Renate Buijze

Tackling the International Tax Barriers to Cross-Border Charitable Giving

Philanthropy for the Arts in the Era of Globalization

IBFD DOCTORAL SERIES 51

Tackling the International Tax Barriers to Cross-Border Charitable Giving

Why this book?
Attracting gifts from private donors is vital for many public benefit organizations, like arts organizations, as the income they generate from other sources is too limited to finance their activities. In order to stimulate individuals to give to arts organizations and other causes active for the public benefit, governments use tax incentives. In many countries, gifts to public benefit organizations qualify for tax incentives for donors' personal income taxes. When donations cross borders, these tax incentives do not always apply. This hinders public benefit organizations' ability to raise funds internationally. Several solutions exist to make international donations possible with the benefit of a tax incentive. These solutions can be public solutions (e.g. tax treaties) or private initiatives making use of public solutions (e.g. foreign friends organizations and intermediary charities).

This research evaluates the solutions to cross-border charitable giving from the perspective of arts organizations, making use of both legal doctrinal research and empirical research methods, in order to identify best practices. Based on literature and interviews with fundraisers and directors of arts organizations, an assessment framework is developed to test the different solutions and to determine which solution is optimal from the perspective of arts organizations.

Title:	Tackling the International Tax Barriers to Cross-Border Charitable Giving
Subtitle:	Philanthropy for the Arts in the Era of Globalization
Author(s):	Renate Buijze
Date of publication:	January 2020
ISBN:	978-90-8722-584-1 (print/online), 978-90-8722-585-8 (ePub), 978-90-8722-586-5 (PDF)
Type of publication:	Book
Number of pages:	432
Terms:	Shipping fees apply. Shipping information is available on our website
Price (print/online):	EUR 115 / USD 140 (VAT excl.)
Price (eBook: ePub or PDF):	EUR 92 / USD 112 (VAT excl.)

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www.ibfd.org

ISBN 978-90-8722-584-1 (print)
ISBN 978-90-8722-585-8 (eBook, ePub); 978-90-8722-586-5 (eBook, PDF)
ISSN 1570-7164 (print)
NUR 826

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Chapter 1

Introduction

1.1. Tax incentives and international philanthropy for the arts

A Dutch businessman had collected art throughout his career. By selling earlier purchased pieces and investing in more important works of art, he gathered an impressive collection of Dutch and Flemish 17th-century art. Key pieces of major historical value are part of his collection. When the businessman grew older, he decided to give several works from his collection to a museum to ensure their preservation and enjoyment by others. Since the gift contained works by Dutch and Flemish painters, the most obvious recipients were museums specialized in Dutch and/or Flemish art, which are mainly located in the Netherlands and Belgium. For these museums, the pieces would significantly enrich their collections. The businessman, however, had moved to the United Kingdom for his career, where he was considered resident for income tax purposes. If he gifted his collection to a UK-based public benefit organization (PBO), it would qualify for a tax incentive. By donating his collection to a Dutch or Belgian museum, the gift might not qualify for a tax incentive. This made it financially more beneficial to give the artwork to a museum in the United Kingdom. The example above illustrates how tax incentives influence the allocation of gifts. The inapplicability of a tax incentive makes it more expensive – thus, less attractive – for the collector to donate to an organization outside his country of residence, even though the collector might have legitimate reasons to donate to a foreign arts organization.

It is important for arts organizations to be eligible to receive gifts with a tax benefit to help attract gifts. Attracting gifts is vital for many arts organizations, as the income they generate from ticket sales and other commercial activities is too limited to finance their activities. Therefore, arts organizations seek support from governments, private foundations, corporate and individual donors and the like. Governments use beneficial tax policies to motivate corporations and individuals to contribute to causes that exist for the public benefit; organizations active in the field of arts and culture are among such causes. By regulating which organizations are eligible for gifts with a tax benefit, governments have a strong tool to influence the allocation of private contributions to PBOs. The beneficial tax policies and the public benefit purposes sought are developed rather autonomously by countries. The causes that are eligible to receive a gift with a tax benefit differ between countries, and the requirements imposed on eligible organizations vary. This causes a discrepancy in which donations to PBOs in one country qualify for a tax incentive, whereas a similar donation to a PBO resident abroad does not qualify for a tax incentive. People and PBOs, however, do not always operate within one country.

Globalization has caused an increase in cross-border transactions of goods, services and capital. Donations to PBOs abroad are no exception to this trend, as the cross-border activities of arts organizations and their audiences have increased. Tourists travel from far and abroad to visit the world's cultural heritage sites. Collections of renowned museums travel for exhibits outside the organization's country of residence, and so do performing arts companies. The interest in philanthropic activities abroad has increased, and arts organizations actively aim at raising funds abroad. Arts organizations like the Israel Philharmonic Orchestra, Metropolitan Opera in New York, the Palace Museum in Beijing, the Rijksmuseum in Amsterdam, Tate Modern and Tate Britain all attract foreign benefactors.[1] Although most of the local benefactors of these organizations obtain a tax benefit for their gift, this is not self-evident for the foreign benefactors of these organizations.

This research focuses on tax incentives for gifts to arts organizations in cross-border situations. It explores cross-border philanthropy for the arts and, specifically, how cross-border gifts can be made while receiving a tax benefit.

1. The Israel Philharmonic Orchestra has "friends of" associations in Argentina, Australia, Germany, Italy and the United Kingdom, as well as an International Board of Governors, a group targeted at major benefactors (*see* https://www.ipo.co.il/eng/Fund/PrivateSupport/Articles,68.aspx (accessed 13 June 2017)), and it has registered as a *algemeen nut beogende instelling* (public benefit pursuing entity, or PBPE) in the Netherlands. The Metropolitan Opera has an International Council, a group of benefactors specifically targeted at residents outside the United States (*see* https://www.metopera.org/Support/Join-The-Met/International-Council (accessed 13 June 2017)). The Rijksmuseum has a similar group of benefactors, the International Circle (*see* www.rijksmuseum.nl/nl/steun-het-rijks/international-circle (accessed 13 June 2017)). The Palace Museum mentions the tax deduction/exemption of VAT and import customs for foreign benefactors on their website (*see* http://www.dpm.org.cn/shtml/2/@/8797.html (accessed 13 June 2017)). Tate Modern and Tate Britain are supported by the Tate Americas Foundation (*see* www.tateamericas.org (accessed 13 June 2017)). Furthermore, the Board of Trustees of the Tate Gallery is registered as a PBPE in the Netherlands.

1.2. Solutions that allow for a tax benefit for cross-border gifts

Both public bodies as well as private parties have implemented solutions to overcome the tax barriers to cross-border philanthropy. The effectiveness of both the private and the public initiatives depend on the applicable legislation in the country where the donor is resident for tax purposes. The solutions can be summarized as follows.

Solutions initiated by public bodies:

- Unilateral solutions: These are present when the tax legislation of a country does not limit tax incentives for charitable gifts to the domestic situation, but extends them to one or multiple other countries. In the Netherlands, for example, foreign PBOs can request *algemeen nut beogende instelling* (public-benefit-pursuing entity, or PBPE) status from the Dutch tax administration in order for their benefactors in the Netherlands to benefit from a tax deduction.

- Bilateral solutions: An example of these would be tax treaties between two countries that agree on the mutual application of tax incentives in the case of donations between treaty countries. The tax treaty between the United States and Canada is an example.

- Supranational solutions: These are evident, for example, in EU legislation. The Court of Justice of the European Union (ECJ) has ruled that, based on the fundamental freedoms of the Treaty on the Functioning of the European Union (TFEU), EU Member States have to treat donations to PBOs in other Member States equivalent to domestic donations, and thus allow for a tax incentive for the donation if this would be applied in a domestic situation. Furthermore, the European Commission proposed a draft directive on a European legal form for charities, the European Foundation, which would have been another example of a supranational solution, had it not been withdrawn.

Solutions initiated by private parties:

- A PBO can establish another PBO with charitable activities abroad. The PBO abroad can have activities and serve as a foreign counterpart of the organization.

– "Foreign friends organizations" are PBOs abroad set up solely for fundraising activities, such as the American Friends of the Louvre, Friends of Venice and the American Friends of the British Museum.[2] In countries that do not allow tax incentives for gifts to foreign entities, foreign friends organizations are a solution that circumvents the cross-border situation. They allow donors to contribute to a domestic PBO with a tax incentive. Foreign friends organizations spend the funds on the arts organization abroad. Donations to these entities are eligible for a tax benefit because the foreign friends organizations are established under the laws of the donor's country of residence.

– Arts organizations and their donors can make strategic use of entities with a charitable status in the donor's country. Donors can set up such a domestic entity in their own country of residence with a charitable status and contribute to foreign PBOs through the domestic entity. Other charitable organizations in the donor's country, also referred to as "intermediary charities", can also provide services that enable the donor to give to a domestic charity and receive a tax benefit even though the donation is made abroad. The donor donates to the domestic intermediary charity and can benefit from the tax incentive. The intermediary charity transfers the donation to the PBO abroad that the donor aims to support. Examples of such intermediary charities are the King Baudouin Foundation United States for gifts from the United States to Europe and Africa, Israel Gives for gifts from the United States and the United Kingdom to Israel and Transnational Giving Europe for cross-border gifts among European countries.[3] Cross-border fundraising and cross-border giving – and thus, the tax barriers involved – are avoided here through cross-border spending by a domestic entity.

These private and public initiatives offer a range of possibilities for benefactors to support a PBO abroad with the benefit of a tax incentive. Whether these solutions can effectively circumvent the tax barrier to a cross-border donation depends on the legislation of the country where the donor is resident for tax purposes. Some jurisdictions do not differentiate between tax incentives for gifts to domestic PBOs and gifts to foreign PBOs. In other jurisdictions, tax incentives are limited to gifts spent in the country of

2. For the American Friends of the Louvre, *see* http://www.aflouvre.org (accessed 13 June 2017); for Americans that wish to contribute to the preservation of the art and cultural heritage in Venice, *see* www.friendsofvenice.us (accessed 13 June 2017); and for the American Friends of the British Museum, *see* http://www.afbm.org (accessed 13 June 2017).
3. *See*, respectively, http://www.kbfus.org, http://www.israelgives.org and http://www.transnationalgiving.eu (accessed 13 June 2017).

residence for tax purposes; therefore, none of the solutions above can overcome the tax barrier to cross-border philanthropy. There are also countries that allow for tax incentives for cross-border gifts, but only under certain conditions. Depending on the jurisdictions concerned, the existing solutions might facilitate arts organizations to be eligible to receive gifts with a tax benefit, thus helping PBOs persuade potential foreign benefactors to give a gift.

1.3. Research questions, scope and aim of the research

1.3.1. Research questions

In this research, the existing solutions that allow for cross-border philanthropy with a tax incentive are evaluated from the perspective of PBOs, more specifically those PBOs involved in arts and culture. The aim of the research is to find which solution best helps arts organizations facilitate their foreign donors with a tax incentive.

The main research question is: How can the existing solutions for tax-efficient international philanthropy be used optimally by arts organizations?

A few words of explanation of the terms used in this research question are necessary. The term “tax-efficient” refers to the “philanthropy”. If the tax incentive present in the relevant jurisdiction is applicable to a gift, the gift is tax-efficient. Tax-efficient thus means “with the benefit of the applicable tax incentive in the relevant jurisdiction”. “Optimally” refers to the solution that is optimal from the perspective of arts organizations, which is determined based on the criteria used by those responsible for fundraising in the arts organization. The criteria they employ are described in chapter 8 and merged with criteria derived from literature as an assessment framework to evaluate the existing solutions to tax-efficient cross-border giving.

To help answer the main research question, five sub-questions are formulated:

(1) Which objectives are at stake for governments and how can they be achieved through tax policy for cross-border philanthropy?

(2) What are the main approaches of countries towards tax incentives for cross-border philanthropy?

(3) What does international philanthropy for the arts currently look like?

(4) What public and private solutions exist to overcome the problems with cross-border philanthropy and tax incentives?

(5) Which criteria does a solution to tax-efficient cross-border giving have to meet in order to be optimal from the perspective of arts organizations?

Together, the answers to these five questions allow for an answer to the main research question.

1.3.2. Scope of the research

The topic of tax legislation and international philanthropy for the arts raises many interesting questions. There are questions about the legitimacy of government support for the arts. For example, who should support the arts? Why should the arts be supported? How should the arts be supported? There are also questions about the effect of government support on the demand and supply of the arts. Who benefits the most from these tax incentives? Do they provide society with more or better art? When these issues are taken to an international level, a whole new list of questions arises. What amount of philanthropic gifts cross borders? Should governments support art in other countries? What influence does cross-border indirect support have on the allocation of donations to the arts?

Although these questions are all relevant and worthwhile to examine, this research does not attempt to answer them. Some of the above questions are rather hard to research. The data available on the amount of donations is limited, let alone specific data for cross-border donations to the arts. The data that is available is difficult to compare.[4] More problematic is the normative nature of many of these questions, as several of the questions require a (political) opinion as an answer. It is not the author's aim to convince the reader that the arts should be supported by the government, nor is it the aim to convince the reader that tax incentives are the best way to do this, or that governments should support donations to arts organizations abroad.

4. A. Klamer, L. Petrova & A. Mignosa, *Financing the arts and culture in the European Union* p. 34 (2006). *See also* J. O'Hagan, *Tax concessions*, in *A handbook of cultural economics* p. 452 (R. Towse ed., Edward Elgar Publishing 2003).

Instead, this research focuses on the existing framework within which arts organizations and their benefactors can benefit from tax incentives for cross-border gifts. Specific focus is on contributions made by individuals and tax incentives for philanthropy in respect of personal income tax. These tax incentives can take different forms, for example, a deduction from taxable income, a tax creditor percentage designation scheme for taxpayers.[5] In this research, government support for the arts and the use of tax incentives as a measure for this support are regarded as a given fact, since they are present in many countries.[6]

Although the focus of this research is on tax incentives for arts organizations, the outcome of the research can be broadened to other fields in which tax incentives are applied to support philanthropic causes, although caution is needed. A prerequisite for the generalization of the outcomes is that the concerned organization must meet the requirements in order to be eligible to receive gifts with a tax benefit according to the applicable jurisdiction.

1.3.3. Aim of the research

There is a substantial amount of literature discussing the use of tax incentives to stimulate philanthropy. The standard work of Feld, O'Hare and Schuster discusses indirect support for private donations to the arts from a policy perspective.[7] Schuster later reflects and builds upon this earlier work.[8] Pommerehne and Frey critically address the influence of different types of funding, such as tax incentives for donations to the arts and the functioning of arts organizations.[9] Hemels and Goto provide an overview of the incentives that exist in different fields of taxation to support the arts, giving

5. S.J.C. Hemels, *Tax incentives for museums and cultural heritage*, in *Tax incentives for the creative industries* pp. 109-119 (S.J.C. Hemels & K. Goto eds., Springer 2017).
6. E. Quick, T.A. Kruse & A. Pickering, *Rules to give by: A global philanthropy legal environment index* (Charities Aid Foundation 2014). *See also* F. Vanistendael (ed.), *Taxation of charities* (IBFD 2015), Books IBFD.
7. A.L. Feld, M. O'Hare & J.M.D. Schuster, *Patrons despite themselves: Taxpayers and arts policy* (New York University Press 1983).
8. J.M.D. Schuster, *Issues in supporting the arts through tax incentives*, 16 The Journal of Arts Management and Law 4, pp. 31-50 (1987); J.M.D. Schuster, *The other side of the subsidized muse: Indirect aid revisited*, 23 Journal of Cultural Economics 1/2, pp. 51-70 (1999); And J.M.D. Schuster, *Tax incentives in cultural policy*, in *Handbook of the economics of art and culture* pp. 1253-1298 (V.A. Ginsburgh & D. Throsby eds., Elsevier 2006).
9. W.W. Pommerehne & B.S. Frey, *Public promotion of the arts: A survey of means*, 14 Journal of Cultural Economics 2, pp. 73-95 (1990).

examples from a variety of countries.[10] Only a limited number of scholars have written about cross-border giving. Tax law scholars address how cross-border donations could be made with a tax benefit within Europe.[11] Other authors compare the taxation of cross-border gifts across different countries.[12] These contributions are written from a tax law perspective; literature on cross-border giving from other perspectives tends to focus on remittances and excludes other forms of cross-border giving.[13] The aim of this research is to help fill the gap in the literature regarding cross-border philanthropy and, more specifically, the tax framework for cross-border philanthropy for the arts. Besides this, this research adds to the existing literature on cross-border giving in an innovative way by including a social sciences perspective.

The purpose of this research is to analyse how the existing solutions can facilitate tax incentives for cross-border gifts to arts organizations. To do so, this research relies on a combination of legal doctrinal research and qualitative case studies. The research targets anyone interested in the legal framework that influences cross-border philanthropy. This includes tax law scholars who want to know how tax legislation affects cross-border philanthropy. For them, it is also interesting to see how the different legal levels – unilateral, bilateral and supranational –interact. For those academics that study the arts, this research provides an initial exploration of international fundraising and philanthropy. For those scholars in the field of cultural

10. S.J.C. Hemels & K. Goto (eds.), *Tax incentives for the creative industries* (Springer 2017).
11. S. Heidenbauer, *Charity crossing borders, the fundamental freedoms' influence on charity and donor taxation in Europe* (Wolters Kluwer 2011); T. Von Hippel, *Cross-border philanthropy in Europe after Persche and Stauffer: From landlock to non-discrimination?* (European Foundation Centre & Transnational Giving Europe 2014); and S.J.C. Hemels, *The European Foundation Proposal: An effective, efficient and feasible solution for tax issues related to cross-border charitable giving and fundraising?*, in *Taxation of charities* pp. 143-172 (F. Vanistendael ed., IBFD 2015), Books IBFD.
12. Von Hippel, id.; S. Heidenbauer et al., *Cross-border charitable giving and its tax limitations*, 67 Bull. for Intl. Taxn. 11, pp. 611-625 (2013), Journal Articles & Papers IBFD; I.A. Koele, *International taxation of philanthropy* (IBFD 2007), Books IBFD; M. Stewart, *Tax deductibility of cross-border giving: Australia gives no quarter*, University of Melbourne Legal Studies Research Paper No. 605 (2012); and N.S. Silver, *Beyond the water's edge: Re-thinking the tax treatment of Australian cross-border donations* (Queensland University of Technology 2016).
13. *See*, amongst others, R.H. Adams & J. Page, *Do international migration and remittances reduce poverty in developing countries?*, 33 World Development 10, pp. 1645-1669 (2005); R.H. Adams, *Evaluating the economic impact of international remittances on developing countries using household surveys: A literature review*, 47 Journal of Development Studies 6, pp. 809-828 (2011); and B. Barham & S. Boucher, *Migration, remittances, and inequality: Estimating the net effects of migration on income distribution*, 55 Journal of Development Economics 2, pp. 307-331 (1998).

economics, this research is of particular interest, as it deals with the funding of culture and how governments in an international context can influence the allocation of funding for the arts. Arts organizations and other PBOs can use this research for guidance on the best solutions in specific contexts to use tax benefits as a tool to attract gifts from foreign benefactors. For benefactors who wish to give to a foreign PBO, the research provides an overview of the different possible solutions to obtain a tax incentive for their gift. For policymakers, the research provides insight into both sides of the debate on the application or restriction of tax incentives for cross-border donations. Furthermore, it provides policymakers with recommendations on how to shape their non-profit policies to be in line with their objectives, whether that be restricting tax incentives for charitable gifts to their own country or extending these benefits to foreign countries.

1.4. Definitions

The study of tax incentives for cross-border philanthropy to the arts calls for an interdisciplinary approach. This research places itself in the fields of tax law, sociology and cultural economics. Consequently, concepts might differ slightly across disciplines. Before proceeding with the research, in this chapter, the author further clarifies the scope of this research and sets the stage for the research to come. The formal and in-depth discussions of the existing literature on the concepts studied are reserved for the remaining chapters.

1.4.1. Tax incentives for individual philanthropy

Philanthropic gifts are voluntary financial donations that can be made by different actors.[14] In this research, the focus lies on philanthropy by individuals, as opposed to gifts made by corporations, grant-making organizations and other actors. Throughout this research, "donation" and "gift" are used interchangeably to refer to the act of making a contribution in cash or in kind with a value that is disproportionately large compared to the tangible benefits for the person who makes this contribution. Furthermore, the benefit must go beyond one's own family, which the author derives from the

14. R.H.F.P. Bekkers, T.N.M. Schuyt & B. Gouwenberg (eds.), *Geven in Nederland 2015: giften, legaten, sponsoring en vrijwilligerswerk* (Reed Business 2015).

definition of "charitable giving" by Bekkers and Wiepking.[15] She also uses the term "philanthropy" in reference to this practice.

A broad definition of philanthropy encompasses the voluntary use of private assets (financial contributions, in-kind resources, time, know-how and skills) for the benefit of specific public causes.[16] Individuals, for-profit organizations, as well as non-profit organizations (NPOs) provide these private assets.[17] Salamon and Anheier earlier defined philanthropy as "the giving of gifts of time or valuables (money, securities, property) for public purposes".[18] The author here adapts this definition of philanthropy to "giving assets (money, securities, property) for public purposes" in order to fit this research. Although "philanthropy" and "charity" are used interchangeably, the author prefers to use the former, as "charity" has the connotation of providing relief for severe and immediate needs, such as serving the poor. As Ostrower states: "Philanthropy is a broader concept, which includes charity but also encompasses the wider range of private giving for public purposes."[19]

In philanthropy, tax incentives mainly have allocation power when the absolute benefit is larger, especially when cross-border situations are concerned. Therefore, emphasis lies on gifts larger than EUR 5,000. The level of tax incentives is much higher in high-income countries than in low-income countries.[20] Because of the high density of tax incentives for philanthropy by individual donors in high-income countries, emphasis in this research is on these countries. Furthermore, the philanthropic potential in high-income countries is larger than in low-income countries. For the definition of "high-income countries", the author adopts that used by the World Bank, stating that high-income countries are those with a gross national income per capita of USD 12,736 or more.[21]

15. R.H.F.P. Bekkers & P. Wiepking, *A literature review of empirical studies of philanthropy: eight mechanisms that drive charitable giving*, 40 Nonprofit and Voluntary Sector Quarterly 5, pp. 924-973 (2011).
16. H.K. Anheier & S. Daly, *Philanthropic foundations: A new global force?*, in *Global civil society 2004/5* p.159 (M. Glasius, M. Kaldor & H.K. Anheier eds., Sage Publications 2004).
17. Bekkers, Schuyt & Gouwenberg, *supra* n. 14.
18. L.M. Salamon & H.K. Anheier (eds.), *Defining the nonprofit sector: A cross-national analysis* p. 13 (Manchester University Press 1997).
19. F. Ostrower, *Why the wealthy give: The culture of elite philanthropy* p. 4 (Princeton University Press 1997).
20. Quick, Kruse & Pickering, *supra* n. 6, at p. 35.
21. World Bank, *New Country Classifications* (2 July 2013), available at http://data.worldbank.org/news/new-country-classifications-2015 (accessed 17 July 2015).

"Donor" and "benefactor" are used interchangeably throughout this research. These individuals all contribute part of their wealth to PBOs. Whenever the author refers to a "gift" or "donation" in this research, she specifically speaks of gifts made to PBOs, where PBOs are those organizations that meet the legal requirements that make them eligible to receive gifts with a tax benefit. They can meet these requirements in any country, such as their country of residence or the donor's residence country. Unless stated otherwise, in this research, PBOs refer to the applicable definition that applies for tax purposes in the jurisdiction discussed. In the United States, for example, these tax-exempt organizations are known as "501(c)(3) organizations".[22] As mentioned in section 1.2., in the Netherlands, these organizations are referred to as *algemeen nut beogende instellingen* (PBPEs).[23]

"Tax incentives for individual philanthropy" refer to the indirect support that governments can provide to the donor and/or the recipient of the gift in order to stimulate philanthropic behaviour. Tax incentives can, for example, take the form of lower tax rates, tax deductions, tax credits and tax exemptions. Instead of collecting taxes, tax incentives "spend" taxes before they are collected.[24] Due to the limitation of the research on gifts from individual donors, only tax incentives for personal income tax are included. Incentives for philanthropy in corporate income tax and gift and/or inheritance tax are excluded from the research.

1.4.2. PBOs and arts organizations

Throughout this research, the author refers to "public benefit organizations". These are organizations that are considered to contribute to the public benefit and therefore have a special tax status that gives them certain benefits. Depending on whether the arts are considered contributions to the public benefit, arts organizations fall within the broader category of PBOs. Other authors have referred to these types of organizations as charities; however, here, the author uses "PBOs" for the same reason why she prefers "philanthropy" over "charity". Also, the terms "non-profit organization" and/or "non-governmental organization" are often used to address organizations that serve the public benefit. The former refers to organizations that are

22. US: Internal Revenue Code, 1986, sec. 501(c)(3).
23. NL: *Algemene Wet Inzake Rijksbelastingen* [General State Taxes Act], art. 5b (2 July 1959).
24. R.L.R. Hennuin, *Hoofdzaken belastingrecht* p. 27 (Boom Fiscale Uitgevers 2010); L. Koopmans et al., *Overheidsfinanciën* (Wolters-Noordhoff 2005); Schuster (1987), *supra* n. 8; And Schuster (1999), *supra* n. 8, at p. 58.

non-profit-distributing, and the latter requires that the organization be independent from the government. Indeed, in many countries, arts organizations are privately owned, and their main aim is not to make profit. However, in some countries, arts organizations are (partially) state owned and/or do aim at making profit. Therefore, "NPO" and "non-governmental organization" do not properly cover the content of the subject here, and thus, PBO is used instead.

The tax barriers to cross-border donations apply to all types of PBOs. This research, however, specifically focuses on PBOs active in the arts, which the author refers to as "arts organizations", since including PBOs in all fields would complicate a comparison.

Now, what is art? As Abbing states, "[a]rt is what people call art",[25] to which he adds that certain people have a bigger say in it than others. Art is defined from a social perspective and, therefore, differs depending on the context. A different decade in time or geographical place could totally change the definition of art. Therefore, the definition of art is relative.[26] This is also reflected in tax law. Countries that include "arts and culture" as public benefit causes for tax purposes impose different requirements on the eligible organizations. Some countries, for example, include craft organizations and/or amateur arts, while other countries exclude these categories. Arts organizations that are profit-oriented, such as organizations in the fields of pop and dance music, are often not eligible because of their for-profit nature.

In this research, professional arts organizations are included that are active in the fields of fine art, performance art and cultural heritage. Examples of arts organizations included in this research are fine art museums, ethnographic museums, cultural heritage sites, theatre, opera and dance companies, orchestras and ensembles.

As noted, arts organizations can, depending on their jurisdiction of residence and on whether they meet the requirements, be PBOs for tax purposes. However, arts organizations do not necessarily have to be eligible for tax benefits. Whether or not art is considered a contribution to the public benefit for tax purposes depends on the social context that is reflected in the national tax legislation. If art is perceived as serving the public benefit, certain requirements and conditions might apply in order for an arts

25. H. Abbing, *Why are artists poor? The exceptional economy of the arts* p. 19 (Amsterdam University Press 2002).
26. Id., at pp. 17-20. *See also* V.D. Alexander, *Sociology of the arts, exploring fine and popular forms* pp. 1-6 (Blackwell Publishing 2003).

organization to be deemed charitable for tax purposes. In this research, however, when mentioning “arts organizations”, the author refers to organizations that are active in the arts sector and meet the standards for being considered a PBO for tax purposes.

Arts organizations are chosen as a field of study because they have certain characteristics that distinguish them from PBOs in other fields, such as environmental aid, disaster relief, healthcare and the like. First of all, the core activity of arts organizations involves unique content that is difficult, if not impossible, to employ at multiple locations at one moment in time. Cultural heritage sites, for example, are fixed at one geographical location, and although orchestras can travel and, in some cases, it might be possible to substitute one musician for another, it is impossible to create a complete substitute for one specific orchestra, as it would have different artistic qualities. Second, the organizational structure of arts organizations is different than that of other PBOs. In other fields, fundraising organizations are often separated from the substantive activities. If the economies of scale are large enough, these PBOs become multinational.[27] In the health sector, for example, fundraising organizations are often separated from the organizations that conduct scientific medical research. In the cultural sector, both of these tasks are usually fulfilled by one and the same organization. The same holds for universities and some other categories within the philanthropy sector. This has an impact on the organizational structure, but also on the geographical flexibility of arts organizations. These characteristics make it more challenging for arts organizations to raise funds outside their country of residence. Therefore, if a solution that overcomes the tax barriers to cross-border gifts works well for arts organizations, it will most likely work for other PBOs as well; however, the other way around might not be true.

1.5. Outline

The structure of this book is as follows. In chapter 2, relevant literature on the topics of philanthropy, government support for the arts, indirect support through tax incentives and the international value of the arts is addressed. After these broad topics, the focus shifts to tax incentives and international philanthropy. As no literature overview on this topic has been created

27. G. Aldashev & T. Verdier, *When NGOs go global: Competition on international markets for development donations*, 79 Journal of International Economics 2, pp. 198-210 (2009).

before, the author does so by discussing the literature on tax incentives for cross-border philanthropy.

After the literature overview, chapter 3 is devoted to the research methods used. In this chapter, the author explains the methods used and justifies the choices made. Special attention is paid to the interdisciplinary approach employed, combining tax law and social sciences, in order to evaluate the existing solutions that allow for a tax benefit for cross-border philanthropy. This chapter also explains why the different approaches of countries towards tax incentives on cross-border philanthropy are broken down into ideal types in chapter 5. Furthermore, the author explicates the process of data collection and data analysis that she used in the empirical part of the research.

The following four chapters, chapters 4-7, discuss cross-border philanthropy in practice. Chapter 4 describes the existing solutions that donors and arts organizations can use to obtain a tax incentive for a cross-border gift. These solutions can be implemented by governments or through private initiatives. Therefore, the author distinguishes between "public initiatives", i.e. implemented by governments, and "private solutions", i.e. initiated by or requiring the effort of private parties. As mentioned, chapter 5 describes the different approaches that governments take towards the application of tax incentives for cross-border philanthropy. Based on existing legislation in a broad selection of countries, the author consolidates the common models into ideal types. To set the scene for the next part of the research, chapters 6 and 7 draw a picture of cross-border philanthropy in practice, including the challenges involved for arts organizations, but also the opportunities it brings and the strategies arts organizations use when raising funds abroad. This is done based on the analysis of documents from arts organizations that are involved in cross-border philanthropy and interviews with tax experts, philanthropists and those responsible for fundraising in arts organizations.

Chapters 8 and 9 concern the assessment of the existing solutions that allow for a tax benefit for cross-border philanthropy. Chapter 8 presents the assessment framework used to evaluate the solutions. This framework was constructed using the perspective of arts organizations. This is valuable for arts organizations, as it allows them to make better-informed decisions. As fundraiser 20A said, "[i]f you ask a lawyer to give you an opinion they are going to give you just the legal opinion. But you can't really make any decision about it […] you need a holistic approach to the problem". The criteria in the assessment framework are derived from interviews with arts organizations and experts in cross-border philanthropy. Furthermore, where available, criteria are derived from literature. In chapter 9, the assessment framework is applied to the existing public and private solutions that allow for cross-border philanthropy with the use of tax incentives.

As the research shows that the use of intermediary organizations is a popular solution for arts organizations to overcome the tax barriers to cross-border giving, a small side step was made to further assess this solution. In a lab experiment, donors' willingness to pay for services through intermediary organizations – such as insurance that their donation is rewarded with a tax benefit or that it reaches its intended goal – was assessed. The outcomes are discussed in chapter 10.

The main findings of the research are discussed in chapter 11. Based on these findings, recommendations are provided to policymakers who create regulations that match their government's approach to tax incentives for cross-border charitable gifts, as well as to arts organizations that want to raise funds abroad. As charitable gifts to arts organizations become more diverse and cross-border situations become more frequent, the experiences of arts organizations and examples of how different countries handle these gifts can be of value to others. As philanthropy adviser 4 said, "[c]ross-border philanthropy is a speck in comparison to philanthropy […] I think that there is no more than EUR 100 million in cross-border philanthropy in Europe. So it is a detail. But it is a growing detail".

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