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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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Abstract

The United States (US) Internal Revenue Service (IRS) is currently undertaking a Future State initiative which aims to improve taxpayer service, enforcement and operations through the use of technology. The purpose of this article is to provide a Dispute Systems Design (DSD) evaluation of the tax dispute resolution system in the US in the context of the IRS's Future State initiative. Following a DSD evaluation of the US tax dispute resolution system, this article discusses the impact of various aspects of the IRS's Future State initiative on the tax dispute resolution system and their potential implications on voluntary compliance. 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.

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

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1. INTRODUCTION

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 important trend in tax administration policies in recent years is the recognition that the traditional 'enforcement' paradigm of tax administration, in which taxpayers are viewed and treated as potential criminals and the emphasis is exclusively on repression of illegal behaviour through frequent audits and stiff penalties, is incomplete.[5]

A revised 'service' paradigm recognises the role of enforcement, but also emphasises the role of the tax administration as a facilitator and a provider of services to taxpayer-citizens.[6] The service paradigm is predicated on improving the services of the tax administration by becoming more 'consumer-friendly' through aspects such as promoting taxpayer education, providing taxpayer services to assist taxpayers in filing returns and paying taxes, improving phone advice service, improving the tax agency website, simplifying taxes, simplifying the payment of taxes and simplifying tax forms.[7] Furthermore, studies indicate that service orientation facilitates tax compliance and is a relevant means for trust building, which also strengthens compliance.[8]

Consistent with the service paradigm, in recent times a number of tax administrations around the world have embarked upon various forms of modernisation programs or reinvention projects which are aimed at, amongst other things, simplifying and

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[1] See, eg, Betty R Jackson and Valerie Milliron, 'Tax Compliance Research: Findings, Problems, and Prospects' (1986) 5 *Journal of Accounting Literature* 125; Maryann Richardson and Adrian J Sawyer, 'A Taxonomy of the Tax Compliance Literature: Further Findings, Problems and Prospects' (2001) 16 *Australian Tax Forum* 137.

[2] Debbie Hastings, 'ATO Reinvention and Managing Disputes Post Independent Review' (Paper presented at the Tax Institute of Australia Financial Services Taxation Conference, Surfers Paradise, 18-20 February 2015) 4.

[3] Ibid.

[4] See, eg, James Alm et al, 'Taxpayer Information Assistance Services and Tax Compliance Behavior' (2010) 31(4) *Journal of Economic Psychology* 577; James Alm and Benno Torgler, 'Do Ethics Matter? Tax Compliance and Morality' (2011) 101(4) *Journal of Business Ethics* 635; James Alm, Kim M Bloomquist and Michael McKee, 'When You Know Your Neighbour Pays Taxes: Information, Peer Effects, and Tax Compliance' (Working Paper 04/2017, Victoria University of Wellington Working Papers in Public Finance, January 2017).

[5] Alm et al, 'Taxpayer Information Assistance Services', above n 4, 577.

[6] Ibid. Similarly, in the Australian context, Braithwaite posits that individuals are motivated either by 'deference' or by 'defiance' motives, and that enforcement actions should be tailored to reflect these different motivations. For further information, see Valerie Braithwaite, 'Dancing with Tax Authorities: Motivational Postures and Non-Compliant Actions' in Valerie Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion* (Ashgate Publishing, 2003) 15; Valerie Braithwaite, *Defiance in Taxation and Governance: Resisting and Dismissing Authority in a Democracy* (Edward Elgar Publishing, 2009).

[7] Alm and Torgler, above n 4, 647.

[8] Katharina Gangl et al, '"How Can I Help You?" Perceived Service Orientation of Tax Authorities and Tax Compliance' (2013) 69(4) *FinanzArchiv* 487, 504. See also Alm and Torgler, above n 4; Erich Kirchler, Erik Hoelzl and Ingrid Wahl, 'Enforced Versus Voluntary Tax Compliance: The "Slippery Slope" Framework' (2008) 29(2) *Journal of Economic Psychology* 210.

digitalising tax administrations, and transforming them into more service-orientated organisations.

For example, in order to achieve their vision of being a 'contemporary, service oriented organisation', the Australian Taxation Office (ATO) is transforming how its clients experience the tax and superannuation systems through its 'Reinventing the ATO' project.[9] The project 'is expected to better position the ATO to be more contemporary, innovate with technology and meet taxpayer expectations'[10] and has three main streams – transforming the client experience, transforming the staff experience and changing the ATO culture.[11]

Inland Revenue in New Zealand (NZ) is changing to make the tax system more open, simpler and more certain for New Zealanders to pay their taxes and receive their entitlements through its 'Business Transformation' program.[12] Business Transformation is a multi-stage program aimed at modernising the NZ tax system by 2021 through streamlining Inland Revenue's processes, policies and upgrading their online services.[13]

In the UK, HM Revenue and Customs (HMRC) is currently over halfway through its ten-year modernisation program to 'create a tax authority fit for the future'.[14] The modernisation program includes investment in new online services, data analytics, new compliance techniques, new skills and new ways of working, 'to make it easier for the honest majority of customers to pay their tax, including by improving customer service, and harder for the dishonest minority to cheat the system'.[15]

In the meantime, in the US, the Internal Revenue Service (IRS) has been working on a 'Future State' initiative for tax administration. The Future State initiative seeks to 'take advantage of the latest technology to move the entire taxpayer experience to a new level … in a way that meets the needs of taxpayers and the tax community in an efficient and effective manner while respecting taxpayer rights'.[16]

A key driver behind a number of these transformation programs is the increasing constraints on the budgets and resources of tax administrations: thus, revenue authorities' efforts in harnessing technology 'to do more with less'.[17] A central component of the transformation programs is the creation of online taxpayer accounts and online tools as new options for taxpayers to interact with and obtain information

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[9] Australian Taxation Office, *Reinventing the ATO – Program Blueprint* (March 2015) 2.

[10] Australian National Audit Office, *Costs and Benefits of the Reinventing the ATO Program* (ANAO Report No. 15, 2017) 7.

[11] Hastings, above n 2, 3.

[12] See Inland Revenue, 'Transforming Inland Revenue', http://www.ird.govt.nz/transformation/?id=footer (accessed 17 January 2019).

[13] Inland Revenue, 'Our Business Transformation Programme', http://www.ird.govt.nz/transformation/bt-programme/bt-programme-section-contents.html (accessed 17 January 2019).

[14] HM Revenue and Customs, 'HMRC announces next step in its ten-year modernisation programme to become a tax authority fit for the future' (12 November 2015), https://www.gov.uk/government/news/hmrc-announces-next-step-in-its-ten-year-modernisation-programme-to-become-a-tax-authority-fit-for-the-future (accessed 17 January 2019).

[15] Ibid.

[16] Internal Revenue Service, 'Future State Initiative', https://www.irs.gov/newsroom/future-state-initiative (accessed 17 January 2019).

[17] William J Wilkins, 'Exploring the IRS Future State: Balancing Taxpayer Needs With IRS Resource and Budget Constraints' (Presentation to ABA National Institute on Tax Controversy, Las Vegas, 9 December 2016) 2.

from revenue authorities. The development of these online service channels affects significant areas of tax administration where taxpayers need to interact with revenue authorities, including in resolving tax disputes.

Set against the background of the various transformation programs being undertaken by revenue authorities, the purpose of this article is to provide a dispute system design (DSD) evaluation of the tax dispute resolution system of the US in the context of the IRS's Future State initiative.[18] DSD refers to to a deliberate effort to identify and improve the way an organisation addresses conflict by decisively and strategically arranging its dispute resolution processes.[19] This article adopts a DSD perspective given that the aim of DSD of reducing the cost of handling disputes and producing more satisfying and durable resolutions, aligns with the service paradigm of tax administration and enhancing voluntary compliance.

The US tax dispute resolution system has been selected for analysis given that the dispute resolution system of the IRS is well-established.[20] The IRS Appeals Office, founded in 1927, is boasted to be 'one of the oldest and largest dispute resolution organizations in the United States'.[21] It is an independent administrative function within the IRS whose mission is to 'resolve tax controversies without litigation on a basis that is fair and impartial to both the government and the taxpayer and that will enhance voluntary compliance and public confidence in IRS' integrity and efficiency'.[22] As stated above, since 2014 the IRS has been working on a Future State initiative.

The Future State initiative stems from a review by the IRS of its operations, driven at least in part by continued budget constraints,[23] and the consequent development of a vision of what the IRS hopes to look like by 2020.[24] Moreover, as noted by former IRS

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[18] The US tax dispute resolution system has previously been evaluated in its general context by the author in Melinda Jone, 'A Dispute Systems Design Evaluation of the Tax Dispute Resolution System in the United States and Possible Recommendations from Australia' (2018) 16(1) *eJournal of Tax Research* 56. Hence, the duplication of the DSD approach and principles adopted as detailed in section 2 of this article.

[19] See William L Ury, Jeanne M Brett and Stephen B Goldberg, *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* (Program on Negotiation at Harvard Law School, first published 1988, 1993 ed); Cathy A Costantino and Christina S Merchant, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (Jossey-Bass, 1996).

[20] In addition, to the best of the author's knowledge, the US tax dispute resolution system has not been evaluated comprehensively from a DSD perspective in recent times. The jurisdictions of Australia, NZ and the UK have all recently been evaluated from a DSD perspective utilising a comprehensive set of 14 DSD principles (see section 2 of this article for a discussion of these principles). See Melinda Jone, 'Evaluating Australia's Tax Dispute Resolution System: A Dispute Systems Design Perspective' (2015) 13(2) *eJournal of Tax Research* 552; Melinda Jone, 'Evaluating New Zealand's Tax Dispute Resolution System: A Dispute Systems Design Perspective' (2016) 22 *New Zealand Journal of Taxation Law and Policy* 228; Melinda Jone, 'What Can the United Kingdom's Tax Dispute Resolution System Learn from Australia? An Evaluation and Recommendations from a Dispute Systems Design Perspective' (2017) 32(1) *Australian Tax Forum* 59.

[21] United States General Accounting Office, *IRS Initiatives to Resolve Disputes Over Tax Liabilities*, Report to the Chairman, Subcommittee on Oversight, Committee on Ways and Means, House of Representatives (GAO/GGD-97-71, May 1997) 2.

[22] Ibid.

[23] The IRS has sustained significant budget cuts since fiscal year (FY) 2010. The National Taxpayer Advocate (NTA) estimated the IRS FY 2016 budget to be set at almost 19 per cent below its FY 2010 funding level in inflation-adjusted terms. In FY 2010, the IRS's appropriated budget stood at USD 12.1 billion. In FY 2016, its budget was set at USD 11.2 billion, a reduction of nearly 8 per cent over the six-year period. Inflation over the same period was estimated at nearly 11 per cent. National Taxpayer Advocate, *2015 Annual Report to Congress* (2015) xiv.

[24] Wilkins, above n 17, 2.

Commissioner John Koskinen, in an era 'when it costs between $40 and $60 to interact with a taxpayer in person, and less than $1 to interact online, [the IRS] must re-examine how [it] provides the best possible taxpayer experience'.[25] The efforts of the IRS in improving processing, increasing filing and payment options and expanding online services, thus collectively describe the IRS 'Future State'.[26] These changes to taxpayer service and operations in the IRS have consequent impacts on the Appeals Office and the dispute resolution system. Hence, the DSD evaluation of the US tax dispute resolution system conducted in this article is set in the context of the IRS's Future State initiative (as distinct from conducting an evaluation of the tax dispute resolution system more generally).[27]

Accordingly, the remainder of this article is organised as follows. Section 2 will provide a background to, and outline, the set of DSD principles, which will be used in this article in evaluating the US tax dispute resolution system. Section 3 will give a brief overview of the current tax dispute resolution system in the US and then provide a DSD evaluation of the system in the context of the IRS's Future State initiative. Section 4 will discuss the impact of the Future State initiative on the dispute resolution system and outline the possible lessons that can be learnt by other jurisdictions currently undertaking similar transformation or modernisation programs. Lastly, section 5 will provide the conclusions and limitations of the article.

2. BACKGROUND TO DISPUTE SYSTEMS DESIGN PRINCIPLES

DSD refers to the strategic arrangement of dispute resolution processes within an organisation.[28] It concerns the design and implementation of a dispute resolution system that is a series of procedures for handling disputes, rather than handling individual disputes on an ad hoc basis.[29] The origin of DSD began in the context of workplace disputes and can be traced to the publication of *Getting Disputes Resolved: Designing Systems to Cut the Costs of Conflict* by Ury, Brett and Goldberg in 1988.[30] Ury, Brett and Goldberg's research drew on empirical evidence in the particular context of the unionised coal industry. The authors described how patterns of disputes can be found in closed settings and that by institutionalising avenues for addressing these disputes *ex ante*, conflicts could be handled more effectively and satisfactorily than through *ex post* measures.

The field of dispute resolution has broadly adapted the concept of DSD beyond organisations with employment conflict and courts to other legal and administrative contexts.[31] There are now growing numbers of conflict management or dispute resolution programs in the substantive areas of education, the environment, criminal

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[25] John Koskinen, Senate Finance Committee Testimony (10 February 2016) quoted in Mary Beth Murphy, Paul Mamo and Darren Guilot, 'Future State Overview' (Presentation to IRS New England Representation Conference, Ledyard, Connecticut, 17 November 2016) 2.
[26] Murphy, Mamo and Guilot, above n 25, 3.
[27] See Jone, 'A Dispute Systems Design Evaluation of the Tax Dispute Resolution System in the United States and Possible Recommendations from Australia', above n 18.
[28] Tina Nabatchi and Lisa Blomgren Bingham, 'From Postal to Peaceful: Dispute Systems Design in the USPS REDRESS Program' (2010) 30(2) *Review of Public Personnel Administration* 211, 211.
[29] John Lande, 'Principles for Policymaking About Collaborative Law and Other ADR Processes' (2007) 22(3) *Ohio State Journal on Dispute Resolution* 619, 630.
[30] Ury, Brett and Goldberg, above n 19.
[31] Lisa Blomgren Bingham, 'Designing Justice: Legal Institutions and Other Systems for Managing Conflict' (2008) 24(1) *Ohio State Journal on Dispute Resolution* 1, 11.

justice, community or neighbourhood 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 solutions 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 characterised by the use of power and frequently involve an exchange of threats and/or acts of aggression. Strikes, voting and warfare illustrate power-based approaches.[37]

Interests, rights and power-based processes produce different costs and benefits.[38] DSD theory posits that 'in general, reconciling interests costs less and yields more satisfactory results than determining who is right, which in turn costs less and satisfies more than determining who is more powerful'.[39] Thus, the costs of resolving disputes can be reduced by designing and implementing 'interests-orientated' systems.[40] An interests-orientated system promotes the resolution of disputes through interests-based procedures wherever possible (i.e., encouraging the use of interests-based methods such as negotiation or mediation),[41] but also provides 'low costs ways to determine rights or

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[32] Ibid 11-12. For review articles on the use of DSD in the contexts of employment, education, the environment, criminal justice, family disputes, civil litigation in courts, and community disputes, see Symposium, 'Conflict Resolution in the Field: Assessing the Past, Charting the Future' in (2004) 22(1-2) *Conflict Resolution Quarterly*.

[33] See, eg, Duncan Bentley, 'Problem Resolution: Does the ATO Approach Really Work?' (1996) 6(1) *Revenue Law Journal* 17 updated in Duncan Bentley, *Taxpayers' Rights: Theory, Origin and Implementation* (Kluwer Law, 2007); Sheena Mookhey, 'Tax Disputes System Design' (2013) 11(1) *eJournal of Tax Research* 79; Jone, 'Evaluating Australia's Tax Dispute Resolution System', above n 20; Jone, 'Evaluating New Zealand's Tax Dispute Resolution System', above n 20; Jone, 'What can the United Kingdom's Tax Dispute Resolution System Learn from Australia?', above n 20; Melinda Jone, 'Lessons New Zealand Can Learn from the Tax Dispute Resolution System in Australia' (2018) 24 *New Zealand Journal of Taxation Law and Policy* 13.

[34] Ury, Brett and Goldberg, above n 19, 4-8.

[35] Nabatchi and Blomgren Bingham, above n 28, 213.

[36] Ibid.

[37] Ibid.

[38] Ury, Brett and Goldberg, above n 19, 10-15.

[39] Ibid 4.

[40] Ibid 18.

[41] In the context of tax dispute resolution, the introduction of interests-based ADR methods such as in-house facilitation and/or mediation programs by various revenue authorities around the world is consistent with a focus on interests-orientated systems. See, eg, Australian Taxation Office, 'In-house facilitation', https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/options-for-resolving-disputes/in-house-facilitation/ (accessed 17 January 2019); Inland Revenue, 'Changes to the dispute resolution process', http://www.ird.govt.nz/technical-tax/general-articles/changes-to-disputes-res-proc.html (accessed 17 January 2019); HM Revenue and Customs, 'Tax disputes: Alternative Dispute Resolution' (3 February 2016), https://www.gov.uk/guidance/tax-disputes-alternative-dispute-resolution-adr (accessed 17 January 2019); Internal Revenue Service, 'Appeals Mediation Programs – Alternative Dispute Resolution (ADR)', https://www.irs.gov/compliance/appeals/appeals-mediation-programs (accessed 17 January 2019).

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 Goldberg, 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]

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[42] Ury, Brett and Goldberg, above n 19, 18.

[43] See ibid; Costantino and Merchant, 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), *Frontiers in Dispute Resolution in Labor Relations and Human Resources* (Michigan State University Press, 1997) 79; Jennifer Lynch, *CCRA: Contemporary Conflict Resolution Approaches* (Canada Customs and Revenue Agency, 1998); Karl A Slaikeu and Ralph H Hasson, *Controlling the Costs of Conflict: How to Design a System for Your Organization* (Jossey-Bass, 1998); Society for Professionals in Dispute Resolution, *Designing Integrated Conflict Management Systems: Guidelines for the Design of Integrated Conflict Management Systems within Organizations* (2001).

[44] John P Conbere, 'Theory Building for Conflict Management System Design' (2001) 19(2) *Conflict Resolution Quarterly* 215, 217.

[45] Nabatchi and Blomgren Bingham, above n 28, 215.

[46] The use of these 14 DSD principles in this article is consistent with other recent DSD evaluations that have been conducted in the tax dispute resolution context. See Jone, 'Evaluating Australia's Tax Dispute Resolution System' above n 20; Jone, 'Evaluating New Zealand's Tax Dispute Resolution System' above n 20; Jone, 'What Can the United Kingdom's Tax Dispute Resolution System Learn from Australia?' above n 20; Jone, 'Lessons New Zealand Can Learn from the Tax Dispute Resolution System in Australia', above n 33.

Table 1: The 14 Dispute Systems Design Principles Used In This Study[47]

(1)	**Stakeholders are included in the design process.** Stakeholders should have an active and integral role in creating and renewing the systems they use.
(2)	**The system has multiple options for addressing conflict including interests, rights and power-based processes.** The system should include interests-based processes and low-cost rights and power-based processes should be offered should interests-based processes fail to resolve a dispute.
(3)	**The system provides for loops backward and forward.** The system should include loop-back mechanisms which allow disputants to return from rights or power-based options back to interests-based options and also loop-forward mechanisms which allow disputants to move directly to a rights or power-based option without first going through all of the earlier interests-based options.
(4)	**There is notification and consultation before and feedback after the resolution process.** Notification and consultation in advance of taking a proposed action affecting others can prevent disputes that arise through misunderstanding or miscommunication and can identify points of difference early on so that they may be negotiated. Post-dispute analysis and feedback can help parties to learn from disputes in order to prevent similar disputes in the future.
(5)	**The system has a person or persons who function as internal independent confidential neutral(s).** Disputants should have access to an independent confidential neutral to whom they can go to for coaching, referring and problem-solving.
(6)	**Procedures are ordered from low to high cost.** In order to reduce the costs of handling disputes, the procedures in the system should be arranged in graduated steps in a low to high cost sequence.
(7)	**The system has multiple access points.** The system should allow disputants to enter the system through many access points and offer a choice of persons whom system users may approach in the first instance.
(8)	**The system includes training and education.** Training of stakeholders in conflict management as well as education about the dispute system and how to access it are necessary.
(9)	**Assistance is offered for choosing the best process.** This includes the use of guidelines and/or coordinators and process advisers to ensure the appropriate use of processes.
(10)	**Disputants have the right to choose a preferred process.** The best systems are multi-option with disputants selecting the process.
(11)	**The system is fair and perceived as fair**. The system should be fair to parties and foster a culture that welcomes good faith dissent.
(12)	**The system is supported by top managers.** There should be sincere and visible championship by senior management.
(13)	**The system is aligned with the mission, vision and values of the organisation.** The system should be integrated into the organisation and reflect the organisational mission, vision and values.
(14)	**There is evaluation of the system.** This acts to identify strengths and weaknesses of design and foster continuous improvement.

[47] See Jone, 'A Dispute Systems Design Evaluation of the Tax Dispute Resolution System in the United States and Possible Recommendations from Australia', above n 18.

3. Evaluation of the tax dispute resolution system in the United States

This section first provides an overview of the tax dispute resolution procedures in the US (section 3.1), the ADR options available in the system (section 3.2) and the IRS Taxpayer Advocate Service (TAS) (section 3.3).[48] The system is then evaluated (in section 3.4) using the 14 DSD principles outlined in Table 1 in section 2 above.

3.1 The tax dispute resolution procedures

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 does not agree with any or all of the IRS findings in an examination procedure, they may request a meeting or a telephone conference with the IRS examiner and/or the examiner's supervisor. If no agreement is reached, the US tax dispute resolution procedures generally involve the following steps (as illustrated in Figure 1):

- A 30-day letter (Preliminary Notice of Deficiency) is issued by the IRS notifying the taxpayer of their rights to appeal to the IRS Appeals Office within 30 days.
- If the taxpayer makes an appeal, the IRS Appeals Office will review the issues of the case and schedule a conference (the Appeals conference) between the parties so that they can attempt to settle the differences between them. Appeals conferences are informal and are conducted by telephone, in-person or by virtual service delivery.[51] Most differences are settled at this level.[52]
- If the taxpayer and the IRS do not agree on some or all of the issues after the Appeals conference, or if the taxpayer does not respond to the 30-day letter (i.e., chooses to by-pass the IRS Appeals system), a 90-day letter (Notice of Deficiency) is issued by the IRS.

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[48] The outline of the US tax dispute resolution system contained in this section provides only a simplified overview of the tax dispute resolution system in order to provide a background context to the DSD evaluation undertaken. For a detailed overview the US tax dispute resolution system, see Edward L Froelich 'United States' in Simon Whitehead (ed), *The Tax Disputes and Litigation Review* (Law Business Research, 3rd ed, 2015) 386.

[49] The IRS is organised into four operating divisions serving groups of taxpayers with similar needs. These operating divisions are: (1) Wage and Investment (W&I); (2) Small Business/ Self-Employed (SB/SE)); (3) Large Business and International (LB&I); and (4) Tax-Exempt and Government Entities (TE/GE): CCH, *US Master Tax Guide 2015* (CCH, Chicago, 98th ed, 2014) [¶2701].

[50] Tax disputes can also arise when a taxpayer disagrees with a proposed or taken IRS collection action. The tax dispute resolution procedures for disputes arising from IRS examination and IRS collection differ. Tax disputes initiated through the IRS collection process are beyond the scope of this article as this article focuses on tax disputes concerning disagreements over taxpayers' tax liabilities or entitlements rather than disputes over the collection efforts of the revenue authority.

[51] Virtual service delivery involves Appeals conferences being conducted virtually through videoconference technology available only at a limited number of IRS 'support' sites and 'customer-facing' sites for Appeals Technical Employees (who conduct Appeals conferences), and taxpayers and/or their representatives, respectively. Internal Revenue Manual IRM 8.6.1.4.5.

[52] Over 90 per cent of all cases before the IRS Appeals Office are settled. Froelich, above n 48, 399.

- 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 a petition with the US Tax Court,[53] the US District Court or the US Court of Federal Claims.[54]

3.2 Alternative dispute resolution options

As shown in Figure 1, in addition to the traditional Appeals process, the IRS Appeals Office offers a number of ADR programs for different types of taxpayers to resolve tax disputes during the examination, appeals and collection stages of the disputes process.[55] These programs include Fast Track Settlement (FTS),[56] Fast Track Mediation – Collection (FTMC)[57] and Post-Appeals Mediation.[58] These programs generally involve an IRS Appeals Officer (Appeals mediator) trained in mediation techniques who serves as an impartial third party,[59] facilitating negotiations between the disputing parties. The Appeals mediators help resolve disputes by identifying the core issues, possible obstacles to settlement, and working with the parties to develop resolution strategies. The Appeals mediator has no power to render a decision or to force either party to accept a settlement.[60] All methods are voluntary and require the consent of both the taxpayer and the IRS.

ADR is also potentially available for tax disputes that reach the US Tax Court (see Figure 1).[61] The forms of ADR available include voluntary binding arbitration, voluntary non-binding mediation and a more general category of 'other methods'.[62]

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[53] If the amount in the taxpayer's case is USD 50,000 or less for any one tax year or period, the taxpayer can request that the case be handled under the small tax case procedure in the US Tax Court. If the US Tax Court approves, the taxpayer can present their case to the US Tax Court for a decision that is final and that they cannot appeal. See Internal Revenue Service, *Examination of Returns, Appeal Rights and Claims for Refund* (IRS Pub. No. 556, September 2013) 12.

[54] The US Tax Court is the main court for trying disputes between taxpayers and the IRS. It generally hears cases before any tax has been assessed and paid. The US District Court and the US Court of Federal Claims generally hear tax cases only after the taxpayer has paid the tax and filed a claim for a credit or refund.

[55] See Internal Revenue Service, 'Appeals Mediation Programs', above n 41. Further, the IRS sometimes characterises related Appeals programs such as Collection Due Process (CDP) appeals, the Collection Appeals Program (CAP), and Early Referral to Appeals as constituting, or constituting aspects of, ADR. Consistent with the view of the NTA, for purposes of this article: 'While all of these programs involve some degree of review and dialogue, they do not present meaningful alternatives to the IRS's current tax controversy process and therefore are not characterised as ADR': National Taxpayer Advocate, *2016 Annual Report to Congress* (2016) 215, n 31.

[56] See Internal Revenue Service, Rev. Proc. 2003-40, 2003-25 IRB 1044 ['Rev. Proc. 2003-40']; IRM 8.26.1; IRM 8.26.2; IRM 8.26.7.

[57] See Internal Revenue Service, Rev. Proc. 2016-57, 2016-49 IRB 786 ['Rev. Proc. 2016-57']; IRM 8.26.3.

[58] See Internal Revenue Service, Rev. Proc. 2014-63, 2014-53 IRB 1014 ['Rev. Proc. 2014-63']; IRM 8.26.5; IRM 8.26.9.

[59] Additionally, in Post-Appeals Mediation, at the taxpayer's expense, the taxpayer may elect to use a co-mediator who is not employed by the IRS. Internal Revenue Service, 'Rev. Proc. 2014-63', above n 58, [9.01].

[60] However, in FTS, the Appeals mediator may suggest settlement proposals to the parties. Internal Revenue Service, 'Rev. Proc. 2003-40', above n 56, [2.03].

[61] While ADR is available and encouraged in the US Court of Federal Claims, it is not widely used in tax refund actions. ADR in US Federal District Courts is not uniform because each district can decide to what extent it wishes to employ ADR methods. Froelich, above n 48, 408.

[62] US Tax Court Rule 124.

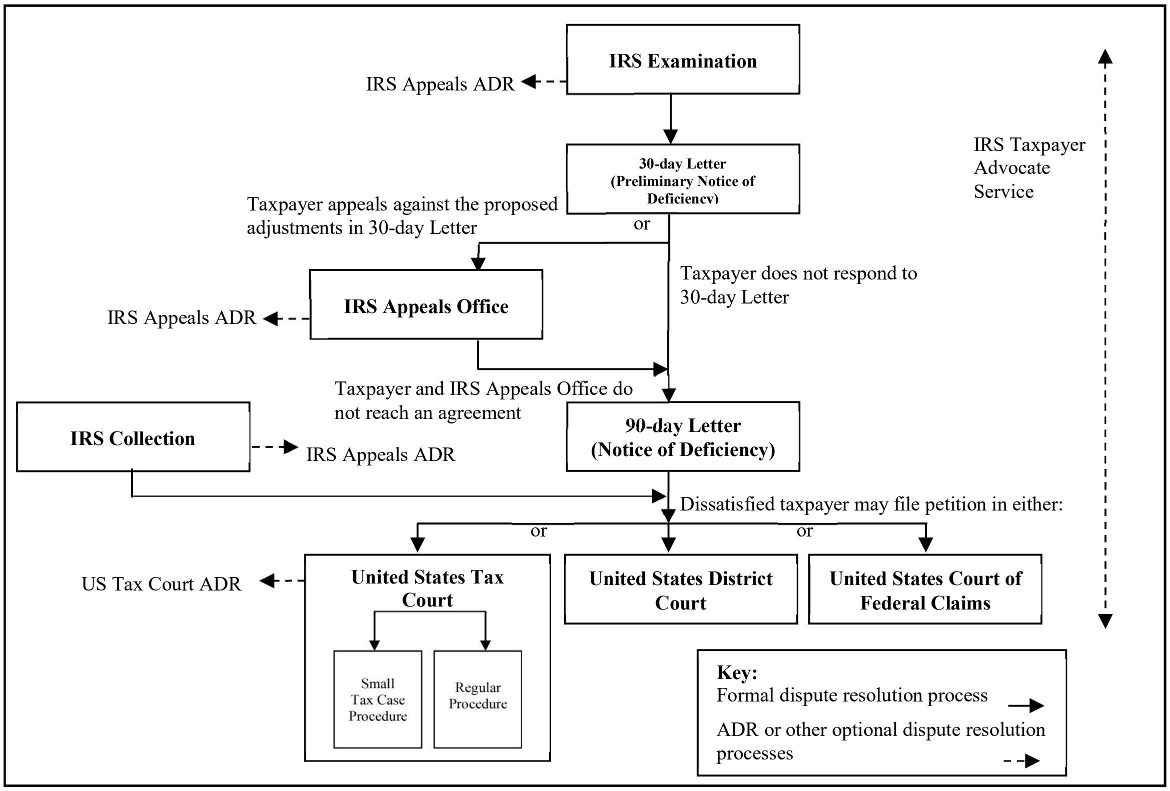
3.3 Taxpayer Advocate Service

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 NTA, the TAS is an independent organisation within the IRS. Its mission is to help taxpayers resolve problems with the IRS and to recommend changes to prevent the problems. The organisation fulfils 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 taxpayers, in solving problems with the IRS, benefit 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 of 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. Furthermore, a taxpayer's right to administrative or judicial review is not diminished or expanded in any way as a result of the taxpayer seeking assistance from the TAS.

[63] IRM 13.1.1.2.
[64] Ibid. A 'significant hardship' is deemed to occur if one of the following four factors exists: (1) an immediate threat of adverse action; (2) a delay of more than 30 days in resolving the taxpayer's account problems; (3) the incurring by the taxpayer of significant costs (including fees for professional representation) if relief is not granted; or (4) irreparable injury to, or a long-term adverse impact on, the taxpayer if relief is not granted. IRM 13.1.2.3.3.
[65] IRM 13.1.1.2.

Fig. 1: The United States' Tax Dispute Resolution Procedures



3.4 Dispute systems design evaluation of the tax dispute resolution system

3.4.1 DSD principle 1: stakeholders are included in the design process

In the context of the Future State initiative, taxpayers and other stakeholders have been included in the design process through the IRS's pilot testing of certain dispute resolution methods or programs. For example, beginning on 1 August 2017, IRS Appeals piloted the option of web-based virtual face-to-face Appeals conferences (as an alternative to conferences by phone, in-person or virtual service delivery)[66] for selected taxpayers and/or their representatives who had individual or business cases pending with Appeals.[67] Stakeholders have also been involved in the design process through a series of public forums convened by the NTA soliciting comments from taxpayers and tax professionals on the Future State initiative and their needs and preferences, including their thoughts on the extent to which taxpayers will continue to need telephone and in-person assistance.[68] The NTA's public forums were held to further public awareness and promote dialogue on the Future State following her 2015 Annual Report to Congress in which she articulated concerns regarding the IRS's lack of transparency and coordination with stakeholders such as Congress, taxpayers, and tax practitioners with respect to its Future State plan.[69] Accordingly, the NTA has played a significant role in involving stakeholders in the design process.[70]

3.4.2 DSD principle 2: the system has multiple options for addressing conflict including interests, rights and power-based processes

As indicated in section 3.1, the US tax dispute resolution system has multiple options for addressing conflict. The procedures provide for initial interests-based negotiations between the taxpayer and the IRS examiner and/or the examiner's supervisor at the conclusion of an IRS examination. If the dispute remains unresolved, the taxpayer may appeal their case to the IRS Appeals Office where a conference is scheduled so that the taxpayer and the IRS can attempt to negotiate a mutually acceptable settlement. If the dispute cannot be resolved at the IRS Appeals Office level (or the taxpayer chooses to bypass the IRS Appeals Office), taxpayers may pursue rights-based litigation processes by filing a petition in either the US Tax Court, US District Court or the US Court of Federal Claims.

In addition to the formal disputes process, as outlined in section 3.2, the IRS Appeals Office offers various ADR programs, which may be utilised by different types of

[66] The pilot program uses a secure, web-based screen-sharing platform to connect virtually with taxpayers face-to-face from anywhere they have internet access. This differs from virtual service delivery conferences (see above n 48) which are conducted via videoconferencing technology available only at a limited number of IRS 'support' and 'customer-facing' sites.
[67] Internal Revenue Service, 'Appeals Virtual Conferences – WebEx', https://www.irs.gov/compliance/appeals/appeals-virtual-conferences-webex (accessed 17 January 2019).
[68] Internal Revenue Service, 'National Taxpayer Advocate Holds Public Forums on Future State Initiative', https://www.irs.gov/newsroom/national-taxpayer-advocate-holds-public-forums-on-future-state-initiative (accessed 17 January 2019).
[69] See National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 3-13.
[70] The NTA also held 'Future State' focus groups with tax preparers and practitioners at the IRS's Nationwide Tax Forums; engaged every single TAS office in meetings about the Future State, asking TAS employees about what they thought taxpayers needed now and in the future; and conducted a nationwide survey of US taxpayers to learn what they need in the way of taxpayer service. National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, vii.

taxpayers to manage or resolve disputes during various stages of the disputes process.[71] These programs constitute interests-based ADR processes as they generally involve an IRS Appeals Officer trained in mediation techniques who facilitates negotiations between the parties. Mediation and arbitration procedures are also potentially available where a dispute reaches the US Tax Court.

The TAS provides an additional option for taxpayers for resolving problems with the IRS, which they have been unable to resolve themselves through normal IRS channels. As stated in section 3.3, the TAS is not a substitute for the established administrative or judicial review procedures. Rather, it is a possible mechanism that can be used to supplement existing procedures if a taxpayer is about to suffer or is suffering a significant hardship.

The IRS's Future State initiative does not change the options available for addressing conflicts themselves. However, as a central component of the Future State initiative is the use of technology to transform the way the IRS interacts with taxpayers, the Future State does impact on the way in which the options for addressing conflict are delivered. For example, the Future State initiative includes proposals for IRS examiners to conduct examinations virtually, from across the country.[72] Thus, if disputing parties pursue this potential digital form of interaction, it effectively eliminates the opportunity for taxpayers to have in-person negotiations with the IRS examiner and/or the examiner's supervisor at the conclusion of an examination. The IRS's piloting of web-based virtual Appeals conferences also signifies an alternative option to taxpayers interacting in-person or by telephone with an Appeals employee to negotiate settlement options at an Appeals conference.[73]

3.4.3 DSD principle 3: the system provides for loops backward and forward

The US tax dispute resolution system features both loops backward and forward. The potential availability of ADR processes, such as mediation, before a trial in the US Tax Court can provide a loop-back mechanism in the system from a rights-based option back to interests-based processes. The US system also provides for loops forward in that a taxpayer may choose to by-pass the IRS Appeals process and file a court petition upon the receipt of a 90-day letter.

The Future State initiative may potentially increase taxpayers' use of loop-forward mechanisms in the system. In her 2015 Annual Report to Congress, the NTA noted that, along with increased IRS interaction with taxpayers through online taxpayer accounts, also '[i]mplicit in the [Future State] plan – and explicit in internal discussion – is an intention on the part of the IRS to substantially reduce telephone and face-to-face interaction with taxpayers'.[74] If the IRS substantially reduces the opportunity for taxpayers to talk with IRS employees, for example, by limiting the ability for taxpayers to have in-person Appeals conferences (discussed further in section 3.4.10 below),

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[71] For example, FTS, FTMC and PAM (see section 3.2 above).

[72] See Internal Revenue Service, 'Small Business: Taxpayer Experience of the Future', https://www.irs.gov/pub/newsroom/irs-small-business-vignette-version-a.pdf (accessed 17 January 2019); Wilkins, above n 17, 18.

[73] While to date it has only been offered as a pilot program, web-based virtual conferences may potentially provide a more convenient option in some circumstances for those taxpayers who have access, and the skills and knowledge to use this option.

[74] National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 3.

many taxpayers will find it much harder to resolve their problems with the IRS. One possible implication of this could be that taxpayers may choose not to pursue the IRS's Appeals internal review forum (Appeals conferences) and instead, loop-forward to litigation. Furthermore, it could be argued that taxpayers' use of loop-back mechanisms, such as ADR before trial in the US Tax Court, may possibly also increase given the abovementioned potential scenario of an increased number of disputes being litigated in court.

3.4.4 DSD principle 4: there is notification before and feedback after the resolution process

The US tax dispute resolution system provides notification before and feedback after the resolution process. With respect to notification before the resolution process, the Future State initiative incorporates the use of technology to deter and prevent disputes through 'customized notifications based on taxpayer history'.[75] This envisages that taxpayers will receive tailored communications from the IRS on tax issues that could affect them and where potential disputes could arise. The Future State initiative further enhances notification before the disputes process as the introduction of online taxpayer accounts facilitates up-front issue identification. Thus, errors, issues and anomalies can be detected at the time of filing and taxpayers given early notification to correct issues.[76] The Future State initiative proposes to 'capture all data digitally'[77] and to deliver more efficient operations through embedding data analysis approaches.[78] Thus, the Future State initiative could also potentially enhance feedback after the resolution process through providing accelerated access to data and expanded data analytics to identify emerging trends in disputes that have occurred. Therefore, feedback after the resolution process may potentially be more timely and useful.

3.4.5 DSD principle 5: the system has a person or persons who function as internal independent confidential neutral(s)

The TAS functions as an internal independent confidential neutral in the system for taxpayers to go to for coaching, referring and problem-solving. As noted in section 3.3, the TAS is an independent organisation within the IRS, which provides free help to qualifying taxpayers where they have been unable to resolve a problem with the IRS themselves or believe that an IRS system or procedure is not working as it should. The TAS can give taxpayers advice on how to approach IRS disputes at a very high level, including discussing options for resolution, pointing taxpayers to the Taxpayer Bill of Rights provisions, providing fact sheets and FAQ's on their website and referring taxpayers to Low Income Taxpayer Clinics (LITCs).[79] Against the background of the IRS's Future State initiative, the NTA notes that: 'As the IRS moves away from having a local presence, it becomes even more important that all taxpayers have access to a

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[75] Internal Revenue Service, 'IRS Future State: The Path Traveled and the Road Ahead' (Working Draft Presentation, December 2016) 5, available at: https://www.irs.gov/pub/newsroom/future_state_102.pdf (accessed 17 January 2019).

[76] Ibid.

[77] Ibid 11.

[78] Ibid 7.

[79] The LITC program is included under the auspices of the TAS. LITCs assist low income individuals who have a tax dispute with the IRS, and provide education and outreach to individuals who speak English as a second language. LITCs can represent low income individuals before the IRS or in court. For eligible taxpayers, LITC services are provided free or for a small fee. For further information on LITCs, see Taxpayer Advocate Service, 'Low Income Taxpayer Clinics', https://taxpayeradvocate.irs.gov/about/litc (accessed 17 January 2019).

local TAS office'.[80] Hence, the TAS's plans to expand its geographic presence into the locales of underserved taxpayers, subject to the availability of additional funding.

With respect to internal independent confidential neutrals within the system for IRS employees, in cases worked in IRS Appeals, an Appeals Team Case Leader (ATCL) in each region leads a team of Appeals officers, technicians, and other support personnel. Part of the role of the ATCL is to 'provide feedback to team members and his/her immediate manager, and serve as a mentor and coach to team members to enhance their performance and settlement skills'.[81] Thus, for relevant IRS Appeals employees, ATCLs may be viewed as internal independent confidential neutrals in the system for IRS staff. The Future State initiative could, however, potentially reduce the number of ACTLs serving as internal independent confidential neutrals in the IRS. As indicated in section 1, a main driver behind the Future State initiative is the continuing constraints on the budget and resources of the IRS. Overall staffing within the IRS has reduced from 100,000 in 2010 to less than 85,000 in 2016 and Appeals staffing has fallen 20 per cent since 2010.[82] In addition, between 2011 and 2016 the number of states which lack a permanent Appeals Hearing Officer increased from nine to 12.[83]

3.4.6 *DSD principle 6: procedures are ordered from low to high cost*

The formal disputes procedures can be viewed as being ordered in a low to high cost sequence in the respect that there is the opportunity for negotiation with the IRS examiner and/or the examiner's supervisor in the first instance, followed by the IRS's administrative Appeals process and then potential proceedings in court. This sequence generally implies an increase in costs at each level. However, it should also be noted that the tax dispute resolution process in the US can require substantial upfront costs from the taxpayer (e.g., the time spent by the taxpayer in preparing for, and participating in negotiations as well as the cost of professional advisers). This suggests that an exception to the apparent low to high cost sequence of the formal disputes procedures identified above is that taxpayers in tax disputes generally incur high initial upfront costs irrespective of the stage of the disputes process that the dispute is ultimately resolved at.[84]

As noted in section 3.4.3, implicit in the Future State initiative is an intention on the part of the IRS to substantially reduce telephone and face-to-face interaction with taxpayers in favour of interaction through online taxpayer accounts. Consequently, to resolve their disputes, taxpayers may now need to seek the assistance of external tax practitioners as opposed to being afforded the opportunity to interact via telephone or face-to-face with the IRS. The offloading of work to third parties that previously could have been undertaken by the IRS may consequently increase the up-front (and compliance) costs to taxpayers. In addition, taxpayers may incur further costs if they need to engage

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[80] National Taxpayer Advocate, *2018 Objectives Report to Congress* (2017) 112.
[81] IRM 8.1.3.5.
[82] Wilkins, above n 17, 3.
[83] National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 52, 207.
[84] This exception is not necessarily unique to the US tax dispute resolution system. Rather, it may be a common feature of tax dispute resolution systems generally as, given the complex nature of many tax disputes, taxpayers are required to work out their positions from the outset and as a consequence may require professional advice and assistance (which incur related costs). See Jone, 'Evaluating Australia's Tax Dispute Resolution System', above n 20, 568; Jone, 'Evaluating New Zealand's Tax Dispute Resolution System', above n 20, 241; Jone, 'What Can the United Kingdom's Tax Dispute Resolution System Learn from Australia?', above n 20, 76-77.

external assistance where they do not have the requisite ability and/or technology to use digital means (e.g., costs incurred from software providers).

A further impact of the Future State initiative is that if taxpayers are unable to resolve their disputes through the IRS Appeals Office's administrative forum (or increasingly, choose to bypass the Appeals process) and thus resort to litigation in court, then the overall costs of dispute resolution for both the taxpayer and the IRS will increase. Furthermore, an increase in the number of disputes being litigated would place an increased burden on the tax courts.

3.4.7 DSD principle 7: the system has multiple access points

The introduction of online taxpayer accounts as a central component of the Future State initiative impacts on the provision of multiple access points to the dispute resolution system in the respect that it provides an additional way for taxpayers to access the IRS for those that are willing[85] and able to engage in the online interface. However, not all taxpayers will be able to resolve their problems through online accounts.[86] This is for several reasons, including that: many of taxpayers do not have internet access and/or the ability to use digital services; many taxpayers with internet access do not feel comfortable trying to resolve their matters over the internet and thus, have a strong preference to conduct interactions by phone or face-to-face;[87] and many taxpayer problems are not 'cookie cutter,' thus requiring a degree of back-and-forth discussion that is better suited for conversation.[88]

Therefore, the introduction of online accounts in conjunction with the IRS's implicit intention to reduce telephone and face-to-face interaction with taxpayers, may also potentially limit the effective provision of multiple access points to the system for certain taxpayers. Multiple access points may be limited for those either unwilling or unable to participate in the online interface, including those who do not have the capacity to engage online from both an access and connectivity standpoint and a computer proficiency standpoint.[89] Furthermore, the Future State may limit multiple access points to the system in particular for 'vulnerable' segments of the taxpayer population including the elderly, disabled and those with language barriers, who may

[85] See, eg, Julia Klier, Regina Pfleger and Lea Thiel, 'Just Digital or Multi-Channel? The Preferences of E-Government Service Adoption by Citizens and Business Users' (2015) *Wirtschaftsinformatik Proceedings 2015* 180, 192, whose research indicates that age and education play a role in determining the digital adoption preferences of individual citizens (i.e., there is a stronger digital adoption preference for younger and well-educated citizens). In addition, for government to business interactions, medium to large companies have a stronger preference for online services than do small companies.

[86] National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 12.

[87] In a recent TAS survey, approximately 50 per cent of respondents indicated that they do not feel secure sharing personal financial information over the internet. See Mike Nestor, Jeff Wilson and Carol Hatch, 'A Further Exploration of Taxpayers' Varying Abilities Towards IRS Options for Fulfilling Common Taxpayer Service Needs' in National Taxpayer Advocate, *2017 Annual Report to Congress, Vol 2: Research and Related Studies* (2017) 63.

[88] National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 4. See Figure 1.1.1 in National Taxpayer Advocate, *2015 Annual Report to Congress*, 10 showing the number of post-filing notices and refund delays that generate taxpayer contacts with the IRS (i.e., issues whereby taxpayers may have to get into a dialogue with the IRS about their unique facts and circumstances).

[89] See National Taxpayer Advocate, *2017 Objectives Report to Congress* (2016) 41.

still require more personalised service options (such as face-to-face or telephone interactions).[90]

3.4.8 DSD principle 8: the system includes training and education for stakeholders

The system provides various forms of education and training for stakeholders. In addition to the development of online taxpayer accounts, the IRS has refreshed its website, www.irs.gov, to become more mobile-friendly and 'deliver an audience-based and task-orientated user experience'.[91] The website has improved search features and continues to provide several self-service tools[92] and resources for individuals, businesses and tax professionals to obtain information. In the context of the Future State initiative, the IRS has created a webpage on the irs.gov site dedicated to the Future State and uploaded numerous documents providing information for taxpayers and other stakeholders.[93] With respect to Future State-related training and education for tax professionals, recent IRS Nationwide Tax Forums for tax practitioners and preparers have featured sessions on the IRS's Future State initiative.[94]

In terms of (online) educative resources specific to the dispute resolution process, the IRS website features a number of 'Appeals Online Self-Help Tools'.[95] These include an 'Appeals Mediation Programs Self-Help Tool',[96] which provides information on each of the Appeals mediation programs and helps taxpayers navigate to a program that best fits their needs. Online videos and podcasts of the Appeals process are also available.[97] However, these online tools and resources are arguably of limited use to those unwilling and/or unable to use them. The NTA, in her 2018 Objectives Report to Congress, noted that at a time when the IRS and the Department of Treasury are touting the digital products that are supposed to ameliorate the IRS's 'abysmal lack of taxpayer service', many taxpayers seem either uninterested or unable to participate.[98] Hits to the IRS's website, irs.gov, declined by 4.1 per cent between filing season (FS) 2016 and FS 2017.[99] Moreover, approximately 41 million US taxpayers do not have broadband access at home and 14 million do not have internet access at all at home.[100]

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[90] Ibid. See also John Bevacqua and Victor Renolds, 'The Digital Divide and Taxpayer Rights – Cautionary Findings from the United States' (Paper presented at the 13th International Conference on Tax Administration, Sydney, 5-6 April 2018; *eJournal of Tax Research*, this issue) for a discussion on the implications of the increasing digitalisation of taxpayer services on vulnerable taxpayers in the United States and Australia.

[91] Internal Revenue Service, 'IRS Future State: The Path Traveled and the Road Ahead', above n 75, 9.

[92] See Internal Revenue Service, 'Tools', https://www.irs.gov/help/tools (accessed 17 January 2019).

[93] See Internal Revenue Service, 'IRS Future State', https://www.irs.gov/newsroom/irs-future-state (accessed 17 January 2019).

[94] Internal Revenue Service, 'IRS Adds Future State Discussion to Nationwide Tax Forums', https://www.irs.gov/newsroom/irs-adds-future-state-discussion-to-nationwide-tax-forums (accessed 17 January 2019).

[95] Internal Revenue Service, 'Appeals Online Self-Help Tools', https://www.irs.gov/compliance/appeals/appeals-online-self-help-tools (accessed 17 January 2019).

[96] Internal Revenue Service, 'Appeals Mediation Programs Self-Help Tool' (1 August 2017) https://www.irs.gov/compliance/appeals/appeals-mediation-self-help-tool (accessed 17 January 2019).

[97] Internal Revenue Service, 'Online Videos and Podcasts of the Appeals Process' (21 February 2018) https://www.irs.gov/compliance/appeals/online-videos-and-podcasts-of-the-appeals-process (accessed 17 January 2019).

[98] National Taxpayer Advocate, *2018 Objectives Report to Congress*, above n 80, 2.

[99] Ibid.

[100] National Taxpayer Advocate, *2017 Annual Report to Congress* (2017) 36.

3.4.9 DSD principle 9: assistance is offered for choosing the best process

There are process advisers for the IRS Appeals process available for taxpayers. This is indicated on the IRS website, which outlines that taxpayers can contact the IRS employee that they have been dealing with or call the Taxpayer Service number for assistance in identifying whether their case meets the requirements for entering into the IRS Appeals system.[101] However, the budget and resource constraints driving the Future State initiative (including the reduction in IRS staffing noted in section 3.4.5), along with the introduction of various online self-help tools for taxpayers (as noted in section 3.4.8), indicates a reduction in the availability of process advisers in the system for taxpayers. In her 2017 Annual Report to Congress, the NTA observes that the IRS 'cannot answer the phone calls it currently receives, much less the phone calls it can expect to receive in light of tax reform, without adequate funding'.[102] Based on its proposed FY 2018 budget, 'the IRS is projecting that it will only be able to answer 39 percent of the calls to IRS assistors in FY 18'.[103]

3.4.10 DSD principle 10: disputants have the right to choose a preferred process

The DSD literature indicates that effective conflict management systems provide disputants with the opportunity to choose a preferred process.[104] For those taxpayers that are willing and able to interact online, the introduction of online taxpayer accounts through which taxpayers can interact with the IRS enhances their ability to choose a preferred process. However, for those taxpayers that are unwilling or unable to interact online, the introduction of online accounts in conjunction with the implicit intention of the IRS to reduce telephone and face-to-face interaction with taxpayers, effectively limits the ability of these taxpayers to choose a preferred process.

In the US system, the importance of providing taxpayers with the right to choose a preferred process is perhaps best illustrated with reference to the IRS's Appeals conferences. Effective from 1 October 2016 the IRS amended its Internal Revenue Manual (I.R.M.) section 8.6.1.4.1 to make telephone conferences the default method for conducting Appeals conferences, and indicating that in-person Appeals conferences would be conducted only under certain facts and circumstances and with approval of an Appeals Team Manager (ATM). This effectively limited taxpayers' ability to choose in-person Appeals conferences. The amendment to I.R.M. 8.6.1.4.1 was criticised by tax practitioners who believed that moving primarily towards Appeals telephone conferences detracted from the taxpayer's and the Appeals 'robust discussion' of the

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[101] Internal Revenue Service, 'Is Appeals the Place for You?', https://www.irs.gov/compliance/appeals/is-appeals-the-place-for-you (accessed 17 January 2019).

[102] National Taxpayer Advocate, *2017 Annual Report to Congress*, above n 100, viii. Public Law 115-97 (*Tax Cuts and Jobs Act of 2017*), a major tax reform statute amending the Internal Revenue Code, became law on 22 December 2017. The IRS estimates that it will need about USD 495 million in FYs 2018 and 2019 to implement Public Law 115-97, including answering taxpayer phone calls, programming and systems updates, and drafting and publishing new forms and publications: National Taxpayer Advocate, *2017 Annual Report to Congress*, xi.

[103] Department of Treasury, *FY 2018 Budget in Brief* (23 May 2017) 55, cited in National Taxpayer Advocate, *2018 Objectives Report to Congress*, above n 80, 3.

[104] See, eg, Karl A Slaikeu, 'Designing Dispute Resolution Systems in the Health Care Industry' (1989) 5(4) *Negotiation Journal* 395, 399; Costantino and Merchant, above n 19, 61, 132.

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 amendment 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]

3.4.11 DSD principle 11: the system is fair and perceived as fair

The Future State initiative has consequent impacts on the fairness of the system. The introduction of online taxpayer accounts and online tools as part of the Future State initiative brings many benefits to both taxpayers and the IRS. In particular, taxpayers with access to the online system (and who are willing to use it) will be more informed about their tax accounts and have the tools to interact with the IRS in a convenient manner. However, also implicit in the Future State initiative is the intention on the part of the IRS to substantially reduce telephone and face-to-face interaction with taxpayers.

It thus follows that notwithstanding the introduction of online accounts, a significant portion of the taxpayer population will continue to require more personalised service options, such as face-to-face or telephone services, due to preference or lack of access to the internet.[109] In addition, even the most technologically-savvy taxpayers may at times need to use personal service options because the issue(s) they have are not conducive to resolve online.[110] Moreover, the NTA has remarked that '[h]aving written a tax code so widely and rightly criticized for its complexity, the government has a practical and moral obligation to help taxpayers comply'.[111]

If the IRS substantially reduces the opportunity for taxpayers to talk with IRS employees, many taxpayers will find it much harder to resolve their problems and in addition, as noted in section 3.4.6 above, they may need to pay third parties to assist them in resolving their problems with the IRS. Consequently, this may generate a great deal of taxpayer frustration with the IRS. As a result, confidence in the fairness of the tax system may erode and taxpayer frustration and alienation may over time lead to a lower rate of voluntary compliance.

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105 RSM US LLP, 'IRS Appeals reverts back to in-person conferences in field cases', http://rsmus.com/what-we-do/services/tax/lead-tax/tax-controversy/irs-appeals-reverts-back-to-in-person-conferences-in-field-cases.html (accessed 17 January 2019).

106 Ibid. See also Kevin Johnson, 'Face-to-Face Conferences With IRS Appeals Should Be A Taxpayer's Right' *Forbes* (5 March 2017), https://www.forbes.com/sites/irswatch/2017/03/05/face-to-face-conferences-with-irs-appeals-should-be-a-taxpayers-right/2/#2593255839b4 (accessed 17 January 2019); National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, 206-207.

107 Field cases are typically more complex cases dealt with at field offices by more experienced senior field-based hearing officers. Field cases can be distinguished from campus cases (which make up the majority of cases in Appeals). Campus cases are dealt with at large tax return processing centres (known as 'campuses') staffed with lower-graded and less experienced hearing officers.

108 Internal Revenue Service, 'Appeals Conference Procedures', AP-08-1017-0017 (13 October 2017).

109 National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 56.

110 Ibid.

111 Ibid 12. Furthermore, as noted in section 3.4.9 above, taxpayers are likely to require more (personalised) assistance with further complexity to the tax code being added by the implementation of Public Law 115-97. See National Taxpayer Advocate, *2017 Annual Report to Congress*, above n 100, xi.

In her 2016 Annual Report to Congress, the NTA noted that Appeals' Future State 'is limited by its reliance on a "one size fits all" model that is primarily bureaucratic- and enforcement-oriented'.[112] This stance appears contrary to the service paradigm of tax administration (as discussed in section 1). The NTA urged Appeals to 'adopt a future vision that is more collaborative and taxpayer friendly', noting amongst other things, that 'a live meeting with a Hearing Officer is an important element in the proper presentation and clear understanding of [a taxpayer's] case'.[113] The absence of in-person conferences puts taxpayers and their representatives at a great disadvantage and substantially increases taxpayers' professional fees and extends the timeline in which to resolve cases.[114] Moreover, this approach may decrease the fairness and ultimate number of case resolutions reached in Appeals.[115] Over time the number of Appeals hearing officers has 'decreased significantly more than the amount of work they are required to perform'[116] and the IRS's ultimate need to do more with less presents challenging issues that underlie Appeals' Future State vision.

However, Appeals' need for operational efficiency and cost-effectiveness is not, in the long run, best served by steps such as limiting access to in-person or geographically proximate conferences, or reducing the quality of substantive review. Rather, as suggested by the NTA, 'taxpayers who choose to engage in dialogue with the IRS through participation in the Appeals process should be encouraged, educated, and welcomed as partners in the voluntary tax system'.[117] This should, in turn, lead to a heightened level of taxpayer trust and fairness in the system and also better aligns with the service paradigm of tax administration.

3.4.12 DSD principle 12: the system is supported by top managers

The IRS webpage on the Future State initiative indicates a level of support and championship by senior revenue authority members of the Future State initiative in general. Speeches on the Future State initiative by the IRS Commissioner and various presentations by the IRS Chief Counsel and Deputy Commissioners have been published online.[118] In terms of the support and championship of the dispute resolution system in the context of the Future State initiative, recent IRS Nationwide Tax Forums have featured presentations promoting IRS Appeals.[119] The IRS's decision to reinstate in-person Appeals conferences for field cases (discussed in section 3.4.10 above), albeit that it was made in response to the significant concerns expressed by taxpayers and tax practitioners, arguably may also indicate that there is some evidence of a commitment by the IRS in trying to resolve cases in the most effective manner possible.[120]

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[112] National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, 204.
[113] Ibid 206.
[114] Ibid 206-207.
[115] Ibid 207.
[116] Ibid 205. The number of Appeals Hearing Officers has fallen from 924 in FY 2013 to 705 in FY 2016.
[117] Ibid.
[118] See Internal Revenue Service, 'Commissioner's Comments, Statements and Remarks Related to IRS Future State', https://www.irs.gov/newsroom/commissioner-remarks-on-future-state (accessed 17 January 2019); Internal Revenue Service, 'IRS Future State', above n 93.
[119] Internal Revenue Service, 'IRS Nationwide Tax Forum Information', https://www.irs.gov/tax-professionals/irs-nationwide-tax-forum-information (accessed 17 January 2019).
[120] However, the NTA asserts that Appeals' Future State plan 'appears to be focused primarily on internal Appeals logistics, such as technology, training, career paths, case management, and communications, all of which are worthy candidates for systemic enhancement. Nevertheless, to be truly significant and effective,

3.4.13 DSD principle 13: the system is aligned with the mission, vision and values of the organisation

The IRS, like various other tax administrations around the world, has reacted to budgetary constraints in recent years by shifting taxpayer personal service options to online channels. The NTA notes that: '"[b]est practices" in taxpayer service begin with considering taxpayers', as opposed to the tax administration's, needs and preferences'.[121] But the IRS bases its approach on information and surveys that are not designed to elicit diverse taxpayer perspectives and do not distinguish between simple tasks and highly emotional, complex transactions.[122]

For example, in developing online taxpayer accounts, the IRS has placed particular reliance on an online panel survey, the W&I Web-First Conjoint Study (Conjoint Study). As an online panel survey, the Conjoint Study may provide insights about the needs and preferences of taxpayers who are already online. However, a sizeable portion of US households, 33 per cent, do not have access to broadband internet at home.[123] Their needs and preferences are not reflected in the Conjoint Study, and they may not be able to rely on an online account. More significantly, the survey instrument used in the Conjoint Study is not designed to elicit taxpayers' preferences. Instead, it requires respondents to select from among a limited number of specified alternatives.[124] Thus, 'the IRS's vision of how taxpayers will interact with it through their online accounts may be unrealistic, conveying to taxpayers a lack of interest in engaging with them'.[125] In addition, 'over the years, TAS has conducted several important research studies and surveys of different taxpayer populations,[126] which the IRS has completely ignored because the survey findings do not jive with the direction the IRS wishes to pursue'.[127]

The approach of the IRS's Future State initiative fails to acknowledge that taxpayers need, not just prefer, to engage in a conversation with the IRS at many points in their transactions to understand how the complex rules and procedures apply to their particular facts and circumstances. Likewise, the IRS also needs to talk with taxpayers to understand their unique situations. Since its establishment in 1927, the mission of the IRS Appeals Office has been to:[128]

> [R]esolve tax controversies, without litigation, on a basis which is fair and impartial to both the Government and the taxpayer and in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service.

Appeals' [Future State plan] should center on the taxpayer experience and seek to improve the case resolution environment via engagement with the taxpayer': National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, 206.

[121] Ibid 64.

[122] Ibid 67.

[123] Ibid.

[124] Ibid.

[125] Ibid 64.

[126] For a description of the TAS's research on taxpayers' service needs and preferences, see National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, 17-23, 121-137.

[127] National Taxpayer Advocate, *2017 Annual Report to Congress*, above n 100, 40.

[128] Internal Revenue Service, 'Appeals – An Independent Organization', https://www.irs.gov/compliance/appeals/appeals-an-independent-organization (accessed 17 January 2019).

Thus, 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 channels in favour of online service delivery, aligns with the Appeal's Office's mission and further with the overall mission of the IRS to '[p]rovide America's taxpayers top quality service'.[129] In fact, in her 2015 Annual Report to Congress, the NTA stated that '[b]ased 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] Moreover, the IRS's intention to significantly reduce taxpayer personal service options may ultimately impair voluntary compliance and undermine many taxpayer rights,[131] including the taxpayers' right to quality service, right to be informed, and right to pay no more than the correct amount of tax.[132]

3.4.14 DSD principle 14: there is evaluation of the system

There are various forms of evaluation of the US tax dispute resolution system in the context of the Future State initiative. Evaluation of the system has occurred through the NTA's annual reports to Congress, in particular since the NTA's 2015 Annual Report to Congress where she expressed concerns about whether the IRS's Future State adequately addresses taxpayers' needs.[133] Evaluation of the system has further occurred through the NTA's public forums seeking public comments on the Future State plan. There has also been evaluation of the system by tax practitioners and preparers attending the IRS's Nationwide Tax Forums where the IRS has sponsored a suggestion booth on its Future State efforts.[134] Internal evaluation of the system has occurred through the IRS 'talking with a variety of groups across the agency's business divisions to get insight and feedback about various changes taking place at the IRS'.[135]

As indicated in section 3.4.13, comprehensive research and evaluation of the system is necessary to ensure that the IRS designs its Future State based on actual taxpayer needs and preferences. However, in designing new research and interpreting existing research, the IRS must take into account all segments of the taxpayer population which it serves and not be 'biased by the IRS's own desired direction'.[136] As noted in section 3.4.13, 'the IRS Future State vision does not incorporate existing third-party and TAS research on service needs and preferences'.[137] Furthermore, prior research conducted by the

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[129] Internal Revenue Service, 'The Agency, its Mission and Statutory Authority', https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority (accessed 17 January 2019).

[130] National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 22, 7.

[131] For a detailed discussion of the Taxpayer Bill of Rights, see Taxpayer Advocate Service, 'Taxpayer Bill of Rights', http://www.taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights (accessed 17 January 2019).

[132] National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 56-57.

[133] Ibid 3-13.

[134] Internal Revenue Service, 'Tax Professionals Provide Insights on IRS Future State; Feedback Efforts Continue in 2017 as Online Account Shows Strong Early Use', https://www.irs.gov/newsroom/tax-professionals-provide-insights-on-irs-future-state-feedback-efforts-continue-in-2017-as-online-account-shows-strong-early-use (accessed 17 January 2019).

[135] Ibid.

[136] National Taxpayer Advocate, *2017 Annual Report to Congress*, above n 100, 42.

[137] National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, 124.

IRS[138] has surveyed selected taxpayers who are already online, but ignored those taxpayers who are not online or who are unwilling to participate in online surveys.[139]

4. DISCUSSION OF THE IMPACTS OF THE INTERNAL REVENUE SERVICE'S FUTURE STATE INITIATIVE

The DSD evaluation conducted in section 3.4 above indicates that the IRS's Future State initiative impacts on each of the 14 DSD principles. From a DSD perspective the Future State initiative, with its introduction of online taxpayer accounts and online tools, has many beneficial impacts on the US tax dispute resolution system. For those taxpayers that have internet access and have the requisite skills to navigate online channels, the introduction of online taxpayer accounts provides an additional access point to the dispute resolution system. In addition, for those taxpayers that are willing and able to interact online, the introduction of online taxpayer accounts may also enhance their ability to choose a preferred process. They also enhance notification before the disputes process as the accounts facilitate up-front issue identification, giving taxpayers early notification to correct issues at the time of filing and the opportunity for self-correction of issues where appropriate.

However, not all disputes can be resolved through online interactions. This is for several reasons, including that many taxpayers do not have the ability to use digital services, have a strong preference to conduct certain transactions by phone or face-to-face, or have an issue that is not conducive for resolution through digital means.[140] Further, where substantial money is at stake and particularly where a taxpayer is experiencing a financial hardship, an online account will neither resolve issues like these nor provide the taxpayer with the certainty they seek. An online account will not provide for the kind of discussion necessary to ensure the IRS understands the details of the taxpayer's circumstances or whether the taxpayer understands what the IRS is telling him or her, and the complex tax rules and procedures which may apply to them.[141] The above factors, in conjunction with the IRS's implicit intention to substantially reduce telephone and face-to-face interaction with taxpayers in favour of interacting through online channels, effectively limit the provision of multiple access points to the system for certain taxpayers, including low income taxpayers, the elderly, disabled and taxpayers with language barriers.

The migration towards interacting through online taxpayer accounts also potentially limits some taxpayers' ability to choose a preferred process. The NTA's 2015 Annual Report to Congress cites several studies showing a preference for multiple service delivery channels.[142] Research has shown that individuals prefer online services for information services, because they can gather and receive information or data on their

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[138] For example, the Conjoint Study and the 2014 Taxpayer Choice Model study were both conducted solely online by the IRS. See ibid 123-125.

[139] Accordingly, in several of her annual reports to Congress, the NTA has recommended that the IRS and the NTA should jointly 'undertake a comprehensive study of taxpayer needs and preferences by taxpayer segment, utilizing telephone, online, and mail surveys, focus groups, town halls, public forums, and research studies': National Taxpayer Advocate, *2016 Annual Report to Congress*, above n 55, 23. See also National Taxpayer Advocate, *2017 Annual Report to Congress*, above n 100, 48.

[140] National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 63.

[141] Ibid xii.

[142] See ibid 56-63.

own schedule and without a need for further discussion.[143] However, they prefer to interact in-person when they need more individualised services.[144] 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] highlights to other tax administrations undertaking similar transformation programs, the importance of providing taxpayers with the ability to choose a preferred process and further signifies that digital channels should be utilised as a complement to, rather than as a substitute for, existing channels. A significant portion of the taxpayer population will continue to require more personalised service options, such as face-to-face or telephone services, due to preference or lack of access to the internet. If the IRS substantially reduces the opportunity for taxpayers to talk with IRS employees, many taxpayers will find it much harder to resolve their problems (and potentially may be forced to pursue more costly litigation processes). Furthermore, they may need to pay third parties to assist them in resolving their problems with the IRS. As a result, in addition to increasing taxpayers' costs, confidence in the fairness of the tax system will erode, and taxpayer frustration and alienation may lead over time to a lower rate of voluntary compliance.

The experience of the IRS also indicates to other tax administrations the importance of conducting sufficient research (utilising appropriate research methods) into taxpayer and tax practitioner service needs, especially with regard to access and preference for online services. Without this research, revenue authorities could build something that few people actually want or use. While believing online accounts can fully meet taxpayers' needs, revenue authorities may potentially reduce their non-digital taxpayer service channels to the point that there will be inadequate taxpayer service options available. This may ultimately impair voluntary compliance. It further follows that for any vision of the future to work, revenue authorities need to engage with the taxpayer populations which they serve and consider diverse viewpoints. In the context of the IRS, the NTA has been instrumental in involving taxpayers and tax practitioners in research surveys and public forums soliciting their views on the Future State and their needs and preferences.

A key concept of online taxpayer accounts is providing taxpayers with the ability to log in securely, access information and interact with the IRS as needed. This approach also has the goal of 'freeing up limited IRS in-person resources - such as our phone lines - to more easily serve people and tax professionals who need one-on-one assistance'.[148]

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[143] Klier, Pfleger and Thiel, above n 85, cited in National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 58.
[144] Ibid.
[145] Rick Parrish, 'The Public Is Still Skeptical of Federal Digital Customer Experience' (Forrester Research, 18 February 2016) 2 cited in National Taxpayer Advocate, *2017 Objectives Report to Congress*, above n 89, 106.
[146] Ibid.
[147] Discussed in section 3.4.10 of this article.
[148] Internal Revenue Service, 'Future State Initiative', above n 16.

However, research indicates that while online accounts 'should reduce taxpayer demand for telephone and face-to-face interaction to some degree, they are unlikely to reduce taxpayer demand dramatically'.[149] Moreover, IRS technological developments historically have not reduced taxpayer demands for personal services despite hopes to the contrary.[150] Thus, in the light of the IRS's implicit intention to substantially reduce telephone and face-to-face interaction with taxpayers, the Future State initiative 'may leave critical taxpayer needs and preferences unmet'.[151] In turn, this raises concerns about whether the IRS can meet its goal of 'resolv[ing] tax controversies … in a manner that will enhance voluntary compliance and public confidence in the integrity and efficiency of the Service'.[152]

5. CONCLUSIONS AND LIMITATIONS

The IRS's Future State initiative describes the IRS's efforts 'to take advantage of the latest technology to enhance the entire taxpayer experience'.[153] In seeking to improve taxpayer services in line with the service paradigm of tax administration, and also in response to increasing financial pressures, many tax administrations, such as the IRS, have adopted the objective of shifting taxpayer service channels such as telephone and in-person assistance, to online channels. In the context of tax dispute resolution, online systems can bring many benefits to those taxpayers that have access, knowledge and experience, and a preference for such systems, including the ability to securely interact with revenue authorities, receive notifications and updates, and utilise online self-help tools. However, not all disputes can be resolved through online channels. This is of particular importance when viewed in the light of the IRS's implicit intention to reduce existing service options such as telephone and face-to-face assistance. Thus, set in the context of the IRS's Future State initiative, this article provides a DSD evaluation of the US tax dispute resolution system. The article then provides an analysis of the impact of the Future State initiative on the DSD evaluation of the tax dispute resolution system and consequently, makes recommendations for other tax authorities undertaking similar transformation or modernisation programmes around the world.

The findings of this article indicate that in the process of migrating towards the utilisation of a system of online taxpayer accounts, it is important for revenue authorities

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[149] See National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 6-10. The NTA cites three reasons (as already noted above in this section) for why online accounts will not dramatically reduce taxpayer demand for telephone or face-to-face service: (1) millions of taxpayers do not use the internet; (2) millions of taxpayers who use the internet do not want to handle complex financial transactions online; and (3) even among taxpayers who have internet access and skills and are comfortable handling financial transactions online, in many cases the complexity of tax issues and the amount of money at stake will make online resolution impractical or undesirable from the taxpayer's perspective.

[150] Since Congress enacted the *IRS Restructuring and Reform Act of 1998*, the IRS has been speaking about harnessing technology to improve efficiency and reduce the need for personal service. In fact, the IRS has succeeded in dramatically increasing the percentage of taxpayers who file their returns electronically, it has expanded and improved its website to provide more information to taxpayers, and it has launched 'Where's My Refund' to reduce telephone calls. But despite these technological advancements, demand for personal services has in fact increased over time (eg, telephone calls to the IRS Accounts Management lines have increased over time and demand for face-to face services at walk-in centres has remained at high levels despite service reductions). National Taxpayer Advocate, *2015 Annual Report to Congress*, above n 23, 10-12.

[151] Ibid 3.

[152] Internal Revenue Service, 'Appeals – An Independent Organization', above n 128.

[153] Internal Revenue Service, 'Future State Initiative', above n 16.

to provide taxpayers with multiple service options and the ability to choose a preferred process from amongst those options. This is because a significant proportion of the population will still require more personalised service options such as face-to-face or telephone services, due to preference, lack of access to the internet or otherwise.

It is also important that the system provides multiple entry points, particularly for certain taxpayers such as low income taxpayers, the elderly, disabled and taxpayers with language barriers. If a taxpayer prefers (or requires) telephone or in-person assistance and that channel is not available, the taxpayer may feel alienated, frustrated, and disengaged from the tax system and this could consequently negatively impact on voluntary compliance. Thus, it is important that online channels are utilised as a complement to existing service channels and not as a substitute.

This article further recommends that before implementing any future vision, it is important that revenue authorities engage with the taxpayer segments which they serve and conduct sufficient and appropriate research (which is not biased by the revenue authority's own desired direction) into taxpayers' and tax preparers' service needs and preferences. Without such research, critical taxpayer needs and preferences could go unmet. In turn this could ultimately increase taxpayers' costs of disputing as well as negatively impact on voluntary compliance. A revenue authority's future vision which is designed around the needs of taxpayers will be effective and efficient, and more importantly, trusted by people.

This article is subject to a number of limitations including that the DSD evaluation conducted is specific to the US tax dispute resolution system and the IRS's Future State initiative. As stated in section 1 of this article, one of the primary drivers behind the Future State initiative is the continuing constraints on the IRS's budget and resources. In the US system, funding cuts have had a particular impact on reducing IRS staffing levels, particularly at a time when it is implementing major tax reform.[154] While budgetary and resource constraints are an issue for many tax administrations around the world, the degree to which tax administrations (and the channels of services which they provide) are affected will differ across jurisdictions.

It is also important to note that the feature of the TAS within the IRS is unique to the US tax dispute resolution system. The NTA, heading the TAS, is 'charged by Congress to be the voice of the taxpayer inside the IRS',[155] and in the context of the Future State initiative has played a significant role in the advocacy of taxpayers' needs and preferences to the IRS. Tax authorities in other jurisdictions may not be able to obtain some of the particular benefits of this feature of the US system.[156]

The DSD evaluation in this article has been conducted on the tax dispute resolution system of the US in the context of the Future State initiative in its current state of progress. As further developments on the Future State initiative and online taxpayer accounts are made by the IRS, future DSD evaluations conducted on the system may

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[154] Pub. Law 115-97 (*Tax Cuts and Jobs Act of 2017*).

[155] National Taxpayer Advocate, *2017 Objectives Report to Congress*, above n 89, 2.

[156] Section 7803(c)(2)(B)(ii) of the Internal Revenue Code requires the NTA to submit an annual report to Congress each year and in it, among other things, to identify at least 20 of the most serious problems encountered by taxpayers and to make administrative and legislative recommendations to mitigate those problems. In comparison, the Inspector-General of Taxation in Australia and the Office of Tax Simplification in the UK, for example, arguably are not subject to comparably stringent requirements.

differ. 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.