Value Creation: Old wine in new bottles or new wine in old bottles?

Jonathan Schwarz


Please refer to this post as: Jonathan Schwarz. The book is also available online on Kluwer International Tax Law. For more information please click here.

The question is, where do the income arise? A seminar was held in Rotterdam on 18 May 2018 on “value creation” in the new tax universe to celebrate the 80th anniversary of the International Fiscal Association. An erudite panel, comprising Prof Robert Danon, Peter Blessing, Prof Wolfgang Schön and Porus Kaka SA, contemplated the meaning of this latest buzz-word in international taxation. Value creation frequently appears in policy documents and new legal instruments as the justification for new international tax rules, but is nowhere explained.

Old wine in new bottles

The discussion made me wonder if there is anything new in this concept. Much discussion focused on the relationship between “value creation” and “source.”

The classical exposition of the meaning and identification of the source of income has come from the courts of Commonwealth countries that adopted a common source-based tax system that served through the 20th Century. This is south Africa for eastern taxpayers: “where it is the income arises” and the location of the source of trading profits were the key. In South Africa (now), the income arises in the source of the income is a practical matter of hard fact. Is this any different in the era of a digitalised economy? Debate standards may not have kept pace with changes in global business practices. In

The 2013 report of the Digital Economy. This certainly supported by key UK case law on the location of the source of trading profits. The discussion would be to accept the debate for what it is.

New wine in old bottles

If value creation is indeed no different from the originating cause of income or profit, then repackaging this fundamental conceptual is empty-surfacing - pouring old wine into new bottles to make the consumer believe there is a new product on tap. If value creation is just the originating cause of income or profit, then the only real output that today remains the continuing examination of existing income and profit generation to identify its originating cause and the location of that cause.

Value creation as understood in this way at odds with the source of income being its originating cause. The effective elimination of the ownership of intangible assets and the role of funding in the value creation puts into serious doubt the application of the source principle, thus also the specific transactional or business patterns. Since that time, a body of case law has developed in many Commonwealth countries that address the implications of the source principle. But it also has specific transactional or business patterns.

If value creation is instead no different from the originating cause of income or profit, then repackaging this conceptual is empty-surfacing - pouring old wine into new bottles to make the consumer believe there is a new product on tap. If value creation is just the originating cause of income or profit, then the only real output that today remains the continuing examination of existing income and profit generation to identify its originating cause and the location of that cause.

Reframing source via value creation

Without approach see abstract, value creation has become a well-received concept by its users. To its most extreme form, the reform approach to transfer pricing of intangibles now in the Chapter 9 of the 2013 OECD G20 Base Erosion and Profit Shifting (BEPS) Project. The effective elimination of the ownership of intangible assets and the role of funding in the value creation puts value creation as understood in this way at odds with the source of income being its originating cause. The use of an intangible asset is what the payer of a royalty receives in consideration of the payment. This approach would be to accept the debate for what it is.

Clarification of the meaning and identification of the source of income has come from the courts of Commonwealth countries that adopted a common source-based tax system that served through the 20th Century. The clearest explanation of the meaning and identification of the source of income has come from the courts of Commonwealth countries who adopted a common source-based tax system that served through the 20th Century. This is south Africa for eastern taxpayers: “where it is the income arises” and the location of the source of trading profits were the key. In South Africa (now), the income arises in the source of the income is a practical matter of hard fact. Is this any different in the era of a digitalised economy? Debate standards may not have kept pace with changes in global business practices. In

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Redefining source via value creation

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