The Dark Side of Cadbury

Methodist Tax Justice Network

Case Study #1.5

2017 Update

Cadbury – an ethical business?

Founded in Bournville, Birmingham, by a Quaker family in 1824, Cadbury is a British institution and manufacturer of iconic confections. The Cadbury brand has always been associated with philanthropy, a strong community spirit and an ethical policy that reflects their Quaker origins.

However, this all changed when the company was taken over by Kraft in 2010. Their closure of Cadbury's UK production centre in Bristol and subsequent relocation of the European headquarters to low-tax Switzerland were seen as a rejection of Cadbury's ethical values.

Unfortunately, where tax is concerned, the waters are slightly muddier, and the divide between the ethics of Cadbury and Kraft (who in 2012 became Mondelēz International after a corporate split) is not clear cut.

A 2013 article in the Financial Times, also reported by the Guardian, revealed that in the decade prior to the takeover, between 2000 – 2010, Cadbury were engaged in 'aggressive tax avoidance', and paid an average of just £6.4m corporation tax on annual profits of over £100m. Tax dodging schemes included sheltering £400m in the Cayman Islands to wipe £9m off their tax bill in a single year, and a complex transfer pricing arrangement codenamed 'Chaffinch' which allowed Cadbury to 'save' £17m between 2006-8.

That was then – what about now?

Mondelēz have repeatedly sought to divorce themselves from tax avoidance scandals. They say:

"The FT article relates to a period from 1997-2010 when Cadbury Schweppes PLC and Cadbury PLC were entirely independent businesses. It would therefore be inappropriate for us to comment." **The Guardian, June 21st 2013**

"

“In common with all global businesses, Mondelez pays corporation tax based on the laws of the countries in which we operate. We comply with all applicable tax legislation in the UK.”
BBC Radio West Midlands, July 2nd 2013

"We comply with UK tax law and, as with all global businesses, pay tax based on the laws of the country we operate in. We have invested over £200m into the future of our UK business over the past five years and we contribute £1.06bn to the UK economy."
The Times, December 6th 2015

In spite of these repeated claims to the contrary, Mondelēz continue to be deeply mired in tax avoidance scandal. It was revealed by the Sunday Times in December 2015 that, although Cadbury UK Limited (the subsidiary representing Cadbury's actual economic activity in the UK) made £96.5m in profits in 2014 and £48.5m in 2015, they paid no UK corporation tax at all. How were they able to get away with this?

A quick survey of the accounts of Cadbury UK Limited shows that they were able to write off nearly all of their taxable profits as 'group relief'. This is a common accounting trick in large corporate groups, where profit-making subsidiaries have their profits written off against the losses made by another subsidiary - as long as one company directly or indirectly controls 75% or more of the shares in the other.

In Cadbury's case, you have to go through a chain of five intermediate holding companies before you reach the entity responsible for pulling off this trick - Chromium Acquisitions Ltd. This is in turn owned by Chromium Suchex, an LLP (Limited Liability Partnership, or Limited Liability Company (LLC) in the US) controlled by entities in Delaware and the Netherlands. The acquisition of Cadbury was financed using an £8.21bn debt bond listed on the Channel Islands Securities Exchange. Since Chromium Acquisitions Ltd is always paying the interest on this debt, and aside from this simply siphons dividends into the US via the LLP's controlling partners in the Netherlands and Delaware, it is constantly making a loss. These losses are used to write off the profits of entities further down the Mondelēz corporate chain.

Of course, this is just scratching the surface. Before going any further, however, the diagrams on the next two pages may help you get some idea of the complexity of Mondelēz's UK structures, as well as some of their overseas schemes - which is where we will be looking next.

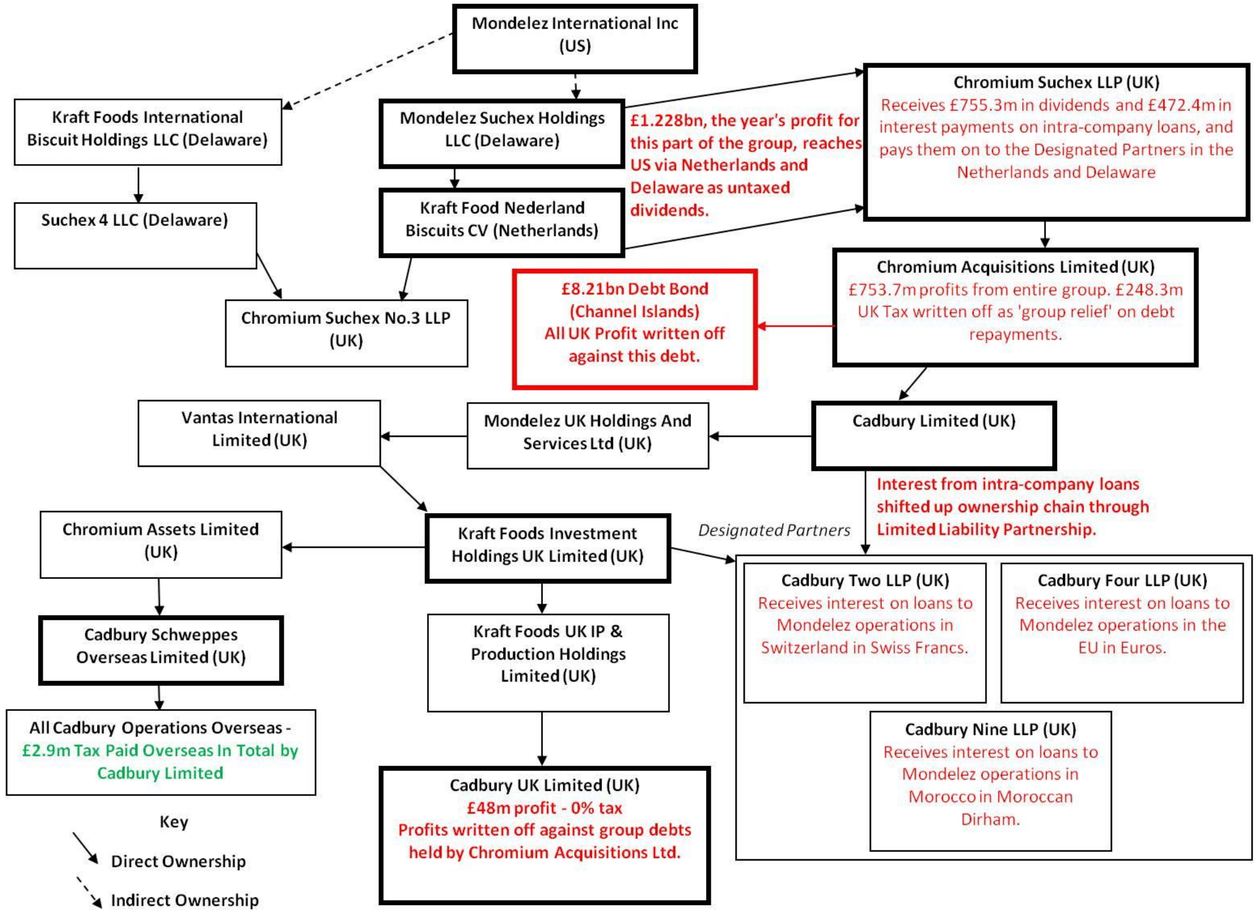

Fig 1. Cadbury UK's place in Mondelēz's corporate structure

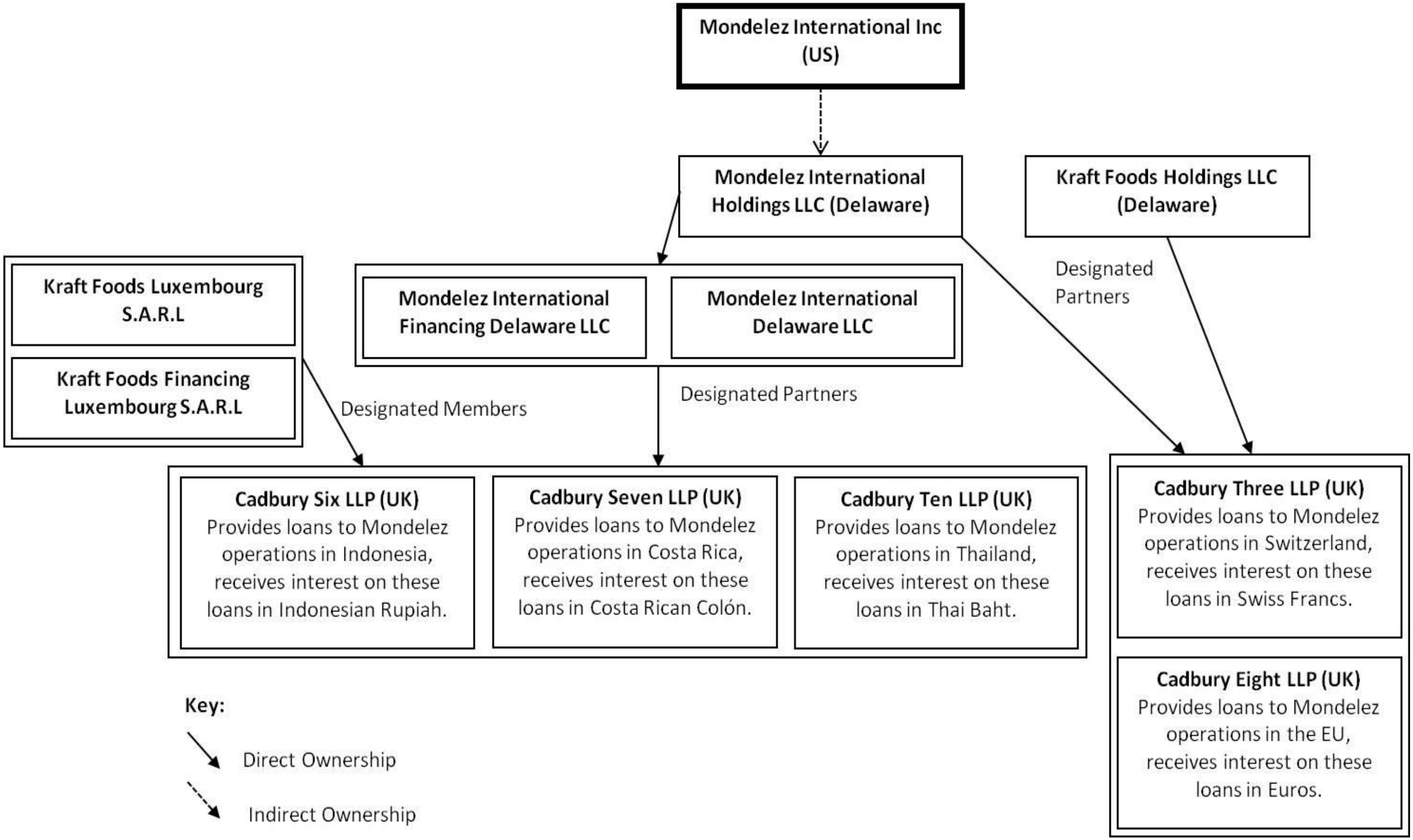

Fig 2. Subsidiaries used to shift global profits into Delaware and Luxembourg through interest payments on inter company loans

Delving Deeper - Mondelēz's Corporate Structures

Looking beyond the UK, just how true are Mondelēz's claims that they pay all taxes required in 'based on the laws of countries in which they operate'? Besides their Swiss-based European headquarters, a quick look through the extensive list of Mondelez subsidiaries, makes for very interesting reading. For example, what might the four subsidiaries in the box below have in common?

Cadbury CIS B. V.; B.V.; Cadbury Enterprises Holdings B.V.; Cadbury Holdings B. V.; Cadbury Netherlands International Holdings B. V.

The answer – they are all registered in the Netherlands, and these are just the ones referencing Cadbury in their names. In total, Mondelēz have 28 subsidiaries in the Netherlands. Despite their 25% corporate tax rate, the Netherlands' favourable 'double taxation treaties' with 80 countries, an exemption on royalties paid on intellectual property held there, and a 'participation exemption' law (meaning dividends transferred to a Netherlands parent company from its subsidiary are tax-exempt) make the Netherlands the perfect place to set up holding companies (12 of the 28 subsidiaries contain the word 'Holdings') – the Netherlands is a 'middle-man', funnelling profits made overseas into other low-tax jurisdictions while further reducing the tax bill en-route. The aforementioned Chromium Suchex LLP was able to pay £2bn in dividends, which had been filtered up through the network of subsidiaries, to one of its controlling partners, Netherlands-based Kraft Food Nederland Biscuits CV. These un-taxed dividends can then return to the US via low-tax Delaware.

Key Delaware Subsidiaries:
Mondelez International Holdings LLC; Mondelez International Financing Delaware LLC; Mondelez International Delaware LLC; Kraft Foods Holdings LLC; Mondelez Suchex Holdings LLC

Speaking of which... Delaware is the US's own on-shore tax haven. It has more corporate entities (mostly shell companies) than people, and has enabled US companies to avoid a combined total of $9.5bn in taxes the last decade. Mondelēz has a staggering 33 subsidiaries in Delaware, allowing them to reroute untaxed profits from Europe, Latin America, Asia and Canada.

Mondelēz also have four Canadian subsidiaries exploiting a loophole in the form of 'Unlimited Liability Companies' (ULCs). Unique to just three Canadian provinces - Nova Scotia, Alberta and British Columbia - these entities, much loved by US tax advisors, are treated as companies for Canadian tax purposes, but as 'flow-through' entities by the US Inland Revenue. This means that the company's income is treated by the US as that of the investors, not of the corporate group, allowing the parent company to avoid dividend taxes and claim US tax credits on the (much lower) Canadian corporate tax charge. Since they are immune from scrutiny under US Controlled Foreign Company Laws, Canadian ULCs can also be used to sell goods and services to US subsidiaries of the same corporate group at inflated prices, then sell the same goods and services elsewhere at much lower prices to artificially balance their market value. This shifts profits out of the US and into Canada, a scheme known as 'transfer mispricing'. Three of Mondelēz's Canadian ULCs are registered to the Calgary, Alberta offices of law firm McCarthy Tétrault, specialists in business law and financial services and one of Canada's top-ranked tax law practices for transnational businesses.

Furthermore, the diagrams also show that Mondelēz uses a series of LLPs, numbered Cadbury Two through Ten (except for Cadbury Five, which has been dissolved), to pay inter-company loans to global branches of their business. The interest on these loans is then paid back to the LLP, moving profits out of those countries. These interest payments can then be shifted to the controlling partners of the LLP, in many cases based in Delaware or Luxembourg, in the form of dividends. Such arrangements are siphoning profits out of Thailand, Morocco, Costa Rica and Indonesia, as well as some European operations.

Bending the law - and breaking it too?

Using subsidiaries to reduce tax bills is a widespread practice, and is not illegal. However, allegations from India suggest something much worse. In March 2013, The Wall Street Journal revealed that Cadbury India Ltd managed to evade $46m in excise duty taxes by building a ‘phantom factory’ in the state of Himachal Pradesh, to gain a tax exemption for companies with operational plants in the state before 31st March 2010. They couldn’t possibly have begun production before January 2011, and had failed to get the required licences or permissions before this deadline. In April 2015 the Directorate General of Central Excise Intelligence issued a demand for Rs 574 crore - just over £70m - in unpaid excise duty and penalty fines. Mondelēz have appealed against the decision, and as of February 2016, both the company and local government officials are being investigated on charges of bribery by India's Central Vigilance Commission.

What Can We Do?

Here are just a few suggestions as to how you can campaign to make Cadbury come clean, as well as campaigning for tax justice in general:

- Boycott Cadbury - until we see evidence that Cadbury are paying tax commensurate with their sales in all countries in which they operate, we will refuse to buy from a company who avoid making their appropriate contributions to wider society.
- Write to Mondelēz UK's management - they need to know that they can no longer get away with the sin of large-scale tax avoidance. Write to Mary Barnard, President of Mondelēz in Northern Europe, or UK Managing Director Mike Taylor, at:
  Mrs Mary Barnard/Mr Mike Taylor
  Mondelez UK Limited
  Uxbridge Business Park
  Sanderson Road
  Uxbridge
  Middlesex, UB8 1DH
  Alternatively, email Mary Barnard at mary.barnard@mdlz.com, or email the Mondelez board at Mdlz-board@mdlz.com.
- Write to your MP and MEP referencing Cadbury and asking them to implement crucial measures such as fully public Country-by-Country Reporting and a public Register of Beneficial Ownership in the UK and all its overseas territories.
- Email mtjncoordinator@gmail.com or visit **www.mtjn.org.uk** for more information, to donate or to join the Methodist Tax Justice Network mailing list.

*Full list of references available online at www.mtjn.org.uk.