

ITRAF Annual Conference (Webinar)

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Jennifer Roeleveld



Notion of source –opposing views

- Shift towards source taxation
- The notion of source
 - Legal liability of non residents
 - Unilateral/ bilateral relief
 - Foreign loss set-offs
- Evidenced by
 - proxies/rules in legislation
 - Case law
 - Administrative guidelines

- Alignment with OECD or UN orthodoxies
 - PE concept
 - Value creation principles
 - CFC rules
- Tensions already exist
- Virtual PE
 - Is there such a thing?
 - Permanent establishment is the wrong term

- Historical PE
 - Extractive industries
 - Special economic Zones

- However taxing rights not fairly distributed

The notion of source and what it means would be key

Is origin the same as source

CIR v Lever Brothers and Unilever Ltd 91946 AD

“the source of receipts, received as income, is not the quarter whence they come, but the originating cause of their being received as income and that this originating cause is the work which the taxpayer does to earn them, the quid pro quo which he gives in return for which he receives them”

- Originating cause
- Location of that originating cause

Elusive concepts

Dissenting judgement in lever Bros case (Judge Schreiner)

“- that the interest paid found its source in the indebtedness which had been assumed by the SA company and as the company was resident in SA the source of the income was derived by the company in SA”

This is mirrored in deemed source rules introduced in recent years.

- Source to be replaced by
 - Origin or
 - Destination

Source and residence concepts

Historical development and refinement

Difficult to change

Has this been supplanted by “nexus”

Example of a successful tax – VAT

indirect tax on transactions

Tax on inbound digital services- proactive

Better co-ordination between indirect taxes and source