are not aware of ADR options outside of Traditional IRS Appeals
- IRS had indicated willingness to engage in ADR, but generally does not provide information up-front to taxpayers informing them of ADR options
- What else can be done for low-income taxpayers?

# Resources

- IRS Dispute Resolution Webpage ([www.irs.gov/businesses/dispute-resolution](http://www.irs.gov/businesses/dispute-resolution))
- PFA and Determination Letter Process: Revenue Procedure 2022-1 ([www.irs.gov/irm/2022-01\\_IRB#REV-PROC-2022-1](http://www.irs.gov/irm/2022-01_IRB#REV-PROC-2022-1)) and Internal Revenue Bulletin 2020-1 ([www.irs.gov/irb/2020-01\\_IRB](http://www.irs.gov/irb/2020-01_IRB))
- APA, MAP, and ACAP Process: Revenue Procedure 2015-41 ([www.irs.gov/pub/irs-drop/rp-15-41.pdf](http://www.irs.gov/pub/irs-drop/rp-15-41.pdf)) and IRS Webpage ([www.irs.gov/businesses/corporations/apma](http://www.irs.gov/businesses/corporations/apma))
- CAP Process: IRS Webpage ([www.irs.gov/businesses/corporations/compliance-assurance-process](http://www.irs.gov/businesses/corporations/compliance-assurance-process))
- IIR Process: Rev. Proc. 2016-19 ([www.irs.gov/irb/2016-13\\_IRB#RP-2016-19](http://www.irs.gov/irb/2016-13_IRB#RP-2016-19)) and IRS Webpage ([www.irs.gov/businesses/industry-issue-resolution-program](http://www.irs.gov/businesses/industry-issue-resolution-program))
- Traditional Appeals Webpage ([www.irs.gov/appeals](http://www.irs.gov/appeals))
- FTS Process: IRS Webpage ([www.irs.gov/appeals/fast-track](http://www.irs.gov/appeals/fast-track)) and Publication 4539 ([www.irs.gov/pubs/irs-pdf/p4539.pdf](http://www.irs.gov/pubs/irs-pdf/p4539.pdf))
- Early Referral to Appeals: Revenue Procedure 99-28 ([www.irs.gov/pub/irs-drop/rp-99-28](http://www.irs.gov/pub/irs-drop/rp-99-28))
- RAP Process: Internal Revenue Manual ([www.irs.gov/irm/part8/irm\\_08-026-011](http://www.irs.gov/irm/part8/irm_08-026-011))
- PAM Process: Revenue Procedure 2014-63 ([www.irs.gov/irb/2014-53\\_IRB#RP-2014-63](http://www.irs.gov/irb/2014-53_IRB#RP-2014-63))
- US Tax Court Rule 124 ([www.ustaxcourt.gov/resources/ropp/Rule-124.pdf](http://www.ustaxcourt.gov/resources/ropp/Rule-124.pdf))
- Federal Rule of Appellate Procedure 33 ([www.law.cornell.edu/rules/frap/rule\\_33](http://www.law.cornell.edu/rules/frap/rule_33))
- US Tax Court Calendar Call Program ([www.ustaxcourt.gov/clinics\\_calendar\\_call.html](http://www.ustaxcourt.gov/clinics_calendar_call.html))
- IRS Settlement Days: IR-2022-207 (Nov. 29, 2022) ([www.irs.gov/newsroom/irs-hosts-first-centralized-national-virtual-settlement-event-helping-more-taxpayers-settle-tax-court-cases](http://www.irs.gov/newsroom/irs-hosts-first-centralized-national-virtual-settlement-event-helping-more-taxpayers-settle-tax-court-cases))



**Thank you**



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# Andrew R. Roberson

## Principal, Washington National Tax



KPMG LLP  
200 E. Randolph St., Suite 5500  
Chicago, IL 60601

Tel 312-665-8426  
andrewroberson@kpmg.com

**Function and specialization**  
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- LLM degree, New York University School of Law
  - JD degree, Pepperdine University School of Law
  - BA degree, University of Washington

### Background

Andrew (Andy) Roberson represents multinational enterprises and other clients in U.S. federal and international tax controversy matters. He is a Principal in the Tax Controversy & Dispute Resolution Services group in KPMG Washington National Tax.

### Professional and industry experience

Andy regularly advises clients on all aspects of tax controversies, including examination, appeals, alternative dispute resolution and litigation. He works closely with personal in the tax and general counsel departments in resolving tax disputes. During his career, Andy has resolved dozens of matters at the IRS administrative level and been involved in over 75 matters at all levels of the federal court system.

Andy joined KPMG from an international law firm, where he led the U.S. Federal Tax Controversy group and was a founder and editor of the firm's tax controversy blog. Earlier in his legal career, he served as an attorney advisor to Judges Joseph R. Goeke and Robert P. Ruwe of the U.S. Tax Court.

### Publications and speaking engagements

Andy has authored and co-authored numerous articles and other publications on tax controversy issues, recently receiving JD Supra's 2023 Readers Choice Award for Tax. He is also a regularly featured speaker on tax controversy issues at conferences and seminars, including the Tax Executives Institute and the International Conference on Taxpayer Rights.