Funding the Future

Cadbury Schweppes - an analysis

https://www.taxresearch.org.uk/Blog/2006/09/13/cadbury-schweppes-an-analysis/

Published: January 12, 2026, 8:15 pm

The European Court of Justice has given its long awaited ruling on the Cadbury Schweppes case. One of the better commentaries on the web (and most are superficial) is from Reuters, so I won't cover the ground here.

What the ruling said was this:

Articles 43 EC and 48 EC must be interpreted as precluding the inclusion in the tax base of a resident company established in a Member State of profits made by a controlled foreign company in another Member State, where those profits are subject in that State to a lower level of taxation than that applicable in the first State, unless such inclusion relates only to wholly artificial arrangements intended to escape the national tax normally payable. Accordingly, such a tax measure must not be applied where it is proven, on the basis of objective factors which are ascertainable by third parties, that despite the existence of tax motives that controlled company is actually established in the host Member State and carries on genuine economic activities there.

It so happens that I have no real problems with that. What this says accords with what I and the Tax Justice Network have said for some time, which is pay your taxes where you earn your profits, and that wholly artificial arrangements are unjustified.

But let's be clear. The average number of employees of the average treasury management company in Ireland is zero. Jim Stewart's *research at Trinity College Dublin shows this. Despite which he shows that their average pre tax profits exceed $13 million per annum. Most are registered at a nominees address. They operate bank accounts. That's all. And that can be done remotely from the UK, US or elsewhere. And in that case our argument is simple. If all you do offshore is book profits by running a bank account at the address of a nominee (even if that nominee's address is that of a real operating division of your company, as is the rare case for Cadbury Schweppes) then you're not running a real operation in Ireland or anywhere else. Nor is having director's meetings offshore enough to move you out of the UK. And reinvoicing goods that you never see is not enough either.*

The objective factors the ECJ calls for must require there to be a real operation, with indication that real people of real calibre who can make real decisions are really located in the territory and are running the operation there, daily. Flying in once a month on the morning flight from Heathrow, making a quick cab ride into town to sign papers written in the UK before you left and emailed for signature on your arrival, to be followed by a cab ride back to the airport to enable you to be in the London office again during the afternoon (as is common practice) is not offshore management, whether the airport be in Jersey, Dublin or the Netherlands. Objectively it's a sham.

If that test is applied then the ECJ ruling is good news. I sincerely hope that this is tack HMRC take now this case moves back to the UK.

And I also hope that they back this up with new guidance on what constitutes tax residence and what constitutes control of a company, because current rules are simply not good enough for an electronic era. If they do, this could be a great outcome for the UK.

At the same time, I'd also welcome some measures just in case HMRC do lose in the end, the most obvious being a requirement that UK companies should only be allowed to offset interest charges incurred on loans for use in their own trade, and not that of their overseas group members (as they can now). The failure to restrict interest deductions in this way is absurd, and it's time it ended. Any damage this ruling does could be more than recovered by that change.