



Fédération des Experts
Comptables Européens

Press Release

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Company Taxation: ECJ may Rule Against CFC Legislation Within Europe

Hundreds of millions of Euros potentially at stake in ECJ ruling

Brussels, 13 December 2005: Speaking ahead of the hearing of the European Court of Justice (ECJ) in the Cadbury-Schweppes case, due to take place on 13 December 2005, the European Federation of Accountants have indicated that the result may effectively rule out Controlled Foreign Company (CFC) legislation in Europe.

"The main legal issue to consider in this case is whether the application of Controlled Foreign Company (CFC) legislation is against the principles of the EC Treaty," stated David Devlin, FEE President, at the launch today of a new paper on European Court of Justice pending case C-196/04.

FEE Vice President and Chairman of FEE's Direct Taxation Working Party, Stefano Marchese added that: "National tax legislations on CFCs imposes upon a company resident in a member state a tax charge for the profits of its subsidiaries which are resident in another member state and subject to a lower level of taxation. FEE questions whether such legislations are consistent with the principles of articles 43, 49 and 56 of the EC Treaty.

It could be reasonably expected that a decision of the ECJ favourable to Cadbury Schweppes would restrict the application of the CFC legislation to subsidiaries established in non-EU member states. A recent FEE survey found that Finland, France, Germany, Hungary, Italy, Poland, Spain, Sweden and the UK apply CFC legislation regardless of the residence of the subsidiary in another EU member state."

FEE has been involved with the issue of CFC legislation for some time. In 2002, the *FEE Position Paper on Controlled Foreign Company Legislations in the EU* analysed differences and similarities of national CFC laws, together with the consistency of the legislation with the fundamental principles of the EC Treaty.

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Notes for Editors:

1. Cadbury Schweppes Plc is incorporated and resident in the UK. The UK Inland Revenue directed that CFC (Controlled Foreign Company) legislation applied to two of its Irish subsidiaries, i.e. the profits of the subsidiaries were attributed to the parent company PLC and subject to UK tax. Cadbury Schweppes PLC appealed to the UK Special Commissioners (UK Tax Tribunal), contending that applying CFC legislation in these circumstances constituted a breach of: Freedom of establishment principles ex article 43 of the EC Treaty; Freedom to provide services under article 49; and Freedom of movement of capital and payments under article 56. The UK Special Commissioners referred the case to the ECJ.
2. The FEE **Observations on European Court of Justice Pending Case C –196/04 - (CADBURY SCHWEPPEES PLC AND CADBURY SCHWEPPEES OVERSEAS LTD V THE COMMISSIONERS OF UK INLAND REVENUE)** can be downloaded free-of-charge from the FEE website (<http://www.fee.be>) or copies may be ordered from Sylvie Romancide (Fax: + 32 2 231 11 12, Email: Sylvie_Romancide@fee.be).
3. The FEE Position Paper on **Controlled Foreign Company Legislations in the EU** (2002) consists of a comprehensive study of fiscal laws regarding Controlled Foreign Companies (CFC), and it considers how CFC rules are structured and applied by EU Member States. Furthermore it analyses differences and similarities of national CFC laws, together with the consistency of the current legislation with the fundamental principles of the EC Treaty (in particular with the non-discrimination provision). It can be downloaded from http://www.fee.be/publications/default.asp?library_ref=4&content_ref=269 rertetre
4. The Fédération des Experts Comptables Européens (FEE) is the representative organisation for the accountancy profession in Europe. FEE's membership consists of 44 professional institutes of accountants from 32 countries. FEE member bodies are present in all 25 member states of the European Union and three member countries of EFTA. FEE member bodies represent more than 500,000 accountants in Europe.