

“The Public Eye Awards”

Nominations form

Nominated company (name):

KPMG International

Short description of the company (information on products / services and brands; financial information: profit, returns and turnover; employees; CEO/president etc.):

A globalised accounting, audit, tax advisory and general consulting businesses.

Nominated for the following award categories:

- environment
- human rights
- labour rights
- taxes
- special prize _____
(name a award category in the style of the above)

More than one category can be chosen, if a company has acted irresponsibly in all these areas or if it cannot be assigned to just one category. In this case the organising committee will decide the final category.

Reasons for nomination:

Paying taxes is a fundamental part of the social contract, but many tax practitioners earn huge fee income from developing tax avoidance strategies and promoting them to their corporate clients. Tax avoidance is legal, but the debate on corporate responsibility challenges the notion that merely acting within the law is sufficient. The corporate responsibility agenda is driven by a demand for an ethical approach to doing business. Companies that claim to be acting as good corporate citizens in such areas as employment rights and environmental protection whilst also engaging in aggressive tax avoidance procedures reveal a major disconnect in their core organizational values.

Aggressive tax avoidance is not the same as the acceptable tax avoidance that means complying with the spirit of the law. Aggressive tax avoidance always, and by definition, seeks to exploit the inevitable gaps and uncertainties in legislation and is always an action contrary to the spirit of the law of the state against whom it is perpetrated. Those who undertake it always face the risk that by acting as they do in the grey areas of uncertainty where the law is not clear they may be acting unlawfully, and by so doing show that they are willing to take that risk. By

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challenging the integrity of tax systems in this way such companies profit from being economic free-riders, but in the long-term their activities threaten global growth, social stability and democratic systems of government.

This problem is global in its nature and has worsened in recent years. In an article in the *Financial Times* in March 2004 a UK Treasury official was quoted as saying that tax avoidance was *"an urgent and escalating problem in terms of the scale, aggression and speed at which these schemes are being marketed"*. He was particularly concerned that large accounting firms have been engaged in marketing tax avoidance schemes which they knew were about to fall foul of legislation. *"We are also concerned the integrity of the accounting profession is not undermined by involvement in these kinds of practices,"* he added (Parker, 2004).

Professional integrity is a significant issue since the accounting profession plays a major role in advising wealthy individuals and businesses on tax affairs and has taken a lead in developing systems for tax avoidance. The role of accountants in abetting tax avoidance was confirmed by one senior tax practitioner who was quoted in the *Guardian* newspaper as bragging that:

"No matter what legislation is in place, the accountants and lawyers will find a way around it. Rules are rules, but rules are meant to be broken."

This raises disturbing questions not only about the ethics of the professionals engaged in tax avoidance but also about the risks that they are prepared to expose themselves and their clients to, both in terms of reputational damage and corporate governance. To put it bluntly, the riskier the tax avoidance strategy the greater the level of risk to shareholders and the other stakeholders of the enterprise.

KPMG is a global business which provides accounting, audit, tax advisory and general consulting services including advice on corporate responsibility to its corporate clients. But for many years KPMG has also operated at the cutting edge of corporate social irresponsibility by encouraging its clients to engage in aggressive tax avoidance. This practice, which frequently involves the use of tax havens, offshore tax shelters and complex lease-back deals, enables companies engaged in cross-border trade and investment to exploit the differences between nationally based tax regimes. These practices, whether by design or not, undermine the integrity and equity of existing tax systems; increase the administrative burden of revenue collection; and shift the tax burden towards small, locally based businesses and onto workers and consumers.

KPMG has derived considerable fee income by abetting its clients to adopt aggressive positions on tax avoidance. The company's involvement in promoting tax avoidance was revealed by a US Senate enquiry into the tax shelter industry. A number of KPMG internal memos, emails and other correspondence were obtained from the company during the course of enquiries into tax shelters by the **US Senate Permanent Committee on Investigations** (a sub-committee of the **US Senate Committee on Governmental Affairs**) in 2003. In one email, for example, a senior KPMG tax adviser told his colleagues that even if regulators took action against their sales strategies for a tax shelter known as OPIS the potential profits from these deals

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would still greatly exceed the possible court penalties: *“our average deal”* he noted *“would result in KPMG fees of US\$360,000 with a maximum penalty exposure of only US\$31,000.”*

Another KPMG document also contained a warning from a senior tax adviser that if the company were to comply with the legal requirements of the Inland Revenue Service relating to the registration of tax shelters, KPMG would find itself at a competitive disadvantage in its sales of tax avoidance products and would *“not be able to compete in the tax advantaged products market.”* In order to be able to continue to profit from selling tax avoidance products to the company’s clients, the KPMG tax adviser urged his company to, in the words of the report of the Senate Committee:

“knowingly, purposefully, and willfully violate the federal tax shelter law.”
[source: US Senate Committee on Governmental Affairs, 2003, p13]

As US Senator **Joe Lieberman** said to the Senate Committee in November 2003:

“Ranks of lawyers, accountants, and financial accountants have abused the law and their own professional ethics simply for the sake of huge sums of money to be made helping their clients evade taxes.”
[source: US Senate Committee on Governmental Affairs, 2003]

During its enquiries the US Senate Committee discovered that KPMG had devised over 500 ‘active tax products’, some of which may have been illegal. Just four of those 500 products cost the US Treasury US\$85 billion annually in lost tax revenues, whilst KPMG booked US\$180 million in fees. Speaking after the conclusion of the Senate Committee’s enquiries, Senator **Carl Levin** said that:

“our investigations revealed a culture of deception inside KPMG’s tax practice.”

KPMG operates through a string of offices based in tax havens across the world. In 2003 the **Association for Accountancy & Business Affairs** revealed that KPMG operated in more tax havens than its competitors. KPMG had offices in 18 of the OECD’s initial list of blacklisted tax havens. Tax havens are widely used to facilitate unethical activities such as profits-laundering, which involves the use of aggressive tax avoidance techniques such as transfer mis-pricing, and re-invoicing. Tax havens are also used to hide illegal transactions such as money laundering, fraud, bribery and embezzlement. Firms using tax havens must be aware of these practices, even if they do not directly engage in them. They risk harm to their reputation by being associated with tax havens where secrecy and non-disclosure of all activities, legal and illegal, ethical and unethical, is the norm.

KPMG’s role in undermining nationally based tax regimes is at best unethical and anti-social, and can be harmful to corporate governance and shareholder interests. For example, KPMG was explicitly cited in the final report on the collapse of giant multinational **WorldCom** for *“malpractice and negligence”* in their advice on tax strategies used to avoid state taxes in the United States. In their 542 page report on **Send your nominations to:** The Public Eye on Davos, Berne Declaration, Quellenstrasse 25, PO 3 Box, CH-8031 Zurich, Switzerland; email: publiceye@evb.ch; fax: +41 (0)1 277 70 01.

the fraud at the USA's second largest telephone business, bankruptcy examiner **Richard Thornburgh** and his lead counsel **Michael Missal** found that:

"Every level of gatekeeper failed to do their job in some way"

In 2004 KPMG claimed to be a reformed company which no longer sells the tax products that were highlighted by the Senate report cited above, but in August 2004 the **New York Times** reported that the KPMG's tax avoidance advisers are still busy designing newer versions of what are to all intents and purposes the same abusive tax shelters. According to internal email messages cited by the *New York Times*, KPMG:

"engaged in exhaustive legal analysis of tax and civil court rulings and IRS rulings to find loopholes in the ever-changing tax code to justify its shelters. . ." and in order to facilitate and market this process *"created a giant bureaucracy - with layers of departments, sophisticated software and scores of employees - to develop and market tax shelters. "*

KPMG also established -

"interconnected 'laboratories' and idea banks that served as factories to develop tax shelters and even awarded paperweights shaped like light bulbs to low-level employees with ideas for tax shelters. KPMG also had a rigorous telemarketing initiative in which employees would call potential investors and pitch shelters by reading from prepared scripts. . "

The revelations from the US Senate Committee on Governmental Affairs have a global importance because the same predatory culture and competitive pressures that shaped the KPMG corporate culture in the US apply in Europe, Australia, Asia, Latin America and Africa. The Senate report concluded that:

"KPMG has devoted substantial resources to, and obtained significant fees from, developing, marketing, and implementing potentially abusive and illegal tax shelters that US tax payers might otherwise have been unable, unlikely or unwilling to employ, costing the Treasury billions in lost tax revenues.

KPMG devotes substantial resources and maintains an extensive infrastructure to produce a continuing supply of generic tax products to sell to multiple clients, using a process which pressures its tax professionals to generate new ideas, move them quickly through the development process, and approve, at times, potentially abusive or illegal tax shelters.

KPMG uses aggressive marketing tactics to sell its generic tax products, including by turning tax professionals into tax products salespersons, pressuring its tax professionals to meet revenue targets, using telemarketing to find clients, using confidential client tax data to identify potential buyers, targeting its own audit clients for sales pitches, and using tax opinion letters and insurance policies as marketing tools.

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KPMG is actively involved in implementing the tax shelters which it sells to its clients, including by enlisting participation from banks, investment advisory firms, and tax exempt organizations (e.g. charities); preparing transactional documents; arranging purported loans; issuing and arranging opinion letters; providing administrative services, and preparing tax returns.”

Most business and economic commentators would agree that paying tax is a fundamental role of a business in a modern, democratic state. A leading publication in the field of corporate ethics argues this point as follows:

“ . . . it is a central tenet of corporate responsibility that merely obeying the law is not enough. And even the Friedmanite “the business of business is business” lobby accepts that part of the business of business is to pay appropriate taxes.”

[Ethical Corporation, 2004]

KPMG promotes itself to its clients as an adviser on corporate responsibility. According to a statement by KPMG chief executive officer, **John Griffiths-Jones**:

“There is a strong business and overwhelming moral case for CSR: not only to benefit our local communities, but also in attracting and retaining the best people and realising benefits derived from, for example, good environmental and health and safety management practices. Increasingly companies are bringing CSR into the heart of their business operations and turning to us for advice. As a result practicing what we preach is becoming even more important.”

[http://www.kpmg.co.uk/about/csr_report/index.cfm - accessed 30 December 2004]

If KPMG genuinely believes in the ‘strong business and overwhelming moral case’ for corporate responsibility it should adopt clear CR standards in the area of taxation, including requirements to publish all necessary accounting information and to refrain from the use of profits-laundering vehicles created without substantial economic purpose. It should advise its clients to list in their accounts and CR statements all the countries in which they trade, how much profit is derived from genuine economic activity in each of these countries, and where these profits are booked for tax purposes, indicating any special purpose vehicles that are used and the extent of tax avoidance arising from the use of tax minimization strategies.

And in the spirit of practicing what it preaches, KPMG should also apply these standards to its own trading operations. Only by doing this can KPMG demonstrate in a convincing manner a commitment to good corporate citizenship in a globalised economy.

Sources / references

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Nomination submitted by

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