

## PWC's tax affairs

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News is out that PWC's own tax affairs are subject to [IRS audit in the USA](#). To some extent I'm not surprised; any large organisation should be subject to periodic tax review, and it's notable that some old chestnuts, such as transfer pricing are reported to be covered by this investigation. That said though, PWC's structure is odd, because it appears to preclude the possibility of any such transfer pricing review. Look at its [web site](#) and it says:

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Well, I guess I breach copyright by copying this then, but it's important to my theme, because if all the entities are independent they can't be under common control and as such transfer pricing issues cannot arise. So what are the IRS getting at when it is reported that they are looking at how the firm moved profits between international units? Could it be that they might, after all, be related in the IRS's opinion?

I hope they won't mind if I offer some evidence to support their case. You see, it turns out (a bit surprisingly) that PricewaterhouseCoopers International Limited is a UK company. And that means you can get hold of its accounts, which I have. In fact you can look at its 2005 accounts [here](#), and its 2001 accounts [here](#). The 2001 accounts are of relevance simply because there is more information in the directors report, and for the extraordinary list of people who came and went as directors, but 2005 will suffice for most purposes. And they really do give rise to the most intriguing list of questions. I suggest the following for starters:

1) How is it that "the provision of guidance in relation to, and assistance in the co-ordination of, certain activities of the members of the PricewaterhouseCoopers Global Network" (page 1) is non-trading activity, as PWC claim? These members are all 'for profit', supposedly independent trading entities (see above). And if that's the case, how can providing services to them be anything but trading? And how can the supply of such services, if they are independent, be anything but the provision of "professional

*services to a client" (page 5), which the company is apparently banned from supplying? I admit alternative descriptions are not springing to the forefront of my mind. In which case the obvious question that occurs to me is to ask whether this company is acting in breach of its own Memorandum of Association (page 5)? It may not be, but if I was the IRS or HMRC I'd be asking just that. Or maybe I'd be wondering if PWC do, in fact, think they are related companies after all, when the supply of services would not be to clients, I accept, but other issues would arise for transfer pricing, as I note below.*

*2) Why is this a company limited by guarantee? Such companies are meant to be non-trading entities or companies created for mutual non commercial benefit where personal profit cannot accrue to the members e.g. charities. This company is operating the web site of the largest firm of accountants in the world on behalf of its members, all of whom hope to benefit from that activity commercially. How is that non commercial? How can the company claim the status of being limited by guarantee? Isn't this an abuse of status? Does this need investigation? I think it might be.*

*3) The fact that the company has failed to record any income in its accounts does not mean that the activity it undertakes is without value. I would have thought "guidance in relation to, and assistance in the co-ordination of, certain activities of the members of the PricewaterhouseCoopers Global Network" has a substantial worth when valued on an arms length basis as required by normal transfer pricing rules. And yet this company has no income, expense or profit, despite apparently also being responsible for the PWC web site (for which, you will notice no individual member firm takes responsibility - only this company does). I really cannot accept that does not have value. In which case, are these accounts true and fair? I wonder.*

*4) More worryingly, I have to ask the question as to whether the UK Revenue are even aware of this. Technically this enormously significant company is 'dormant' in the definition used in the UK. It claims not to trade, has neither assets nor liabilities and therefore has no transactions to report. As such it may well not even submit a tax return to HMRC despite apparently coordinating the activities of PWC worldwide. Of course, it might do so, voluntarily, but dormant companies limited by guarantee don't normally figure high on the list of concerns of most tax inspectors, I expect. In which case it may simply not have been noticed because of the unusual structure PWC have adopted.*

*5) If it does now pop up on someone's radar in the UK then I hope someone here might look to see whether the claim that the entities within the PWC Global Network are as independent as claimed might be challenged. I suspect that PWC have been very clever in their planning. At face value it is obvious that these firms are under common control. All the member firms are associated - by membership of PricewaterhouseCoopers International Limited, for a start. Let's be clear; by holding that membership they are saying "we are a firm". Their web site says "we are a firm". These accounts say "we co-ordinate our activities". The accounts also say "we are uniform" in our actions. In*

*fact, the wording appears sufficient to suggest to me that non-compliance is not tolerated because it is clear that all member firms are required to subscribe to this programme. In other words, there is but one PricewaterhouseCoopers.*

*If that's the case then I would like to think that arms length pricing rules should apply. In which case there can be no doubt whatsoever that a taxable income should arise in this company. But there appears to be none. The question has to be, why not when as these accounts make clear all the member firms of PricewaterhouseCoopers International Limited are under the common control of this company for all the reasons already noted'.*

*And what does control mean? Well, there are a number of definitions in UK taxation law alone. In the narrow sense (section 840 ICTA 1988) it means voting control. The use of a company limited by guarantee almost certainly prevents that applying. Perhaps more interesting though is section 755D ICTA 1988 which says control can be taken to mean any power a person has that ensures that 'the affairs of the company are conducted in accordance with his wishes'. The relevance of this is high; the definition is put forward with regard to controlled foreign companies. And it is clear that PricewaterhouseCoopers International Limited does have the power to make sure member firms are run in accordance with its wishes: that's the condition of membership. So there appears to be control, although I have little doubt that PWC have a defence to such suggestion, and that it is, at least in their opinion, legally valid even if clearly inconsistent with any commonsense interpretation of the situation as I put forward here.*

*But I hope this evidence does give the IRS something to think about because their rules on control may be different. And for that matter, I hope it gives HM Revenue & Customs in the UK similar cause to question what is happening. After all, why should PWC International appear to be controlled from the UK, as the reports of this company suggest to be the case, and run their international web sites from this country and yet declare no UK taxable profits for doing so? There may be legal defence for this - but as ever I raise the question, is the disingenuous structure PWC are using acceptable when corporate responsibility is considered? I think the answer is obvious.*