Public Accounts Committee

Oral evidence: Tax avoidance: the role of large accountancy firms - follow-up, HC 860

Monday 8 December 2014

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Members present: Margaret Hodge (Chair); Guto Bebb; Mr David Burrowes; Meg Hillier; Mr Stewart Jackson; Mrs Anne McGuire; Austin Mitchell; Stephen Phillips; John Pugh; Nick Smith

Gabrielle Cohen, Assistant Auditor General, John Thorpe, Executive Leader, and Rob Prideaux, Director, National Audit Office, and Richard Brown, Treasury Officer of Accounts, were in attendance.

Witnesses: Kevin Nicholson, Head of Tax, PricewaterhouseCoopers LLP (UK firm), and Fearghas Carruthers, Head of Tax, Shire Pharmaceuticals, gave evidence.

Q1 Chair: Thank you, both of you, for coming this afternoon. I am going to start with you, Mr Nicholson, if I may. We have asked you to come back to see us because we reflected on the evidence you gave us on 31 January 2013 and tried to relate that to the revelations around the "Luxembourg Leaks" that have been in the press. I have a very simple question for you. Did you lie when you gave evidence to us on 31 January 2013?

Kevin Nicholson: No, I didn't, Madam Chair. I stand by what I said in that meeting, but if there were any misunderstandings or things that I can clarify today, I would be more than happy to do that.

Q2 Chair: I find that rather hard, so can I refer you to some of the evidence you gave on 31 January? To question 36, you said: "We do not mass-market tax products, we do not produce tax products, we do not promote tax products." You go on to say, "we are not just producing a clever idea and distributing it out." You go on to say in question 39, "we are not in the business of selling schemes." In answer to question 41, you say, "they are not mass-marketed schemes." When I asked you at the end, "You do not create these terribly complex structures which are all about avoiding tax?" you said, "I'm sorry, Madam Chairman, I don't agree." If I then look at the evidence that has come into the public domain on around 343 companies and 548 letters, all of which are on PricewaterhouseCoopers headed notepaper, it is very hard for me to understand that this is anything other than a mass-marketed tax avoidance scheme.

Kevin Nicholson: First of all, they are not, and I am happy to clarify that and give the context—

Q3 Chair: They're what?

Kevin Nicholson: They're not mass-marketed tax schemes; they are not schemes, so let me—

Q4 Chair: I don't understand that.

Kevin Nicholson: I'll clarify that, because I realise how important that is. First of all, Luxembourg, like all countries, including the UK, is competing for business and for tax revenues. At the heart of the Luxembourg economy—now anyway—is an economy based around businesses going there to finance and hold investments, and the tax structure, the system that they have created facilitates that happening, along with all the other infrastructure.

Q5 Nick Smith: How many PwC staff are there in Luxembourg?

Kevin Nicholson: I think 2,500 people. Shall I continue? I don't want to mislead the Committee. There are two things happening here: one is multinationals looking to finance operations overseas, and the second is really the holding of investments, mainly through funds or private equity. What we are doing is going to the Luxembourg authorities in advance, saying, "If I did these certain things, what would be the tax position?" and getting that agreed; then, in the case of a UK company—there are about 80-odd UK companies there—they would disclose that to HMRC and that would be settled and agreed. That is what we have here. They are all different, as you have seen.

Q6 Austin Mitchell: But you advise them to go to Luxembourg and you negotiate with the Luxembourg tax authorities.

Chair: All the letters are on PricewaterhouseCoopers headed notepaper.

Kevin Nicholson: Just to answer Mr Mitchell's question, Madam Chair, you are right, we did advise on all of those. You have to remember that you are looking through a relatively narrow lens here of one country over eight years and one set of data, which is ours. If we were advising, say, a US company on where to build their research and development centre, it might be the UK, so you would see lots of UK letters.

Q7 Chair: We are looking at what you advised. All that has come to light—I am sure there were more—is 343 companies that you advised and 548 letters that have reached the public domain on your headed notepaper, in which you appear to me to have mass-marketed. I will pursue the mass-marketing for a minute. It seems to me that they all suggest setting up subsidiaries, don't they?

Kevin Nicholson: I don't know, Madam Chair, but I assume they do if you are saying that.

Chair: I am sure you have looked at them.

Q8 Nick Smith: Have you looked at the materials?

Kevin Nicholson: I have not gone through 617, or whatever it is, pages of rulings, no, but I do understand what they are doing, why they are there, what was happening, what has changed and how, if people do not like the result of that, that is stopped.

Q9 Stephen Phillips: We are going to look at the Shire example in a minute, and we have Mr Carruthers here. One of the answers that you gave a moment ago was that Luxembourg was competing, along with a number of other countries, for tax revenues. We all understand that. If one takes the Shire deal as an example, it resulted in a corporate tax rate of 0.0156%. What benefit is there to the Luxembourg authorities in that arrangement?

Fearghas Carruthers: May I interrupt, Kevin, as that is a question directed at Shire? I am delighted to be here today—

Stephen Phillips: Actually, Mr Carruthers, I will let you in in a moment. I want Mr Nicholson's answer to that question, please.

Kevin Nicholson: If you take a financing arrangement, what is happening, effectively, is that you have a choice, right? You are a UK company—let's assume it's a UK company—

Q10 Stephen Phillips: Mr Nicholson, I am going to interrupt you. I asked you a very simple question. If it is right that the Shire arrangement resulted in corporation tax of 0.0156% being paid to the Luxembourg authorities, there is not very much in it for them, is there?

Kevin Nicholson: Sorry, that is what I was just going to try to explain, because it is important I do not get this wrong and mislead. If you have a UK company looking to finance, you can do it directly from the UK, you could do it through shareholder equity, or you could do it through a loan. If you are going to do it through a loan, it will not always be Luxembourg, but Luxembourg is one of the places that you would look to go to.

Q11 Stephen Phillips: This is an entirely artificial loan, isn't it, between entities in the Shire group, of about $10 billion?

Kevin Nicholson: These are not artificial; they are real loans. May I just finish on the percentage, because that might help? In the structure—

Q12 Nick Smith: The entities are artificial, not the loans. That is the point my colleague is making.

Kevin Nicholson: Even that I would dispute. Sorry, it is hard to—

Stephen Phillips: Mr Nicholson, you finish and then let's have Mr Carruthers in.

Kevin Nicholson: Okay. In a typical example, the UK might put a loan into a branch in Luxembourg that would then on-loan to a subsidiary that would go out and buy something. The tax rate is the difference between the interest rates that the branch and the subsidiary were charged, and because there isn't a great deal of risk involved, the arm's length rate would arrive at that interest rate—the interest rate on which it is taxed—and that ends up the effective rate that you have described. All those payments have to be done under arm's length OECD principles.

Chair: Can I just come back? I'm sorry to interrupt—

Stephen Phillips: I think, to be fair, we must let—do you want to say something at this stage, Mr Carruthers?

Q13 Chair: I was going to bring him in later; let's bring him in later. I want to stick, if I can, to the mass-marketing, because it strikes me that the features—let me get those features out. One is that they've all got subsidiaries in Luxembourg because of the low tax. The second is that it's all about lending money to each other; it's all about intra-company loans, isn't it?

Kevin Nicholson: Actually, it isn't. I think about 30 to 40% of them—I can't quite—

Q14 Chair: All those companies—I've looked at most of them—that were set up in Luxembourg were set up to avoid tax by an intra-company loan agreement.

Kevin Nicholson: I'm sorry to disagree, Madam Chair—

Q15 Chair: I thought you hadn't looked at them all in detail; you hadn't had time.

Kevin Nicholson: No, I haven't, but about 30 to 40% of them are private equity holdings, and that would not be the reason to have a private equity holding. They are nothing to do with the avoidance of, say, UK tax or intra-group loans on a private equity holding.

The second thing is on the mass-marketing, because you asked about that and in case we don't come back to that. The mass-marketing—if you look at HMRC's definition under DOTAS, it's all around secrecy, not wanting HMRC to know. This is nothing like that; this is going to a revenue authority—

Q16 Chair: Oh come on! That's the most absurd interpretation I have ever heard of mass-marketing. Mass-marketing means you have a scheme that you market to a whole lot of different companies. That's what you've been doing, and that's what you denied, which is why I accused you of lying, and I don't do that lightly. That is what you denied to us when you came to see us in January 2013. You have advised companies on the same scheme; you've written to the Luxembourg authorities yourself—all on your headed notepaper. I don't know how you can possibly think that is not mass-marketing.

Kevin Nicholson: Because it isn't. It is actually working with clients around their individual needs and requirements. They are all different, Madam Chair; none of them are the same.

Chair: Well, let me give you an example.

Q17 Stephen Phillips: Mr Nicholson, you said in January 2013, "we are not in the business of selling schemes." Is that evidence you stand by?

Kevin Nicholson: Yes.

Q18 Stephen Phillips: We are looking here at 548 schemes that were put to the Luxembourg tax authorities, involving 330 different companies. Those companies didn't come up with those schemes themselves. You went to them as their tax advisers and said, "We can save you tax by putting in place this complex structure," didn't you? That's what PwC does. That's how it generates 25% of its revenue in the UK.

Kevin Nicholson: Well, there's a series of questions there. No, 25% of our revenues in the UK is not derived from this sort of work at all—

Q19 Stephen Phillips: Really? Because in your written evidence in January 2013, PwC said that it was, so that was untrue, was it?

Kevin Nicholson: No, no. Sorry. I will answer the questions. 25% of our revenue in the UK comes under the badge of tax, which I am the leader of. 25% of our revenue in the UK does not come from this sort of advice. It's pensions, it's actuarial work, it's reward, it's mobility, international tax movements; it could be legal. That's why I said no to 25%, but getting back to the mass-marketed—

Q20 Stephen Phillips: Selling schemes is what I'm interested in. Your evidence was, "we are not in the business of selling schemes", in circumstances where 548 schemes have been put to the Luxembourg tax authorities for 330 of your tax clients.

Kevin Nicholson: They're not schemes by any sense of the imagination, Madam Chair. These are individual companies, over an eight-year period, all of whom need financing. What you're looking at is Luxembourg. There could be other companies that have gone to Holland; they could have come to the UK; they could have gone to the US. You happen to be looking at Luxembourg.

Q21 Chair: Let me take an analogy, because it's absurd if we're going round the houses. If I go to Marks and Spencer's, see a dress in the window there, go in and buy a size 12 dress and then go home and have to shorten it and let it out a bit, but it's still got the same colour, the same style and the same material, it's the same dress, and that's what you've been doing in Luxembourg. I might shorten; I might do something else with it, but essentially the product is the same. You talk to my constituents, Mr Nicholson, you talk to the constituents of any of us around the table—you are selling a product in Luxembourg that is about going to set up subsidiaries there and then getting a device—we'll come to Mr Carruthers in a minute—that actually means intra-company loans, to get all the income into Luxembourg, where it's then taxed at 0.0 whatever it is—1.16%. That's what you're doing, isn't it? Just be honest.

Kevin Nicholson: No. I am being honest, Madam Chair, and it's quite frustrating. We deal with 15,000 clients in the UK alone, right?

Q22 Chair: Let's just concentrate—

Kevin Nicholson: Well, I am.

Chair: —on the 343 companies and the 548 letters in your name going to Mr Kohl in Luxembourg.

Kevin Nicholson: These are all—well, I think they are mostly—large, sophisticated businesses with complex arrangements. This is not, I'm afraid, like buying a dress in Marks and Spencer.

Chair: It is; it is the same essential business.

Q23 Stephen Phillips: Do you at least accept that these are schemes to minimise tax?

Kevin Nicholson: No.

Q24 Stephen Phillips: What are they then?

Kevin Nicholson: First, there will be some commercial and acquisition, there will be investment overseas—

Q25 Stephen Phillips: What is the purpose of the Shire scheme?

Kevin Nicholson: One of the things that they will look at is what the cost of the tax is, because tax is a commercial cost—if I do it in this way or if I do it in that way—but ultimately there is a commercial rationale. I do not think that Mr Morse is here today, but the NAO Report to the Committee in November 2012 looked at five settlements, three of which were CFC settlements similar to this. One of those, company D—

Q26 Chair: If they are similar, they all have the same characteristics, have they?

Kevin Nicholson: The characteristics would be the same if you are going from the UK and Luxembourg because the tax systems are the same. They do not have the same characteristics in terms of the individual thing that they were financing or the history of that organisation.

Q27 Chair: They have commonalities, actually, in Stewart Jackson's terms.

Kevin Nicholson: If you look at the Report from Sir Andrew Park, he looks at—

Q28 Chair: We know about that report. You are trying to divert us from the real thing.

Kevin Nicholson: No, I am not. Company D is exactly on all fours with the circumstances that we are talking about. He makes it clear at the end of the Report that, had the taxpayer litigated, it would have been found that it was not motivated by tax avoidance.

Q29 Chair: Mr Nicholson, did company D have the characteristics of what we are talking about today?

Kevin Nicholson: Company D was one of the companies with the CFC regime.

Q30 Chair: Did company D have the characteristics that we are talking about today?

Kevin Nicholson: It had a ruling in Luxembourg—

Q31 Chair: Did it have the characteristics of the companies that we are talking about today?

Kevin Nicholson: It depends on what you mean by characteristics.

Q32 Chair: Well, you just quoted it as having the characteristics of the companies that we are talking about today. Did it?

Kevin Nicholson: I believe that it had the broad characteristics of what we are talking about today.

Q33 Chair: Thank you. If it had the broad characteristics, we are not talking about individual, personalised, customised, different companies; we are talking about something with broad characteristics that then becomes customised.

Kevin Nicholson: No, Madam Chakr. I am trying to say that the broad characteristics are, first, you are looking at Luxembourg—

Chair: You cannot have it both ways.

Q34 Stephen Phillips: Hold on, if you are looking at Luxembourg, you are absolutely right. In each of the cases where there has been a leak of these documents for your 340 clients, there was a letter to the Luxembourg tax authorities, essentially for pre-approval of something that was going to result in lower payment of tax. Is that right?

Kevin Nicholson: You go to the Luxembourg authorities in advance for a ruling and say that if these things happen—

Q35 Stephen Phillips: So the answer to my question is yes?

Kevin Nicholson: You go and ask for a ruling to say what the tax impact would be of doing these things, just as you could in the UK, Australia, many other countries, Ireland—actually, probably not Ireland.

Q36 Stephen Phillips: So there is another feature of commonality between each of these 548 deals for these 340 clients.

Kevin Nicholson: But those are the Luxembourg rules.

Q37 Stephen Phillips: You have put them together. You have gone, in advance, to the Luxembourg tax authorities to say, "This is how we propose the tax treatment should work," and the Luxembourg authorities have agreed that. That is right in each of these cases, isn't it?

Kevin Nicholson: That is the process, just as we have a process here.

Q38 Stephen Phillips: And those companies did not come up with those things themselves. You did it—PwC, as their tax advisers.

Kevin Nicholson: I can't say that on all the cases. Remember that these are big organisations with in-house tax departments and lots of advisers.

Q39 Chair: They are your letters, for heaven's sake, on your headed notepaper.

Kevin Nicholson: Yes.

Q40 Stephen Phillips: Mr Nicholson, come on. We know how this works. In perhaps a handful of cases, they might have come to you and said, "We have an idea. Wouldn't it be a good idea if we did this?" but in the vast majority of these cases, you—PwC—have gone to these companies and said, "We can help to reduce your tax bill globally by putting in place these arrangements, provided that they are approved by the Luxembourg tax authorities." You have been marketing these arrangements to your clients, haven't you?

Kevin Nicholson: No, I think that is a misrepresentation. Remember, these clients will be ongoing clients of the firm. We will talk to them regularly on an ongoing basis—"Where are you investing? What do you want to acquire? Where do you need additional finance?" Out of those discussions will come the sort of work and discussions around, "Look, if we did it this way, what would be the impact on tax? If we did it that way, what would be the impact on tax?" We are having similar conversations about where they might put their manufacturing, which might be the far east, and where they might put their R&D, which might be the UK. This is not unique; it just so happens that you are looking at one territory over a certain period of time, and all those rulings at a time.

Q41 Chair: And it's just to avoid tax.

Kevin Nicholson: No, no, it isn't.

Q42 John Pugh: What other features did these arrangements have in common? It might be commercial benefit or, as you say, wanting to put your business in one place or another. What other features did all these schemes have, apart from the fact that they were mechanisms for avoiding tax? We are looking for a common thread here. They are all different sorts of schemes, as you said, but the one thing they all seem to have in common is tax avoidance, and there is nothing else that they seem to have in common beside tax avoidance.

Kevin Nicholson: No, they are all looking for financing or the holding of investment. If you take the private equity example, if you have a private equity house or a private equity structure, you can have hundreds of partners or investors from around the world; that has to be based somewhere. The reasons they would choose Luxembourg are, first, because they would get clarity from the ruling and, secondly, because they can effectively ensure there is no withholding tax coming out as the receipts come into the private equity house. Ultimately, that has absolutely no bearing on the taxation of either the partner or the thing they have invested in. The partners are still fully taxed if they are taxable—most of them aren't—and the company, if we say it is a UK company that they have invested in, is still taxed in the UK.

Q43 John Pugh: Help me here. Tax avoidance aside, what other feature, commercial benefit or use is there to any of these schemes? It may not be something that is in every single scheme, but what is a fairly dominant feature in the schemes you have marketed?

Kevin Nicholson: Subject to not correcting the words that I wouldn't use—

Nick Smith: Say that again. Subject to what?

Kevin Nicholson: Sorry, I wasn't trying to be clever. I was just saying that if I say, "Yes," someone will turn around and say, "You have accepted that there are schemes and that you are mass-marketing them." The common feature here is that they are big, international businesses that are looking at where to locate—

Q44 John Pugh: No, the one thing that the big, international businesses are all doing in all these cases is avoiding tax by doing this. I am asking you, what else do they very commonly do? What do more than 50% of them do with these schemes in addition to avoiding tax?

Q45 Chair: Why do they go to Luxembourg, apart from tax?

Kevin Nicholson: The tax system, as I said at the beginning, is clear. It has been created by the Luxembourg authorities to make it attractive for financing and the holding of investments. It is absolutely clear. As I said earlier, Madam Chair, if you are looking at R&D—I know you don't want to—you would look at the UK. That would be the common feature. As a business, I would come to the UK for my R&D innovation because the tax system has been created to make it attractive for businesses to come here for innovation. For manufacturing, it might be the far east. For financing, it would be Luxembourg.

Q46 Stephen Phillips: But those businesses actually bring their R&D operations to the United Kingdom, because it is advantageous to them to domicile those operations here. Correct?

Kevin Nicholson: Yes. And the financing—

Q47 Stephen Phillips: Right. Taking Shire as an example, how many Shire employees—perhaps Mr Carruthers can help us—were domiciled in Luxembourg in connection with intra-company loans totalling twice the annual revenues of the entire group? How many, Mr Carruthers?

Fearghas Carruthers: Maybe I can answer the question in terms of why we have an operation in Luxembourg.

Q48 Stephen Phillips: You can in a moment, Mr Carruthers. The first thing you can do is to give me a number.

Fearghas Carruthers: We have two full-time employees in Luxembourg.

Q49 Stephen Phillips: Two full-time employees in Luxembourg, in circumstances where the Luxembourg entities, as I understand it, have managed intra-company loans of about $10 billion. Is that right?

Fearghas Carruthers: That would be correct.

Q50 Stephen Phillips: How many employees have you got worldwide?

Fearghas Carruthers: We have about 5,600 employees worldwide.

Q51 Stephen Phillips: Right. Now give the explanation that you wanted to give.

Fearghas Carruthers: Coming back to the point about the staffing, the staffing is entirely appropriate to the operation we have in Luxembourg. If it were anywhere else doing these activities, that would be the level of staffing we would use.

Q52 Chair: The staffing is appropriate for what?

Fearghas Carruthers: For the financing activities that are undertaken by our Luxembourg company.

Q53 Nick Smith: How much profit did you make in Luxembourg with your company?

Fearghas Carruthers: The profit on an average basis in the financing company would be about $400 million, but it also has borrowings in from Ireland which equal that, so in terms of the net spread, they pay 29% corporation tax in Luxembourg.

Q54 Nick Smith: Okay, so you made $400 million profit in Luxembourg last year.

Fearghas Carruthers: No, we made a net profit of about—I need to work it out—

Q55 Stephen Phillips: Does $1.87 billion in a five-year period ring a bell, Mr Carruthers?

Fearghas Carruthers: Our financing company in Luxembourg has received that number.

Q56 Stephen Phillips: And how much tax has it paid?

Fearghas Carruthers: But our branch, which is the parent of the Luxembourg fiscal unity, has also paid a very similar amount.

Q57 Stephen Phillips: How much tax has been paid?

Fearghas Carruthers: About $2 million.

Q58 Stephen Phillips: Right. What's the tax rate?

Fearghas Carruthers: 29%.

Q59 Stephen Phillips: Right. So you paid $2 million on $1.87 billion, and you say that's 29%, do you?

Fearghas Carruthers: No. On the spread between what Luxembourg borrows at and what it earns income on, it pays tax at 29%, which is $2 million of Luxembourg tax.

Q60 Stephen Phillips: But what did this Luxembourg entity actually do, other than lend money to other companies in the group?

Nick Smith: With two staff.

John Pugh: They must be the most productive staff in the country.

Fearghas Carruthers: There is a very important point here. Shire has grown through acquisitions over a number of years, and it has also invested significantly in infrastructure. Shire has funded those acquisitions; it has funded investments in infrastructure, such as our Lexington campus in Massachusetts in the US.

Chair: We are interested in what you are doing in Luxembourg, Mr Carruthers.

Q61 Mr Burrowes: The two employees, particularly—you are talking about them and what they have done, are you?

Fearghas Carruthers: The two employees, supported by the other directors of the company.

Q62 Chair: You? Do you go there?

Fearghas Carruthers: Yes.

Q63 Chair: And you spend how much time there?

Fearghas Carruthers: I am there probably five to 10 times a year. I was supposed to be spending two days this week, actually, including today.

Q64 Chair: Can I ask you a question and then I'll bring it back to Mr Nicholson? If you are putting nearly £10 billion of loans through the two guys in Luxembourg, where are the decisions taken?

Fearghas Carruthers: The decisions are taken in Luxembourg.

Q65 Mrs McGuire: Can I ask what your staff bill is in Luxembourg?

Fearghas Carruthers: Our staff bill is €135,000.

Q66 Mrs McGuire: €135,000 for the two staff in Luxembourg, making these major decisions that have generated—

Fearghas Carruthers: Yes,

Chair: Over £10 billion of loans.

Fearghas Carruthers: Well, they make decisions plus there are also the members of the board of the company.

Q67 Chair: What do you mean, "They make the decisions"? Take me through it. What level are they? What sort of level are the guys there?

Fearghas Carruthers: All two—those two employees are directors of the company.

Q68 Stephen Phillips: How old are they?

Fearghas Carruthers: I wouldn't like to comment.

Q69 Stephen Phillips: Are they in their 20s, their 30s or their 60s?

Fearghas Carruthers: I would hazard a guess that they are 50-plus.

Q70 Stephen Phillips: And are they directors of any other companies in Luxembourg as well?

Fearghas Carruthers: Yes, they are.

Q71 Stephen Phillips: How many other companies are they directors of? Are they directors of some of the many thousands of companies that are all domiciled at 5 rue Guillaume Kroll?

Fearghas Carruthers: One director would be a director only of Shire companies, and the other director would be a director of a number of other companies. I do not know the total. I am happy to write back.

Q72 Mrs McGuire: Your total staffing bill, just to repeat it, is about €120,000?

Fearghas Carruthers: €135,000.

Q73 Mrs McGuire: For these two incredibly productive people in Luxembourg?

Q74 Nick Smith: Who made you nearly $2 billion in profits in five years.

Q75 Mrs McGuire: I have to say, I have rarely come across such leverage in the financial services industry for such a modest salary.

Fearghas Carruthers: It is not only about the two employees. We also have two other directors who attend and bring their expertise, and their expertise together—

Q76 Chair: The point is that there has to be substance in Luxembourg and the decisions have to be taken in Luxembourg. You are stretching our credulity by suggesting to us that these two employees, who are also directors—we have seen the brass plates on the door—of umpteen other companies, are seriously the guys taking the decisions on loans totalling over £10 billion. Let me just put this to you, Mr Carruthers, because it is a very serious matter: if the decisions, in substance, are not taken in Luxembourg, this is not just avoidance; for me, it is fraud.

Fearghas Carruthers: Well, Madam Chair, I can assure you that the decision making in respect of Luxembourg—that Luxembourg company—is made in Luxembourg. I can assure you.

Q77 Stephen Phillips: Apart from lending $10 billion to other companies within the Shire group, am I right in understanding that those Luxembourg entities have not done anything else?

They don’t make anything. They don’t manufacture anything. They are not responsible for R and D. They just loan money to other companies within the Shire group. Is that right?

Fearghas Carruthers: That would support the small headcount. It is not a significant resource needed to—

Q78 Stephen Phillips: That is fine. I understand. And they charge interest on those loans, don’t they—as much as 8% or 10%? That is how they make their profits.

Fearghas Carruthers: Let me come back to you on the interest.

Q79 Stephen Phillips: Just answer the question first.

Fearghas Carruthers: I am going to answer the question. In terms of the interest rates, there are no loans that are on 10%. There is one tranche which is 9%. The average interest yield on the $10 billion is 4%. We arrive at that by a very rigorous process of looking at credit ratings of all the likely borrowing entities. We go through a very rigorous process to assess their ability to borrow and the terms on which they should borrow.

Q80 Stephen Phillips: Let’s have the interest rate. If you want it at 4%, it’s 4%—£10 billion of loans, £400 million a year. That’s how you get your £400 million, yes?

Fearghas Carruthers: That is correct.

Stephen Phillips: Right. That £400 million in interest payments by other Shire companies is then written off in the jurisdictions in which they are domiciled for tax purposes against their profits, isn’t it?

Fearghas Carruthers: It will depend on the particular country jurisdiction in which it is borrowed and which has had the need.

Q81 Stephen Phillips: It is a pretty simple question and I am afraid that was an evasive answer.

Fearghas Carruthers: I don’t mean to be evasive. I am just saying that not all companies provide a deduction—

Q82 Stephen Phillips: The vast majority do, don’t they?

Fearghas Carruthers: A number of countries do, and in those we would get an interest deduction.

Q83 Stephen Phillips: For example, the United Kingdom does, and the United States of America does, and those are the countries in which you have the majority of your operations, aren't they?

Fearghas Carruthers: We do not have the majority of our operations in the UK. We have about 6% of our work force in the UK. In terms of borrowing into the UK, we do not borrow from Luxembourg to the UK.

Q84 Stephen Phillips: Let me put my question again, slightly differently. In the vast majority of companies where Shire companies are domiciled for tax purposes, the interest payments they have to make to the related Shire entities in Luxembourg will be deductible against the profits they are making. That is correct, isn't it?

Fearghas Carruthers: The loans have obviously been drawn down for sound business purposes to fund acquisitions and the interest cost is deductible.

Q85 Stephen Phillips: Come on, Mr Carruthers, this is how it works. You therefore manage to reduce your profits in the jurisdictions where Shire is actually operating, while at the same time, because of the deal which Mr Nicholson and PwC have negotiated with the Luxembourg tax authorities, paying an effective corporation tax rate on those loans on the other side of the deal of 0.0156%. A very nice little scheme if you can get it, isn't it?

Fearghas Carruthers: I don't accept the terminology of "scheme",

Q86 Stephen Phillips: Do you accept the rest?

Fearghas Carruthers: I don't accept the rest. If you could repeat the question, I would like to take each part as we go through and respond to it.

Q87 Stephen Phillips: Right. One of your operating companies—I don't know where it is domiciled so let's pick one that is domiciled somewhere in the United States—takes a loan from these entities in Luxembourg and pays interest on that loan. It sets off that interest against its profits to reduce the amount of corporation tax it has to pay in the United States.

Fearghas Carruthers: That is correct. Obviously, that would be for an acquisition, for example, and that would be as US rules set out absolutely clearly.

Q88 Stephen Phillips: Fine. What then happens on the other side of the deal is that you would expect the entities in Luxembourg then to have to pay to the Luxembourg tax authorities tax on the amount that they are receiving in interest because that is profit to them on the loan which they have made to the company in the United States. That is also correct. That is what you would expect to happen, isn't it.

Fearghas Carruthers: If we go back to the arrangement or the position that we have, we have borrowing from Ireland and we have interest-bearing loans from Luxembourg. The spread between those two is agreed at arm's length and on which we pay 29% Luxembourg corporation tax.

Q89 Stephen Phillips: Right. You didn't answer the question, but we will draw our own conclusions from that. What is actually happening here is that Mr Nicholson's firm, or at least the Luxembourg part of it, has managed to negotiate a deal where Shire is managing to reduce the amount of corporation tax it pays in the places where it is actually operating, while at the same time not paying a corresponding amount in Luxembourg because PwC has managed to persuade the Luxembourg tax authorities that there is nothing of significance going on in Luxembourg. It is a scam, isn't it, Mr Carruthers?

Fearghas Carruthers: No, it is not. To be absolutely clear, we have borrowing in Luxembourg and we have lending out in Luxembourg.

Q90 Mr Burrowes: How do your huge internal loans compare with your borrowing needs? How do you quote those?

Fearghas Carruthers: At the current moment we have external borrowing of approximately $800 million.

Q91 Stephen Phillips: Less than 10% of your intracompany loans is external borrowing.

Q92 Mr Burrowes: The loans are how much?

Fearghas Carruthers: We currently have £10 billion outstanding, but clearly we have—

Q93 Chair: That is £10 billion of intracompany loans. £10 billion.

Q94 Mr Burrowes: How can you justify that compared with the borrowing needs?

Fearghas Carruthers: The entities that have made acquisitions have needed borrowing to fund their activities, be that investment in R and D—

Q95 Mr Burrowes: At that level.

Fearghas Carruthers: Yes, at that level. Shire has a very long history of growing by acquisition. Very recently, we paid $4.2 billion for a company called ViroPharma in the US. Our US operations have needed significant funding for expansion. We have undertaken that financing and as the tax rules work we have done that entirely through a process of working out what would happen at arm's length, and that is exactly what the tax rules say you have to do. You have to go out and look into them on an arm's-length basis, and that is exactly what we have done.

Q96 Chair: Go on.

Fearghas Carruthers: We have done that using the Moody's shadow rating procedure. We have rated the US organisation to work out what its debt capacity is and on what terms it could borrow in the market to finance this expansion. We have absolutely complied with that.

Q97 Austin Mitchell: On the £10 billion in loan interest that you owed to the company in Luxembourg by the end of 2013—in a group that has few overall borrowing needs, to be quite honest—that is more than two years' sales for the entire group, isn't it? Would that entity in Luxembourg exist if it were not for the tax concession that it gets, which reduces the tax for all the other companies? Is it just for tax purposes?

Fearghas Carruthers: Absolutely not. There is no concession with Luxembourg tax.

Q98 Chair: Why is it there, then, if not for tax purposes? These two middle-aged guys—

Austin Mitchell: Do you want the money to tour Luxembourg and be flashed around a bit?

Fearghas Carruthers: No. Maybe this would be an opportunity to talk a little about Shire. Shire is very focused on bringing medicines to the marketplace that deal with life-altering conditions. A lot of that involves people with rare diseases that affect 0.05% of the population. In some cases, 30% of people who have the conditions die before the age of five.

Q99Chair: It is because what you do is so important that we are so offended by the way in which you do it. It is because these medicines are so important that we feel such huge offence at the way in which you have scammed the British public.

Fearghas Carruthers: We have not scammed the—

Q100Chair: You are trying to tell us that what you do is important. We know that—those medicines are very important to lots of people—but the way in which you conduct your business is outrageous.

Fearghas Carruthers: I would like to answer this question, if I may—

Q101 Nick Smith: Mr Nicholson, on the arrangement which Shire have in Luxembourg, which Mr Phillips just outlined, was your company the conduit for setting up all of these arrangements?

Kevin Nicholson: I don't know, to be honest. I am sure Mr Carruthers could answer that.

Chair: Well, we do, because we've got the leaks.

Q102 Nick Smith: So you don't know?

Kevin Nicholson: Well, I don't know. You said "all of them".

Q103 Nick Smith: Okay. The arrangements that we specifically heard about this afternoon—did your company act as a conduit?

Kevin Nicholson: If our name was on the letterhead, then clearly—

Stephen Phillips: Oh, come on, Mr Nicholson. You know your letters are—

Q104 Chair: Okay, let's establish this. Maybe our Clerk can help us. We have a before and after chart on Shire. Has everybody got a copy of it? Let's start with that. Let's do the before and after. There are copies for members of the public as well, if they want to see them. "PwC" is on the top, just in case you have forgotten.[1]

Q105 Stephen Phillips: While those are being distributed, Mr Nicholson, let's not waste the time. Have you read the letters that have been leaked to the Luxembourg tax authorities from your partner in Luxembourg on PwC notepaper?

Kevin Nicholson: I haven't read all of them, no. I have read some of them. Sorry; just to be clear, the reason why I haven't done that is that, first of all, these were not only agreed in Luxembourg but agreed and settled with HMRC. They were happy that tax avoidance was not the—

Q106 Stephen Phillips: The question that was being put to you by Mr Smith was whether you were responsible for putting in place these arrangements, and that is absolutely clear from these letters, isn't it?

Kevin Nicholson: We would have been involved, but it depends how you use the word "responsible".

Q107 Stephen Phillips: The letters begin—for example, take this one of 14 July 2010. It is a letter to Mr Kohl, who seems to be the Luxembourg tax official responsible for most, if not all, of these deals, saying "We discussed in our meeting on 10 March 2010". It then goes on to set out the arrangements with Shire. They are all designed by PwC, aren't they?

Kevin Nicholson: It would be normal in Luxembourg, from what I understand, for the agents—

Q108 Stephen Phillips: It is a very simple question. They are all designed by PwC, aren't they? Yes or no?

[1] Diagrams are printed on the last pages of the transcript

Kevin Nicholson: Sorry, I am not trying to be awkward. I just don't understand what the word "designed" means. What I am trying to say is that we will have helped a client. It is normal for the advisers—

Chair: What do you understand by it?

Q109 Nick Smith: What do you mean by "involved", then? Let's hear your side of the story in terms of these arrangements with Shire.

Kevin Nicholson: I don't know the Shire ones, but like any client—

Q110 Chair: You do know the Shire. They are PwC.

Kevin Nicholson: Madam Chair, I am trying to help the Committee by explaining our relationships with the clients. As I said earlier, we would have long-standing relationships with the clients, and we would meet them regularly to talk about what they were doing. In those discussions, some of the things that would come out would be financing, employment needs, and pension requirements. All of those things would be discussed. We would discuss options. Tax is a commercial cost to the business, so yes, one of the things that we would do was to work with clients to say, "If you did it this way, it would reduce the tax cost." Absolutely.

Q111 Nick Smith: Have you looked at your company's arrangements with Shire?

Kevin Nicholson: No.

Q112 Nick Smith: Not at all?

Kevin Nicholson: Well, I looked at some of the documents. I keep coming back to this. Not only was this several years ago, but they had been settled with HMRC. All of these had been settled.

Q113 Chair: We do not know what HMRC does. It is one of our frustrations. Let me take you to these two, because these have both got PwC. What interested me in these two was—you have it in front of you; I hope they have given you a copy—appendix 2. If you look at this one, which is a before, you find royalties going into Shire UK, which fits in with research and development taking place in the UK. The actual economic activity for R and D comes here, with undoubtedly very generous tax credits, and you account it for it there. You then go after—have you got the other one?—and it disappears. Suddenly, miraculously, the royalties that were attributed to activity in the UK disappear. Why?

Kevin Nicholson: Madam Chair, I do not know. I am not involved—

Q114 Chair: You tell me. One of you must know. You all knew we were going to talk about Shire this afternoon, because that is why we asked Mr Carruthers here.

Fearghas Carruthers: Madam Chair, that was a royalty stream that came from very old anti-retrovirals related to the HIV condition, which were developed in Canada. For a period of time, the royalty stream was in the UK. At a later period in time, we transferred that to Luxembourg.

Q115 Chair: Why?

Fearghas Carruthers: Because we were centralising our royalty streams in all of those—

Q116 Chair: Because you were avoiding tax, Mr Carruthers.

Fearghas Carruthers: No, we did not avoid tax in that transaction. That transaction was a taxable transaction in the UK, and we agreed the taxation position.

Q117 Chair: What is the difference? Why did you move from that to that? You tell us, Mr Nicholson. It is a scheme, of course. What made you shift from one to the other? You can have a look at them in detail. I hope you have copies in front of you. What is the difference between those two? We want to know why. Explain it to us.

Kevin Nicholson: Is that question for me?

Chair: Yes. Well, one of you.

Kevin Nicholson: I do not know. I was not involved.

Fearghas Carruthers: If you want me to answer that, I would be delighted to do that. In essence, we were locating intellectual property streams from various locations across the globe to manage them centrally. That happened to be in Luxembourg. We went through—

Q118 Chair: These two guys in Luxembourg not only manage the loans; they manage the intellectual property, do they?

Fearghas Carruthers: These streams have now gone from the Shire business, because the medicines have been replaced by new evolutions in the anti-retroviral area. This transaction, actually the value of this transaction, had to be pre-ruled and agreed with HMRC. We went through the full process and—

Q119 Chair: I am not interested in that bit. What you said to us before was that you decided to put all your intellectual property into Luxembourg. Is that right?

Fearghas Carruthers: What I said was that we put intellectual property streams related to anti-retrovirals into Luxembourg.

Q120 Chair: You put them into Luxembourg. So these two guys who were responsible for £10 billion-worth of intra-company loans were also responsible for overseeing the intellectual property rights around some of your research. Is that right?

Fearghas Carruthers: It is not research. It is a stream of royalties from the companies that commercialise these products.

Q121 Chair: And there was no tax advantage in that.

Stephen Phillips: There was a significant tax advantage.

Fearghas Carruthers: There was no tax advantage.

Q122 Nick Smith: You said you were centralising all your royalty streams. Were they all centralised through Luxembourg?

Fearghas Carruthers: No. We were centralising the royalty streams in relation to this small part of our operations.

Q123 Chair: They all go here—royalties from 1 January 2010—into Luxembourg. That is what this little diagram shows.

Fearghas Carruthers: Yes, that is correct, but, as I said, it is not all royalties. It is a very small part of our business.

Q124 Chair: Why does it show it there as all royalties?

Fearghas Carruthers: I think it says all royalties in respect of GSK.

Q125 Chair: No. It just says royalties from 1 January 2010.

Fearghas Carruthers: If I could clarify. I can't see the chart you are holding because there is a speaker in the way. In the copy I have it says GSK. It is only that royalty stream from GSK in the US. It is not our global royalties.

Q126 Nick Smith: How many other royalty schemes were centralised as part of this process?

Fearghas Carruthers: There are not any schemes.

Nick Smith: Excuse me.

Fearghas Carruthers: Basically, we have income streams.

Nick Smith: Streams rather.

Fearghas Carruthers: I think there were three income streams.

Q127 Chair: Why did the structure change? Can you explain all this to us? Come on, just simply, why? I have got another absolutely incomprehensible structure to show you afterwards. I would like to understand what this is all about.

Fearghas Carruthers: For business reasons, we centralise those three royalty schemes.

Q128 Chair: Business reasons or tax reasons?

Fearghas Carruthers: For business reasons.

Q129 Chair: Does business mean tax?

Fearghas Carruthers: No, business means business.

Q130 Stephen Phillips: What are the business reasons that cause you to do that?

Fearghas Carruthers: Luxembourg is a good place to hold intellectual property. It has a good corporate law environment.

Q131 Stephen Phillips: It is a good place to hold it because you pay less tax there.

Fearghas Carruthers: It is really important in the pharmaceutical industry that we can demonstrate and pursue title over patents. Luxembourg has well established legal principles and therefore is a location where we can hold intellectual property.

Q132 Stephen Phillips: Are you being straight with the Committee? The difficulty I have is that your company has a bit of a track record here, hasn't it? In 2008, when the previous Government changed the rules on tax, you re-domiciled the company to Jersey and re-domiciled for tax purposes to Ireland. That was to avoid what the British Government was then doing in relation to intra-company loans and avoidance. That's right, isn't it?

Fearghas Carruthers: No. What I would say is that at the time—and this is clear in our circular—there was a concern that legislation would be introduced that would tax profits that had nothing to the do with the UK in the UK. That was a significant risk to our business. We then decided because of the instability and uncertainty we could not stay in the UK, and we moved to Ireland at that point.

Q133 Stephen Phillips: You did not move anything significant, did you? You had still got several thousand employees out in Berkshire, is it?

Fearghas Carruthers: We have 300 employees remaining in the UK. We have 6,000 employees globally and the majority of those are in the US.

Q134 Stephen Phillips: How many are now in Jersey? You are supposed to be a Jersey company?

Fearghas Carruthers: We are an Irish tax resident company.

Q135 Stephen Phillips: I am asking you about your headquarters. I will come back to tax domicile. For some reason your tax domicile is different from the place where the company is actually incorporated.

Fearghas Carruthers: In Jersey, we are simply Jersey incorporated. It does not take personnel to establish what we are doing in Jersey.

Q136 Nick Smith: Do you have any staff in Jersey?

Fearghas Carruthers: We are an Irish resident company.

Q137 Chair: Have you got no staff in Jersey?

Fearghas Carruthers: We have no staff in Jersey, but we are not Jersey tax resident.

Q138 Chair: How many have you got in Ireland?

Fearghas Carruthers: A hundred.

Q139 Stephen Phillips: Three hundred here, and where are the rest of the 6,000?

Fearghas Carruthers: The majority of the rest will be in the US, but we have people in Canada, Brazil, Argentina, across Europe.

Q140 Stephen Phillips: Average corporation tax rates in the United States are over 30%. Over the past five years, Shire has managed to reduce the amount of corporation tax it pays worldwide across its group activities to approximately 16%, hasn't it? That is pretty good given that all your business is taking place in the United States and you should be paying your tax there.

Fearghas Carruthers: Let me come back on the 16%. The 16% is due to an anomaly of US GAAP on the accounting of potential milestones on acquisitions we have made. I am happy to go into detail on that. If we were to exclude that, our average tax rate would be 22% and our average cash tax would be 25%. Shire has paid in the past five years $1.4 billion of corporation tax globally.

Stephen Phillips: It has also managed aggressively to avoid quite a lot of tax by the structures that you put in place by having these intra-company $10 billion loans from Luxembourg to other entities within the group. That is right, isn't it?

Fearghas Carruthers: As I have said before, we financed particular transactions, be they acquisitions, infrastructure investments, with funding. We did that at arm's length and on principles that would apply between intra-companies.

Q141 Stephen Phillips: Have you made $10 billion of acquisitions in the past five years?

Fearghas Carruthers: Since 2006 we will have made—I'm just totting this up in my head—approximately $12 billion of acquisitions.

Q142 Chair: These are two more pictures, a before and after. Somebody described them to me as a bunch of demented worms, which is what they look like to me. I have let you off, so explain it to me, Mr Nicholson. Explain the before, explain the after and explain what changed.

Kevin Nicholson: I can't, Madam Chair, because I was not involved, I do not know the background or the investments.

Q143 Chair: You are head of tax, aren't you?

Kevin Nicholson: I am head of tax.

Q144 Chair: You will know the sort of pattern that is involved in this. I want you to explain it to us. I just cannot accept that you don't understand what is happening here, and I want you to help the Committee to understand what you are doing.

Kevin Nicholson: Madam Chair, I am head of tax at PwC, which is the biggest tax firm outside the US. My job is to lead that business. I have 237 of the best partners in the world, and I don't spend my time second-guessing the structures.

Q145 Chair: Mr Nicholson, I do not believe that, with so many clients—do you want me to go through your clients?—you do not understand what you are advising and why. I want you to explain that to me. I just cannot accept it. I don't want you to be in a position where, again, you have failed to help the Committee in an honest way.

Kevin Nicholson: Madam Chair, I am trying to help the Committee. I was not involved with this client. I am not an international tax expert. I do not work on those sorts of structures. What I can tell you, quite clearly, is that these agreements, whether you dismiss it or not, were agreed with HMRC. This CFC regime was subject to the biggest review, started by the Labour Government and continued by the coalition, there has ever been on corporate tax reform, and they decided that this sort of structure—Luxembourg financing—was permissible in the new corporate tax regime. In fact, they went further and said that, because of EU laws, you have to have an overseas finance company to qualify for the 5% regime that this Parliament enacted. In other words, if you went now and said, "Are these structures and finance companies still in existence?" the answer is that they are because it is the only way that UK tax laws—the laws that this Parliament enacted—now work.

Q146 Stephen Phillips: Mr Nicholson, it is not really a question of whether it is permissible. It is a question of whether it is aggressive tax avoidance. You may not be able to talk about this scheme, but you heave heard me discussing the general principles with Mr Carruthers, and those general principles are the ones that PwC was putting forward—I will not say "marketing"—to its various clients. That is right, isn't it?

Kevin Nicholson: There are two points there.

Q147 Stephen Phillips: Let me just recap what those points are. The way it works is this: you will incorporate some companies in Luxembourg, and they will make loans to other companies in your group worldwide. Interest will be paid on those loans, and those interest payments will be deductable against your profits where you are actually operating, and you will have to pay much lower rates of taxation in Luxembourg, which PwC will be able to negotiate with the Luxembourg tax authorities in that jurisdiction. No one is saying that that is not permissible, and it is what we were saying was happening at the time and what was being marketed. That is right, isn't it?

Kevin Nicholson: There is no doubt, as I said earlier, that if you were looking to finance something, the tax regime in Luxembourg allows you to reduce the cost of the tax—

Q148 Stephen Phillips: You keep returning to "If you want to finance something," but the trouble is that these loans are completely artificial.

Kevin Nicholson: No, let me just follow up on that. The second thing is that, if you look at the UK angle, to satisfy the CFC rules at the time you could claim that the EU meant that you had a right of establishment in Luxembourg, and then there was the motive test, which asked whether the main purpose was tax avoidance. That clearance had to be sought from HMRC. I go back to the NAO Report, which we skipped over earlier, because the NAO says that, had the taxpayer litigated, they would have won on the motivation test.

Chair: I still want you to explain. One of you has to explain this to us. My constituents want to know why people like this company, Shire, are not paying tax. This is the intricate scheme, the before and after, and I want to understand it. Give me the principles behind it. I cannot bear to think that the head of tax at PwC doesn't know the principles.

Q149 Mrs McGuire: If we had the Chancellor of the Exchequer sitting where you are today and looking at those charts, given what he has said about aggressive tax avoidance, he would think that the charts look like it and probably are.

Kevin Nicholson: This Parliament, including the Chancellor and the Treasury Secretary, looked at this when they enacted corporate tax reform. What they said was that they wanted the UK to be an attractive place for business to come and operate. To do that, they needed to have the ability to finance their operations overseas in a tax efficient way.

Q150 Mrs McGuire: Do you think that what we are discussing this afternoon would pass the Osborne litmus test for aggressive tax avoidance?

Kevin Nicholson: They have a UK set of rules, which includes the tax—

Chair: Answer one question directly. Ask it again, Anne.

Q151 Mrs McGuire: Would that pass the Osborne litmus test?

Kevin Nicholson: I cannot speak for George Osborne, but I would hope so given that Parliament has looked at this area and said that it wants British businesses to be able to compete internationally.

Q152 Chair: You think it is a kosher system?

Kevin Nicholson: Yes.

Q153 Chair: You think it abides by your code of conduct, do you?

Kevin Nicholson: Yes, I do. Can I just finish this point? It is really important. You asked about the current Government. It is not just the current Government; the corporate tax reform rules, of which this was a part, were passed with all-party support. In fact, I don't think there was a vote in Parliament because it had all-party support. They said, "We want to change the rules"—which is the BEPS discussion—but as an interim step, they have said, "We need British business to have the opportunity to finance capital in a tax-efficient way like this." You might not like it, but we need it.

Q154 Chair: You have repeated that about four times. You still haven't helped me to understand this structure, and I want you to do that. What is the commercial purpose of the change in structure? That is what you say in your code of conduct. You say, "the underlying business arrangements have some commercial purpose other than the avoidance of tax." What is the commercial purpose here?

Kevin Nicholson: It was not just us saying that—

Q155 Chair: What is the commercial purpose here?

Kevin Nicholson: I don't know the facts; Mr Carruthers might do. We have got 15,000 clients in the UK—

Q156 Chair: No. You knew you were coming to answer questions about Shire. What is the commercial purpose of changing from this to that? What is the commercial purpose, to fit with your code of conduct?

Kevin Nicholson: I am happy to answer questions about PwC, but I can't answer questions—

Q157 Stephen Phillips: You are obviously not going to answer, so let's hear from Mr Carruthers. What was the commercial purpose of this alteration that was agreed with the Luxembourg tax authorities in 2010?

Fearghas Carruthers: The broad change that happens here is that we actually create, from Ireland, the loans down into our Luxembourg finance vehicle. In terms of all the other companies—

Q158 Chair: What is the commercial purpose?

Fearghas Carruthers: The commercial purpose of lending—one of the purposes, in terms of when we finance an overseas entity—is that it is basically more efficient.

Q159 Chair: Efficient for what?

Fearghas Carruthers: Efficient in terms of the movement of capital to basically lend into companies. It is far easier to lend into entities than to put equity in.

Q160 Stephen Phillips: Let's ask the question again: what is the commercial purpose of these alterations that were scheduled to the letter that PwC sent to the Luxembourg tax authorities in 2010?

Fearghas Carruthers: The commercial purpose was for Ireland to put the loans into a Luxembourg—

Q161 Stephen Phillips: Because that was tax-advantageous.

Fearghas Carruthers: No, because that suited our overall commercial treasury function.

Q162 Stephen Phillips: No. You suddenly have two people sitting in Luxembourg working for companies that you have just incorporated. There is no commercial purpose other than reducing the tax bill for Shire, which is the scheme that was put to you by PwC. That is as plain as a pikestaff to everybody on the Committee and everybody in this room.

Fearghas Carruthers: To be clear, Shire has paid $1.4 billion of corporation tax in the past five years. Also, we are number 95 in the FTSE 100 in terms of—

Q163 Stephen Phillips: I understand you have done witness training this weekend, and those are the lines you have been told to spin.

Fearghas Carruthers: This is important—

Q164 Chair: What is the commercial purpose here?

Fearghas Carruthers: The commercial purpose is to allow us to have a treasury operation in Luxembourg that finances our activities.

Q165 Stephen Phillips: Why could that not have been done from Ireland? Why did it have to be done through Luxembourg? Why did you suddenly wake up one morning in the Shire boardroom and think, "Do you know what? It's not good enough to have our treasury operation in Dublin. We're going to move it to Luxembourg"?

Fearghas Carruthers: We have never had a treasury operation in Ireland. We set up a treasury operation in Luxembourg.

Q166 Stephen Phillips: So you set it up. You created it in Luxembourg. What was the commercial purpose of doing that?

Fearghas Carruthers: As I said, the commercial purpose—

Q167 Chair: Do you sell more drugs in Luxembourg? There is a population of half a million there. That is a commercial purpose: you sell more drugs. Did you?

Fearghas Carruthers: What Shire does, to be absolutely clear, as number 95 on the FTSE 100, is pay minimal dividends to shareholders.

Q168 Chair: What is the commercial purpose of this?

Fearghas Carruthers: The commercial purpose is for us to be able to reinvest our cash flow properly and efficiently. We do that—

Q169 Chair: So to save cash that you can then reinvest—save cash through tax avoidance for reinvestment. Is that the commercial purpose?

Fearghas Carruthers: No, the commercial purpose is to have an efficient financing vehicle.

Q170 Mrs McGuire: What can you do more efficiently in Luxembourg that you cannot do in Dublin or London?

Fearghas Carruthers: Generally, we can—

Q171 Mrs McGuire: You have two people sitting and earning what, for Luxembourg, appear to be pretty modest salaries, but who are making multi-million-pound decisions and transferring money through all these boxes that have been established. So what can you do more efficiently in Luxembourg? My constituency is the size of Luxembourg, so it is not an enormous place. What do you do more efficiently there?

Fearghas Carruthers: It is not necessarily a question of comparative efficiency. We could have the lending in and lending out in all sorts of other jurisdictions. It is just a good location; among many other ways, we decided that in that way, it would work for us.

Q172 Mrs McGuire: Given the fact that lending can be done now at the flick of a button, by somebody sitting in their garden sunning themselves of an afternoon, why Luxembourg? Frankly, you need to explain to us how it makes your company more efficient to set up a two-person operation to manage multi-billion-pound loans at a modest cost to the company of €135,000.

Fearghas Carruthers: As you said yourself, Mrs McGuire, you can actually do things at the flick of a switch, and I think that does demonstrate the point that it is not a significant investment in infrastructure to run these operations.

Q173 Mrs McGuire: Right, so when did you go to Luxembourg?

Fearghas Carruthers: We went to Luxembourg in 2008.

Mrs McGuire: 2008?

Fearghas Carruthers: Yes, and we were here before that with some other operations, but mainly in 2008.

Q174 Stephen Phillips: Who recommended that you should go to Luxembourg? PwC?

Fearghas Carruthers: So—

Q175 Nick Smith: Answer that question.

Fearghas Carruthers: Absolutely delighted to. In terms of the process of identifying a treasury operation, we would have gone through the process of looking at our key decision-making factors, which would be access to capital markets—

Q176 Stephen Phillips: Mr Smith asked you to answer my question, and I would be grateful if you did as well. It is a very simple question: who advised you go to go Luxembourg? Was it PwC?

Fearghas Carruthers: Well, let me come back to this.

Q177 Stephen Phillips: Who advised you? Mr Carruthers, do you want to be sworn?

Fearghas Carruthers: No. I am genuinely trying to help the Committee here about the processes that plcs go through. Plcs have a number of areas of expertise. In general, the existence of Luxembourg as a treasury operation would be well known in multinational operating environments. We would have then gone to PwC, and we could have gone to any law firm, or any other big four firm, to take advice on what would be the position in Luxembourg, and do the arm's length pricing and the borrowing in and borrowing out. In this instance we went to PwC. I am genuinely trying to be helpful.

Q178 Stephen Phillips: Are PwC your auditors?

Fearghas Carruthers: No, PwC are not our auditors.

Q179 Stephen Phillips: Were they at the time?

Fearghas Carruthers: No.

Q180 Stephen Phillips: Who are your auditors?

Fearghas Carruthers: Deloitte.

Q181 Chair: These are PwC schemes. I am going to say this to you once more, finally, Mr Nicholson: you are not prepared to explain the difference between this and that to us this afternoon.

Kevin Nicholson: No, because they are not standard schemes. These are things that are developed with a client.

Chair: Just do not keep saying that.

Kevin Nicholson: Madam Chair, you can choose not to believe me.

Chair: No, it is not that I choose not to believe you; it is the facts of the case.

Kevin Nicholson: But these are individually agreed, and although we can brush over the fact that HMRC have agreed these, and Parliament have spent a considerable amount of time looking at the CFC regimes—

Q182 Chair: Have you talked to HMRC? Was this taken through HMRC?

Fearghas Carruthers: We are an Irish resident plc, so there are no steps that involve the UK.

Q183 Chair: There are no steps involved in the UK.

Fearghas Carruthers: There are no companies involved in the UK.

Q184 Chair: So you did not take this to HMRC; so why do you tell us that you did take it to HMRC?

Kevin Nicholson: I was talking in general, and I thought that we—

Q185 Chair: But this scheme that we are talking about never went before HMRC. Don't pray in aid HMRC's compliance.

Q186 Mr Burrowes: That is the point. It has not gone through the level of scrutiny of a UK tax regime.

Kevin Nicholson: I am sorry, I thought we were here to talk about the UK tax position. If a UK company had undertaken a ruling in Luxembourg and obtained a ruling, they would have reported that to HMRC, and it would have been the subject of either agreement or settlement. That is the point I was trying to make.

Q187 Stephen Phillips: I am trying to understand this. Is your evidence that when this scheme was agreed, which saw Shire paying 0.0167%—I am sorry, 0.0156%—on its profits in Luxembourg, which is what was agreed with the Luxembourg tax authorities, that would have been reported by Shire to HMRC in the UK?

Kevin Nicholson: If it was a UK company, of course it would—and agreed with HMRC.

Q188 Chair: It is a UK company, but Mr Carruthers is telling us that he didn't report it to them.

Fearghas Carruthers: Just to be absolutely clear, Shire plc is an Irish tax resident company. That is the parent company of those sorts of operations. To be clear as well about our migration in 2008, that went through a long and very open process. We went through every single step with HMRC, and they have agreed that.

Q189 Chair: What I am going to ask, Mr Nicholson, is that you write to us—we will even let you have our blown-up charts—in the next week, explaining the difference between chart A, which was before you gave the advice, and chart B, after you had got the okay from the Luxembourg tax authorities, and the differences between the two schemes, so that the Committee and the public can understand the differences.

I want to come back to Shire, but the reason we spent a bit of time on this is twofold. In your code of conduct, you say—and you prayed in aid the code of conduct when you gave evidence to us in January 2013—"the underlying business arrangements have some commercial purpose other than the avoidance of tax". In this exchange this afternoon, I do not think that either of you have demonstrated to us that the underlying business arrangements have any commercial purpose other than the avoidance of tax, so you are not abiding by your own code of conduct. The code of conduct is almost like a shroud, hiding the way in which you abuse terms in order to devise schemes that are essentially just aggressive tax avoidance schemes, isn't it?

Kevin Nicholson: No. Mr Carruthers has talked through some of the commercial rationale in his group, but I go back to the point that not only do we have that as a test—*[Interruption.]* I'm sorry, this is very important.

Q190 Stephen Phillips: He has tried to identify something, but has not managed it. Do you want to have a go?

Kevin Nicholson: Not only is it important to us, that point, Chair, but it would be important to HMRC in agreeing whether the motivation was avoidance or not. That was clear from the review of the cases at the time. It was clear from Sir Andrew Park's NAO Report to this Committee. In that case, he concluded that had the taxpayer litigated, they would have won on the tax motivation. In other words, the tax wasn't the main motivation.

Rob Prideaux**:** I think that Mr Nicholson is slightly overstating the position in our Report, which said that there was uncertainty about what the outcome would be—

Kevin Nicholson: Sure.

Rob Prideaux**:** And that therefore it was a reasonable settlement for HMRC to make.

Kevin Nicholson: Well, it was actually a very good settlement for the taxpayer, I think, company D. I get back to this point, Chair, because it is important. I understand the frustration with the way that these rules work, and that is at the heart of the work that is going on at the minute, which we support, the Government supports and the Opposition supports, around the BEPS debate. Having got the corporate tax reform rules in, the UK has dealt with this issue from a UK perspective; we now need to make sure that all countries are working together to make sure that this sort of thing doesn't—

Q191 Chair: And you know that's going to take forever. In the meantime, how much money has PwC made out of Luxembourg in the last 10 years? What's your profit been in PwC?

Kevin Nicholson: Chair, on the first point, it won't take forever. Since we last met, we have had a year—

Chair: We do know. We keep in touch. How much money have you made out of—

Kevin Nicholson: But it is making real progress, with the UK leading, Chair.

Chair: We know. We like to think we had a bit of a role in that.

Kevin Nicholson: Good.

Q192 Chair: How much money have you made out of Luxembourg in the last 10 years?

Kevin Nicholson: We don't account that way, I'm afraid.

Q193 Stephen Phillips: How many people do you employ in Luxembourg?

Kevin Nicholson: I said earlier. I think it's about 2,500. About a third of them are tax people.

Q194 Stephen Phillips: Is it a separate partnership?

Kevin Nicholson: Yes.

Q195 Stephen Phillips: Where do the profits from that partnership go?

Kevin Nicholson: Well, to the Luxembourg partners.

Q196 Stephen Phillips: Does the Luxembourg partnership not have to reply on tax?

Kevin Nicholson: I'm sorry; I misunderstood the question. I represent the UK firm, so I thought you meant how much the UK firm has made from the work that is done by Luxembourg.

Q197 Stephen Phillips: Do you get a referral fee in the UK when you refer one of your clients to your Luxembourg partners in the Luxembourg partnership?

Kevin Nicholson: That's not the way it works. Luxembourg tax revenues in FY14 were €85 million.

Q198 Nick Smith: €85 million between 2,500 staff. Ten years ago, how many staff did you have in Luxembourg?

Kevin Nicholson: I don't know that. I'm sorry.

Q199 Nick Smith: Five years ago?

Kevin Nicholson: I don't know.

Q200 Chair: Do you charge an hourly rate, or do you take a percentage of tax saved?

Kevin Nicholson: No, we would normally charge an hourly rate for this work. We wouldn't take a percentage of the tax—

Q201 John Pugh: Could I ask you about your code of conduct? You clearly made the point several times that you believe that what you and your company have done is in line both with the law, quite obviously, and with the current guidance being offered by the Treasury, so far as you can understand it.

Kevin Nicholson: Yes.

Q202 John Pugh: You're suggesting that, aren't you?

Kevin Nicholson: Yes.

Q203 John Pugh: Right. The Treasury can confirm that another time, possibly. But you are suggesting that this scheme is in line with your code of conduct as well.

Kevin Nicholson: This piece of work is.

John Pugh: But can you explain why it couldn't be? It seems to me, when I look at your code of conduct—I have it in front of me now—that it consists of a series of disjunctions, if I can put it like that. It says you only need one of the following conditions to apply, and the first condition is the one we have all been banging on about: "the underlying business arrangements have some commercial purpose other than the avoidance of tax". That does not have to apply for it to be consistent with the PricewaterhouseCoopers code of conduct, does it?

Kevin Nicholson: That is in part because—

Q204 John Pugh: You could have come here today and said, quite openly, "Yes, quite frankly, it is all about the avoidance of tax, and it is wholly in line with our code of conduct," because it might satisfy condition 2—which is rather long and I won't read it out, but it is fairly innocuous—or condition 3.

Chair: I can't understand condition 3.

John Pugh: The point is that it is not a conjunction of conditions; it is an either/or. PricewaterhouseCoopers can legitimately put forward this code of conduct and say, "Actually, schemes that have underlying business arrangements that have no commercial purpose other than the avoidance of tax can be in line with our code of conduct." You can say that, can't you? And you haven't said it. You have shied away from saying it, but you could have come up, full front, and said, "Actually, this sort of thing is in line with our code of conduct, as long as conditions 2 and/or 3 are met."

Kevin Nicholson: I don't know the percentage, because we don't keep the data that way, but the way that we work with clients—that commercial rationale, that business purpose, would be at the heart. I think, from memory, that that clause is described in that way because there will be situations where you are advising on a particular relief that is in the code which does not require a commercial purpose. I can't remember them now, but I would be happy to give you examples. It is not there, by the way, to try and wriggle out of something. It is there because the advice was, "There are very particular reliefs that might be applied that do not have the commercial purpose." The other reason, I think from memory and discussions, was that if you have a private client, and you are advising a private client what to do, it is not always easy to say, "What's the commercial purpose?"

Q205 John Pugh: My point is that the conduct is very, if I can put it like this, client friendly, no matter what the client puts forward as a scheme. As you agreed, it could be a business arrangement that has no commercial purpose other than the avoidance of tax, and you could say, as a practitioner of PricewaterhouseCoopers, in all integrity, "Yes, this is in line with our code of conduct," couldn't you?

Kevin Nicholson: Well, if you put it that way, if we work with a client, the code of conduct is very important. First of all, as you said, it has to be legal, or it has to be supportable in law.

Q206 John Pugh: That, interestingly enough, is not part of the code of conduct.

Kevin Nicholson: It is, actually.

Q207 John Pugh: It says "consistent with the intention of the relevant tax law".

Kevin Nicholson: We have to comply with the disclosure rules, so we have to disclose and make sure that the revenue authorities can challenge—

Q208 Chair: What we have learnt this afternoon is that Mr Carruthers did not disclose to HMRC because he felt they had no need to, because they have companies in Jersey, Ireland and Luxembourg, although it is a British company.

Kevin Nicholson: The relevant authorities. I don't think anyone is suggesting that every company sends every return to every authority where they do business.

Q209 Chair: No, but there is a British-quoted company—I can't remember what's where, but there's Jersey, Ireland and Luxembourg—that does not interact in any way with HMRC.

Fearghas Carruthers: That is actually not correct. What I said was—

Q210 Chair: You pay a bit of PAYE on behalf of your staff.

Fearghas Carruthers: No, what I was going to say was that we went through all the transactions when we migrated from the UK to Ireland, including those that did not have any impact from a UK tax perspective. We walked through all that very clearly and very openly with HMRC. We engaged with HMRC very openly on all of our annual corporation tax—

Q211 Chair: Did you get authorisation for this transfer of all your stuff into Luxembourg from HMRC? Did you get authorisation from HMRC—yes or no?

Fearghas Carruthers: The transaction was between an Irish company—we are an Irish plc—

Q212 Chair: So you did not get authorisation from HMRC.

Fearghas Carruthers: We didn't need to.

Q213 Chair: Okay, you didn't need to. That's the whole point.

Fearghas Carruthers: It is not subject to UK tax law.

Q214 Stephen Phillips: Were the Irish tax authorities told about it?

Fearghas Carruthers: Yes, fully disclosed.

Q215 Meg Hillier: On the code of conduct, who measures or checks activities against the code in PwC?

Kevin Nicholson: This is our own code. It is something that we want to—

Q216Meg Hillier: Yes, but you are the head of tax. How do you make sure it's compliant?

Kevin Nicholson: I would be accountable for looking at whether that is the way we are operating. So we train our staff; if we were doing file reviews or talking to our partners about their performance, we would talk about whether they have complied with the code.

Q217 Meg Hillier: What happens if an individual or a section of your company breaks the code?

Kevin Nicholson: Of course, the whole idea is that if you have a set of principles, you work towards them, rather than looking to break them. If we thought that someone was not following the way that we work, we would talk to them, educate them and try to ensure that that did not happen again. We put that code out 10 years ago. We do not have to do that sort of thing, but we think it is extremely important that we understand who our client is and what they are doing and that we explain the issues to them in the wider context and not just the law. That is something that we set out, which no other firm did publicly, and we abide by that code of conduct.

Q218 Stephen Phillips: Are you happy with how Ms Dupont behaved in relation to these transactions with Shire? Do you think that she fulfilled the requirements of the code of conduct that you have, Mr Nicholson?

Kevin Nicholson: Who?

Q219 Stephen Phillips: Ms Dupont. She seems to have been the tax partner who was responsible for this scheme, and no doubt a number of others as well.

Kevin Nicholson: I am sorry, but as I said I do not know the specifics of this case.

Q220 Stephen Phillips: Are you telling me that as the head of tax in the UK you have never come across her?

Kevin Nicholson: No, I have not. She is not a UK partner, Madam Chair.

Q221 Chair: But she is part of your empire.

Kevin Nicholson: I am afraid that you have overstated my empire.

Q222 Chair: I am sorry, but I completely forgot to give my declaration of interest. I worked with the company as a public sector consultant.

Kevin Nicholson: So you will understand that my empire does not quite extend beyond the UK.

Chair: No, well, I never worked in tax, thank God. I worked as a public sector consultant, and I now get a tiny pension.

Q223 Nick Smith: I have a couple of questions about PwC in Luxembourg. Mr Nicholson, you told us that you have 2,500 staff there at the moment. You said that last year your Luxembourg operation made £85 million profit. You did not know how big it was 10 years ago, you did not know how big it was five years ago, and you were not aware of the arrangements for Shire. Is all of that right?

Kevin Nicholson: I think it was €85 million revenue for tax, rather than profit. Just to be clear, PwC is a network of individual partnerships owned by partners of that territory. I am on the board of UK PwC; I have no responsibility for PwC Luxembourg. I am trying to be helpful and explain what happened there, why businesses go to Luxembourg and how the rulings work, but I have no direct responsibility, which is why—

Q224 Mrs McGuire: So you have no direct responsibility in referring any clients in Britain to consider having a conversation about a system that does not exist in Luxembourg, but which would be very tax efficient. There is no link in terms of referring on from your advisers in the UK to your associate partners as part of this big global company in Luxembourg.

Kevin Nicholson: We are a network of partnerships, so we work together on clients. With most of these multinationals, we will have relationships everywhere. By the way, I said at the beginning that I am not trying to hide the fact that if you were looking at where to do something like this, one of the benefits of going to Luxembourg is the tax regime. You reduce your tax liability. That is what the Treasury has come out and openly said that it understands that and that it wants British business to be able to do that, because they have to deal in the international world, but we—

Q225 Nick Smith: Did you say that you had £85 million turnover or profit in Luxembourg? Which was it?

Kevin Nicholson: I have here that Luxembourg tax revenues, which is what I was asked about earlier, were €85 million in FY 2014 and the firm-wide revenues are €315 million.

Q226 Stephen Phillips: Was that in Luxembourg?

Kevin Nicholson: Yes. To be clear, Luxembourg is a separate PwC firm. It has, I am told, firm-wide revenues of €315 million—this is in their accounts—and tax revenues of €85 million, which equates to 27% of their business.

Q227 Nick Smith: How much profit did PwC make in Luxembourg through tax work?

Kevin Nicholson: I do not know.

Q228 Chair: Well, all their income is profit in a way, Nick, because they just get the fees for advising.

Kevin Nicholson: I do not know. Luxembourg is an enormously successful economy.

Q229 Chair: It has half a million people. It is smaller than Birmingham and Liverpool. Half a million people; they buy a huge number of hoovers and endless drugs. Really important.

Kevin Nicholson: And look how successful they have been, Madam Chair, at creating an economy around things they do not have to do.

Q230 Nick Smith: I am still trying to understand PwC's relationship with Luxembourg. It has a chunky number of staff, 2,500. How many people in your UK tax business refer UK companies or others to Luxembourg?

Kevin Nicholson: I do not know, because that is not the way we work. If you have a multinational client, you will be doing all sorts with them. You will be doing the supply chain, mobility of people, pension strategies, R&D and where to set up manufacturing. We work together with the client on those business issues.

Q231 Nick Smith: But you are head of tax, so you should understand the tax work that PwC does in the UK—

Kevin Nicholson: But day to day, we would be talking to our colleagues in Australia and the US about issues to do with—

Q232 Nick Smith: I am sure. I am asking about Luxembourg.

Kevin Nicholson: We are very focused on Luxembourg, because that's what we're here to talk about.

Q233 Nick Smith: That's where we are today. That's right. So that's why I am asking you about it.

Kevin Nicholson: Exactly, but it's a very narrow lens, so we don't monitor the interaction between ourselves and Luxembourg.

Chair: I will tell you why we're interested. Let's go back to another bit of Shire—

Q234 Nick Smith: That's why we're here today. We want to find out what you are doing in Luxembourg.

Kevin Nicholson: I am just saying that if I am sitting there running this business, why would I daily or annually monitor the interaction I had with my Luxembourg firm, rather than the enormous relationships that we have with the US?

Q235 Chair: Because you've grown it and you know that you can make a lot of money. When you came to us in January—I keep going back to that January because I think you misled us, Mr Nicholson—you misled us on three counts. You misled us on the code of conduct and you misled us on marketing. You also said in answer to question 50: "It is not just that they are working across borders; they are actually centralising functions, centralising procurement, for example, where they hold the finance and intellectual property." You said in answer to question 95: "If there is no substance there, that planning—that particular structure would not work. There has to be substance there. If you have a finance company in Luxembourg, the Cayman Islands or Bermuda, and you haven't got people, the loans and the agreements there, I do not understand how that would work." In answer to question 96, you said: "If there is no substance—we would always advise that, whatever it is that you say you are doing, you have to be doing there." I simply put it to you that we have the example of Shire, where there are two guys who earn perhaps €50,000 a year—not a lot in your world. You cannot say that that is substance. You cannot in any common-sense way accept that that is substance. Can you?

Kevin Nicholson: First, I stand by what I said. Secondly, if you look at the latest Treasury and HMRC guidance on what substance is required, they actually say that not much substance is required if all you have is a finance company. The same would be true in the UK. If somebody was—

Q236 Chair: So you are changing your evidence.

Kevin Nicholson: No, I'm not. I'm standing by it.

Q237 Chair: You are changing your evidence, because the impression you gave us—

Kevin Nicholson: No, no—the correct amount of substance.

Chair: The impression you gave us last time was that if there is no substances, whatever it is that you say you are doing you have to be doing there.

Kevin Nicholson: Yes.

Q238 Chair: You are now saying that the substance is actually a pretty meaningless concept.

Kevin Nicholson: No, I'm not. I am saying "the right amount of substance." If you were manufacturing or running—

Q239 Chair: Ah, the right amount of substance. We've got a new concept this afternoon: the right amount of substance.

Kevin Nicholson: I am sorry, Madam Chair, but whether it's the right amount of substance or the substance, I am saying that that is what you need. The same would be true—

Q240 Chair: No. You said that there has to be substance there.

Kevin Nicholson: Yes. There has. Let me just finish my point. The same would be true in the UK. If you had somebody who was agreeing to make three interest payments a year on a loan, how much substance, presence or activity would that require?

Q241 Stephen Phillips: Hold on, Mr Nicholson. We are talking here about two employees of Shire who are paid some €130,000 between them, so let's say that it is €65,000 each. They are responsible for a loan book of $10 billion.

Chair: And for royalties. And for other stuff no doubt.

Stephen Phillips: It is obviously a shell. There is no substance there. Frankly, it must be apparent to everybody, including, I hope, the tax authorities following this hearing, that no decisions of any substance are actually being taken in Luxembourg. They are plainly being taken elsewhere—one imagines where the company is domiciled.

Fearghas Carruthers: Is that question directed at me?

Nick Smith: Let's see what Mr Nicholson's response is.

Kevin Nicholson: I stand by the point that I made. If substance—if the right amount of substance isn't there, whatever it is that you are seeking to do from a tax perspective won't apply. It won't work. I stand by that.

Q242 Nick Smith: It's an empty shell, isn't it?

Kevin Nicholson: As I said, HMRC has set out guidance that states what premises and substance you need in order for this situation at a finance company to apply.

Q243 Chair: That is different from what you told us in January 2013.

Kevin Nicholson: I don't agree, Madam Chair.

Chair: It is different.

Kevin Nicholson: I'm sorry, but I don't agree.

Q244 Chair: I think there are three ways in which you lied. I think what you are actually doing is selling tax avoidance on an industrial scale.

Q245 Austin Mitchell: Did you notify DOTAS of any of these arrangements in Luxembourg with British firms?

Kevin Nicholson: Sorry?

Austin Mitchell: Have you notified DOTAS of any of these arrangements made in Luxembourg for British firms?

Kevin Nicholson: No, because—I was trying to say this earlier but was told that it wasn't relevant—the DOTAS regime refers to the hallmarks around secrecy and whether there is a premium fee or whether something is being kept confidential from HMRC. None of this is like that.

Q246 Austin Mitchell: Have you disclosed anything to DOTAS?

Kevin Nicholson: To do with?

Austin Mitchell: These Luxembourg schemes.

Kevin Nicholson: No. That is what I am saying. If it was a UK company, it would be disclosed to HMRC anyway and discussed with them either up front or as part of a negotiated settlement or agreement. Nothing is hidden from them, so DOTAS doesn't apply.

Q247 Austin Mitchell: Okay. Let me ask now how PwC works. You say that you do not mass-market schemes, although the schemes seem very similar and mass-marketable. You say that you consult with clients and recommend a scheme. That is, presumably, the British end of PwC. What happens then? Do you refer it to your Luxembourg associates? Do they get a commission for implementing the deal with the Luxembourg tax authorities? How are they paid?

Kevin Nicholson: If it was a UK company, which I think is what you are saying, and it was about financing from Luxembourg—it depends what the relationship was, but let us assume it was in the UK—the discussions would be had with the UK client, and at some stage our Luxembourg colleagues would be brought in and we would work on that together.

Q248 Austin Mitchell: And who gets the fees?

Kevin Nicholson: It depends, getting back to the earlier point, who has spent the time and who has been involved in the project. We do not have a template or a written rule that says, "This is the fee here and this is the fee there." That is another reason, Madam Chair, why I fail to understand how these can be described as schemes, because we just do not have a fee, a template or a, "You do this. You do that." This is working with a client on, say, an acquisition—

Q249 Stephen Phillips: It is a scheme, Mr Nicholson, in this sense: that it has been implemented on behalf of a number of PwC clients; that it has the same features; and that, because of the deals that your partners have been able to conclude with the Luxembourg tax authorities, it has the net effect of reducing the amount that multinational global corporations have to pay by way of corporation tax in the places where their operations are actually taking place.

Austin Mitchell: That is more than niche marketing; that is large-scale marketing.

Kevin Nicholson: I do not agree.

Q250 Stephen Phillips: Do you want a list? IKEA, FedEx, BAT, Burberry, E.ON, Dyson, Office Depot, Staples, HSBC, ABN AMRO, 3i, ACE group, Aviva, AXA, Accenture—I can go on and on. All PwC clients. All PwC letterhead. All PwC deals negotiated with the Luxembourg tax authorities. Amazon, Cargill, Citigroup, Credit Suisse, GE, Guardian Media Group—somewhat surprisingly—ICAP, Schroders, UBS, Coca-Cola, PepsiCo, Heinz, Barclays, GSK, Informa, Reckitt Benckiser, Apple, Verizon, Vodafone and 300 others.

Austin Mitchell: And that is not mass-marketing?

Kevin Nicholson: We have 15,000 UK clients alone. A lot of those are not UK clients. I was trying to help you by dealing with the entirety; about 80-odd, I think, are UK companies. We would have hundreds on hundreds of agreements every year with revenue authorities around the world helping our clients to do things. You are focused on whether it is 300, 500 or 80 in Luxembourg over an eight-year period. That is not an enormous amount of clients by PwC standards.

Q251 Austin Mitchell: There is a practised routine here, which seems very easy. You say in your publicity that Luxembourg has "flexible and welcoming" tax authorities. That must be totally unlike Britain. You say that they are "easily contactable"—so I do not know why we need PwC to do it—and offer "readiness for dialogue and a quick decision-making process."

I have got here the papers as revealed by the journalists for the Carlyle Group, which is a British property group. PwC negotiated an agreement with the Luxembourg tax authorities on their behalf on 29 September. The letter from PwC runs to about 15 pages and is fairly complex. It took me some time to understand it, and I have no idea about these things. It also includes a complicated plan. You say that you do not do complicated schemes, although this looks very complicated. You have got money coming in from Delaware, you have got money coming in from UK properties and you have got money coming in from Jersey, but it is not complicated, in your view. That is agreed after one day of discussions—probably less, actually—with the Luxembourg tax authorities. Having sent a letter in on the 29 September, you receive a letter back at the end of the day on 29

September from Marius Kohl—daddy Kohl—a Luxembourg tax adviser, who has now retired. It says that is okay. Fantastic. That is a very easy way of earning money, isn't it?

Kevin Nicholson: First of all, I think that most of these arrangements are complex, and they are very different. Secondly, I am not here to defend the Luxembourg tax regime. It is a place where businesses go because they get certainty and they can get the clearances, as you can in many other places. I am not here to defend the Luxembourg tax regime or how the inspector operates, but we do abide by the law—we abide by the procedures that Luxembourg puts in place. We can't get away from the fact that these are Governments—economies—that are competing with each other for taxation. That is at the heart of the issue, and the heart of the solution is BEPS and the OECD making sure that Governments do not compete in that way so we don't have the mismatches that you are looking at here.

Q252 Austin Mitchell: But Luxembourg is very obliging. Mr Gramegna, the Minister of Finance, went to New York and said, "Luxembourg is not an offshore place." That got a laugh, and it gets a laugh with me, because they have a vote on the common fisheries policy, which usually goes against our fishermen in Grimsby. But they are not an offshore place—no, they are a strictly honourable place. This Mr Kohl—Daddy Kohl—signed 39 tax agreements—not all of them with PwC—in one day. That really is efficient tax administration. Do you have to give him any bribes or kickbacks?

Kevin Nicholson: I am not going to respond to that.

Q253 Austin Mitchell: Does he get any bribe or kickback? Does he get a bottle of whisky for Christmas?

Kevin Nicholson: Mr Mitchell, I know you hold strong views on this, but I can't be expected to respond to that.

Q254 Austin Mitchell: Well, why is the relationship so easy?

Kevin Nicholson: I'm not sure it is. Luxembourg is a member state of the EU—it is part of the EU—with international tax treaties with countries including the UK. If the politicians don't like the way Luxembourg works within the EU, change it.

Q255 Chair: Luxembourg seems to me to be a parasite state, actually. Let me pursue this thing about Mr Kohl. *The Wall Street Journal*, in which he gave an interview, says he is known "in financial circles as 'Monsieur Ruling'". Until he retired, he "had sole authority at Sociétés 6 to approve or reject the tax deals." The article says: "'I could say "yes" or "no,"' Mr. Kohl, a bearded 61-year-old with a ponytail, said in a recent interview...'Sometimes it's easier if you only have to ask one person.'" The article then quotes the head of Ernst and Young—let me find the page, because I don't want to deceive anybody—as saying of Mr Kohl, "'We would meet him once a month, and if [a tax structure] was OK, you could basically do the deal right away". The article goes on to say: "Asked how he determined whether a company's pricing information was accurate, Mr. Kohl licked his thumb and held it up in the air. 'There was no way to verify it,' he said." One final thing about this great Mr Kohl is that, according to the article, he "says he had no regrets. 'The work I did definitely benefited the country, though maybe not in terms of reputation'". I think this guy was extremely powerful. Have you met him?

Kevin Nicholson: No. I have not even been to Luxembourg, Madam Chair, for my sins.

Q256 Chair: Have PwC met him for lunch? Have you had lunches with him?

Kevin Nicholson: I have no idea.

Q257 Chair: Have you had dinners with him?

Kevin Nicholson: I have no idea. Madam Chair, the debate has moved on. Since the rulings that we are looking at, the UK corporation tax rules have changed, and we are now engaged with the OECD—

Q258 Chair: We look backwards, Mr Nicholson—that's what we do.

Kevin Nicholson: I understand that, and I am focused on the future. The OECD rules will mean that any mismatches—

Q259 Chair: If and when the OECD rules come in—stop praying those in aid. We know a lot about them. We have had a lot of discussion about them. The Committee went and talked to the OECD. The OECD is doing brilliant, really important work, but don't just rely on them—it'll take some time before those rules come in, and we are dealing with the here and now.

Kevin Nicholson: But this is the sort of thing that we are trying to change, Madam Chair.

Q260 Chair: I want to know about PwC's relationship with Mr Kohl.

Kevin Nicholson: I don't know.

Q261 Chair: Again, in preparing for this, you should have known. Do you know if you have ever met Mr Kohl together with Mr Juncker?

Kevin Nicholson: I have no idea.

Q262 Stephen Phillips: Your partners in Luxembourg—I'm sorry, the partners of the firm in Luxembourg which bears the same name as your firm in the UK—seem to have had a very close relationship with Mr Kohl.

Chair: 548 letters to Mr Kohl is what was uncovered by the journalists.

Stephen Phillips: Yet, no evidence of any scheme ever put to Mr Kohl of the Luxembourg tax authorities ever being turned down.

Kevin Nicholson: I don't know. I would imagine that, by the time you get to the ruling, you would have had the discussions around what was the—

Q263 Stephen Phillips: Absolutely. They always have a meeting, which is referred to in the letters. Of course, we don't have any insights or any documents relating to those meetings. It is plain that they met with him on any number of occasions. They seem to have been great friends—Mr Kohl and the partners of PwC in Luxembourg dealing with tax matters. Can you comment on that?

Kevin Nicholson: I'm not sure what that is trying to insinuate. I am not here to defend the Lux tax regime. If you want to change the Lux tax regime, the politicians can change the Lux tax regime.

Q264 Chair: I must say, since I have uncovered all this I have questions about whether Mr Juncker is actually fit to be the President of the European Commission. I think that if this had been around during the period of his appointment, there might well have been a different decision. You clearly have a very close relationship with Mr Kohl, but you are not prepared to tell us how close it is, whether there is any money involved or whether any trips to the race courses, lunches, dinners or anything of that sort have taken place between PwC partners or employees and Mr Kohl, and possibly Mr Juncker, who presided over this for a long time.

Kevin Nicholson: I'm certain that no money was exchanged, if that is the accusation. It is not that I am not prepared to; I simply don't know, Madam Chair.

Q265 Chair: I know from my time in PwC—unless it's changed massively—that you will have taken him out to lunch, you will have had dinner with him and you might well have taken him to the race course or to a golf game.

Kevin Nicholson: I think things have changed, Madam Chair—I don't know. Seriously, you can't expect the head of a UK tax practice to understand what someone is doing in a Luxembourg office. We employ 180,000 people around the world.

Q266 Mrs McGuire: But the Luxembourg office is not just a random office. It is an office that bears the brand of PwC. There are relationships between the UK PwC, the US PwC and, I assume, the Luxembourg PwC. I appreciate that, as a result of the collapse of Arthur Andersen many years ago, there might be different ways in which all those individual groups are constructed.

Kevin Nicholson: No, no, it goes back into history. Most accountancy firms have to be owned by domestic partners. That is really why it has grown up that way.

Q267 Mrs McGuire: Right. I appreciate some of the construction. Forgive me if the comparison is not valid. However, surely there must be some way in which PwC the brand, based in the UK, can give some explanations about what PwC the brand is doing in Luxembourg.

Kevin Nicholson: Yes, they could. I simply don’t know, and nor do I know how many times we have met the SEC in New York.

Q268 Mrs McGuire: Mr Nicholson, with the greatest respect, you were previously at HMRC and you are an accomplished senior partner in one of the big multinational companies. You knew what we were going to ask when you came before this Committee today. Are you seriously telling us that we should accept that there are so many things that you don’t know?

Kevin Nicholson: I’m afraid that I had not expected to be commenting on Mr Juncker, how many dinners we had and whether he was present. I must be honest; I had not. I thought I was coming here to talk about the evidence I gave.

Q269 Mrs McGuire: All right then. We will leave the dinners, the lunches and the golf tournaments out of it. Let’s put that to one side. On some of the other elements of the questioning here today, I find it surprising that someone of your seniority in a big, multinational company coming in front of the Public Accounts Committee either does not know about those things or is not prepared to answer.

Kevin Nicholson: I’ve tried to be as open and as honest as I can be, which I think you commented that I was last time.

Q270 Nick Smith: Mr Carruthers, did you meet Mr Kohl?

Fearghas Carruthers: No.

Q271 Stephen Phillips: Mr Nicholson, you obviously prepared for this hearing because you were asked to come last week—I don’t think you were formally summoned—and you knew that you were coming to talk about Luxembourg. You must have spoken to your opposite number in Luxembourg before coming to give evidence.

Kevin Nicholson: I haven’t actually spoken to Wim, no.

Q272 Stephen Phillips: Sorry, who is the head of tax?

Kevin Nicholson: Wim Piot.

Q273 Stephen Phillips: How often do the partners get together across the tax function? You have an annual meeting, don’t you, of all the tax partners in all the partnerships.

Kevin Nicholson: In the UK we do, yes. The UK partners meet annually. I have probably met the head of tax in Luxembourg twice in the past year.

Q274 Stephen Phillips: And you knew you were coming today to talk about your previous evidence, specifically in relation to the disclosures that have been forthcoming from Luxembourg in relation to PwC, and you didn't speak to the head of PwC in Luxembourg?

Kevin Nicholson: I didn't personally, but just to be clear—

Q275 Stephen Phillips: Sorry, you didn't personally, but others did?

Kevin Nicholson: Others will have spoken to him. Since the stolen document were put into the press, there has been an ongoing dialogue with clients. People have been talking to—

Q276 Stephen Phillips: Thank goodness they were, Mr Nicholson, or none of us would have known about any of this, would we?

Kevin Nicholson: The Revenue authorities knew about it.

Q277 Stephen Phillips: We know that that is not true. Some of them may have known some things.

Kevin Nicholson: Well, the UK Revenue authority would have known about those that referred to the UK. We can second-guess whether HMRC looked at them properly and agreed them, but in my view these were old agreements that had been disclosed and agreed with the Luxembourg authorities and with HMRC.

Q278 Chair: They had not been agreed by HMRC. We have just established that.

Kevin Nicholson: Sorry, Madam Chair, there will be lots and lots in those rulings that would never have been agreed with HMRC, because they are nothing to do with the UK.

Chair: This is tax avoidance on an industrial scale. This is what we have seen. You may be saving companies, such as Mr Carruthers', a few pounds, or several hundred million pounds, but you are trashing their reputations. That is what you are actually doing. Having to come here to talk about this for us and our constituents to understand is actually trashing reputations.

Q279 Mr Jackson: The other thing that I am a bit puzzled about, aside from the technicalities that we have been discussing, is that there does not seem to be anyone protecting your company's brand. You seem to say that the Luxembourg operation is autonomous in terms of the tax partners there, but the brand of your organisation is very important as an international multinational. Who is co-ordinating the response to this? You are going to take collateral damage to your brand if the attitude is, "I was not there at the time. I did not see that documentation. I am not responsible. I have not met the people." I am not telling granny how to suck eggs, but someone should be looking out for the brand damage that will be suffered.

Kevin Nicholson: They have. Whether it is the global head of tax or the policy lead for my practice in the UK, they have been heavily involved. By the way, I am not disowning the brand. I am being completely open with you. I was not involved in these particular rulings, but of course the brand is involved. We do not take our clients for granted. That is why this publicity—these stolen documents that have been put in the public domain—is embarrassing and deeply upsetting.

Chair: Mr Nicholson, there is a difference between stealing documents and whistleblowing. We deal with that a lot.

Q280 Stephen Phillips: You just said it was deeply upsetting that these stolen documents have come into the public domain. It is deeply upsetting because it has shone a light on the aggressive tax avoidance that PwC has been marketing to its clients worldwide, in truth, but certainly those who have been referred to Luxembourg.

Kevin Nicholson: No, it is deeply upsetting because nobody likes their private affairs splashed all over the newspapers.

Q281 Chair: That is my whole point about—

Kevin Nicholson: They were not secret, Madam Chair.

Chair: These are whistleblowers.

Q282 Stephen Phillips: Did you just say they were not secret?

Kevin Nicholson: They were not secret. They were disclosed to the Luxembourg authorities. If they were UK, they were disclosed to HMRC.

Stephen Phillips: They were disclosed to Mr Kohl for him to rubber-stamp.

Q283 Mr Jackson: They were a sweetheart deal between you and the Luxembourg tax authorities—that great paragon of euro-virtue.

Kevin Nicholson: That is not how it works.

Q284 Mr Jackson: Let me try and pin you down, because we have questioned you or your colleagues on this before. Tax is about taxing value and the generation of value. This is for both of you. Are you seriously saying that these two guys on not quite minimum or living wage in Luxembourg, who are apparently middle-ranking officials running a loan book of several billion pounds, are creating value there? If so, what is the value that is being created? That is the most outstanding part of the evidence today. I have never come across any bank in the world that gives a lending discretion of several billion pounds to officials who are earning about £45,000.

Consider their productivity. These guys are generating $935 million and getting paid £40,000 a year. Whoever they are, it is alchemy. They are geniuses, frankly. I cannot understand how you can possibly justify that value is being created there, and I do not think you have been credible in your answers about the move from Ireland in 2008. Do you agree that it is all about where value is created as to where tax will be paid?

Fearghas Carruthers: You seemed to be directing the question at both of us. Let me answer. There are two employees based full time in Luxembourg and there are four directors. The directors meet as and when required. It is a fairly stable loan book. We receive interest four times a year on that loan book. That is not a significant operational requirement. Any external lending—covenant requirements, for example, which we have and which are consistent with arm's length—places the covenant requirements on the borrower, so the covenant preparation and reporting is all done by the borrower. To my mind, it would be the same level of activity and substance wherever we were in the world with that activity.

Q285 Mr Jackson: So you're saying it is not significant. You said it was not significant—the work being done there by those two. Did you say that?

Fearghas Carruthers: No, I didn't say it was not significant; I am just saying that the level of activity and people we have there in Luxembourg and at the directors' meetings is absolutely appropriate to the level of activity in that company.

Q286 Mr Jackson: Yes, but it is at variance with what Mr Nicholson said. He used the word "substance". Is a substantial operation being transacted in the Luxembourg office?

Fearghas Carruthers: No. There is a difference. I would say the substance is there for that activity.

Q287 Chair: What is the substance, sorry?

Fearghas Carruthers: The substance is that individuals are there, augmented by the board and by third-party advice that we take.

Chair: I don't understand that.

Q288 Mrs McGuire: Can I ask my final question? I am becoming quite intrigued by the relationship between PwC in the UK, PwC in Luxembourg and the evidence that you gave to this Committee. When you gave evidence to this Committee whenever it was—in January—you said you were not marketing schemes in Luxembourg.

Kevin Nicholson: Sorry, I didn't say Luxembourg.

Q289 Mrs McGuire: Right. Were you speaking on behalf of PwC UK when in actual fact, something else was happening in PwC Luxembourg for which you were not responsible? Within that very narrow focus of PwC UK, were you saying that you were not marketing these schemes, but we can conclude that another part of the brand may well have been?

Kevin Nicholson: First of all, I don't think that Luxembourg were marketing any schemes here either, but when I gave the answers, I was talking about the UK and UK tax, because that is what the Select Committee was looking at. By the way, that is not to say that I was ignoring Luxembourg, nor was I ignoring Australia, New Zealand or any of the many other territories that we are a part of. I don't believe they are marketing schemes, but my answers here were about UK tax, which is what the Select Committee was looking at.

Q290 Mrs McGuire: So you weren't speaking on behalf of PwC the international global financial institution; you were speaking quite narrowly about PwC UK?

Kevin Nicholson: Well, I wasn't, but I do not believe that PwC Luxembourg or any other network firm that I know markets tax avoidance schemes.

Q291 Mrs McGuire: Except that you told us earlier in your evidence that you have no relationship, in terms of practices or the work that goes on, in Luxembourg or indeed any other part.

Kevin Nicholson: Actually, I didn't say that. We do have a relationship. I said they were separately owned.

Q292 Mrs McGuire: You certainly implied it.

Kevin Nicholson: No. To be clear, all I was doing was saying that I didn't know the name of the partner. You asked, "Why don't you?" It was in that context that I said I am responsible for the UK partnership. I am not disowning the relationship with Luxembourg. Of course we work with Luxembourg. They actually operate to the same global code of conduct as we do, and I don't think—I have no knowledge—that they market tax avoidance schemes.

Q293 Chair: Does PwC put professional directors into these fantasy firms in Luxembourg?

Kevin Nicholson: Well, they are not fantasy firms, and I have no knowledge that we put any directors in—

Q294 Chair: Take out the "fantasy". I think they are fantasy firms; you disagree. Does PwC put directors into these shell firms in Luxembourg?

Kevin Nicholson: Not that I am aware of, Madam Chair.

Q295 Chair: My understanding is that they do. Another company that we had some interest in—Vodafone, which we never got to the bottom of, or rather Vodafone Luxembourg 5—made £2.4 billion profit last year and had staff costs of £15,000: that is, a part-time accountant. Does that sound like whatever it is in your code of conduct—real economic activity, or a "commercial purpose other than the avoidance of tax"? Does that sound like it to you, on the face of it? You won't know the detail, so I will repeat it to you: £2.4 billion in profit, no tax paid and staff costs in Luxembourg of £15,000 for a part-time accountant. Is that or is that not a business arrangement to avoid tax?

Kevin Nicholson: As you said, I don't know the facts, but as we said earlier—

Chair: Doesn't it look, on the face of it—

Kevin Nicholson: I am not trying to avoid this.

Chair: You are, actually. Sorry!

Kevin Nicholson: No. Let me explain. This hits the nail on the head; I'm not trying to avoid it at all. Businesses go to Luxembourg because it has an attractive tax regime if you want to finance operations or hold investments.

Q296 Chair: So the purpose of going there is to avoid tax.

Kevin Nicholson: No, the purpose—

Q297 Chair: Honestly, Mr Nicholson, at least come clean; I would feel so much better if you came clean. You say in your code of conduct that you will only do schemes where the underlying business arrangements have some commercial purpose other than the avoidance of tax. When they go to Luxembourg, the only purpose is to avoid tax.

Kevin Nicholson: No, it isn't.

Chair: That's what is clear to us here.

Kevin Nicholson: If you are going to finance an operation or make an acquisition, tax clearly will be part of the equation that you go through, and if everything else was equal and you could choose where to put the financing, you would definitely consider Luxembourg, because it has an attractive tax regime for financing operations, but there's still a commercial purpose—

Q298 Stephen Phillips: For intra-company finance arrangements.

Kevin Nicholson: No, there's quite a lot of private equity—

Q299 Stephen Phillips: Artificial intra-company finance arrangements, which you could get rubber-stamped by Mr Kohl, greatly to reduce the corporate tax burden on your clients. That's the truth of it.

Kevin Nicholson: No.

Q300 Nick Smith: Mr Carruthers, the two staff you have in Luxembourg—how many directorships do they have each?

Fearghas Carruthers: I couldn't comment on that for sure. It's not because they have huge numbers; I just haven't got the numbers to hand. I would be happy to write back.

Q301 Nick Smith: Okay. On both of them?

Fearghas Carruthers: Yes.

Chair: We'll hear from Austin and then I'm going to bring this to a close.

Q302 Austin Mitchell: I just wonder about the social responsibility of all this and the reputational damage, because there is reputational damage. There's reputational damage to PwC, to Shire and to everybody else who is fiddling their taxes in this kind of way. Even Daddy Kohl, who went out singing "Je ne regrette rien"—I suppose he spoke French—said: "The work I did definitely benefited the country, though maybe not in terms of reputation." Well, you could fool me on that one.

I just want to ask this in connection with one scheme that PwC advised on. I'm talking about Vocalspruce *v.* The Commissioners for HMRC, which was decided only on 30 October, so this news is hot off the press. It shows that PwC was in fact mass-marketing a scheme, and the Revenue was forced to pursue this through a whole series of courts, with you contesting it all the while. The Court of Appeal win concerned a tax avoidance scheme used by a number of large businesses. The lead case was Vocalspruce Ltd, and there were 43 follower cases. A combined total of £85 million of tax was at stake. A number of other users of the scheme have already settled. In other words, they gave up, and that produced £65 million. That's one scheme that you marketed—mass-marketed, judging by these numbers. That's a large number: 43 follower cases.

That scheme would have deprived the Government, the Revenue, the taxpayer—everything in this country—of £150 million of tax revenues, which could have paid for 80,000 cataract operations in the national health service. You marketed it. Was there any consideration ever in this scheme, or any of the other schemes in Luxembourg, of the social reputation of PwC, and of the social consequences for the taxpayers of this country?

Kevin Nicholson: The answer is yes, that—well, let me give the answer. First of all, we are there to advise our clients, and I said that last time. I was asked by Madam Chair, "Is your duty to wider society or your clients?" I said it was to the clients, but this is the very issue, Madam Chair, that the Government has been looking at. On the corporate tax reform—this is really important, because it gets to the social point—there was an agreement that we needed business to want to come to the UK and stay here because it generates taxes. Corporation tax rates are going down; it's only 7% of the Treasury take now, but we need businesses to be here, because it creates employment taxes, sales taxes, etc. Now, you might not like what's going on in Luxembourg and its ability to be an attractive place for financing, but fundamentally the Government, cross-party, agreed that that financing operation should be allowed to continue and taxed at roughly 5% here in the UK, because it was good for the UK economy if British businesses had the opportunity to access that cost-efficient, tax-efficient financing through Luxembourg, because they could be more competitive. That was the decision that we made as a country—Parliament made—in the last two years. If you take the FTSE 100 group, just two weeks ago they announced that they paid over £80 billion of taxes paid and collected—£25 billion direct.

Q303 Chair: Do you know, we are so bored by those? Those are just big numbers; they are meaningless. We had that at the Amazon hearing. We all pay PAYE. We all pay VAT. We all pay council tax. We pay a whole series of taxes. What is absolutely clear is that this is tax avoidance on an industrial scale. I don't care how often you tell us that people went along with it. For us here in the PAC, which is charged with looking after public money, it is an outrage. Your justifying it does not help.

Kevin Nicholson: Madam Chair, we are not being open here with the public around the strategy. The previous Labour Government and this one have set out a clear strategy: reduce corporation tax rates—

Chair: Paid!

Kevin Nicholson: Yes, exactly, and under the rules that they have looked at, they would allow—

Q304 Chair: You are trying to blame others. I love it when you keep blaming. I want to ask you a couple of questions. Why have you got seven companies in Luxembourg looked after by these two middle-ranking people, who also have other things to look after? Why seven companies?

Fearghas Carruthers: They have grown up around certain operations.

Q305 Chair: Why?

Fearghas Carruthers: Because those operations are appropriate to our jurisdiction.

Q306 Chair: Why? I don't understand why you have to have seven companies in this tiny little country of 500,000 people.

Fearghas Carruthers: Madam Chair, they do different things, and to be absolutely clear—

Q307 Chair: Why do you have separate companies?

Fearghas Carruthers: To come back to Mr Mitchell's point—

Chair: No. Why do you have separate companies?

Fearghas Carruthers: Because they do different things.

Q308 Chair: Because one lends to the other, doesn't it? It is the murkiness of the deals.

Fearghas Carruthers: The Luxembourg companies do not lend intra-group in Luxembourg. That is not what happens.

Q309 Stephen Phillips: I shouldn't think they have got any money left, if they are lending $10 billion intra-group to other companies.

Fearghas Carruthers: On the point of where Shire's money goes, Shire does not pay a dividend. It has paid $1.4 billion of corporation tax in the past five years.

Q310 Stephen Phillips: How much tax has it paid in the UK?

Fearghas Carruthers: Tax paid in the UK? $227 million in the past five years.

Q311 Chair: In the UK, in corporation tax, Mr Carruthers. How much corporation tax have you paid?

Fearghas Carruthers: There is a well held principle that until you make a profit—we have not made a profit in the UK.

Q312 Stephen Phillips: You have not made a profit in the UK. Is that because your UK operating company has its profits more than extinguished by the interest that it is paying to the Luxembourg lenders?

Fearghas Carruthers: It pays no interest to Luxembourg lenders. The reason it has not paid corporation tax is profit. We are profitable in the UK; we have historical losses in the UK that have not been—

Q313 Stephen Phillips: Are they associated with intra-group lending, those historical losses?

Fearghas Carruthers: No, they are not. Can I point out one other thing? In terms of the cash flow that Shire has generated, Shire has reinvested every single penny it has generated in the past five years into bringing rare disease products to the market.

Q314 Chair: We don't think you are great, Mr Carruthers. You might try to say so. You have this complex thing about Ireland, Jersey and Luxembourg. I have looked at your board. Can you tell me who is British? Is Anne Minto British? She has an OBE, so I assume she is.

Fearghas Carruthers: As far as I am aware, yes.

Q315 Chair: Is Graham Hetherington, your CFO, British?

Fearghas Carruthers: Graham Hetherington is no longer CFO.

Q316 Chair: He was when I got this. Is he British?

Fearghas Carruthers: He was. He is British.

Q317 Chair: Are you now the CFO?

Fearghas Carruthers: No.

Q318 Chair: Dominic Blakemore, ex-PwC, now on the board; is he British?

Fearghas Carruthers: Yes, he is.

Q319 Chair: David Kappler, fellow of the Chartered Institute of Management Accountants, is he British?

Fearghas Carruthers: Yes, he is.

Q320 Chair: Anybody else I have missed out who is British?

Fearghas Carruthers: Not to my knowledge.

Q321 Chair: Have I got the British people here? So you have got a lot of Brits on your board, but you are located in Ireland. Your headquarters are in Jersey. What is in Jersey?

Fearghas Carruthers: Jersey is simply the place of incorporation. Our tax affairs are entirely in Ireland.

Chair: Okay. But they are all Brits. There are a load of Brits on there.

Q322 Stephen Phillips: It is extraordinary: you are a Jersey company, domiciled for tax purposes in Ireland, with your major operations in the United States, a legacy in the United Kingdom and a treasury operation of gargantuan proportions operated by two middle-ranking employees in Luxembourg, whom you visit a few times a year.

Fearghas Carruthers: As I said before, only 3% of our turnover is in the UK, 6% of our employees are in the UK, and the majority of our board members are non-UK tax resident—

Q323 Stephen Phillips: Given all the good work Shire does, Mr Carruthers, why don't you just go back to the board and say, "Wouldn't it be much more sensible and responsible to redomicile in the UK, and to start to pay our taxes properly?"?

Fearghas Carruthers: We pay all the taxes we owe. We have paid $1.4 billion of corporation tax in the last five years.

Q324 Chair: Mr Nicholson, a final question to you. I think what we are trying to understand—you will write to us about the specific scheme you suggested to Shire—is about the murky, underground pool here, with dodgy operations. That is what it feels like to us. You talked about material being stolen from PwC. In my view, you had whistleblowers. I have done this job for four and a half years, and I must tell you that you will carry on having whistleblowers for as long as you undertake business of this nature. You will carry on having such people in your employ. In fact, I will invite them to write to me, and I am sure this Committee will treat their evidence with confidentiality. Going back to Stewart's point, I cannot think of a company that would want to do business with you if they thought that they would end up in *The New York Times* or *The Guardian,* because you are simply indulging in scams.

Stephen Phillips: Even though *The Guardian* seems to have been one of your clients.

Chair: The Guardian Media Group was one of your clients; absolutely. Why aren't you, for heaven's sake, just cleaning up your act? Why don't you clean up your act and give us some confidence that the very bright people you employ are working in the British public interest in a way that my constituents can understand? They all pay their tax. They can't bear it when they see this sort of stuff going on among large corporations. Why don't you just clean up your act?

Kevin Nicholson: Madam Chair, we have 3,500 staff and 237 partners who work every day with 15,000 clients to generate employment and to grow profitably, and they are doing fantastic work across this country. I just do not recognise your description. I said last time, and I say again—you will not like this—that I am proud of the work that our people do. We have a fantastic client base, which we do not take for granted, and we generate a lot of profit and a lot of business for the UK. I spend my time travelling—whether with the Treasury Secretary, David Gauke or others—across the world and in the US, encouraging business to come to the UK because we have an attractive, competitive tax regime. Politicians—I am not talking about people in this Committee—cannot duck responsibility. This country's strategy is to have a competitive tax system so that people come here, stay here—

Chair: Not me, guv.

Q325 Stephen Phillips: Whether that is right or not, what you need to stop, as we see from the leaked documents, is your Luxembourg partners, whether they are engaged in lawful activity, activity that benefits their clients or whatever. That has resulted in PwC, which frankly is a great UK brand worldwide, being dragged through the mud publicly in this Committee, along with a great formerly British company that has fantastic drugs. There are any number of other great companies you have been advising, and as a result of these schemes, which the Luxembourg partners are responsible for, their names are now potentially mud. It needs to stop, Mr Nicholson.

Kevin Nicholson: The dragging through, Madam Chair, is because of simply ignoring the law, the disclosure, and the agreement on these pieces of planning and structures by these organisations—

326 Chair: It is not fair, Mr Nicholson—

Kevin Nicholson: I agree it is not fair.

Chair: It is not fair to any one of our constituents. It is just deeply unfair. I will close things there.

Q327 Austin Mitchell: You are talking about the good that PwC does, but the revenue from its tax practice is £714 million, so the partners are benefiting very richly from organised tax avoidance, aren't they?

Kevin Nicholson: No, we do not do tax avoidance, and that £714 million is made up of pensions and mobility. We are helping British businesses to be successful, to pay taxes here—

Q328 Austin Mitchell: I asked you about Carlyle, which is a British company, and the tax arrangement it made with Luxembourg. We have a viewer who asks: "Carlyle is a UK company. Why did PwC not tell HMRC?" Did you tell HMRC?

Kevin Nicholson: I do not know the detail of that particular transaction.

Q329 Chair: We will look clearly at the evidence that you have given us today. We discussed whether to put you on oath today, because I think you misled the Committee last January. I think you were playing around with words and that you misled us. If you have misled us again, we will have you back on oath.

Kevin Nicholson: Thank you, Madam Chair, but I didn't.

PRICEWATERHOUSECOOPERS

Appendix 2

CHART STRUCTURE BEFORE REORGANISATION (ABRIDGED)

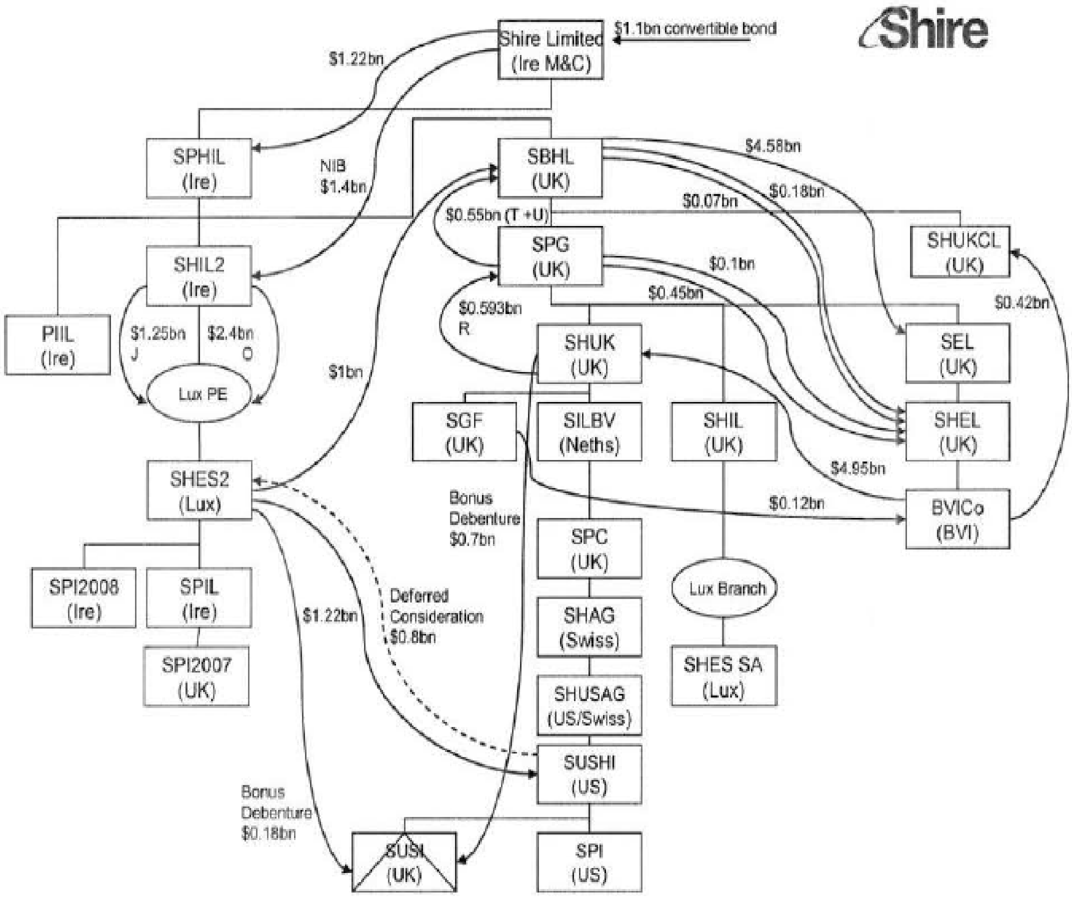


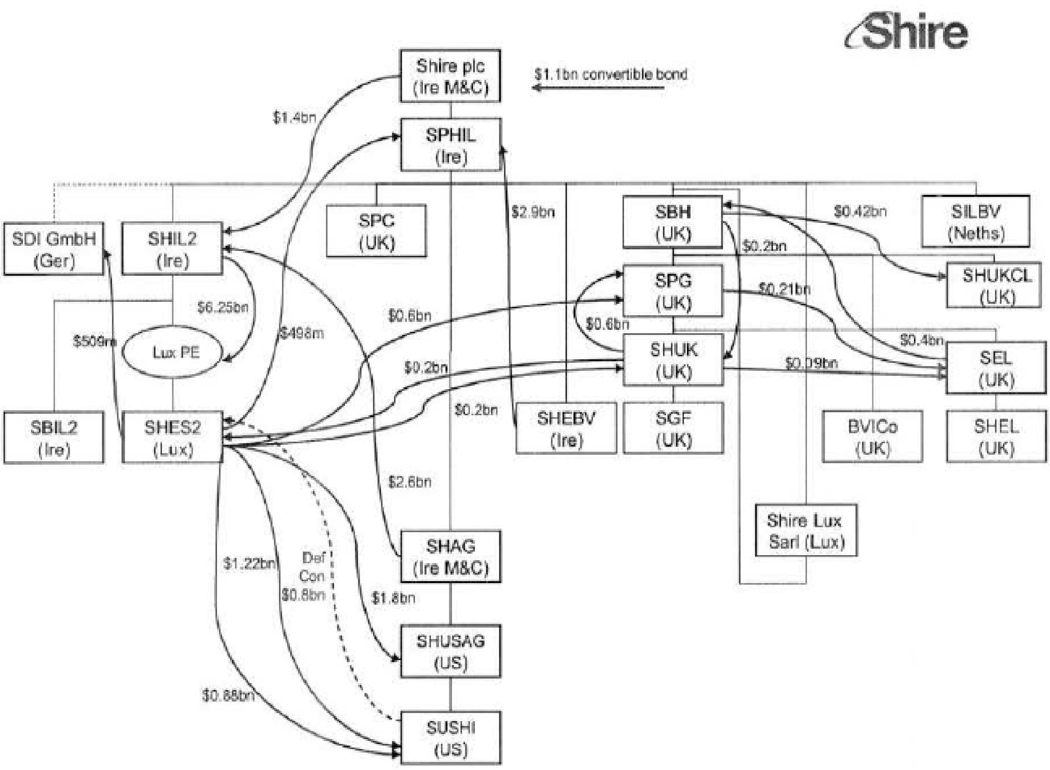
Chart from PWC Letter to Marius Kohl of the Luxembourg fisc dated 14th January 2009

The proposed transaction is extremely complex, but appears to have no purpose other than tax minimisation

PRICEWATERHOUSECOOPERS

Appendix 4

FINAL CHART STRUCTURE (ABRIDGED)



Please note that SHIL (UK) and its Lux PE are not represented in this chart.

Chart from PWC Letter to Marius Kohl of the Luxembourg fisc. dated 14 January 2009

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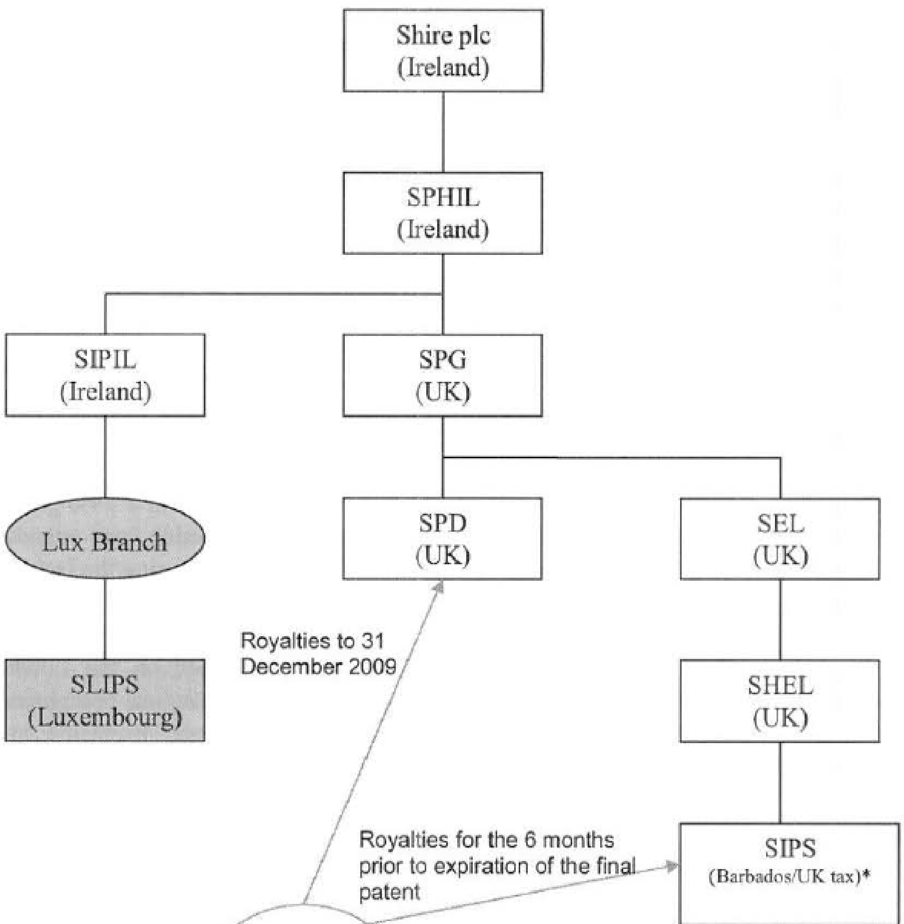
Appendix 2

CHART STRUCTURE BEFORE REORGANISATION (ABRIDGED)



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Appendix 4

FINAL CHART STRUCTURE (ABRIDGED)