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Claire Holland
James Cook University

Tina Hoyer
Australian Taxation Office

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A CASE FOR COACHING: INFLUENCING CULTURAL CHANGE AT THE ATO

CLAIRE HOLLAND AND TINA HOYER

Abstract

In conjunction with the authors of this paper, the Australian Taxation Office (ATO) is contemplating a trial of an innovative ‘case coaching’ model. The case coaching model is designed by Holland and Hoyer to specifically coach ATO auditors and objections officers (‘ATO officer’) to build their dispute resolution capacity, improve the way in which they deal with tax disputes, and foster technical capability. It is envisaged this coaching model will complement the ATO’s toolkit for resolving tax disputes, support the prevention and early resolution of tax disputes, and influence positive cultural change within the ATO, which will in turn benefit the wider community. The ‘case coaching’ model also has the potential for adoption by other large government and non-government organisations. This paper will discuss the ATO’s current approach to dealing with tax disputes and introduce the coaching model design, drawing on literature and practice of current commercial coaching models.

I INTRODUCTION

The Australian Taxation Office (ATO) is the Australian government’s principal revenue collection agency. The ATO’s role is to manage and shape the tax, excise and superannuation systems that support and fund services for Australians.¹ How the ATO achieves its mandate is influenced by the cultural values of the ATO’s workplace and the strategic direction of the Commissioner of Taxation. Since 2013, the ATO has been undergoing a broad transformational change program focused on achieving the ATO’s vision of being a contemporary service-oriented organisation (‘the Reinvention’).² One

¹ Australian Taxation Office, ‘ATO and Treasury Roles’ (Web Page, 26 June 2019) <<https://www.ato.gov.au/general/new-legislation/ato-and-treasury-roles/>>.

² Australian National Audit Office (ANAO), ‘Costs and Benefits of Reinventing the ATO Program’ (Web Page, 26 June 2019) <<https://www.anao.gov.au/work/performance-audit/costs-and-benefits-reinventing-ato-program>>.

of the ATO's central themes of the Reinvention has been the prevention and early resolution of tax disputes.³

The term 'tax disputes' refers to disputes between taxpayers and the ATO. Tax disputes arise when a taxpayer disagrees with a decision made by the ATO with respect to the taxpayer's tax liability or entitlements. Tax disputes may also include related issues and actions taken by the ATO and taxpayer regarding the disagreement, as well as complaints by taxpayers about how they are treated by the ATO. The tax disputes considered in this paper include:

- Tax disputes prior to litigation,⁴ and subject to the ATO's internal review process being handled by ATO officers;
- Interactions between the ATO and individual or small business taxpayers (that is, excluding international, large and high wealth taxpayers); and
- Three broad categories of tax disputes which can be dealt with by the ATO's internal review processes, namely:
 1. disputes as to the facts or the application of taxation law by a taxpayer arising during a tax audit;
 2. objections by taxpayers to reviewable rulings, assessments (including self-assessment) and adjustments to assessments made by the ATO; and
 3. debt matters when a tax liability is raised against a taxpayer and recovery action is taken by the ATO.

The overwhelming majority of interactions with the ATO do not end up as a tax dispute. In 2017-18, there were over 36 million returns lodged (comprising of income tax returns and activity statements). Of these, there were around 360,000 adjustments arising from audits; approximately 24,000 objections; 478 cases lodged with courts/tribunals; and 102 litigation cases that proceeded to a court/tribunal decision.⁵ Whilst overall the number of disputes is small, their significance is not. Tax disputes have a significant impact on people's lives.⁶ Resolving tax disputes early not only has obvious social justice benefits, it also saves time and costs for taxpayers and the ATO,

³ Australian Taxation Office, 'ATO Corporate Plan 2018-2019' (Web Page, 26 June 2019) <<https://www.ato.gov.au/About-ATO/Managing-the-tax-and-super-system/In-detail/Corporate-plan---current->>.

⁴ The Administrative Appeals Tribunal and Federal Court of Australia and ultimately the High Court of Australia have jurisdiction to hear substantive tax disputes. Debt matters are primarily dealt with by State Courts.

⁵ Australian Taxation Office, 'Annual Report 2017/18' (Web Page, 28 June 2019) <<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Annual-report-and-other-reporting-to-Parliament/Annual-report/>>.

⁶ This was made particularly clear in the submissions and testimony before the House of Representatives Committee on Tax and Revenue Inquiry into Tax Disputes - Submissions and Testimony, House of Representatives Standing Committee on Tax and Revenue, 'Tax Disputes', (Web Page, 28 June 2019) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Inquiry_into_Tax_Disputes/Report>.

as well as providing certainty for the taxpayer.⁷ Furthermore, if taxpayers perceive the dispute resolution process as fair, they are more likely to have a positive attitude towards the ATO and are more likely to meet their current and future taxation obligations voluntarily.⁸

The ATO has achieved a substantial reduction in tax disputes proceeding to litigation over the last five years.⁹ This is largely due to the ATO's sophisticated Dispute System Design (DSD)¹⁰ and the ATO's internal use of Alternative Dispute Resolution (ADR) methods, including the implementation of initiatives such as objections management, in-house facilitation (mediation), independent review, and the dispute assist program.

A *Objections Management*

The objections management initiative has shifted objections case handling to the Review and Dispute Resolution area of the ATO. As stated by the Administrative Review Council (ARC):

... perceptions that internal review officers are not sufficiently independent of agency decision makers can arise from their physical proximity. Further, if internal review officers have close links with the decision makers whose decisions they review, there is a danger that those internal review officers will lose the objectivity required for undertaking internal review effectively.¹¹

The distinct internal separation between the audit and objection areas has been implemented to address concerns over a perceived lack of independence.

B *In-house facilitation (mediation)*

In-house facilitation is a free service offered by the ATO where 'an impartial ATO facilitator meets with the taxpayer/their agent and the ATO case officers to identify issues in dispute, develop options, consider alternatives, and attempt to reach an agreement'.¹² ATO facilitators are ATO officers who have been trained in mediation techniques.

⁷ Binh Tran-Nam and Michael Walpole, 'Independent Tax Dispute Resolution and Social Justice in Australia' (2012) 35(2) *UNSW Law Journal* 470-500.

⁸ This is known as 'tax morale'. Binh Tran-Nam and Michael Walpole, 'Tax Disputes, Compliance Costs and Access to Tax Justice' (Conference Paper, International Conference on Tax Administration, 31 March - 1 April 2016).

⁹ Tran-Nam and Walpole (n 7) 470.

¹⁰ 'DSD' refers to a deliberate effort to identify and improve the way an organisation addresses conflict by decisively and strategically arranging its dispute resolution processes. Melinda Jone, 'Evaluating Australia's Tax Dispute Resolution System: A Dispute Systems Design Perspective' (2015) 13(2) *eJournal of Tax Research* 552-580.

¹¹ Administrative Review Council (Australia), *Better Decisions: Review of Commonwealth Merits Review Tribunals* (Australian Government Pub. Service, Report No 39, 1995).

¹² Australian Taxation Office, 'In-house Facilitation' (Web Page, 28 June 2019) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/In-House-Facilitation/>>.

C *Independent review*

The independent review process provides an opportunity for an ‘independent officer’ outside of the audit area to review the technical merits of an audit case prior to finalisation of the ATO position. This function is conducted by a senior officer (reviewer) from the Review and Dispute Resolution area of the ATO who will not have been involved in the audit process.¹³

D *Dispute Assist*

Dispute Assist is a free service offered by the ATO to help unrepresented individuals and small businesses with the dispute process at the objection stage of a tax dispute. ‘Dispute Assist Guides’ assist taxpayers (meeting certain criteria) through the dispute process and work towards resolving the tax dispute.¹⁴

II ATO DISPUTES POLICY

As part of the Reinvention, the ATO has reinvigorated its disputes policy to include key principles of dispute management, promoting a resolution culture based on effective communication, genuine engagement, collaboration, and strategies that are fair and proportionate to the matters in dispute, as well as leading to early resolution at minimal cost.¹⁵ The key principles of the ATO’s disputes policy are:

- disputes should be avoided wherever possible;
- efforts to resolve disputes should be made as early as possible, including both before and throughout legal proceedings;
- the merits of each dispute (including risks for the ATO and the revenue) should be assessed in a timely fashion;
- disputes should be managed in a courteous, honest and respectful manner, reflecting the highest ethical standards of public governance;
- disputes should be managed fairly and flexibly, in a manner which recognises that Commonwealth agencies serve the Australian community and which respects the diversity of the Australian community;
- disputes should be resolved in the simplest and most cost-effective way that is appropriate to the circumstances. Where appropriate, the parties in dispute should consider the use of effective and professional

¹³ Australian Taxation Office, ‘Independent Review’ (Web Page, 28 June 2019) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/In-detail/Avoiding-and-resolving-disputes/Independent-review/Independent-Review---Small-Business-Pilot/>>.

¹⁴ Australian Taxation Office, ‘Dispute Assist’ (Web Page, 26 June 2019) <<https://www.ato.gov.au/General/Dispute-or-object-to-an-ATO-decision/Options-for-resolving-disputes/Dispute-Assist/>>.

¹⁵ Australian Taxation Office, ‘Disputes Policy’ (Web Page, 26 June 2019) <<https://www.ato.gov.au/general/dispute-or-object-to-an-ato-decision/disputes-policy/#ADR>>.

dispute resolution practitioners whose costs are proportionate to the issues in dispute;

- disputes should be resolved collaboratively, by listening to other views and putting forward and considering options to resolve the dispute;
- everybody should have access to, and seek out, information that enables them to choose suitable dispute resolution processes; and
- ATO employees have a responsibility to take genuine steps to resolve or clarify disputes and will be supported to meet that responsibility by the ATO.

The ATO's disputes policy requires that ATO officers contact taxpayers at various stages of the dispute process and taxpayers are given the opportunity to discuss and substantiate their claims. There is also the opportunity for taxpayers to seek an independent review, and/or if either the taxpayer or the officer initiate it, in-house facilitation may be sought as an early intervention option. As a result of these initiatives and the disputes policy, the ATO has been recognised as having an effective DSD possessing many best practice principles in dispute resolution.¹⁶

III PUBLIC PERCEPTIONS OF ATO OPERATIONS

While there is a lot of positive change occurring as a result of the Reinvention, there are still areas for improvement. The ATO has received recent adverse public attention in relation to its handling of tax disputes, particularly individual and small business tax disputes.¹⁷ At the House of Representatives Standing Committee on Tax and Revenue Inquiry into Tax Disputes ('Inquiry into Tax Disputes'), there was testimony about 'heavy-handed and unfair tactics used by "cowboy" ATO auditors'.¹⁸ Taxpayers' concerns included unfair treatment and unnecessary compliance costs stemming from the wide scope of ATO information gathering requests, delays, as well as a lack of commercial awareness, technical knowledge, and conduct of ATO staff. It was suggested that timely and effective resolution of disputes is not always the primary goal of ATO officers.¹⁹

The Inquiry into Tax Disputes also highlighted concerns with a lack of consistency across the ATO in the management of tax disputes. For example, a submission to the Inquiry into Tax Disputes by PricewaterhouseCoopers ('PwC') stated:

We observe ATO disputes that are managed efficiently, effectively and fairly. But we also observe the opposite, where ATO [officers] exhibit behaviours or engage

¹⁶ Jone (n 10) 554; Sheena Mookhey, 'Tax Dispute System Design' (2013) 11(1) *eJournal of Tax Research* 79-96.

¹⁷ 'Mongrel Bunch of Bastards', *Four Corners* (ABC, 2018).

¹⁸ Henry Belot, 'What the Tax Office Has the Power To Do', *ABC News* (Web Page, 28 June 2019) <<https://www.abc.net.au/news/2018-04-10/ato-what-the-tax-office-has-the-power-to-do/9633658>>.

¹⁹ Christopher Budd, 'Will ADR Improve the Australian Taxation Office's Dispute Resolution Processes?' (2016) 27(1) *Australasian Dispute Resolution Journal* 76, 79.

in practices which call into question the ATO's objectivity, transparency or fairness. At worst, this can damage the relationship between taxpayers and the ATO to such an extent that trust is lost and positions become entrenched through lack of engagement.²⁰

Another submission to the Inquiry into Tax Disputes by the Commonwealth Ombudsman reflected complaints received from individual taxpayers and small businesses, indicating that key concerns in relation to the ATO's handling of tax disputes were in relation to:

- the ATO's engagement with taxpayers prior to the litigation stage;
- individual taxpayers and small businesses feeling intimidated by the ATO during litigation and the settlement process;
- poor communication from the ATO to individual taxpayers and small businesses during the dispute resolution process; and
- undue delays by the ATO which contributed to a protracted dispute resolution and/or debt recovery process.²¹

Most recently, the Inspector General of Taxation publicly stated that whilst his office has not seen evidence of the ATO systematically targeting small businesses, there are clearly matters that need to be addressed and improved.²² This includes focus and investment in the dispute resolution training of ATO officers.

IV DISPUTE RESOLUTION TRAINING OF ATO OFFICERS

While the DSD includes great initiatives, processes and practices, some deficiencies have been identified. One deficiency is inadequate staff training on conflict management.²³ The ATO has stated that ATO officers 'may have but do not always have' training in negotiation from an in-house provider.²⁴ Training of ATO officers who regularly interact with taxpayers is often only provided on an ad hoc basis. In order for the principles of the ATO's DSD and disputes policy to be realised, it is imperative that individual staff and teams are supported and effectively trained in dispute resolution principles, including the specific skills required for any ADR methods that officers are involved in. In addition, there has been a recognition of a drain in corporate knowledge and technical capability as a result of the Reinvention's structural

²⁰ Price Waterhouse Coopers, 'Submission 23', *House of Representatives Committee on Tax and Revenue Inquiry into Tax Disputes* (Web Page, 29 July 2014) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Inquiry_into_Tax_Disputes/Submissions>.

²¹ Commonwealth Ombudsman, 'Submission 14', *House of Representatives Committee on Tax and Revenue Inquiry into Tax Disputes* (Web Page, July 2014) <https://www.aph.gov.au/Parliamentary_Business/Committees/House/Tax_and_Revenue/Inquiry_into_Tax_Disputes/Submissions>.

²² Inspector General of Taxation, 'Submission to the Secretary of the Treasury' *Investigation Into Matters Reported by the Four Corners Program About Small Business Dealings with the Australian Taxation Office* (Inspector General of Taxation, April 2018).

²³ Mookhey (n 16) 93.

²⁴ Jone (n 10) 552-580.

change, resulting in the movement of staff with expertise and corporate knowledge to different areas, redundancies, and retirements.²⁵

Attention is being paid to potential support systems and processes that could educate and support ATO officers in preparing for their interactions with taxpayers and addressing concerns in relation to corporate knowledge and technical capability. One particular process being considered is individual coaching. There are many different styles and models of coaching used in professional contexts. In a collaborative project between the ATO and James Cook University, the use of coaching and its potential to assist ATO officers to develop greater competency, confidence and understanding of their choices in ADR processes is being explored.

V PROPOSED ADDITION TO THE ATO'S DSD

A trial of an innovative internal 'case coaching' model which will target ATO officers to meet the practical needs of actualising the ATO disputes policy is being considered. The goals of the coaching model include: to build the ATO officer's dispute resolution capacity, improve the way in which they deal with tax disputes, and develop their corporate knowledge and technical capability. It is envisaged this coaching model will further support the prevention and early resolution of tax disputes, influence positive cultural change within the ATO, and provide a basis for discussion for the implementation of this type of coaching model in other large government and non-government organisations.

VI COACHING IN THE ATO CONTEXT

Coaching is a term used to define a wide variety of activities. Coaching has evolved as a leadership tool, especially since the late 1980's. It is a process to help people be their best and achieve their personal and professional goals.²⁶ There are many types of coaching that may be used in a professional organizational context, for example career coaching, leadership coaching, relationship coaching, or conflict coaching.²⁷ Individuals may voluntarily choose to attend coaching (for example, for professional development) or

²⁵ Lara Bullock, 'Major Accounting Body Concerned by ATO Personnel', *Accountant Daily* (Blog Post, 26 June 2019) <<https://www.accountantsdaily.com.au/tax-compliance/10549-accounting-body-speaks-out-on-ato-reinvention-program>>; Inspector General of Taxation, 'Review Into the Australian Taxation Office's Management of Transfer Pricing Matters' (Web Page, December 2013) <igt.gov.au/publications/report-of-reviews/ato-management-of-transfer-pricing-matters/chapter-5-individual-ato-officer-capability/>.

²⁶ Baek-Kyoo Joo, Jerilynn Sushko and Gary McLean, 'Multiple Faces of Coaching: Manager-as-Coach, Executive Coaching, and Formal Mentoring' (2012) 30(1) *Organization Development Journal* 19.

²⁷ Ross Brinkert, 'Conflict Coaching: Advancing the Conflict Resolution Field by Developing an Individual Disputant Process' (2006) 23(4) *Conflict Resolution Quarterly* 517; Daniel Feldman and Melenie Lankau, 'Executive Coaching: A Review and Agenda for Future Research' (2005) 31(6) *Journal of Management* 829; Nick Marson, *Leading by Coaching* (Springer International Publishing, 2018).

may be required to attend coaching by their organisations (for example, for performance management to improve sales or communication). One style of coaching that may be particularly relevant to the ATO context is conflict coaching.

Conflict coaching is a term used to describe coaching that is specifically aimed at supporting individuals to better manage, prepare for or respond to conflict. In the literature, conflict coaching has been described as a conversation one person has with another to help them move forward or create change,²⁸ and as a process for the purpose of developing the disputant's (the client's) conflict-related understanding, intervention strategies and interaction skills.²⁹ Different approaches to conflict coaching include problem solving for one ('PS1'), Conflict Education Resource Team ('CERT'), CINERGY, Comprehensive Conflict Coaching ('CCC') and REAL Conflict Coaching system.³⁰ The authors have chosen the REAL Conflict Coaching model – based on the values of Reflection, Engagement, Artistry and Learning ('REAL') – as a foundation for the 'case coaching' approach, as both authors are trained and practising REAL conflict coaches. The REAL Conflict Coaching model states that conflict coaching is provided by a conflict specialist whose role it is to assist the client to develop the '5 C's':

1. **clarity** about the conflict situation;
2. greater **comprehension** of their own and other people's needs and goals;
3. identify and evaluate their **choices** for moving forward;
4. develop **confidence** about managing conflict and achieving their goals; and,
5. increase their conflict management **competence** so that they can constructively engage in conflict.³¹

Coaching may assist in having any emotional investment disentangled from the tax questions at issue. ATO officers (particularly auditors) can become emotionally invested in their work. This sometimes leads to an inappropriately zealous pursuit of individual taxpayers, an inability to judge individual taxpayer arguments on their merits, and a tendency to assume that individual taxpayers are dishonest.³² Not listening to or engaging with individual taxpayers is something ATO officers have been criticised for.³³

²⁸ Ross Brinkert, 'State of Knowledge: Conflict Coaching Theory, Application, and Research' (2016) 33(4) *Conflict Resolution Quarterly* 383.

²⁹ Tricia Jones and Ross Brinkert, *Conflict Coaching: Conflict Management Strategies and Skills for the Individual* (Sage, 2008) 18.

³⁰ David Spencer, Lise Barry and Lola Akin Ojelabi, *Dispute Resolution in Australia – Cases, Commentary and Materials* (Lawbook Co. Casebook, 4th ed, 2019).

³¹ Samantha Hardy and Nadja Alexander, 'Beyond Mediation: How Conflict Coaching Can Enhance your Practice', *Singapore Management University* (Blog Post, November 2012) <https://ink.library.smu.edu.sg/sol_research/2764>; Conflict Coaching International (CCI) (Web Page, 26 September 2019) <<https://conflictcoachinginternational.com/>>.

³² House of Representatives Standing Committee on Tax and Revenue, 'Tax Disputes' (n 6).

³³ *Ibid.*

Individual conflict coaching may increase the likelihood of an ATO officer listening to the individual taxpayer and considering their perspective on the situation through engagement.

VII WHAT IS NEEDED IN A COACHING MODEL FOR THE ATO

The focus and the values of the REAL coaching model are applicable to the context of ATO officers who will be engaging in conversations and negotiations with taxpayers. The artistry of managing a conflict situation, such as delivering an adverse decision to a taxpayer, can be developed through coaching the ATO officer, assisting them to reflect on their role, and develop greater conflict understanding and communication skills. Specifically, introducing conflict coaching for ATO officers could assist them to analyse their own behaviour and develop a greater understanding about what choices they can make in the situation that could result in a clearly articulated outcome for the taxpayer. Officers may be delivering an adverse decision to a taxpayer, and coaching could assist the officer to consider how the outcome will be communicated, and any additional options for the early resolution of the dispute in line with the key principles of the ATO disputes policy. However, there is a wide range of context specific factors that need to be considered when determining an appropriate coaching process.

A model, such as REAL coaching, that supports ATO officers with the development of the 5 C's, also has the flexibility to adapt to individuals' different goals and needs. A coaching model within the ATO context cannot be one size fits all. The goals of the officer, and their need for support with a particular case, will depend on factors such as: the stage the case is at (that is, the needs of an officer dealing with a case at the objection stage will be different to the needs of an officer dealing with a case at the audit stage); the complexity of the case; the relationship between the officer and the taxpayer; the experience and skills of the officer; the taxpayer's market; the range of outcomes available; and the amount of money involved.

A coaching model will also need to be flexible enough to accommodate a range of styles, skills and experience of the coaches. The coaching could be conducted by someone who also has technical expertise and can appropriately reality test outcomes and support the ATO officer through creative problem solving. There have been concerns raised about the loss of corporate knowledge within the ATO during the last five years.³⁴ If coaching could be performed by tax officers with the relevant coaching skills who also possess technical tax skills, then staff may further benefit from the sharing of corporate and technical knowledge.

Freedman suggests that when working in complex adaptive systems, such as the healthcare sector, conflict coaching can be used to support conflict

³⁴ Lara Bullock, 'Major Accounting Body Concerned by ATO Personnel', *Accountant Daily* (Blog Post, 26 June 2019) <<https://www.accountantsdaily.com.au/tax-compliance/10549-accounting-body-speaks-out-on-ato-reinvention-program>>.

transformation or management, rather than focusing on resolution.³⁵ Orientating the purpose of the coaching is important to ensure the coaching model and style are best 'fit for purpose'. A coaching model for the ATO context will be developed drawing on principles from the REAL Conflict Coaching process and incorporating ATO policy and resources, such as negotiation tools, that could be useful for the coach and officer to work through together. For example, *Fisher and Ury's 7 step negotiation preparation*³⁶ is a popular tool. Fisher and Ury's 7 steps include a number of reflective questions that could help the officer to consider the case from different perspectives and better prepare them for a negotiation that will achieve a result in line with the ATO's disputes policy. The coaching model aims to support officers in developing a conflict transformation mindset for conversations and negotiations with taxpayers, which results in prevention or early resolution of tax disputes.

VIII WHO IS THE COACH?

There is a large and growing body of research on managers and peers acting as coaches. Managerial coaching³⁷ and peer coaching³⁸ can help improve the performance of employees, benefit organisational learning, and therefore improve employee and organisational outcomes. In the ATO context, a manager or peer who has knowledge of the context of the case, the tax issues being considered, and an understanding of the range of outcomes available will be able to more effectively question, reality test, explore and support the officer during the coaching session. As stated by Richard Ladyshevsky, Professor in the School of Management at Curtin University:

In any medium sized organisation individuals possess skills and competencies at varying degrees depending on their tenure and practice within the work-place. This knowledge can be leveraged effectively to help others who need to develop their performance capabilities to a higher level in a safe, non-threatening and collegial environment. This is where peer coaching becomes highly effective.³⁹

Coaching at the ATO will likely be conducted by a pool of people who are available at different times. This means that officers will receive the benefit of multiple perspectives on the coaching process, and different guidance around ATO policy and procedures based on the skills and experience of the different coaches. Officers will be able to discern what information assists them with each case and hopefully gain new understandings through the sharing of

³⁵ Benjamin Freedman, 'Conflict Coaching in Complex Adaptive Healthcare Systems: Conflict Resolution or Transformation?' (2018) 4(1) *Australian Journal of Clinical Education* 1.

³⁶ Roger Fisher and William Ury, *Getting to Yes – Negotiating Agreement Without Giving In* (Penguin Books, 2nd ed, 1991).

³⁷ Marcia Hagen, 'Managerial Coaching: A Review of the Literature' (2012) 24(4) *Performance Improvement Quarterly* 17.

³⁸ Richard Ladyshevsky, 'Peer Coaching as a Strategy to Increase Learning and Development in Organisational Life - A Perspective' (2017) 15(1) *International Journal of Evidence Based Coaching and Mentoring* 4.

³⁹ *Ibid* 5.

corporate and technical knowledge. The experience and skill set of the coaches in the coaching pool will therefore be important considerations in the selection of coaches.

IX DEVELOPING THE COACHING MODEL

The REAL Conflict Coaching model involves eight phases in the conflict coaching session.

1. Goal setting: The coach starts with the end in mind, asking the client what they want to focus on and work towards.
2. What happened? The client is allowed sufficient space to explain what has led to the situation arising.
3. Why does it matter? The coach assists the client to explore why the situation is impacting upon the client and why it matters to them.
4. Other perspectives: The coach works with the client to explore other people's perspective on the conflict.
5. Preferred future: Once the client is clearer about the conflict situation, the coach assists the client to think about what might be possible in the future or what their preferred future might look like.
6. Action steps: The coach assists the client to develop action steps to work towards the preferred future.
7. Reflection: Towards the end of the session the client is encouraged to reflect on what he or she has gained from the session and how well the coaching process is going for them.
8. Close: The coach officially ends the session.

The ATO model will follow similar phases in the coaching session, however the framing of some phases will be tailored to suit ATO needs and different officer contexts.

A *Goal setting*

In the ATO context, there is the overarching goal of the organisation (processes and decisions aligning with ATO dispute policy) and the goal of capacity building ATO officers to develop and apply greater conflict resolution skills in their work with taxpayers. As such, the coaching model for the ATO will need to be tailored to meet the organisation's skill development objectives. Therefore, in addition to the REAL 5 C's clarity, comprehension, choices, confidence and competence, the ATO model will add 'capacity building' for officers.

While capacity building may be seen as an organisational goal, in terms of setting up the coaching session, the officer may be encouraged to articulate their own goal about what they are hoping to achieve in the management of their case. Examples of officer goals may be 'making the right decision' or 'achieving a fair outcome'. Setting up the coaching session with the desired outcome in mind will set the direction for the coaching session. In this stage, the coach could work with the officer to review relevant policy around their

case and invite the officer to consider the policy in ascertaining their goal. In the goal setting stage, it will be important for the officer to reflect on whether their goal is in line with ATO officer's obligations and policy. If there is a big difference in the mindset of the officer and the wording or intention of the relevant policy, then the coach can support the officer through questioning, listening, reality testing and reference to policy, guidelines and previous outcomes throughout the coaching session to see if their mindset can shift.

B *What's happened (Case history)*

This stage will allow the officers to explain a short, succinct history of the case up to its current state. Talking through the case history out loud may assist the officer to get the timeline clear in their own minds and recognise any missing information in their understanding of what has happened so far. The coach could support the officer in this stage by asking questions about the timeline, the information that has been provided, and supporting the officer to identify any parts of the history that are uncertain or lack information. If there is missing information, the coach may assist the officer in brainstorming to consider whether there is other information that may fill the gaps.

C *Why does it matter (What points are in dispute?)*

In this stage the officer can talk with the coach about the issues in dispute or the adverse decision that will be made against the taxpayer. The coach can assist the officer to explore what information the ATO is relying upon for its case and why this case matters to the ATO. For example, what tax technical issues are being argued, what does this mean for the ATO, and what does this mean for the officer? If the dispute is to go further, what will that mean for the ATO?

D *Other perspectives*

The coach may assist the officer to consider the perspectives of other parties involved in the dispute. After looking at the dispute from the officer's and the ATO's perspective, what might be the perspective of the taxpayer? How might they be thinking, feeling and behaving in this situation? What are the possible consequences of the adverse decision being made? Are there any third parties who may be affected by the adverse decision? Similarly, if legal representatives, tax practitioners, or other support people are involved, what might be their perspective? If the taxpayer is a business, will people lose their jobs as a result of the decision? How might the taxpayer be thinking, feeling and behaving? The coach may also ask the officer to consider the opinion of the general public. Is the decision fair? If the facts of this case were to become known to the public, what might they think or feel regarding the case?

E Preferred future (*Case outcome options*)

In considering the preferred future, the officer will be looking at what case outcome options are available and how they might actualise those options. In this stage, the coach could support the officer to use different conflict management tools, for example *Fisher and Ury's 7 step negotiation preparation model*.⁴⁰

The seven elements framework outlines core considerations for officers prior to entering a meeting with the taxpayer. The seven elements are:

1. **Interests:** Consider the needs, wants and fears of the ATO officer, the taxpayer, the ATO and any third parties. For an ATO officer this would involve making a correct decision after taking all the facts into account, including concerns about the taxpayer's ability to pay, sufficient information, time pressures, and closing the case. For a taxpayer it is likely to be whether a decision is fair, their capacity to pay, and their future. For the ATO, is the decision in line with policy? Are there any reputational risks at stake?
2. **Alternatives:** Consider what the ATO and the taxpayer can do if no agreement is reached. What will happen in the next step in the tax dispute process? Consider what this will mean in terms of time, resources, reputation and costs.
3. **Options:** Consider the possibilities available to the ATO and the taxpayer to reach an agreement together. Are there other possible tax technical interpretations? Is there scope to reduce any penalties?
4. **Standards:** Consider the ATO disputes policy and relevant legislation. If benchmarking evidence has been applied, is it reliable in the taxpayer's circumstances?
5. **Relationship:** Consider the dynamic between the ATO officer and the taxpayer; is there a gap and what can be done to bridge the gap. Litmus test questions; put yourself in the taxpayer's shoes.
6. **Commitment:** Consider what is the purpose of the meeting; topics for discussion; authority to settle.
7. **Communication:** Consider questions to be asked; assistance to prepare a pitch; strategy to communicate; tone, questioning; communication style.

The seven elements have been adapted into a tool that can be used in a coaching session.

⁴⁰ Fisher and Ury (n 36).

COACHING MODEL				Generate options before and separately from evaluating or deciding on the options	
1. GOAL SETTING				Standards/Benchmark options: Objective standards/criteria are more persuasive.	ATO DISPUTES POLICY
2. WHAT HAPPENED				Relationship	What does the relationship look like? What would I like it to look like? What is the reason for the gap? Strategies for bridging the gap Ultimate test question (testing how the other party sees it)
3. NEGOTIATION PLANNING				The dynamic between the people negotiating levels of trust and respect Consider what the relationship looks like from the taxpayer's perspective not just the ATO's	
Interests		ATOs:		Commitment	What is the purpose of the meeting? Topics for discussion? What is my authority/theirs? What has been agreed? How will it be implemented?
The needs, wants and fears which motivate a person to negotiate		Taxpayers:		The process elements that shape the meeting, agenda	
Identified your own and the taxpayer's/ third party (eg Representative) interests on each issue		Others		Communication: The verbal and non-verbal exchange of information	Questions to ask: Information to give (prepare a 'pitch')
Ask "why?" to get away from positions to interests		No Deal Outcome BATNA		Any barriers to communication Language/Culture	Strategy to communicate (how do I set the right tone?)
Alternatives		No Deal Outcome BATNA			
What each party can do without the other involved (if resolution is not reached)		WATNA			
What is the best/worst alternative to a negotiated agreement measured against ATO's/taxpayer's interests?		WATNA			
Really test the alternatives against ATO's/taxpayer's interests.					
Options					
The possibilities available to reach a resolution (together)					
				4. RELECTION	
				5. CLOSURE	

Table 1
Seven Elements Coaching Tool

In considering the preferred future the coach may also have a range of relevant literature for the officer to refer to, for example:

- Commissioner’s speeches;⁴¹
- ATO disputes policy;⁴²
- ATO law administration practice statements;⁴³
- APS values;⁴⁴
- Taxpayers’ Charter.⁴⁵

Reference to documents that support the officer’s preferred future may assist them in gaining confidence and clarity in their choices. The coach may also assist in questioning around the mindset of the preferred outcome options of the officer. In this stage, the coach may also assist in capacity building the officer by bringing reference documents to their attention, talking about past case outcomes, and sharing corporate and technical knowledge relevant to the current case.

F *Action steps (Process and Actions)*

Given all that has been discussed in the coaching session, the coach may now assist the officer to plan what the best process is to achieve their desired outcome, and the best actions for them in order for that to happen. In setting out the process and action options, the coach may support the officer to brainstorm a number of ‘next steps’ in case one option does not work out. For example, if the preferred option is for the case officer to obtain certain information in order to be convinced of a result and that information does not exist (maybe the document has been lost, destroyed or was never created), what other information may exist that could support the officer reaching a decision as an alternative to a primary source document?

G *Reflection*

Before the close of the session in the ATO context, the reflection stage of the coaching model could be used to support the officer to reflect on any new insight into how ATO policy or relevant literature has informed their case management for the current case, and how it has informed their mindset for

⁴¹ Commissioner Chris Jordan, ‘Commissioner’s Address to the Tax Institute National Convention 2018’, *Australian Taxation Office* (Web Page, 28 June 2019) <<https://www.ato.gov.au/Media-centre/Speeches/Commissioner/Commissioner-s-address-to-the-Tax-Institute-National-Convention-2018/>>.

⁴² Australian Taxation Office, ‘Dispute Assist’ (n 13).

⁴³ Australian Taxation Office, ‘Law Administration Practice Statements’, *Australian Taxation Office* (Web Page, 28 June 2019) <<https://www.ato.gov.au/General/ATO-advice-and-guidance/ATO-guidance-products/Law-administration-practice-statements/>>.

⁴⁴ Australian Public Service Commission, ‘APS Values’, (Web Page, 28 June 2019) <<https://www.apsc.gov.au/aps-values-1>>.

⁴⁵ Australian Taxation Office, ‘Taxpayers’ Charter Australian Taxation Office’, (Web Page, 28 June 2019) <<https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Taxpayers-charter/>>.

similar cases in the future. The reflection stage may also assist the officer to identify any particular skills or knowledge they would like to gain or improve on for the current or future case management (reflection-on-action) and how they might work on building their capacity outside of coaching.⁴⁶

H Close

The coach would then officially end the session.

The training of coaches in the model and the support resources available for them to use throughout the session will be the focus of another paper.

X RESISTANCE TO COACHING

It is acknowledged that there may be resistance to the coaching process. It is also important for the framing of the coaching to officers in order to establish buy-in and trust. Lack of clarity or inconsistency about the purpose of the coaching, anger about being referred, assumptions about the reasons for the referral and other possibilities, may have an impact on how coaching is received by officers. As it will be a new initiative, it will be important to positively frame the requirement to engage with the coaching so that the sessions are not construed as performance management meetings for officers who are considered problematic, or as a requirement by management for underperformance. Concern over who the coach is, the role the coach tends to play in forming the view of the case, or 'interfering' in the case may also be resistance points.⁴⁷

However, it is not uncommon for coaches to work with resistant people and a skilled coach will employ techniques to assess coachability and to manage the sources of resistance.⁴⁸ Accordingly, resistance to coaching does not necessarily flag that coaching is not viable. Conflict coaching does not work however, when referrals are inappropriate and when coaches resist to the point that they will not willingly engage in the process. Therefore, the pool of coaches will need sufficient training and resilience to be able to 'sell' the coaching model and alleviate any fears of officers about the coach's role in their case management.

As the coach is likely to be a peer or manager within the officer's business line, a clear understanding of the purpose of the coaching process, and what it aims to achieve, is necessary for the coach. In order to achieve the buy-in of the ATO officers, the coaching will be offered on the basis that it is for the purpose of conducting a thorough analysis of the case, potentially referred to simply as a 'case check-in', taking into account ATO dispute policy and negotiation best practice in preparation for negotiation with the taxpayer.

⁴⁶ Donald Schon, *The Reflective Practitioner: How Professionals Think in Action* (Ashgate Publishing Ltd, 1991).

⁴⁷ Hagen (n 37) 17-39.

⁴⁸ Jones and Brinkert (n 29); Samantha Hardy and Nadja Alexander, *REAL Conflict Coaching Manual* (Conflict Coaching International, 2015).

XI RESISTANCE TO BEING COACHES

Coach selection is a vital component to the success of any coaching program. Particular challenges in the ATO context will be in the selection, training and ongoing support of staff to perform in the role of coaches. A major inhibitor is time. Recruitment of sufficiently experienced and skilled peer or managerial staff to be coaches, means there will be yet another function added to their current role.⁴⁹ The time allocated within current jobs to perform the coaching function will need to be negotiated as part of workloads, and there may be resistance to accepting additional roles with no foreseeable reduction in current duties. Fitting the coaching process into current workloads will be a challenge. Particularly as staff who are more experienced and have greater corporate knowledge are likely to be in senior roles, have greater responsibilities, and therefore less capacity to 'add on' another function. Therefore, ensuring there is clear organisational buy-in for the program, acknowledgement of the role and consideration of the time required to perform the coaching will be very important in how successful the coaching model is in practice.

XII TIMING OF THE COACHING

When the coaching occurs in the 'case cycle-time' is another important consideration. The intention is that coaching will occur prior to the release of a decision that is adverse to the taxpayer at a pre-negotiation/mediation stage of the tax dispute. At this stage, the ATO officers are often dealing with technical issues and will have potentially have formed a view (decision). While the aim of the coaching is to support the officer to expand their thinking prior to the meeting with the taxpayer and to ensure they have considered the taxpayer's perspective and relevant policies when making a determination, a case may be 'ripe' for coaching at different times, depending on the nature of the case. For example, in different areas, the coaching may be best placed very early on as it is more appropriate for the officer to have a coaching session early in order to consider the impact of the choice of process and potential interaction with the taxpayer before any communication commences. In other areas, the coaching may take place 'just in time' because of the nature of the dispute and timing of the interactions with the taxpayer, and availability of the officer. In some cases, the officer may benefit from multiple coaching sessions over the life-cycle of the case. In other instances, the coaching may involve a discussion of a number of similar cases and the coach will only meet with the officer once. The timing will also need to take into consideration the technical nature and complexity of the case and when best to support the officer in forming a view/preparing for an interaction with a taxpayer. The balance of a commercial and technical mindset and forming a

⁴⁹ Zhuolin She et al, 'The Double-Edged Sword of Coaching: Relationships Between Managers' Coaching and their Feelings of Personal Accomplishment and Role Overload' (2019) 30(2) *Human Resource Development Quarterly* 249.

view in line with the Reinvention and ATO disputes policy could be supported by a coach who is able to effectively work with an officer at the most opportune time in the case cycle time.

XIII CONCLUSION

Key goals of the Reinvention include the prevention of tax disputes (such as taxpayers understanding and accepting an audit outcome and not lodging an objection or proceeding to litigation), and the early resolution of tax disputes (that is, a decrease in the number of objections and litigation). Through a tailored coaching program, it is envisioned that increasing ATO officer's conflict understanding and communication skills will result in less reports of 'heavy-handed and unfair tactics' used by the ATO. In addition to the Reinvention goals, the ATO would also like to achieve a process for dissemination of technical and corporate knowledge, capacity building of staff for improved staff experience (such as greater employee satisfaction with their interactions with taxpayers), and improved client (taxpayer) experience. Coaching can assist with achieving these goals. While this paper has focused on the development of the coaching model and consideration of contextual factors, challenges and resistance points to the coaching program, another paper will be forthcoming that considers the proposed implementation and review of the coaching program. There is emerging literature on how to evaluate programs by measuring coaching outcomes, organisational benefits and an overall program's success.⁵⁰ After consideration of the elements of an appropriate coaching process that is tailored to the ATO context, a training program will be developed.

⁵⁰ Lorna Stewart et al, 'Towards a Model of Coaching Transfer: Operationalising Coaching Success and the Facilitators and Barriers to Transfer' (2008) 3(2) *International Coaching Psychology Review* 87; Jessica Jarvis, David Lane and Annette Fillery-Travis, *The Case for Coaching: Making Evidence-Based Decisions on Coaching* (Chartered Institute of Personnel and Development, 2006).