

Funding the Future

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KPMG's [reaction](#) to the Treasury's proposed new rules for controlled foreign companies that deal with the consequences of the [Cadbury's ruling](#) is typical of many. They say:

The key point that the European Court of Justice (ECJ) made in its recent judgement on Cadbury Schweppes was that the UK's controlled foreign company (CFC) rules should not apply where an entity is genuinely carrying out an economic activity. Today's announcement is clearly contrary to this ruling as it seeks to limit the circumstances in which it will apply. It suggests that the new relief will only protect the profits arising from 'labour' activities - ie directly from workers' actions - and not from profits arising from the investment of capital.

Well, I can't dispute the interpretation of the ECJ's ruling. That seems fair. I can dispute what KPMG then say about the Treasury's interpretation of this. The reason is simple, and it's precisely because as KPMG go on to say:

This is a very important distinction. It means for example, a shared services centre should fall outside the CFC rules. However, a finance company or an intellectual property management company would not be protected.

Yes, that's exactly what they meant KPMG. The reason is simple. You cannot pretend that locating a computer in Dublin and booking intra-group borrowing from that computer (operated remotely from London in all probability) does represent real economic activity. Nor is relocating the copyright of your logo, probably designed in London to a tax haven and then charging massive royalties for its use economic activity. They're both profit shifting activity. Real economic activity requires management, people, decisions, services to be supplied. It does not mean artificial legal structures with no real third party economic impact designed solely to reduce the tax paid by a company at cost to the UK Exchequer. If you can't understand that KPMG, what do you understand?

But just in case evidence is needed, look at the work of [Jim Stewart](#). As he shows the average number of employees of a company bin the Dublin financial services centre is precisely zero. That is not possible is the claim is being made that these companies undertake economic activity.

This puts KPMG's final comment into perspective. They say:

The Treasury had the opportunity to react to the ECJ's ruling in a way that would dramatically improve the business climate for multinationals based in the UK and they have not taken it.

Come on KPMG. They'd have been negligent if they had.