

GE, KPMG, spin and tax avoidance

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I [blogged about GE's US tax affairs](#), and the European dimension to its tax lobbying at the weekend.

I was not alone. It's fascinating to note that GE seems to have taken exception to some of the commentary - but that according to the [Huffington Post](#) [did](#) so on Twitter. It's an interesting new use for that medium. And, as they note, the effort seems to have pretty much failed. The reason? It seems they resorted to the standard (shall we call it the Barclays or OWC?) tactic of saying they'd paid lots of tax - \$2.7 bn in all. But as the Huffington Post notes:

The dispute: what kind of taxes constitute that \$2.7 billion GE claims to have paid? @khivi tweeted "@Gepublicaffairs tweets confirm @nytimes that GE paid \$0 corporate tax," to which GE responded "They are separate. Of \$2.7B income tax paid, signif portion was US fed. GE also paid \$1B+ in payroll, state & local use & property tax."

You'd have thought they'd have realised that claiming you pay your employees tax which is their liability and not yours is a ruse that's worn thin now - but apparently not.

More interesting comment came from [Francine McKenna in her Forbes blog](#), where she kindly quotes me (we're something of a mutual fan club) and then points out the role of LKPMG in this:

It's not surprising that GE uses their auditor, KPMG, to help them put their "zero" tax return together.

The Sarbanes-Oxley Act of 2002 started out tough on tax. The rules regarding prohibited activities by the auditor, intended to preserve their independence, scared the living daylights out of the largest firms. It appeared initially that the SEC would prohibit the tax side of the firms from providing highly lucrative tax advice to their audit clients. Many of those professionals started planning an exit from their firms so they could continue working with long time clients.

A compromise was reached. The result is one of the loosest and most generous

exceptions to auditor independence rules on the books.

The Commission reiterates its long-standing position that an accounting firm can provide tax services to its audit clients without impairing the firm's independence. Accordingly, accountants may continue to provide tax services such as tax compliance, tax planning, and tax advice to audit clients, subject to the normal audit committee pre-approval requirements under 2-01(c)(7).

The Sarbanes-Oxley Act of 2002 also prohibits an auditor from providing "bookkeeping" services to its audit clients.

The rules utilize the previous definition of bookkeeping or other services, which focuses on the provision of services involving: (1) maintaining or preparing the audit client's accounting records, (2) preparing financial statements that are filed with the Commission or the information that forms the basis of financial statements filed with the Commission, or (3) preparing or originating source data underlying the audit client's financial statements. Our experience with this definition demonstrates that the concept of bookkeeping and other services is well understood in practice.

In defiance of these provisions, KPMG — GE's auditor — provides "loaned staff" or staff augmentation to GE's tax department each year. These "temps" perform tasks that would be otherwise the responsibility of GE staff. Sources tell me KPMG employees working in GE tax have GE email addresses, are supervised by GE managers — there is no KPMG manager or partner on premises — and have access to GE employee facilities. They use GE computers because the software required for their tasks is GE proprietary software.

This type of "secondment" to an audit client is never allowed. KPMG should know better. KPMG was recently sanctioned by the SEC for a similar transgression involving their Australian office.

What the heck? No tax is paid. It's worth the risk. Haven't we heard that before about KPMG? Will they never learn.