



Bombay Chamber of Commerce and Industry

## **Mediation**

An alternate mechanism for minimising tax disputes in India

May 2025

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# 1

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Background:  
Why tax mediation?

# Why mediation for tax disputes in India?

- ▶ Tax litigation in India is a matter of serious concern. As of September 2024, approx INR 29.8 lakh crores\* (INR 29.8 trillion) were stuck in direct tax disputes.
- ▶ In terms of number of cases, 6.2 lakh\* (0.62 million) direct tax cases were pending at various levels as of September 2024. ~88.5% of pending cases are stuck at CIT(A) level.
- ▶ Government and businesses have a shared interest in minimising disputes. Lower litigation would lead to an improved business environment and a growth in the tax pie and collections.
- ▶ The current Income tax law provides for alternate mechanisms such as Dispute Resolution Committee (DRC), Dispute Resolution Panel (DRP), etc. for expeditious resolution of disputes. However, these mechanisms have had limited effectiveness in reducing disputes.
- ▶ Presently in India, mediation is largely used for disputes in personal law and corporate law. Mediation in tax disputes can be an effective and time-bound alternate dispute resolution mechanism to minimise disputes
  - ▶ Supreme Court observed mediation as an effective remedy of dispute resolution with Government authorities [National Co-operative Development Corporation v. CIT]\*\*; impressed upon enactment of a separate Indian Mediation Act for civil disputes, including in taxation [M.R. Krishnamurthy v. New India Assurance Company\*\*\*]
- ▶ Internationally, mediation is extensively and successfully used to resolve tax disputes. UK, US, Australia, Mexico, Belgium and Netherlands are some of the jurisdictions where mediation in tax disputes has been effective

## **BCCI suggests a time-bound Mediation mechanism for tax disputes to be introduced in the Income tax law, which will have the potential of reducing the numerous litigation cases**

- ▶ Mediator to be an independent body of experts that would focus on encouraging fair settlement at pre-assessment stage
- ▶ Mediation to provide final and binding settlement (without penalty or prosecution) to ensure certainty, relief from long drawn litigation
- ▶ The mechanism to have wider reach to include both domestic and international tax issues
- ▶ Short duration of 90 days proposed for faster resolution and early collection of tax
- ▶ Initially to be used for TP cases and later, with experience, to non-TP cases also
- ▶ DRP / CIT(A)/ DRC route to continue independently for resolution of disputes

*\*Source: Parliamentary Standing Committee on Finance, Ninth Report, March 2025*

*\*\*[2020] 119 taxmann.com 137 (SC)    \*\*\*2019 SCC online SC 315*

# Existing ADRs have limitations

- ▶ Currently in India, ADR mechanism like MAP operate after confirmation of an addition. Other ADRs such as Board for Advance Ruling (BAR) and Advance Pricing Agreement (APA)\* are largely used for proposed transactions. DRC and DRP are the only ADR options available at the stage of draft assessment order.
- ▶ The above mechanisms, however, have not been effective in achieving faster resolution of disputes.
- ▶ **Dispute Resolution Committee**
  - ▶ The Dispute Resolution Scheme (DRS) is an optional forum serving as an alternative to the conventional appeals process and is available both at the stage of draft assessment order and post passing of assessment order.
  - ▶ E-DRS scheme was notified on 30 August 2024 to activate the forum
  - ▶ DRC comprises of 2 retired IRS members of CIT & above post and 1 serving PCIT/CIT.
  - ▶ DRC can reduce penalties or grant immunity from prosecution.
  - ▶ However, DRC scope is limited to small taxpayers with returned income up to Rs 50 lakhs and disputed amount of Rs 10 lakhs.
  - ▶ Further, the scheme being in its nascency, not many taxpayers who are eligible are aware of it. There is lack of awareness and confidence in the forum on part of taxpayers and tax practitioners.
  - ▶ As a result, DRC has failed to achieve faster resolution of disputes.
  - ▶ The DRC scheme's limitation to small taxpayers may not effectively address the extensive backlog of tax litigation in India which presently needs urgent attention having regard to huge pile up of cases before CIT(A).

*\*APA program is overburdened with pendency due to inadequate number of officials assigned for APAs.*

## Existing ADRs have limitations

### ► Dispute Resolution Panels

- DRP comprises of a collegium Pr. CIT/ CIT (viz. officials of the tax department). Given this, and the fact that the tax authority is not permitted to appeal against DRP directions, DRP's conclusion generally tend to be inclined towards Revenue.
- It also does not provide any finality to the disputed issues which can be appealed before the ITAT. As a result, in practical terms, it has become a fast track route to the Tribunal.
- The DRP forum is available after draft assessment order is passed. DRP's powers are limited to only confirm, reduce or enhance the variations proposed in the draft order.
- There are no independent experts within the DRP
- It is presently available only to non-resident taxpayers or in cases of issues relating to Transfer Pricing

**Mediation for tax disputes addresses the above concerns by providing an independent, timebound and binding /final resolution for both domestic and international disputes**

## Other jurisdictions use tax mediation extensively

- ▶ Mediation is extensively and successfully used in many foreign jurisdictions to resolve tax disputes.
- ▶ UK, US, Australia, Mexico, Belgium and Netherlands are some examples. Mediation was implemented by these jurisdictions for the following advantages:
  - ▶ Addresses excessive and increasing volume of tax appeals which jeopardize the legal protection of taxpayers
    - ▶ For example, In Australia, over time around 85% of litigation cases are resolved by agreement between the ATO and the taxpayer. Of the remainder which proceed to a hearing about 3 quarters of litigation cases go the way of the ATO.\*
  - ▶ Faster collection of taxes under dispute
    - ▶ For example, in UK, 88% of the cases which were accepted for ADR (including mediation) were resolved. Further, UK HMRC has reported a 62% rise in disputed tax collected using ADR (including mediation) during FY 2017- 18 from FY 2016-17\*\*
  - ▶ Assistance to Courts in resolving disputes in appropriate cases by using expertise and skill of third party facilitators
    - ▶ For example, in Australia, both Federal Court and Appellate Tax Tribunal refer cases for ADR processes (inter alia, mediation)
  - ▶ Increases trust in tax authorities
    - ▶ For example, in a survey, the Australian Tax Authority (ATO) was the most trusted Australian government agency, with 81% of people trusting their services, and also scored the highest of all Australian government agencies in satisfaction with 82% of participants satisfied with the ATO services they use.\*

\* Source: [The ATO perspective: Alternative pathways in resolving tax disputes | Australian Taxation Office](#)

\*\*UKHMRC 2018-19 Annual Report and Accounts

# 2

## Understanding mediation



# Understanding mediation

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- ▶ Generally, mediation is defined as a facilitative process in which disputing parties engage the assistance of an impartial third party (mediator) who helps them to try to arrive at an agreed resolution of their dispute.
- ▶ Mediator has no authority to make any decisions that are binding on parties but uses certain procedures, techniques, skills, etc. to help them to negotiate for an agreed resolution of their dispute.

## Facilitative

Mediator assists the parties in identifying the disputed issues, suggests options and ideas and endeavours to reach an agreement about the disputed issue.

## Evaluative

Similar to facilitative mediation but with the mediator offering an opinion as a specialist

# 1

## **Facilitative process**

Mediator is a facilitator and not a decision-maker. Parties do not attribute the decision over the case to the mediator, instead remain in control regarding solution to the conflict.

# 2

## **Self determination**

Parties remain in control of the conflict and also determine the solution to such conflict. Autonomy and willingness of the parties are fundamental in mediation.

# 3

## **Restoring relationships**

Mediator aims to restore relationship between the disputing parties.

# 4

## **Impartial and independent mediator**

Mediator is independent in relation to the disputants and has no interest in the outcome of dispute. He/ She should have no conflict of interests with the parties.

# 5

## **Confidentiality**

Mediation ensures a trustful environment for the disputants. Parties can speak freely and reveal their concerns and interests and should make parties more open and eager to disclose information.

# Why mediation?

**01**

## Settlement prior to litigation

Settlement at very stage of an issue, thereby avoiding long drawn litigation

**02**

## Speed & Cost

Time and cost effectiveness as compared to lengthy litigation in India; Ensures speedier collection of taxes

**03**

## Taxpayer's satisfaction

High satisfaction since outcome/ decision comes from disputants themselves

**04**

## Transparency

Mediator, an independent party, is unbiased and transparent – ensures a fair settlement

**05**

## Competency

Expertise of mediator to result in efficient resolution; a useful tool for many taxpayers who may not have adequate knowledge of complex tax law / feel misrepresented

**06**

## Confidentiality

Private discussions during mediation process are highly confidential – to encourage taxpayers to enhance disclosure of relevant information

**07**

## Other litigation alternatives

In case of unsuccessful mediation, rights of the parties to opt for conventional mode of litigation/ other alternatives is preserved

**08**

## Mutual Trust and relationship

Settlement based on mutual agreement with focus on business interest, preservation of relationship and boosting trust

# How mediation is different from other ADRs (under general law)

Particulars	Arbitration	Conciliation	Mediation
<b>Governing Act</b>	Arbitration and Conciliation Act 1996 (A&C Act)	Arbitration and Conciliation Act 1996 (A&C Act)	Prima facie, no formal Act; governed by s. 89 of Code of Civil Procedure 1908
<b>Legal Status</b>	Equivalent to court process	Negotiation with assistance of third party; executable as decree of court	Negotiation with assistance of third party; Akin to a contract between two parties
<b>Binding Nature</b>	Binding	Binding; legal sanctity given only after requirement u/s. 73/74 of A&C Act is complied with	Non-binding
<b>Retention of Rights</b>	Right to decide on dispute given to arbitrator	Conciliator has right to formulate settlement agreement on terms agreed upon by the parties	No right of mediator to formulate resolution
<b>Type of process</b>	Adjudicatory	Non-adjudicatory	Non-adjudicatory
<b>Refer back to appellate forum/ court</b>	Arbitral award can be challenged on specific grounds only	Award can be challenged before the court	If mediation is unsuccessful, the dispute can be resolved through normal litigation route
<b>Involvement in decision making</b>	No involvement	Parties are involved	Parties hugely involved
<b>Considered ideal when</b>	No relations are to be preserved	Relations are to be maintained	Relations are to be maintained
<b>Applicable for</b>	Existing and future disputes	Existing disputes	Existing disputes

# 3

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BCCI  
recommendations:  
Tax mediation  
framework  
for India

## Suggestions on DRC

- Adequate publicity may be given to the DRC Scheme through TV, Print and Online Advertisements to make it popular amongst taxpayers and tax practitioners.
- The threshold of returned income of Rs. 50L and addition of Rs. 10L should be suitably enhanced to cover Micro & Small Enterprise taxpayers to give them opportunity to amicably settle the litigation at threshold instead of pursuing the conventional appellate remedy. Such enhancement will provide opportunities to larger set of taxpayers to settle their matters instead of pursuing costly and time-consuming litigation.

1

## Suggestions on DRP

Expand scope of powers of DRP through:

- The DRP option, which is presently available only to non-resident taxpayers or issues relating to TP may be extended to all taxpayers (other than MSEs who can be covered by DRC);
- DRP's powers are presently limited to only confirm, reduce or enhance the variations proposed in the draft assessment order. DRP may be granted powers akin to the DRC such as ability to mediate tax disputes, reduce/ waive penalties, grant immunity from prosecution, etc.

2

## New Mediation Alternative

In addition to the alongside, institute a new Mediation mechanism as discussed at **ensuing slides.**

3

# Mediation features proposed by BCCI: An overview

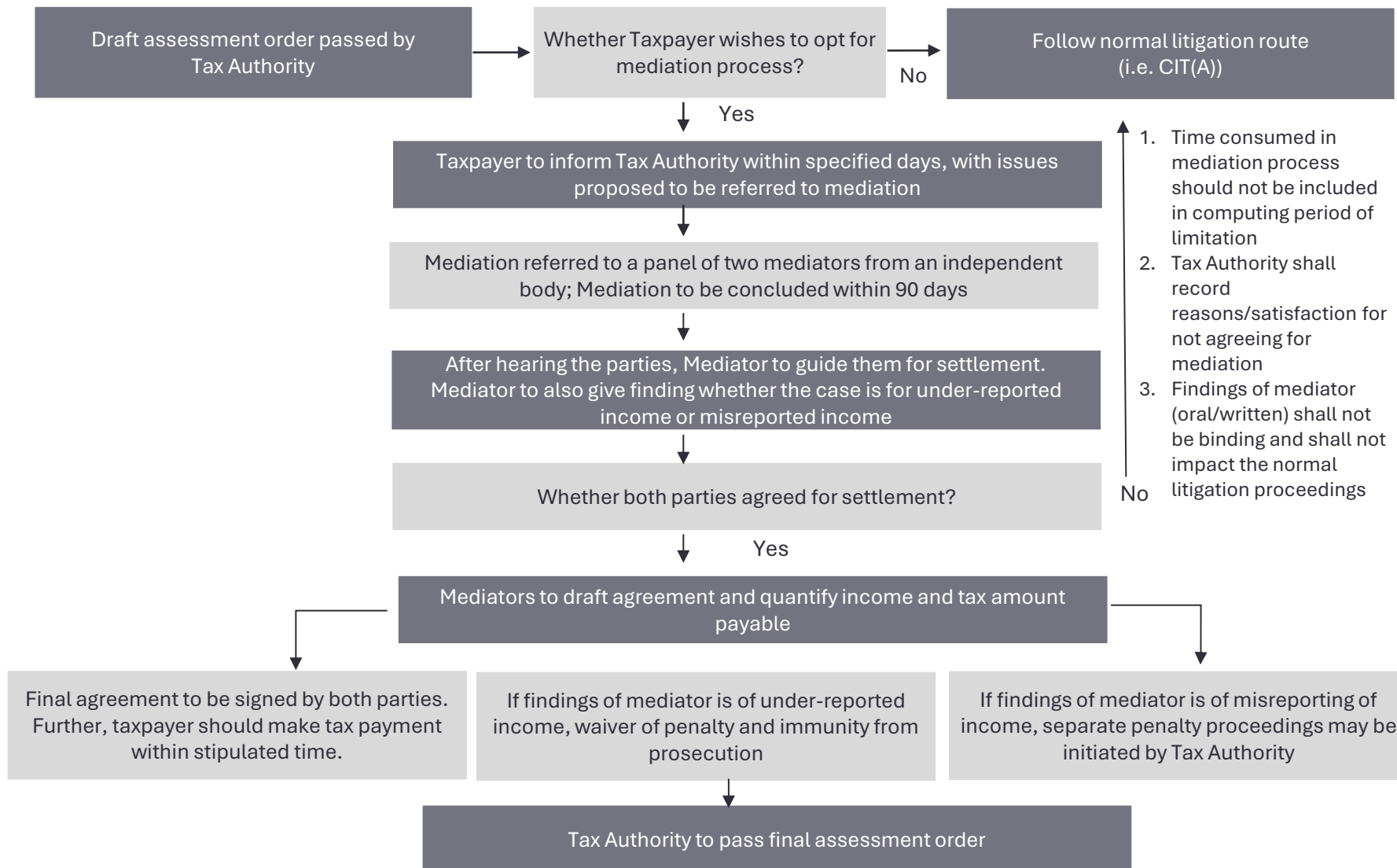
General	Mediator	Process	Settlement Agreement
Mediation to settle disputes on factual issues and not legal issues <sup>1</sup>	Mediator to be an independent autonomous body, and not a government department	Mediation proceedings to be completed within a specified time frame (e.g. 90 days)	Mediation Agreement to be final, enforceable and binding on both parties <sup>3</sup>
Mediation to be governed under a separate statute / chapter in Income tax Act	Mediator, an expert, to practice evaluative mediation (not facilitative mediation)	Time involved in mediation to be excluded from the limitation period	6-10 months time limit for payment of taxes may be provided
Can be opted for at the stage of draft assessment order or at appeals stage before CIT(A)/ ITAT	Mediator's fee to be kept at reasonable levels and should be borne by both the parties	Issue-wise settlement to be permissible under Mediation	Upon settlement, immunity should be granted in respect of penalty in relation to under-reported income and prosecution proceedings
If mediation is not successful, other ADR mechanism(s) will be available		All proceedings and information gained under Mediation will be kept confidential <sup>2</sup>	

<sup>1</sup>To start with, TP disputes to be considered as pilot project

<sup>2</sup>Protection under Mediation Rules, 2003 and other Indian laws (Arbitration and Conciliation Act, 1996) may be extended to matters settled under Mediation as well; Tax authority may summon the records furnished by the parties to the mediator while observing confidentiality in terms of s.138 of ITA

<sup>3</sup>Not a binding precedent on any other taxpayer or for same taxpayer for other year/s

# Proposed flow of the Mediation Process





## 1. Should mediator be a government organisation or independent autonomous body?

### ▶ Independent and autonomous body as a mediator to be preferred

- ▶ As per the Economic Survey 2017-18, the Department is one of the largest litigants (direct tax) Mediation conducted through an independent body will help build trust and transparency
- ▶ Engaging a qualified independent mediator increases the possibility of positive outcome
- ▶ Mediation through government body will impose additional burden on government resources that are already stressed due to current huge litigation
- ▶ Independent mediator can resolve disputes where tax authorities are reluctant to take a view due to the risk of audit objections or vigilance action
  - ▶ This view is endorsed by the SC in National Co-Operative Development Corporation (supra)
- ▶ Mediation through independent body has been successful in other countries. For instance, it has been successful in Mexico through an independent body PRODECON. More than 50% of the tax disputes referred have been concluded. Of the concluded matters 2 of every 3 requests have reached agreements whether totally or partially.

### **BCCI view: Set up an independent mediation body**

- Separate statute as a 'Mediation Act' may be introduced to provide the framework of mediation law in India and to set up an independent body; OR
- For tax disputes, an independent mediation body may be setup through amendment in the Income tax Act similar to establishment of Income Tax Appellate Tribunal

## 2. Facilitative Mediation or Evaluative Mediation?

### Facilitative

Mediator assists the parties in identifying the disputed issues, suggests options and ideas and endeavours to reach an agreement about the disputed issue.

### Evaluative

Similar to facilitative mediation but with the mediator offering an opinion as a specialist

- ▶ Both Facilitative and Evaluative Mediation have their own benefits and limitations
- ▶ The choice of mediation depends on the need and intention of implementing the mediation process
- ▶ Internationally, both facilitative and evaluative approaches are offered for tax disputes

### BCCI view:

Given that mediation is proposed through an independent body of experts, **evaluative** mediation may be more appropriate for tax litigation in India

## 3. Type of disputes to be covered

### Mediation to cater to disputes purely on fact-related matters

- ▶ To begin with, only facts related disputes may be handled under mediation
- ▶ Pure legal issues may continue to be part of traditional litigation route
- ▶ Cases on application of law to the facts may also be covered – Mediator, an expert, to guide disputing parties to resolve the factual issue within the application of law.
- ▶ In TP disputes, if a precedent from High Court is available, mediator may resolve the issue by applying the HC ruling to facts before it - in accordance with the direction of the HC or with suitable modification as may be agreed

### Illustrative issues that may be taken up through mediation

- ▶ **Margin related disputes** - Majority of TP disputes is around benchmarking and consequent margins earned by taxpayer. Mediation process may be undertaken to discuss the issue and arrive at a reasonable solution acceptable to both the parties
- ▶ **Intra-group services** - TP disputes around intra group services are highly fact specific and may be fit for the mediation process. The parties may mediate on the charge which is warranted for intra group services
- ▶ **Financial transactions** - Parties may mediate and agree on the interest and guarantee fee commensurate with the facts of the transaction

### Cases where factual and legal both issues are inter-related and co-exist

- ▶ As one alternative, mediation may be adopted to resolve dispute on factual aspects and leave aside other legal aspect for normal appellate proceedings. This may expedite closure of litigation once finality of legal issue has come.

### BCCI view: Stages of implementation

**Stage 1** - PILOT project for transfer pricing (TP) cases (e.g. disputes on computation of ALP, choice of MAM, comparability analysis; Choice of tested party; DEMPE location, ALP for intra-group services, financial transactions etc.). Simultaneous with using as ADR, Mediation may also be applied to cases of renewal of APA which largely involve issues of recurring nature/ already been agreed through an APA, to ease the workload of tax department and expedite the renewal approval.

**Stage 2** – If pilot project is successful, mediation to extend to non-TP cases as well

## 3. Type of disputes to be covered - Other considerations

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- ▶ CBDT may provide broad guidelines on scope and coverage of the issues that could be taken under Mediation route
  - ▶ UK and Australia guidelines specify the types of cases which can or cannot be pursued in mediation. They specifically exclude legal issues from the scope of mediation.
  - ▶ Disputing parties and mediator will be required to adhere to CBDT guidelines on choice of issue.
  - ▶ Obligation may be cast on the mediator (an expert of law) to evaluate eligibility of the issue consistent with the CBDT guidelines. Similarly, UK mediator has the right to reject applications not considered appropriate for ADR.
- ▶ Mediator should be empowered to determine the eligibility of the taxpayer for undertaking mediation.
- ▶ Where a tax dispute under assessment covers both TP and non-TP issues-
  - ▶ Pilot Project to cover mediation for TP issues; If mediation fails, the TP issues can be resolved via normal litigation routes
  - ▶ All corporate issues and other legal issues may continue under normal assessment proceedings as independent issues. DRP/CIT(A) route could also be allowed for such issues independently.
- ▶ Once Pilot project is successful, mediation could be extended to objections/appeals pending before DRP/CIT(A)/ITAT. These authorities shall decide whether the matter is fit for mediation.

## 4. Waiver from penalty or prosecution for cases settled through Mediation

- ▶ Under the Income tax Act, cases of under-reporting/misreporting of income attract penalty at the rate of 50% of tax payable (under-reporting) and 200% (misreporting) as also prosecution.
- ▶ Internationally, penalty immunity is granted to issues settled under mediation. For instance, Mexico allows a 100% waiver from all fines under the first conclusive compromise agreement entered by the taxpayer.

### **BCCI view:**

- ▶ To make mediation option attractive, certain relaxation in penalty and prosecution may be provided relating to issues settled under mediation.
  - ▶ If the mediator records that the case is of mis-reporting of income, tax authority may initiate penalty proceedings.
  - ▶ However, complete immunity from penalty and prosecution may be provided – on the lines of s. 270AA of the current Income tax law - in case of under-reporting of income. The immunity may be given on issue-wise basis instead of the entire assessment order.
  - ▶ While the mediator shall provide his finding whether issue involves under-reporting / misreporting of income to ensure finality of settlement between the disputing parties, the findings of mediation should not be binding if settlement is not reached

## 5. Confidentiality of mediation process

- ▶ Confidentiality is significant element in a mediation process where trust and confidence are cornerstones.
- ▶ In India, various statutory provisions enable preserving confidentiality
  - ▶ Rule 22 of Mediation Rules 2003;
  - ▶ S. 75 of Arbitration and Conciliation Act 1996;
  - ▶ Companies Act 2013 and Rule 23 of the Companies (Mediation and Conciliation) Rules 2016
- ▶ In the context of certain civil law matters, mediation proceedings are kept completely confidential. Mediator cannot be called upon to witness or disclose any facts he / she was made privy to during mediation proceedings.
- ▶ International experience suggests that there is consensus on keeping mediation process confidential to ensure a trustful environment.
  - ▶ However, in countries where mediator is from tax administration itself (e.g. US, Canada, Netherlands), confidentiality may not fully be ensured due to inherent limitation.

### **BCCI view:**

- ▶ BCCI suggests that a confidentiality clause for mediation may be inserted in the provisions / governing rules for mediation

## 5. Confidentiality of mediation process (Contd.)

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### **Proposed framework of confidentiality clause for tax mediation**

- ▶ Confidentiality is better preserved if mediator is an independent body as against an official of the department or government.
- ▶ With an independent mediator, it is essential that all protection measures suggested under Mediation Rules 2003 and other Indian laws are extended to tax mediators
- ▶ At the highest, tax authority may be entitled to summon the records furnished by the disputing parties with the Mediator. In this case, mediator should be specifically protected from other witness proceedings.
  - ▶ Even in relation to the records summoned from Mediator, tax authority is to observe confidentiality in terms of s. 138 of the Income tax Act
- ▶ Settlement agreements are binding only on the parties and should not be published.

# Certain procedural aspects of proposed Mediation (1/3)

Classes / Stage where Mediation can be opted	Choice of mediator panel	Duration of mediation process	Period of limitation
<ul style="list-style-type: none"> <li>▶ In the Faceless assessment mechanism, draft assessment order will be passed in all cases. Thus, mediation option could be integrated suitably at any time after the draft assessment order is passed.</li> <li>▶ Countries like Netherlands, Mexico, UK &amp; USA allow mediation even before tax assessment has been finalised by tax authorities</li> <li>▶ Canada &amp; Belgium allow mediation only where taxpayer has objected against tax assessment</li> </ul>	<ul style="list-style-type: none"> <li>▶ Mediator panel should comprise of at least two mediators. One mediator could be selected by taxpayer and other by tax authority from empanelled names with the autonomous body.</li> <li>▶ Mediator's panel* may comprise of people of eminence and experts in the field of taxation. For instance, retired SC/HC judge or ITAT member, or an industry representative, professional or legal practitioner of standing (say 15 years or more) in the field of taxation/ TP (e.g. ex-TPO).</li> <li>▶ CBDT should announce the list of members on mediator panel.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Mediation should be concluded within a period of 90 days.</li> <li>▶ USA requires mediation to be concluded within 60-120 days</li> <li>▶ To save time, taxpayer can apply parallelly to DRP, while eligible issues can be carried to mediation.               <ul style="list-style-type: none"> <li>▶ If mediation is successful, any overlapping issues before DRP will stand withdrawn and DRP will be obligated to respect the settlement.</li> <li>▶ If mediation fails, DRP proceedings will continue seamlessly and its timeline kicks in from the initial stage itself.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▶ The time period involved in mediation proceedings shall be excluded from computation of period of limitation</li> <li>▶ Alternatively, time period for passing draft assessment order be preponed with sufficient margin for Mediation period.</li> <li>▶ This feature is present in most of foreign countries where mediation is used as an ADR.</li> </ul>

*\* Rules 3-5 of the Mediation Rules 2003 provide for qualifications, disqualifications of mediator. The same may be referred to for composition and functioning of the Mediation Panel.*



## Certain procedural aspects of proposed Mediation (2/3)

Enforceability	Revision / reopening of settlement order	Binding precedent	Is mediation applicable every year?
<ul style="list-style-type: none"> <li>▶ Settlement order would be binding and enforceable once concluded- unless it is achieved through fraudulent measures (such as misrepresentation of facts)</li> <li>▶ In USA, Australia &amp; Mexico, once the taxpayer and government sign a settlement agreement, it is binding and not appealable.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Settlement shall be final. No revision/ reopening shall be permissible.</li> <li>▶ In Mexico, Australia, Belgium and Netherlands, proceedings once closed under Mediation is not subject to re-opening/revision.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Settlement may not have a precedent value for other taxpayer or for same taxpayer for other year/s.</li> <li>▶ Similar practice is followed in US, UK, though this can be understood as a common feature in most countries given the nature of resolution.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Like in case of any litigation route, taxpayer will have option to opt for mediation against any draft assessment order for any year.</li> <li>▶ Further, there should be no bar on taxpayer in subsequent year to opt for mediation merely on the ground that in earlier year, mediation has failed.</li> <li>▶ Parties can be given an option to club dispute in multiple years for mediation</li> <li>▶ Roll back of mediation settlement to be considered, like in APA process.</li> </ul>

# Certain procedural aspects of proposed Mediation process (3/3)

Timing of payment of demand relating to settlement by mediation	Faceless proceedings for Mediation	Should there be standard agreement of parties under dispute with mediator?	Cost of mediation
<ul style="list-style-type: none"> <li>▶ Under normal litigation route before CIT(A), but for stay granted, demand is to be paid within 30 days. However, if DRP route is adopted, demand becomes payable once the final assessment order is passed (almost after 10 months).</li> <li>▶ Therefore, under mediation midway approach may be preferred to make it attractive - (a) demand payable within 6 months or (b) after considering financial conditions of the taxpayer, mediator may decide a schedule for payment on instalment basis beyond 6 months but not exceeding 10 months</li> </ul>	<ul style="list-style-type: none"> <li>▶ Consistent with Government's present policy, faceless proceedings may be implemented for mediation also.</li> <li>▶ Personal meetings with mediator, which are critical to the settlement process, to be undertaken through video conferencing and e-meetings. While identity of taxpayer may be known, identity of Tax Authority may not be revealed including to Mediators as well.</li> <li>▶ A separate infrastructure/ portal to be devised for mediation. Use of present infrastructure managed by NeAC may be avoided, to maintain confidentiality of mediation process.</li> </ul>	<ul style="list-style-type: none"> <li>▶ There should be standard format of initial declaration form for adopting the process and undertaking consent for binding effect once accepted. (Optional if law itself provides for the manner of conducting the process)</li> <li>▶ The roles, rights, duties and obligation of mediator shall be defined under the proposed mediation law (Refer Mediation Rules 2003).</li> <li>▶ E.g.: In Netherlands, an independent body is responsible to regulate professional code of conduct of the mediators as well as mediators' rules. In USA, UK, Australia, the government has prescribed regulations on procedure of mediation.</li> </ul>	<ul style="list-style-type: none"> <li>▶ To encourage the mediation process, the cost involved in the process should not be huge. There may be some general guidelines for deciding the fees of mediator.</li> <li>▶ As one option, cost may be shared by taxpayer and tax authority equally. Cost may be required to be paid even if mediation fails.</li> <li>▶ Eg: In USA, Australia &amp; Netherlands, internal mediators' fee is borne by tax authority. In UK, Mexico, Netherlands and Canada both disputing parties share the cost. However, the taxpayer shall have to bear the entire cost of external mediator in USA.</li> </ul>

## Certain procedural aspects of proposed Mediation process (3/3)

### Double taxation Relief

- ▶ Mediation being a non-adjudicatory and voluntary settlement process (with a binding effect on the parties), may result in income adjustment in hands of Indian AE, which is not considered to meet ALP standard as per Art 9 of a tax treaty.
- ▶ This may result in double taxation in foreign country where foreign tax authorities refuse to admit mediation settlement for correlative adjustment in hands of foreign AE
- ▶ With a view to make mediation successful and provide double tax relief, the Government may direct Indian competent authority (CA) to assist the taxpayer in approaching foreign CA of treaty partner country, to provide a correlative relief in the hands of foreign AE.
- ▶ Similar approach is recommended in the MAP Guidelines for issues settled by ITAT.

### Threshold

- In India, threshold has been introduced in some other ADRs such as settlement commission and AAR. On similar lines, for mediation too, Government may take a policy decision to prescribe a threshold limit either on the basis of the amount of dispute or tax effect therein.
- As an alternative, for small disputes, only one mediator can be appointed and for larger issue, there may be a panel of mediators.

# Annexures

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International experience

# International Experience: Conceptual aspects

## US, Canada, Belgium, Netherlands

Particulars	USA	Canada	Belgium	Netherlands
Is the mediator independent external person or is he a tax authority itself?	Internal/External	External	Internal (but completely autonomous)	Internal/External
Types of mediation available	Majorly facilitative	Info not available	Evaluative	Facilitative
When/which cases not available for mediation?	Generally, no prohibition, can be used for most factual and legal disputes	Generally, no prohibition; although more appropriate for factual disputes	If Issue is not discussed between taxpayer and tax authority or the request is without grounds	Generally, no prohibition
Is it once in life-time opportunity?	No			No, However, tax authority may consider case for rejection if mediation has failed previously
Exception to confidentiality provisions	Confidentially not fully ensured	Confidentiality subject to law prescribed in the statute	Info not available	Confidentiality subject to law prescribed in the statute



# International Experience: Conceptual aspects

## Mexico, UK, Australia

Particulars	Mexico	United Kingdom	Australia
Is the mediator independent external person or is it the Tax Authority itself?	External [Independent body (PRODECON)]	Internal / External (rarely practiced)	Internal / External
Types of mediation available	Active Mediation	Facilitative and Neutral Evaluation	In-house facilitation, External practitioner mediation, Mediation initiated by courts/tribunals
Cases not available for mediation?	In general, no restrictions	List specified by UK HMRC	No restrictions in general
Is it once in life-time opportunity?	No		
Exception to confidentiality provisions	Not fully confidential	Settlement agreement is confidential, not made public	Strict Confidentiality is maintained, subject to disclosure required by law

# International experience: Procedural and other aspects

## US, Canada, Belgium, Netherlands

Particulars	USA	Canada	Belgium	Netherlands
Can taxpayers opt mediation before dispute has reached courts?	Yes			
Can taxpayers voluntarily request for mediation?	Yes			
Is there a time limit for resolution?	Between 60 -120 days	Information not available		
Whether mediation time impacts limitation period under statutory process of appeal?	No			
Further appeal possible against order passed by mediation?	No	Yes	No	Appeal in generally not possible subject to certain conditions.
Whether mediation has statutory recognition as part of tax law or through a separate legislation?	Tax law	Separate legislation		
Split of External Mediator's fee	Entirely Borne by taxpayer	Yes, ratio of division is 50:50	Info not available	Fees if any, is split between taxpayer and tax authority
Any independent body setup for regulating mediation?	No		No (an internal division within Tax authority set up to facilitate process)	No



# International Experience: Procedural and other aspects

## Mexico, UK, Australia

Particulars	Mexico	United Kingdom	Australia
Can taxpayers opt mediation before dispute has reached courts / tribunal?	No, request can be made only during continuation of tax audit	Available during an HMRC enquiry and once an appeal has been filed	Yes
Can taxpayer voluntarily request for mediation?	Yes		
Is there a time limit for resolution of dispute through mediation?	No specified time limit	No specified time limit (Average 61 days)	No specified time limit
Whether mediation time impacts limitation period under statutory process of appeal?	No		
Further appeal possible against order passed by mediation service?	Agreement is binding and cannot be challenged in courts		
Whether mediation has statutory recognition as part of tax law or through a separate legislation?	Tax Law	Tax law	Separate Legislation
Split of External Mediator's fee	No fee	In rare case if external mediator is appointed, parties share mediator's fee in 50:50 ratio	Parties may share cost of External mediator (no specified split ratio)
Any independent body setup for regulating mediation?	Yes; PRODECON	No	

# Thank You