

The Internal Revenue Service's Future State initiative and its impact on the tax dispute resolution system of the United States: a dispute systems design perspective

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The United States (US) Internal Revenue Service (IRS) is currently undertaking a Future State initiative which aims to improve the evaluation of the tax dispute resolution system of the United States. The Future State initiative is a multi-phased project that is currently in progress. Following a DSD evaluation of the US tax dispute resolution system, this article discusses the impact of the Future State initiative on the tax dispute resolution system of the United States.

This includes concerns surrounding the reduction in the availability of face to face interaction between IRS employees and taxpayers in resolving tax disputes as a consequence of the introduction of online and digital alternatives. This article also provides possible lessons for tax administrations undertaking similar modernisation or digitalisation programs in other jurisdictions.

Keywords: Internal Revenue Service, Future State, United States, dispute systems design, tax dispute resolution

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The tax compliance literature indicates that factors associated with tax dispute resolution procedures can influence taxpayers' levels of compliance.¹ One critical factor is the experience that taxpayers have when dealing with revenue authorities.² Thus, the way in which tax disputes are managed and resolved can have a significant impact on the overall experience that taxpayers may have in interacting with revenue authorities and thereby, affect voluntary compliance.³ Furthermore, the fair and effective resolution of tax disputes fits squarely within the 'service' paradigm of tax administration.⁴ An

justice, community or neighborhood justice, domestic relations and family law.³² In addition, DSD has also recently been applied in the context of tax dispute resolution.³³

DSD identifies three primary methods of conflict resolution: interests, rights and power-based procedures.³⁴ Interests based approaches focus upon the underlying interests of the parties to produce resolutions to satisfy as many interests as possible. Negotiation and a variety of alternative dispute resolution (ADR) processes such as facilitation and mediation are examples of interests based approaches.³⁵ Rights based approaches involve a determination of which party is correct according to some independent and objective standard. Adjudication and ADR processes such as arbitration and early neutral evaluation are examples of rights based procedures.³⁶ Power based approaches are characterized by the use of power and frequently involve an exchange of threats and/or acts of aggression. Strikes, voting and warfare illustrate power-based

power for those disputes that cannot or should not be resolved by focusing on interests alone.⁴²

Accordingly, a number of principles have been put forward by various DSD authors and practitioners for best practice in DSD.⁴³ The work by authors in the DSD field beginning with Ury, Brett and Goldbag has been cumulative in the respect that 'each author or group of authors has built on the concepts contained in the earlier [DSD] models'.⁴⁴ However, systems that follow these general design principles are generally thought to be 'more likely to produce positive dispute outcomes and improve the organisation's overall capacity for effective conflict management'.⁴⁵ Moreover, in the context of tax dispute resolution, a well-designed system can improve taxpayer revenue authority interactions and potentially have resulting positive effects on voluntary compliance. Table 1 below outlines a set of 14 DSD principles as synthesised from the DSD literature.⁴⁶

⁴² Ury, Brett and Goldbag, above n 19, 18.

⁴³ See *ibid*, Costantino and Madhat, above n 19; Mary P Rowe, 'Dispute Resolution in the Non-Union Environment: An Evolution Toward Integrated Systems for Conflict Management?' in Sandra Gleason (ed), (Michigan State University

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This section first provides an overview of the tax dispute resolution procedures in the US (section 31), the ADR options available in the system (section 32) and the IRS Taxpayer Advocate Service (TAS) (section 33).⁴⁸ The system is then evaluated (in section 34) using the 14 DSD principles outlined in Table 1 in section 2 above

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The IRS is the revenue service of the US federal government responsible for collecting taxes and administering the Internal Revenue Code.⁴⁹ Tax disputes in the US generally arise through the IRS's examination (audit) process.⁵⁰ In instances where the taxpayer

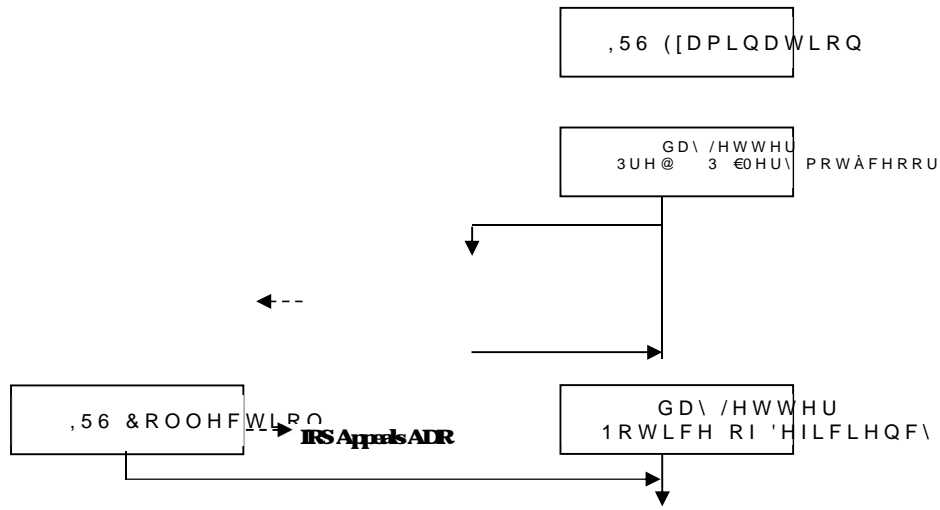
- X The taxpayer has 90 days (150 days if it is addressed to a taxpayer outside the US) from the date of the 90-day letter to file an appeal with the US Tax Court,⁵³ the US District Court or the US Court of Federal Claims.⁵⁴

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The Taxpayer Advocate Service (TAS) provides an additional avenue for taxpayers to resolve problems with the IRS, which they have been unable to resolve themselves. Headed by the NIA, the TAS is an independent organization within the IRS. Its mission is to help taxpayers resolve problems with the IRS and to recommend changes to prevent the problems. The organization fulfills its mission through two types of advocacy: case-related and systemic.⁶³ Thus, the TAS handles individual cases in which a taxpayer is suffering or about to suffer a significant hardship and it also handles cases in which the taxpayer, in solving problems with the IRS, benefits from TAS involvement, even though the taxpayer is not individually experiencing a significant hardship.⁶⁴ Where the TAS cannot provide a remedy for taxpayers because of deficiencies in administrative procedures or barriers imposed by the tax law, the TAS will propose administrative solutions or legislative changes, as appropriate.⁶⁵

As indicated in Figure 1, the TAS is available alongside the traditional dispute resolution process. It is not intended to be a substitute for an established administrative or judicial review procedure. Rather, it is intended to supplement existing procedures, generally where a taxpayer is about to suffer or is suffering a significant hardship.

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taxpayer's case.¹⁰⁵ Tax practitioners also raised concerns that taxpayers would be adversely affected by the lack of face-to-face conferences because 'complete representation at Appeals often includes sophisticated presentations and complex negotiations'.¹⁰⁶ In fact, the IRS's stance that was met with such strong opposition from taxpayers and tax practitioners, that effective from 16 October 2017 (for 'field cases only')¹⁰⁷ the IRS reinstated taxpayers' ability to have an in person Appeals conference if they requested one by removing the requirements to limit in person Appeals conferences to cases that satisfy certain criteria and obtain ATM approval.¹⁰⁸

The IRS, like various other tax aM

This, in the context of the Future State initiative, it is arguable whether the intention of the IRS to substantially reduce face-to-face and telephone personal service demands in favour of online service delivery, aligns with the Appeals Office's mission and further with the overall mission of the IRS to 'provide America's taxpayers top quality service'.¹²⁹ In fact, in her 2015 Annual Report to Congress, the NIA stated that 'based on our internal discussions with IRS officials, TAS has been left with the distinct impression that the IRS's ultimate goal is "to get out of the business of talking with taxpayers".¹³⁰

own schedule and without a need for further discussion¹⁴³. However, they prefer to interact in person when they need more individualised services¹⁴⁴. In addition, in a survey conducted by Forrester Research in 2015, respondents indicated a higher level of satisfaction in their interactions with various federal government administrations in person, compared to their digital interactions through mobile applications, federal websites and email.¹⁴⁵ Furthermore, the survey found that only 39 per cent of respondents believed that the federal government should focus on offering more digital services.¹⁴⁶

The experience of the IRS, in particular with respect to limiting taxpayers' ability to request in person Appeals conferences,¹⁴⁷

offer: This provides opportunities for future comparative research to be conducted on evaluating the design of the US dispute resolution system. It was also not the purpose of this article to provide a DSD evaluation of the US tax dispute resolution system, including ADR processes, outside the context of the Future State initiative. In addition, it was beyond the scope of this article to provide specific remedies to any DSD deficiencies identified in the evaluation of the US tax dispute resolution system conducted.