

**Philanthropy for the Arts in the Era of Globalisation
International Tax Barriers for Charitable Giving**

**Kunstfilantropie in tijden van Globalisering
Fiscale barrières op grensoverschrijdende giften aan goede doelen**

Thesis

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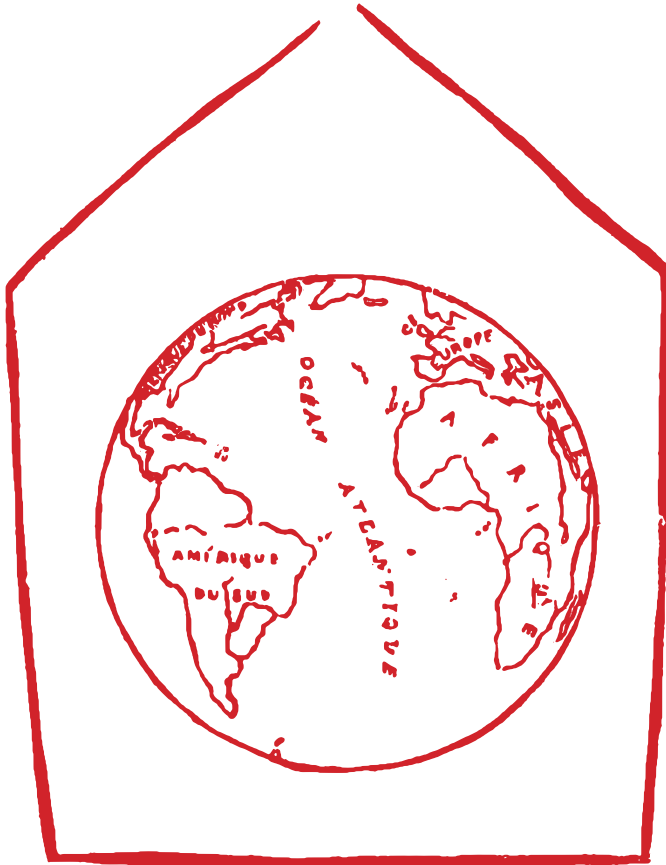
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*Quaevis terra patria.
[Any land at all is my home]*

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CASA para el Mundo

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Acknowledgements

Eager to expand my knowledge and with an openness for adventure, I began my PhD research in the fall of 2012. Triggered by curiosity, I wanted to find out how far I could reach when presented with the opportunity to deepen my understanding of arts funding while becoming acquainted with a new field, namely that of tax law. At the same time, I was uncertain of where this path would lead.

The start of my PhD journey coincided with the foundation of the Erasmus Graduate School of Law. For the next four and a half years I was surrounded by ambitious, intelligent PhD candidates from across the globe. I would like to thank the first class of the Erasmus Graduate School of Law, the PhDs who went ahead of us and those that will soon follow in our footsteps. Thank you for your critical and inspiring questions, the pleasant company and motivational words. Many of you have become friends over the last few years. I would especially like to thank my fellow PhD candidate Erlis and my friend Anisa, for opening their house, their hearts and their fridge to me. Jing, I am so happy that you are my paranymph today. It marks the end of us working side by side on our dissertation and the beginning of a friendship.

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With a finished dissertation in front of me and a ton of new knowledge, I am ready for the next adventure. All that is left for me is to invite you, the reader, to go through this research and witness the results of my PhD research.¹

Renate Buijze
Rotterdam, September 2017

¹ Materials have been included up to June 7, 2017.

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List of abbreviations

AE	United Arab Emirates	GBP	Great Britain Pound
AO	Abgabenordnung (Fiscal Code of Germany)	HMRC	Her Majesty's Revenue and Customs (tax authorities of the UK)
AU	Australia		
AUD	Australian Dollar	HU	Hungary
AWR	Algemene Wet Inzake Rijks- belastingen (Dutch General State Taxes Act)	IB	Inkomstenbelasting (Dutch Income Tax Act)
BB	Barbados	ICJ	International Court of Justice
BE	Belgium	IRS	Internal Revenue Service (tax authorities of the US)
CAD	Canadian Dollar	IRC	Internal Revenue Code
CAF	Charities Aid Foundation	JP	Japan
CASC	Community Amateur Sports Club	KBFUS	King Baudouin Foundation United States
CCRA	Canada Customs and Revenue Agency (Canada's Tax Authority)	LIR	Loi concernant l'Impôt sur le Revenu (Income Tax Act)
CGI	Code Général des Impôts (French General Tax Code)	LU	Luxembourg
CHF	Swiss Franc	NL	The Netherlands
CIT	Corporate Income Tax	NPO	Non-profit Organisation
ECJ	European Court of Justice (before 01-12-2009) and Court of Justice of the European Union (from 01-12-2009)	OECD	Organisation for Economic Cooperation and Development
DAC	Development Assistance Committee (of the OECD)	PBPE	Algemeen Nut Beogende Instelling (Dutch Public Benefit Pursuing Entity)
DE	Germany	PBO	Public Benefit Organisation
DGR	Deductible Gift Recipient (Australian qualifying public benefit organisation)	PIT	Personal Income Tax
EATLP	European Association of Tax Law Professors	SEK	Swedish Krona
EC	European Commission	TFEU	Treaty on the Functioning of the European Union
EEA	European Economic Area	TGE	Transnational Giving Europe
ES	Spain	UK	United Kingdom
EStG	Einkommensteuergesetz (German Income Tax Act)	UN	United Nations
EU	European Union	UNESCO	United Nations Educational, Scientific and Cultural Organisation
FA	Finance Act	UNIDROIT	International Institute for the Unification of Private Law
FR	France	US	United States of America
FTE	Full Time Equivalent	VAT	Value Added Tax
		WIB	Wetboek Inkomstenbelastingen (Belgian Income Tax Act)

1 Introduction

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 seventeenth-century art. Key pieces of major art 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 specialised 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 organisation, 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 artworks to a museum in the UK.

1.1 Tax incentives and international philanthropy for the arts

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 organisation outside his country of residence, even though the collector might have legitimate reasons to donate to a foreign arts organisation.

It is important for arts organisations to be eligible to receive gifts with a tax benefit to help attract gifts. Attracting gifts is vital for many arts organisations, as the income they generate from ticket sales and other commercial activities is too limited to finance their activities. Therefore, arts organisations 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; organisations active in the field of arts and culture are among such causes. By regulating which organisations 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 organisations 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.

Globalisation 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 organisations 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 organisation's country of residence and so do performing arts companies. The interest in philanthropic activities abroad has increased and arts organisations actively aim at raising funds abroad. Arts organisations 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.² Although most of the local benefactors of these organisations obtain a tax benefit on their gift, this is not self-evident for the foreign benefactors of these organisations.

This research focusses on tax incentives for gifts to arts organisations 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.

1.2 Solutions that allow for a tax benefit on 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 summarised as follows.

Solutions initiated by public bodies:

- Unilateral solution, which is present when the tax legislation of a country does not limit tax incentives on charitable gifts to the domestic situation, but extends it to one or multiple other countries. In the Netherlands, for example, foreign PBOs can request a 'public benefit pursuing entity' status (*Algemeen Nut Beogende Instelling*) at the Dutch tax administration in order for their benefactors in the Netherlands to benefit from a tax deduction.
- Bilateral solution, such as tax treaties between two countries that agree on mutual application of tax incentives in case of a donation between treaty countries. The tax treaty between the United States and Canada is an example.
- Supranational solutions, such as EU legislation. The ECJ has ruled that based on the fundamental freedoms of the 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 on the donation if this would be applied in the domestic situation.

² The Israel Philharmonic Orchestra has 'friends of' associations in the UK, Australia, Italy, Germany and Argentina and 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 PBPE in the Netherlands, see https://www.belastingdienst.nl/rekenhulpen/anbi_zoeken/. The Metropolitan Opera has an 'International Council', a group of benefactors specifically targeted at residents outside the US, 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. 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, see https://www.belastingdienst.nl/rekenhulpen/anbi_zoeken/ (Accessed 13 June 2017).

- Furthermore, the EC proposed a draft directive for 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:

- PBOs can establish a PBO with charitable activities abroad. The PBO abroad can have activities and serve as a foreign counterpart of the organisation.
- Foreign friends organisations, which 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.³ In countries that do not allow for tax incentives on gifts to foreign entities, the foreign friends organisations are a solution that circumvents the cross-border situation. It allows donors to contribute to a domestic PBO with a tax incentive. The foreign friends organisation spends the funds on the arts organisation abroad. Donations to these entities are eligible for a tax benefit, because the foreign friends organisations are established under the laws of the donor's country of residence.
- Arts organisations 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 organisations in the donor's country, also referred to as 'intermediary charities', can also provide services which enable the donor to give to a domestic charity and receive a tax benefit, even though the donation is spent 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 US to Europe and Africa, Israel Gives for gifts from the US and the UK to Israel and Transnational Giving Europe for cross-border gifts among European countries.⁴ 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 solve the tax barrier on a cross-border donation depends on the legislation in 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 resident country; therefore, none of the solutions above can overcome the tax barrier to cross-border philanthropy. There are also countries that allow for tax incentives on cross-border gifts, but only under certain conditions. Depending on the jurisdictions concerned, the existing solutions might facilitate arts organisations to be eligible to receive gifts with a tax benefit, thus helping PBOs persuade potential foreign benefactors to make a gift.

³ See <http://www.aflouvre.org> for the American Friends of the Louvre, www.friendsofvenice.us for Americans that wish to contribute to the preservation of the art and cultural heritage in Venice and <http://www.afbm.org> for the American Friends of the British Museum.

⁴ See <http://www.kbfus.org>, <http://www.israelgives.org> and <http://www.transnationalgiving.eu>.

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. Aim of the research is to find which solution best helps arts organisations 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 organisations?”

A few words of explanation on 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 organisations, which is determined based on the criteria used by those responsible for fundraising in the arts organisation. Which criteria they employ is described in Chapter 8 and merged with criteria derived from literature into 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. *What criteria does a solution to tax-efficient cross-border giving have to meet to be optimal from the perspective of arts organisations?*

Together, the answers to these five questions allow me to answer 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? And there are questions about the effect of government support on the demand and supply for the arts. Who benefits most from these tax incentives? Does it 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 crosses 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 amounts of donations is limited, let alone specific data for cross-border donations to the arts. The data that is available, is difficult to compare (Klamer, Petrova, & Mignosa, 2006, p. 34; O'Hagan, 2003, p. 452). 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 my aim to convince the reader that the arts should be supported by the government, nor is it my aim to convince the reader that tax incentives are the best way to do this, or that governments should support donations to arts organisations abroad.

Instead, this research focusses on the existing framework in which arts organisations 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 personal income tax. These tax incentives can take different forms, for example: a deduction from taxable income, a tax credit and a percentage designation scheme for taxpayers (Hemels, 2017b, pp. 109-119). 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 (Quick et al, 2014; Vanistendael, 2015).

Although the focus of this research is on tax incentives for arts organisations, the outcome of the research can be broadened to other fields where tax incentives are applied to support philanthropic causes, albeit caution is needed. Prerequisite to the generalisation of the outcomes is that the concerned organisation meets the requirements 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 following is a list of literature that focusses on tax incentives to support the arts. The standard work of Feld, O'Hare and Schuster (1983) *Patrons Despite Themselves: Taxpayers and Arts Policy* discusses indirect support on private donations to the arts from a policy perspective. Schuster (1987; 1999; 2006) later reflects and builds upon this earlier work. Pommerehne and Frey (1990) critically address the influence of different types of funding, such as tax incentives on donations to the arts, on the functioning of arts organisations. Hemels and Goto (2017) provide an overview of the incentives that exist in different fields of taxation to support the arts and give examples from a variety of countries. 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 (Heidenbauer, 2011; Von Hippel, 2014; Hemels, 2015). Other authors compare the taxation of cross-border gifts across different countries (Koele, 2007; Stewart, 2012; Heidenbauer et al., 2013; Von Hippel, 2014; Silver, 2016). 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 (see amongst others Adams & Page, 2005; Adams, 2011; Barham & Boucher, 1998). 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 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 organisations. To do so, this research relies on a combination of legal doctrinal research and qualitative case studies. The research tar-

gets 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 – the unilateral, bilateral and supranational – are interacting. For those academics that study the arts, this research provides a first exploration of international fundraising and philanthropy. For those scholars in the field of cultural economics, this research is of particular interest as it deals with funding of culture and how governments in an international context can influence the allocation of funding for the arts. Arts organisations and other PBOs can use this research for guidance on the best solution in context 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 on their gift. For policy makers, the research provides insight into both sides of the debate on the application or restriction of tax incentives in cross-border donations. It furthermore provides policy makers with recommendations on how to shape their non-profit policies in line with their objectives, whether that is restricting tax incentives on charitable gifts to the own country or extending these benefits to foreign countries.

1.4 Definitions

The study of tax incentives for cross-border philanthropy to the arts asks for an interdisciplinary approach. This research places itself in the fields of tax law, sociology and cultural economics. Consequently, concepts might differ slightly among disciplines. Before proceeding with the research, I further clarify the scope of this research and set the stage for the background of 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 which can be made by different actors (Bekkers, Schuyt & Gouwenberg, 2015). In this research, focus lies on philanthropy by individuals, as opposed to gifts made by corporations, grant making organisations 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 characteristic I derive from the definition of ‘charitable giving’ by Bekkers and Wiepking (2011a). I also use the term ‘philanthropy’ in reference to this practice. A broad definition of philanthropy is the voluntary use of private assets – financial contributions, in-kind resources, time, know-how and skills – for the benefit of specific public causes (Anheier & Daly, 2004, p. 159). Individuals, for-profit organisations, as well as other non-profit organisations provide these private assets (Bekkers et al., 2015). Salamon and Anheier (1997, p. 13) earlier defined philanthropy as “*the giving of gifts of time or valuables (money, securities, property) for public purposes.*” I adapt 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, I prefer to use the previous, as charity has the connotation of providing relief to severe and immediate needs, such as serving the poor. As Ostrower (1997, p. 4) states: “*Philanthropy is a broader concept, which includes charity but also encompasses the wider range of private giving for public purposes.*”

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 (Quick et al., 2014, p. 35). 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, I adopt that used by the World Bank; high-income countries are those countries with a Gross National Income per capita of USD 12,736 or more.⁵

'Donor' and 'benefactor' are used interchangeably throughout this research. These individuals all contribute part of their wealth to PBOs. Whenever I refer to a 'gift' or 'donation' in this research, I specifically speak of gifts made to PBOs, where PBOs are those organisations 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 it refers to the applicable definition that applies for tax purposes in the jurisdiction discussed. In the US, for example, these tax-exempt organisations are known as 501(c)(3) organisations.⁶ In the Netherlands, these organisations are referred to as PBPE.⁷

'Tax incentives for individual philanthropy' refers to the indirect support 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 (Hennuin, 2010, p. 27; Koopmans, de Kam, Sterks, & Wellink, 2005; Schuster, 1987; Schuster, 1999, p. 58). Due to the limitation of the research of gifts by individual donors, only those tax incentives in 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 Public benefit organisations and arts organisations

Throughout this research, I refer to 'public benefit organisations'. These are organisations 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 organisations fall within the broader category of public benefit organisations. Other authors have referred to these types of organisations as 'charities'. However, I use 'public benefit organisations', for the same reason I prefer 'philanthropy' over 'charity'. Also 'non-profit organisation' and/or 'non-governmental organisations' are often used to address those organisations that serve the public benefit. The former refers to organisations that are non-profit-distributing and the latter requires that the organisation is independent from the government. And indeed, in many countries arts organisations are privately owned and their main aim is not to make profit. However, in some countries arts organisations are (partially) state owned and/or do aim at making profit. Therefore, 'non-profit organisation' and 'nongovernmental organisation' do not properly cover the content of the subject and thus PBO is used instead.

⁵ World Bank, *New Country Classifications*, <http://data.worldbank.org/news/new-country-classifications-2015>. Accessed 17 July 2015.

⁶ US: IRC, section 501(c)(3).

⁷ NL: article 5b AWR.

The tax barriers to cross-border do nations hold for all types of PBOs. This research, however, specifically focusses on those PBOs active in the arts, which I refer to as arts organisations, since including PBOs in all fields would complicate a comparison.

Now what is art? As Abbing (2002, p. 19) states: “*Art is what people call art*”, 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 (Abbing, 2002, pp. 17-20; V. D. Alexander, 2003, pp. 1-6). 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 organisations. Some countries, for example, include craft organisations and/or amateur arts, while other countries exclude these categories. Arts organisations that are profit oriented, such as organisations in the fields of pop and dance music, are often not eligible because of their for-profit nature.

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

As noted, arts organisations can, depending on their jurisdiction of residence and on whether they meet the requirements, be a PBO for tax purposes. However, arts organisations do not necessarily have to be eligible for tax benefits. Whether 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 for an arts organisation to be deemed charitable for tax purposes. In this research, however, when mentioning ‘arts organisation’ I refer to those organisations that are active in the arts sector and meet the standards to be considered a PBO for tax purposes.

Arts organisations 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 organisations 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 to 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 of one specific orchestra, as it would have different artistic qualities. Second, the organisational structure of arts organisations is different than that of other PBOs. In other fields fundraising organisations are often separated from the substantive activities. If the economies of scale are large enough, these PBOs become multinational (Aldashev & Verdier, 2009). In the health sector, for example, fundraising organisations are often separated from the organisations that conduct scientific medical research. In the cultural sector, both these tasks are usually fulfilled by one and the same organisation. The same holds for universities and some other categories within the philanthropy sector. This has an impact on the organisational structure, but also on the geographical flexibility of arts organisations. These characteristics make it more challenging for arts organisations 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 organisations, most likely it will work for other PBOs as well. However, the other way around might not hold.

1.5 Outline

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

After the literature overview, I devote Chapter 3 to the research methods used. In this chapter I explain the methods used and justify 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 on cross-border philanthropy.

This chapter also explains why the different approaches of countries towards tax incentives on cross-border philanthropy are reduced into ideal types in Chapter 5. Furthermore, I explicate the process of data collection and data analysis which I used in the empirical part of the research.

The next four chapters, Chapter 4-7, discuss cross-border philanthropy in practice. Chapter 4 describes the existing solutions that donors and arts organisations can use to obtain a tax incentive on a cross-border gift. These solutions can be implemented by governments, or through private initiatives. Therefore, I distinguish between ‘public initiatives’, i.e. implemented by governments, and ‘private solutions’, i.e. solutions that are initiated by, or require effort of, private parties. As mentioned, Chapter 5 describes the different approaches governments take towards the application of tax incentives on cross-border philanthropy. Based on existing legislation in a broad selection of countries, I summarise 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 organisations, but also the opportunities it brings and the strategies arts organisations use when raising funds abroad. This is done based on the analysis of documents from arts organisations that are involved in cross-border philanthropy and interviews with tax experts, philanthropists, and those responsible for fundraising in arts organisations.

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 I use to evaluate the solutions. This framework was constructed using the perspective of arts organisations. This is valuable for arts organisations as it allows them to take a better-informed decision. As fundraiser 20A says: *“If 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 the interviews with arts organisations 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 organisations is a popular solution for arts organisations 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 organisations – 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 policy makers who create regulations that match their government's approach to tax incentives for cross-border charitable gifts, as well as to arts organisations that want to raise funds abroad. As charitable gifts to arts organisations become more diverse and cross-border situations become more frequent, the experiences of arts organisations and examples of how different countries handle these gifts can be of value to others. As philanthropy advisor 4 says: "*Cross-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.*"

2 ● Theoretical basis: International philanthropy, tax incentives and the arts

“If charity begins at home, scholarship on the charitable deduction has stayed at home.” (Pozen, 2006a, p. 1)

Tax incentives for cross-border philanthropy is a very specific and relatively untouched topic on which only a limited amount of literature exists. This limited literature mainly covers the tax consequences of cross-border donations (Cutbill, Paines, & Hallam, 2012; Heidenbauer, 2011; Koele, 2007), which is discussed in Chapter 4. The separate sub-themes of the research topic, however, have received an overwhelming amount of attention in academia, of which I discuss the highlights in this chapter.

First, I further explore philanthropy, which I defined as “*giving assets (money, securities, property) for public purposes*” in the introduction. In this chapter I take a closer look at philanthropy and fundraising for the arts and the differences across countries. The chapter then continues with a section on government interference in the non-profit sector and more specifically why governments support the arts. The following section addresses how governments stimulate private support for the arts through tax incentives. This is followed by a discussion of the advantages and disadvantages of indirect subsidies. Next, art, philanthropy and tax incentives are taken to the international level, focussing on cross-border situations. I discuss cross-border philanthropy and the indications we have on its size and its characteristics. Then I discuss what we know about cross-border philanthropy for the arts and identify the existing gaps in literature. Finally, I identify which factors inhibit cross-border philanthropy and summarise the arguments in favour and against the application of tax incentives on cross-border donations.

2.1 Philanthropy for the arts

2.1.1 Philanthropic giving

Why do individuals give their private assets to public purposes? Bekker & Wiepkink (2011a), in their literature survey on philanthropy, identify eight key mechanisms that determine philanthropy according to studies in different scientific disciplines:

1. Awareness of need – Potential donors need to be aware of existing needs in order to engage in philanthropy. The higher the awareness of a (perceived) need, the more likely it is that people give;
2. Solicitation – The majority of donations occur in response to solicitation by or on behalf of an organisation. Whether, and how often, people are solicited influences philanthropic activity;

3. Costs and benefits – Philanthropy goes at the cost of the donor’s assets. When costs of a donation decrease or benefits for the donor increase, giving increases in the majority of cases;
4. Altruism – Philanthropy, out of pure concern for the recipient, is labelled altruistic. Those who are motivated by altruism reduce their donations if they learn that the needs are already addressed. Overall, philanthropy is only partially altruistic, as donors care about the private benefits derived from their donations as well as the public benefits generated;
5. Psychological benefits – Philanthropy is practiced more for psychological benefits than for tangible benefits. People feel good about themselves because they do good;
6. Reputation – People give to public causes, because it leads to a positive social evaluation;
7. Values – In line with the values individuals derive from their religion, political conviction or more general values, they give to make the world a better place;
8. Efficacy – As (perceived) effectiveness of a donation increases, likeliness to engage in philanthropy increases.

A combination of these factors drives individual philanthropy. The people surrounding a person and moment in one’s life also influence giving behaviour. Affluent donors are usually introduced to philanthropy through their family, marriage, their business associates or their religion (Ostrower, 1997, pp. 17-19). This causes a ubiquity of philanthropy in their social environment and triggers them to start giving as well. Ostrower (1997, pp. 17-19) found that philanthropic behaviour is dominant in certain moments in the lifecycle, namely when being confronted with significant life change, such as illness, after retirement or when children start to age. Other studies add that people become more generous after they have spent some time reflecting on their lives, such as thinking about their own death or things in their lives for which they are grateful (Bekkers & Wiepking, 2011a, p. 28). Ostrower (1997, pp. 14-16) found that, in general, donors from the elite regard the selection of a cause a personal choice. A number of her interviewees, however, felt the obligation to support causes in the local community. This might relate to individuals perceiving their donation as fair contributions to services that they may use in the future (Bekkers & Wiepking, 2011a, p. 27). Nearly 80% of US donors contribute to multiple organisations per year. Among individuals with a high net worth, more than 60% give to at least four organisations (Dietz & Keller, 2016).

The data on individual giving behaviour can be accumulated. When this is done by country, differences in gift behaviour across countries show. The *World Giving Index* provides quantitative data on the frequency (not the size) of charitable giving around the world and, thus, provides insight into differences across countries. To create the index, 148,000 people were surveyed in more than 140 countries (Charities Aid Foundation, 2016). Based on the sample, Myanmar proves to be the most generous country in the world, despite being classified as a lower-middle-income country by the World Bank.⁸ This high ranking for Myanmar can be explained by religious values transferred through the Theravada Buddhism in which *Sangha Dana*, charity to the monk community, is practiced. The majority of the donations are small, but are made on a regular basis. Myanmar is followed by Indonesia, which also has a high population of religious individuals. The first high-income country in the top ten is Australia, ranked number three, followed by other high-income countries: Malta, New Zealand, Iceland, the UK, Norway, the Netherlands and Ireland, respectively. The countries where the least amount of money is donated, based on this sample, are Yemen and Morocco (Charities Aid Foundation, 2016).

8 <http://data.worldbank.org/country/myanmar?view=chart>, Accessed 18/07/2016.

Salamon & Anheier (1998) sought an explanation of differences across countries in the non-profit sector based on the historic development of the relationship between society and the state under influence of political and economic factors, which is also known as the social origins theory (Salamon & Anheier, 1998). This resulted in four different ideal types (liberal, social-democratic, corporatist and statist non-profit sectors) based on a two-dimensional approach in which government social welfare spending was set off against the size of the government. Einolf (2015), however, only found partial support for this theory among wealthy countries. The social origins theory offered a better explanation of differences in the non-profit sector among developing countries. Other explanations for differences in philanthropy across countries can be found in contextual factors such as historical developments, political influences, government policy in the non-profit sector, regulation of the non-profit sector and cultural factors. I briefly outline these factors in the following paragraphs.

The historical development of philanthropy varies from country to country, as it reflects the historical, economic, political and geographic changes in a country (Salamon & Anheier, 1997). Most countries have a long philanthropic tradition and there are few countries that have a relatively short history of philanthropy. South Korea, for example, is a country with a relatively short philanthropic tradition. Until the late-1980s, it was a recipient of global philanthropy and it only developed philanthropy after that time (Kang, Auh, & Hur, 2015, p. 426).

Three political influences that help explain differences in philanthropy across countries can be identified. First, the introduction of welfare laws at the beginning of the 19th century and the development of the welfare state in the 20th century in most Western and Northern European countries led to the institutionalisation of private initiatives that provide public benefits. This was accompanied by a decrease in public support and donations for non-profits (Wiepking & Handy, 2015c, pp. 598-599). Second, changes in political regimes impact the non-profit sector. The founding of the socialist government in the People's Republic of China ended the non-profit sector in that country, for example. The opposite also happens, as seen in Bulgaria, where the end of communism meant the re-emergence of the non-profit sector, largely thanks to gifts from foreigners (Wiepking & Handy, 2015c, pp. 597-603). Third, the political conditions in a country and its level of economic development influence the influx of gifts by foreign donors to a country. As an economy gets stronger, the amount of foreign funds decrease (Wiepking & Handy, 2015c, pp. 597-603).

Whether, and to what extent, the government supports the non-profit sector is another explanatory context factor. Some research shows that direct government support for PBOs (partially) drives down individual giving, which is also called 'crowding out' (Brooks, 2000). Others argue that the opposite is the case and that government spending actually crowds in – attracts or increases – individual giving, as:

1. Government subsidies lead to a higher budget and thus more can be spent on fundraising and creating awareness of need, and;
2. Government subsidies can be seen as a signal of trustworthiness of the PBO (Wiepking & Handy, 2015b).

Indirect support can be seen as such a signal of trustworthiness. The majority of countries provide indirect support to the non-profit sector through tax incentives for philanthropy. Layton (2015, p. 541) suggests that the tax treatment of the non-profit sector is an indication of the relation between the state and the non-profit sector. Those with a generous and favourable tax treatment of the non-profit sector hold the non-profit sector in high esteem.

An explanatory factor related to the tax treatment of the non-profit sector is the regulation of the non-profit sector. Formal regulation of the non-profit sector is often connected to registration for favourable tax treatment, although countries exist with separate bodies that regulate the non-profit sector. Many countries also have informal regulation through voluntary non-profit regulation systems (Wiepking & Handy, 2015c, pp. 605-606).

Furthermore, the culture of giving is of importance. The national religious culture is an important factor that shapes the culture of giving in a country, which is illustrated by the high rankings of Myanmar and Thailand in the *World Giving Index*. Buddhism and other religions, like Judaism, Islam and Christianity share an inherent strong obligation to give and to help others. Religions reinforce social ties and stimulate their communities to engage in philanthropic behaviour. The relation between the two shows to be a positive, statistically significant relation. The effect of religion on philanthropy can be expanded to a national level, where the national religious culture influences cultural values, reaching citizens outside the religious community, which positively affects philanthropy (Grönlund & Pessi, 2015). Besides religion, the level of professionalisation of fundraising in a country is of importance for the culture of giving, as the majority of donations happens in response to solicitation. There are similarities in fundraising around the world, but also differences, such as the extent to which fundraising is a formalised profession in a country, the attitude people have towards fundraising, the stage of development of fundraising technology and the maturity of the domestic donor pool (Breeze & Scaife, 2015). Depending on the advancement of fundraising in a country, there is a more or less culture of giving in a country.

Based on accumulated country data, worldwide trends on philanthropy can be distinguished. Globally, 31.4% of the people donated money to charity in 2015. This was an increase of 4.1% since 2011 (Charities Aid Foundation, 2016). The overall increase in monetary donation is reflected in all age categories, but is strongest among the youngest group of people between 15 and 29 years old. Interestingly, women across the world used to donate money more often than men, although the difference has decreased since 2009 and in 2015 there was little difference between the genders (Charities Aid Foundation, 2015; Charities Aid Foundation, 2016). Usually, there is a strong relation between giving in general and developments in the global economy. When there is a growth in global GDP, cash donations increase. When there is an economic downturn, like in 2009, giving faces a decrease as well (Charities Aid Foundation, 2012, pp. 6-7, 16-17). In 2015, however, global GDP fell but the levels of monetary donation remained stable (Charities Aid Foundation, 2016).

CAF made an estimate on future charitable giving. Based on the OECD predictions on the emergence of the global middle class and average charitable giving per household, the CAF believes that in 2030 the middle classes will contribute USD 224 billion to civil society per year. The emergence of the middle class in combination with the rise of those that possess more than USD 100 million creates a great opportunity for global philanthropy. It would allow solutions to major world problems, like extreme poverty (Charities Aid Foundation, 2013). Therefore, it would be beneficial for society as a whole if individual philanthropy continues to increase. Based on their cross-national analysis, Wiepking & Handy (2015b, pp. 597-623) identified the following eight factors that facilitate philanthropy:

1. A culture of philanthropy, where philanthropy and the non-profit sector are perceived as relevant and important, has a positive effect on individual giving.
2. Public trust in the non-profit sector, supported by a perception of transparency, accountability and effectiveness of the sector also has a positive effect on giving. In most countries

there are no actual issues with transparency, accountability and effectiveness of the sector, but individual's perception is that these elements are lacking.

3. Trust can be increased by government regulation and legislative frameworks and it also makes PBOs more effective, as it increases professionalism. The downside, however, is that it puts an administrative pressure on non-profit organisations.
4. Tax incentives to support philanthropy are considered an important factor influencing philanthropy. Governments that support the provision of public goods through the non-profit sector typically also have better tax incentives in place. Tax incentives are addressed extensively in the upcoming sections.
5. The state of the non-profit sector – its level of professionalisation – has a positive effect on philanthropy in a country.
6. The political and economic stability of a country are also key to giving behaviour. In unstable countries, people are less likely to give. Economic stability, or growth, influence philanthropy in two ways:
 - a) People need to have money to be able to give, and;
 - b) The perception of financial stability positively influences giving behaviour.
7. Demographics also prove to be very influential for philanthropy, as the typical donor is religious, older, wealthy and highly educated.
8. International giving is relevant, as foreign donor money can have significant impact on the development of non-profit sectors (Wiepking & Handy, 2015b).

It is likely that the eight mechanisms that determine individual philanthropy (Bekkers & Wiepking, 2011a) and facilitate philanthropy (Wiepking & Handy, 2015c) also apply to philanthropy for the arts, which is addressed in the next section.

2.1.2 Historic developments in cultural policy and philanthropy for the arts

Individuals, amongst others, give to the arts out of altruism and because of reputational motivations (Heilbrun & Gray, 2001, p. 265). In the US it is estimated that 5.7% of philanthropy goes to arts, culture and the humanities (Schuster, 2006, p. 1266). In the Netherlands 6% of philanthropy goes to culture (Bekkers et al., 2015). Inkei (2001), comes to a higher number for the international situation. He crudely estimates that internationally, some 10% of philanthropy goes to culture, but this most likely is an overestimate (Katz, 2006, p. 1317).

There is a strong difference in philanthropy for the arts between Europe and the US. Private philanthropy for the arts is larger and perceived as more advanced in the US. The majority of research focusses on US philanthropy for the arts and tries to explain the difference with European philanthropy through historical developments, which I summarise next, after mentioning that little attention has been paid to countries outside the US and Europe.

After World War II, the US government started to support social issues that were supported by foundations before the war, which led to foundations turning away from these causes and towards support for the arts and culture. Besides, a wave of grant-making foundations had just emerged in the 1930s and 1940s in the US, stimulated by federal tax laws. As corporate philanthropy emerged in the 1950s they joined the foundations in supporting arts and culture, leading to a strong private support for the arts (Katz, 2006, pp. 1306-1307). Up to the early-1960s the federal and state governments in the US offered no continuous direct support to arts organisations (Heilbrun & Gray, 2001). The US has a strong tradition of philanthropy for the arts. Art museums, orchestras and operas have a strong tradition of elite patronage. Later, theatre and dance followed, when they shifted from commercial entrepreneurship to

high art supported by patrons (DiMaggio, 1992). These historic developments are still visible in US arts funding. It is estimated that arts organisations derive 3% from corporate support, 4% from foundations and 24% from private support. With 60%, the largest source of income is the earned income, which includes ticket sales, sponsorships and fundraising events. Income from all levels of government adds up to a modest 9%.

In Europe the government had a much more dominant role in supporting the arts. After World War II, France, the UK, the Netherlands and other Western European countries started developing cultural policies. This active involvement of governments with the arts appeared under the influence of the social democratic paradigm which was in place. It stressed the importance of economic, social and cultural equality. By the end of the 1970's support for the arts had increased significantly and became a well-accepted part of public policy. Differences between European countries emerged, however (Toepler & Zimmer, 2002, pp. 31-33).

The larger countries in continental Europe developed themselves into generous supporters of the arts. Especially in the Scandinavian countries and the Netherlands, governments showed significant involvement with the arts, up to the point that the expenditure on arts in these countries surpassed the arts budget in traditional big spenders such as France and Germany. In Germany, for example, 90% percent of total expenditure on culture is provided through public funds (Burns & Van der Will, 2003, p. 145). Where in France and Germany the arts served as a vehicle to express the national grandeur, in Scandinavian countries the arts were closely linked to social empowerment. In Western and Northern European countries, the government played a dominant role and took on the financial responsibility for the arts (Toepler & Zimmer, 2002, pp. 31-42).

Although the development of cultural policy is largely influenced by its past, gradual shifts can be witnessed over time. The National Endowment for the Arts supported the arts in the US with USD 146 million in 2014. This is a major growth of government support for the arts in the US, in comparison to 1966, when the National Endowment for the Arts only gave USD 2.9 million (Americans for the Arts, 2014). Where governments in Europe were very involved in the arts sector since the 1970's, a tendency towards privatisation emerged in the 1990's. Arts organisations that were previously led by governments became privatised and more public-private partnerships arose. This shift seems to be the start of a tendency towards an arts sector in Europe that relies less on the government. However, this does not entail that the European model will converge into the US model in the short run. For now it seems that the arts sector in Europe is discovering the private sector, but sees the resources derived from private donations and the business community as complementary to public funding (Toepler & Zimmer, 2002, pp. 44-45).

2.1.3 Fundraising

In sharp contrast to the attention for donors, literature has paid little attention to the supply side (Breeze & Scaife, 2015). This is despite the fact that we know that the majority of donations is in response to solicitation; the more opportunities an individual has to give, the more likely they are to give (Bekkers & Wiepking, 2011a, p. 23; Breeze & Scaife, 2015, pp. 607-609). Larger donors receive more solicitations per year for philanthropic donations. This is because on the one hand solicitations yield contributions and on the other hand because contributions attract more solicitations (Bekkers & Wiepking, 2011a, p. 23). Based on older research from the 1980s and 1990s, we know that effort put into fundraising pays off well for museums, with ratios varying from 1:2 to 1:7 (Heilbrun & Gray, 2001, pp. 212-213). This underlines the

importance of solicitation and fundraising. Luckily, the sector recognises this and fundraising is becoming more professional and professionalised (Breeze & Scaife, 2015, p. 587).

Prerequisite for philanthropy is that individuals are aware that there is a need. Non-profit organisations and their fundraisers, as well as the media, have an important role to play here (Bekkers & Wiepking, 2011a, pp. 20-23). According to Dietz & Keller (2016), the four fundamental issues donors care about, and thus key to successful fundraising, are that:

1. donations are spent correctly;
2. the organisation is reputable;
3. the organisation's mission is sound and;
4. contributions make a difference.

What it mainly boils down to, therefore, is trust in the organisation (Breeze & Scaife, 2015, p. 590).

Communication is king for fundraisers. Donors want to receive short, independent information, preferably tuned to their interest. More than half of donors would like to receive this information on a monthly basis and 65% think PBOs currently communicate the correct amount (Dietz & Druart, 2015). A misconception exists among PBOs; they believe that their donors want to receive information more frequently. Personalised information makes 71% of donors feel more engaged. However, when personalisation is not done the right way (e.g. misspelled names), it is counterproductive. Furthermore, it has to be sincere personalisation. After making a gift, most donors value a sign of recognition, of which a personalised thank you note sent to the home of the donor is favourite, followed by a personalised thank you email. Of all the possible forms of recognition, public recognition of the donation was liked least (Dietz & Druart, 2015; Dietz & Keller, 2016).

Most arts organisations provide their donors with a range of benefits (Heilbrun & Gray, 2001, p. 264). This can increase donations, as shown by a study on gifts to the English National Opera (Buraschi & Cornelli, 2002), but also engaging donors with the organisation helps increase loyalty. 74% of a representative sample of US donors say that attending an event, has a positive effect on their likelihood to donate (Dietz & Keller, 2016). Around the world, hosting events is one of the most frequently used methods to raise funds (Breeze & Scaife, 2015). Volunteering for an event has a similar effect to fundraising events, and 73% of volunteers stated that it increased their likelihood to donate. 11% of US donors had a volunteer leadership role, such as serving on a committee or board, over the past year (Dietz & Keller, 2016). The board of an arts organisation can serve as a fundraising tool. By attracting wealthy individuals as board members, it incorporates and attracts wealthy donors to the organisation. Members on the board might give to the organisations themselves. This is a custom in larger arts organisations in the US, for example. In other countries, however, this may be restricted by rules regarding the governance of an organisation. Still, it can be beneficial to have affluent people on a board, since peer pressure in philanthropy is strong and therefore the board members can increase fundraising efforts by mobilising their friends to contribute to the organisation (Ostrower, 1997). Having wealthy individuals on the board, however, can also be a source of tension; if wealth is viewed as a status symbol, wealthy individuals may be concerned with the exclusivity of their own status. This might not be in the best interest for fundraising for the arts organisations (Ostrower, 1997, pp. 9-10).

Despite these common trends in fundraising, fundraisers are faced with many differences around the globe. Wealth of the general population, average spending on philanthropy and other factors affect their work (Breeze & Scaife, 2015). This, amongst others, results in differences in philanthropy across countries.

2.1.4 Final remarks on the literature on arts philanthropy

Existing literature sheds light on the mechanisms underlying philanthropy in general, and more specifically on philanthropy for the arts. The role of fundraisers has proven to be one of the key factors in philanthropy. Although several studies provide cross-country analyses on the non-profit sector and philanthropy (Salamon & Anheier, 1997; Wiepking & Handy, 2015b), the literature emphasises arts philanthropy in the US. The available comparisons on the historical development on funding for the arts in Europe and the US show that the two continue to move. European arts organisations turn more towards private philanthropy, whereas arts organisations in America witness relatively little government spending and rely on alternative income. Other countries remain largely underexposed.

2.2 Government and the arts

Governments can take several roles with regard to support for the arts, varying by the means with which the state funds art, and the degree to which the state actively shapes the culture it supports (Hillman, Chartrand & McCaughey, 1989):

1. A facilitator state encourages private support for the arts through favourable tax policies.
2. A patron state funds arts through quasi-independent arts councils. Arts councils rely on peer-review panels, so arts professionals rather than agents of the state decide what art deserves support.
3. An architect state relies on centralised ministries of culture to support art. The ministries, an arm of the government staffed by civil servants, attend to social as well as artistic standards in determining funding merit.
4. An engineer state promotes art that fulfils political purposes and suppresses the rest.

Extensive literature has been written on why governments take a role in supporting the arts. This paragraph provides a comprehensive overview of the main arguments put forward in literature on government support for the arts. The arguments for government support for the arts can be roughly divided into two strands: 1) arguments based on economic reasoning and; 2) more philosophical reasoning relying on ethical convictions. The first six arguments I address are more philosophical. The last seven arguments are based on market distortions, which represent the economic reasoning. The main claim within the economic reasoning is that if markets are perfect, they do not need any government support. However, when there are market failures, there are grounds for government intervention.

2.2.1 Cultural legacy

Preservation of arts and culture is perhaps one of the most prominent reasons governments support the arts. People find joy, stimulation and enlightenment in the consumption of art. According to this view, future generations should be able to enjoy art just like present generations. A culture that is at least as rich as we know it to be should be handed over to them (Heilbrun & Gray, 2001, pp. 226-227). This value of art for future generations is labelled 'bequest value' (Pommerehne & Frey, 1990).

Although this is a strong argument, it can be countered with a few tentative arguments. First, some question why government subsidies are necessary. If society as a whole values the preservation of art, this should be taken on by the private sector. This can be countered by the economic theory that the private sector pursues profit maximisation on the short-, medium- and long-term, not on the long run. Second, preferences change over time. Therefore, the

current generation does not know what future generations will value and thus it is uncertain whether they will value the preservation of art as much as the current generation does. Nevertheless, history shows that these changes in preferences over time are subtle and certain pieces of art have remained valuable for hundreds of years.

Dworkin (1985, pp. 226-227) questions whether government support can be justified based on the bequest value of art. He argues that the people who pay to preserve cultural heritage are not always the ones who benefit. This could, however, be solved by making this policy continuous. In that case, people will pay for future generations and will benefit themselves from investments made by previous generations. Furthermore, Dworkin states, it is impossible to predict the precise outcome of public support for the arts. What specific type of art does it produce? This problem also places marginal notes on the public support for art. A final problem with the cultural legacy argument, according to Dworkin, is that should art disappear as a whole, people might not miss it since they never experienced the existence of art; it is not their judgment that their lives would be better with art. Though these problems exist, they do not imply that public support for the arts have negative effects and therefore they do not overthrow the cultural legacy or non-market arguments.

2.2.2 Aesthetic value of art

Art can be beautiful, art can be ugly, art can be thought provoking, art can be full of humour and much more. All these characteristics are captured in the aesthetic values of art. An individual piece of art displays its own aesthetic values. Some argue that, due to these characteristics, the consumption of art has an elevating effect. Being exposed to the aesthetic values of good art is deemed to help exercise peoples' senses. Exercising senses improves behaviour, which makes individuals better people. This is good for society and therefore art deserves government support. There is no proof, however, that art has a positive influence on the behaviour of people. Another problem with this argument is that the discussion on what is considered good art is highly subjective (Heilbrun & Gray, 2001, pp. 228-229; Pommerehne & Frey, 1990).

2.2.3 Cultural identity

Art is a way to manifest a culture in relation to other cultures. It helps to construct a cultural identity among groups within a society. Cultural identities can be national identities, as well as the identity of belonging to a certain social class or ethnicity. Besides, a sense of cultural pride might be derived from art, which can lead to a stronger solidarity within a group. To bolster its contribution to a strong national identity, governments can support art (Fullerton, 1991, p. 168; Heilbrun & Gray, 2001, p. 227). Closely related to this idea is the idea that cultural organisations produce prestige value (Pommerehne & Frey, 1990).

Some might find a national identity a valid reason for government support for the arts, others might refute this. This depends on one's ethical and political conviction. If it is found desirable to support a national identity, it is questionable whether art is the most efficient way to do so, since art is only one way to construe a sense of national pride and prestige (Heilbrun & Gray, 2001, p. 227).

2.2.4 Economic spillover

The presence of cultural activity of arts organisations can increase economic activity. This is achieved by the actual economic activity the arts produces, but also indirectly by attracting

visitors from other areas that spend money on other facilities, such as the parking lot, dining at a restaurant and staying at a hotel (Heilbrun & Gray, 2001, pp. 227-228; Throsby, 2001, pp. 124-130). Furthermore, cultural activity can make a region attractive for businesses (Heilbrun & Gray, 2001, pp. 227-228; Throsby, 2001, pp. 124-130). Again, it is questionable whether arts are the most cost-effective way to create economic value (Heilbrun & Gray, 2001, pp. 227-228).

2.2.5 Merit good

The merit good argument argues that when people are left alone, they consume too little of a good thing for their own well-being, from the perspective of society. This is also applied to the arts. Thus, according to this argument, it would be better for society if people consumed larger quantities of art than the individual consumer would purchase in the market (Frey, 2003, p. 392; Heilbrun & Gray, 2001, pp. 219-243). Sometimes the merit good rationale is extended to the point that art needs a certain degree of sophistication, richness and excellence, in order for individuals to optimally benefit from it. Taken from this perspective, governments should intervene if individuals will not or cannot arrange this themselves (Dworkin, 1985, p. 221). The fact that the merit good rationale denies the sovereignty of the consumer goes against the idea that the consumer knows what is best, a belief held by free market economists. By doing so, the merit good argument is highly paternalistic (Fullerton, 1991, p. 73).

2.2.6 Income redistribution

All classes of society should have access to the arts, not just the rich. To ensure this, the government needs to support the arts so people that cannot afford to pay much money for consuming arts can also benefit from it. This argument is also known as the equity argument, which entails that subsidies should be given because some participants lack the income to buy a minimum fair share (Frey, 2003, p. 393; Heilbrun & Gray, 2001, pp. 219-220).

This argument is largely refuted among scholars. First, the majority of the people with relatively low incomes will probably prefer financial support for basic necessities and not for luxurious goods such as art (Fullerton, 1991, p. 72). However, this is an ethical conviction and cannot be proven scientifically. Second, empiric research shows that in general, the (upper) middle class benefit most from government support to the arts rather than the least wealthy. Those in relatively high-income brackets pay for this. This shows that the arts are only mildly redistributive (Feld et al., 1983; Frey, 2003, p. 395; Fullerton, 1991, pp. 72-73). Third, the meta-study by Dimaggio and Useem (1978) on arts attendance among American audiences indicates that the increase in government subsidies in the early-1960s did not lead to a less elite and more diverse arts attendance. Perhaps the arts are not the best way to redistribute income, unless it is desirable that money flows from the very wealthy to the upper middle class.

The income redistribution argument can also be applied to the supply side. On average, artists are less wealthy than others in society. Therefore, some governments provide support for artists. The government support, however, does not always end up with artists with low incomes. Some forms of government support tend to stimulate more successful and therefore wealthier artists, since this is less risky in the political re-election process. The majority of government support, however, ends up with artists with low incomes (Frey, 2003, p. 394).

Still it remains difficult to justify government support for artists with this argument, since there are more groups of professionals that are less wealthy on average than others in society. And it is again an ethical conviction that governments should support poor artists.

Furthermore, Abbing (2002, pp. 101-102) pointed out that artists are mainly intrinsically motivated to become and remain artists.

2.2.7 Public goods

An imperfection of arts markets is caused by arts having characteristics of public goods. Public goods, or collective goods, are goods that are non-rival and non-excludable in consumption. The non-rival characteristic entails that the consumption of a public good by one person does not diminish the amount that remains for others to enjoy. Public goods being non-excludable means that people cannot be denied consumption of the good. Since these are rather strong characteristics, the number of pure public goods is limited (Gruber, 2011, pp. 181-183). However, heritage sites such as the Egyptian pyramids are examples that are as good as pure public goods. They are non-rival and non-excludable. Everybody who visits Egypt can stroll along the pyramids and this enjoyment does not exclude others from enjoying the pyramids, nor does the consumption of one person influence the amount that remains for others to enjoy. This makes the Egyptian pyramids public goods.

Since consumption by one person of a public good does not diminish the amount that remains for others to enjoy and it is difficult, if not impossible, to exclude those who do not pay for the good, the so called 'free riders' problem arises (Heilbrun & Gray, 2001, pp. 219-243). A consequence of free riders is that suppliers of a public good are incompletely reimbursed for their efforts and therefore should be compensated, since many public goods would otherwise be underprovided (Throsby, 2001).

The public goods argument cannot be applied to all arts and culture though, since they usually do not (fully) meet the characteristics of public goods. Strictly taken, cultural consumption as provided by museums and theatres are, for example, not public goods (Frey, 2003). The attendance of one person at the opera diminishes the amount that remains for others to enjoy, since one seat out of a limited number of seats is occupied and cannot be used by others. People who cannot afford the entrance fee can also be excluded from attending the opera performance.

When looking at it from a broader perspective the opera could be an impure public good. An impure public good is a good that has one out of two characteristics of a public good, but does not meet both. Although the number of seats at an opera performance is restricted, the opera could be performed endlessly. One opera company performing *Carmen* cannot prevent other opera companies from performing it, nor can it prevent opera companies from performing it in the future. This makes the opera non-rival. By demanding copyright fees however, opera companies can still be excluded from performing the piece.

2.2.8 External benefits

In fully competitive markets, goods are allocated efficiently. However, the production and/or consumption of goods can produce side effects or externalities that influence the welfare of individuals or society as a whole. These side effects can be positive as well as negative (H. S. Rosen & Gayer, 2010, p. 73).

The costs of externalities are not included in the price of a good. Think of costs governments incur to rinse river water due to pollution by factories. These costs are not included in the price of the goods the factories make. This causes negative externalities for society as a whole, namely the costs to rinse the polluted water. The opposite holds as well: positive externalities for society as a whole are not fully reflected in the demand for a specific good.

Since these external benefits are not included in the market, this might lead to a too limited production in comparison to the socially optimal production (Gruber, 2011, p. 123).

According to many scholars, the arts produce external benefits such as social cohesion or national identity and prestige, collective benefits produced by artistic innovation, contribution to a liberal education, the economic boost cultural sites create for their surroundings and finally the satisfaction art provides for humans' desire for stimulation and excitement (Frey, 2003, p. 391; Fullerton, 1991, pp. 74-75; Heilbrun & Gray, 2001, pp. 219-243; Pommerehne & Frey, 1990; Throsby, 2001, p. 38). It is not the producer of art that benefits from these positive externalities, but other parties (Gruber, 2011, p. 128).

The external benefits argument is countered by some scholars. They are convinced that external benefits are limited, if they exist at all. Others claim that the external benefits are not relevant, since these also exist in many other fields. Governments do not interfere there either; the market manages to deal with externalities in those fields, so why should the government support the arts (Dworkin, 1985, p. 225; Frey, 2003, p. 393)? A response by those in favour of government support for the arts is that external benefits caused by the arts are far larger than those produced in other fields, which gives governments a reason to support the arts (Frey, 2003, p. 393).

2.2.9 Lack of information

Markets are efficient when consumers are fully informed; unfortunately, this is not the case for the arts. Consumers lack the necessary information to make a fully informed market choice. Therefore, they cannot decide on whether – or what – art to consume. According to this argument, governments should provide for the arts (Frey, 2003, p. 392; Throsby, 2001, p. 140). An additional refinement of this argument is that consumers do not always behave rationally. Sometimes, they do not act according to their underlying values due to misperceptions, weakness of will and fluctuations in preferences over time. Government intervention can compensate this irrational behaviour through long-term art policy (Throsby, 2001, p. 141).

There are several arguments that refute this reasoning. The lack of information might be a rational choice made by individuals. People might not be interested in arts and therefore rationally decide not to inform themselves on art (Frey, 2003, p. 392). Besides, this argument assumes that consumers cannot decide what is good for them and therefore the government must do this. Just like the merit good argument, this goes against the economic rationale of fully competitive markets and is haughtily paternalistic.

2.2.10 Non-market demand

Not everybody consumes art; still the presence of art in society can be valued by those who do not consume it. Some might value the option of consuming art. They might want to consume art in the future and find it satisfying that art belongs to one of the options they can choose from. This is also referred to as the 'option value' (Pommerehne & Frey, 1990). Other non-consumers value art because of its effects on society. Furthermore, there may be a bequest value to art, as was discussed in section 2.2.1, in order for future generations to be able to enjoy art (Throsby, 2001, pp. 36-37).

The value non-consumers attach to art – the non-market demand – is not reflected in the market demand for art. If supply of art depended solely on the market, it would be less than when the non-market demand is taken into account (Frey, 2003, p. 391; Heilbrun & Gray, 2001, pp. 219-243; Throsby, 2001, p. 37). To compensate for this market failure, governments

support the arts. This argument can be partially overthrown by the fact that the present generation does not know the preferences of future generations and non-consumers. Furthermore, when governments have to compensate in order for the non-market demand to be taken into account, this would mean they have to support almost all sectors.

2.2.11 Imperfect competition

Some areas of arts markets are characterised by monopolistic actors, such as theatres and museums. In many cities they are the single provider of a certain cultural good. This makes these arts organisations monopolists and allows them to provide smaller quantities at prices higher than competitive suppliers would sell for. In this manner the goods become more expensive for consumers and producers maximise their profits. As with many monopolies, the government might want to compensate for this market failure. This does not apply, however, to all art markets. When art is sold at auction houses, there is no monopoly effect, but rather perfect competition, for example. Furthermore, even when arts organisations hold a monopoly position, this does not entail that they will act as such, since most arts organisations are organised on a not-for-profit basis (Frey, 2003, p. 393; Heilbrun & Gray, 2001, pp. 219-223). Besides, even if a city or region has only one theatre, it is questionable whether this can be considered a monopoly, since current transportation possibilities allow people to easily travel between cities. Finally, the monopoly of a theatre can be debated as it must compete with other activities for the leisure time of their audiences.

2.2.12 Increasing returns to scale

In the production of most goods there is a constant return to scale, which means that doubling the input leads to a doubling of output (H. S. Rosen & Gayer, 2010, pp. 320-321). However, this does not apply for certain arts markets. The arts are subject to increasing returns to scale (Frey, 2003, p. 393). This means that output increases more in proportion to input as additional products are produced. So, production of the initial product costs much more than additional products. This is the case for many performing arts, but also for the production of movies, books, etc. The initial preparations for a play are very costly; however, once the first theatre performance is ready, the costs of an additional performance are much lower because the initial costs – also referred to as sunk costs – are constant.

Usually, an efficient price for a good is a price that at least equals marginal costs. This means that the price at least equals the costs necessary to produce an additional product after producing the first product. This pricing mechanism would produce a loss in the case of the arts, since the marginal cost is lower than the average cost. If governments want the product to be provided according to efficient pricing, they should compensate for the difference between marginal and average cost. Arts organisations, however, could also choose a different pricing mechanism (Frey, 2003, pp. 393-394). Increasing returns to scale, therefore, do not seem to be a justification for government support for the arts.

2.2.13 Productivity lag and rising costs

In other fields of the economy, the labour productivity increases over time due to an increase in capital per worker, technological developments, increase in labour skills, better management and economies of scale as output rises. This does not hold for certain areas of the arts,

such as the performing arts where the work of the artist is the final product. Due to this fact, labour productivity in the performing arts does not increase as quickly as in other fields. Wages, however, do rise as quickly as in other fields. This type of cost pressure is known as Baumol's cost disease (Baumol & Bowen, 1966). In the long run, government support is necessary in this view to preserve the performing arts.

Nevertheless, in many areas of the arts, labour productivity increases over time just as in other sectors, due to process innovation and product innovation. Even though a piece of Shakespeare cannot be performed faster than the actual duration of the play and a minimum number of players is needed, the play can reach a far larger audience through recordings. The play can be recorded and broadcasted immediately or later. This decreases the average price per play and increases income of the theatre company as a whole. For supporting activities, such as lighting, ticket sales and set design, the cost disease is not present, which relieves some cost pressure from the production. Furthermore, a certain number of actors might be necessary for a Shakespeare play, but that may not be the case for contemporary plays (Cowen, 1996; Frey, 2003, p. 393; Heilbrun, 2003, p. 91).

According to this reasoning, the cost disease is an outdated theory. The performing arts are now witnessing a decrease in technological costs, which makes it possible to provide performances at decreasing rates on the short run. Baumol (1996, pp. 198-199) refutes it for the long run, however, since human input from artists is still necessary and their productivity does not increase, whereas the price of technology continues to increase. The share of the costs of a performance made up of technological costs will, therefore, become relatively small in comparison to the share of costs of performing artists, whereas production costs of products not subject to the cost disease will continue to decrease. In the long run, performing arts will, therefore, become expensive relative to other products, resulting in a decline in the production of performing arts, presuming that these are price-elastic. Price elasticity means that if the price of a good decreases, the consumption of that good increases to a larger degree than the price change, all else being equal. If a product is price-inelastic, the percentage of change in demand is smaller than the percentage of change in price. Section 2.3.1 elaborates on price elasticity in relation to donations.

Other scholars, on their turn, refute this by arguing that this also holds for other fields, such as manufacturing, education, healthcare, police and justice. A certain amount of human input is necessary in most fields (Cowen, 1996, p. 209). Furthermore, if the arts are price-inelastic, the argument that art becomes more expensive is no argument for government support, since people would buy it anyway. Besides, the cost disease assumes that wages also increase, which entails that people would have more money to spend, including on the arts (Fullerton, 1991, p. 69).

2.2.14 Concluding remarks

Neither philosophical nor economic arguments can provide a solid and objective ground for government support for the arts, as each of the arguments can be opposed. For the more philosophical arguments, it can be wondered whether government support for the arts is the most cost-effective way to achieve certain policy goals. Second, most of the arguments are based on certain paternalistic beliefs; an assumption is made about what is good for consumers. Whether these arguments hold depends on one's ethical conviction and political beliefs. The manner in which the philosophical arguments are valued depends largely on the role assigned to the government. The arguments based on distortions in arts markets might identify weak

spots in the market, but do not provide hard evidence in favour of government support for the arts. The distortions in the art market could also be rectified by the market itself. Besides, almost every industry faces distortions in the market. Last, when weighing the value of these arguments against arguments for government support to other fields, these might show a certain amount of weakness.

This does not mean that there should not be government support for the arts. Depending on one's political and ethical viewpoints, there can be strong grounds for government support for the arts. This is especially the case when market failures prevent certain highly-valued goals from being met. How governments decide whether and which art should be supported depends on the position they take in relation to the community. Governments can take three standpoints when supporting the arts in relation to the community (Throsby, 2001, p. 139):

1. They can take a paternalistic standpoint, which would be the case if the community were indifferent, or even hostile towards the arts;
2. The government can act on the belief that it shares the same views as its voters, which would imply that government actions are in line with individual preferences of the community, and;
3. The government can support the arts as a response to the lobbying of the arts sector.

This research takes as a starting point that governments exist that want to support the arts, regardless of their standpoint.

2.3 Indirect support for the arts

Governments can provide support for the arts in several ways (Pommerehne & Frey, 1990). They can provide financial support, but they can also support the arts in other ways. National art institutions owned by governments, governments purchasing works of art, as well as marketing campaigns initiated by governments in which the arts sector of a country is advertised are examples of ways in which the government can support the arts. This being said, from this point forward when I mention government support, I refer to support through subsidies, which can be divided into two categories: direct and indirect subsidies.

Direct subsidies are payments all at once by governments to subsidise the recipients (Hennuin, 2010, p. 27; Koopmans et al., 2005; Schuster, 1999, p. 27). The direct subsidies are financed through the collection of taxes and other revenue by the government. From the budget that is formed, the government allocates direct subsidies to recipients. The government takes the direct subsidies into account on the expenditure side of the balance (Hemels, 2005, p. 11). Surrey sums up examples of direct financial government support: “...*direct grants, loans, interest subsidies, guarantees of loan repayment or interest payments, insurance on investment and so on*” (Surrey, 1970, p. 173).

Indirect subsidies, also referred to as tax expenditures or tax incentives, are a compensation in the tax legislation. The taxpayer pays less tax, and therefore the government receives less tax. A physical flow of money from the taxpayer to the government is lacking. The recipient organisation, however, has more funds in the end, while the government has less funds than if there had not been indirect subsidies. The same holds for direct subsidies (Hemels, 2005, p. 11). Examples of indirect support are preferential tax rates, income deductions, exemptions and tax deferrals. The aim of these measures is to influence the behaviour of taxpayers in order to achieve policy goals (Surrey, 1970, p. 173; Feld et al., 1983; Hemels, 2017a). Indirect subsidies erode the primary tax structure. What this primary tax structure encom-

passes is debated among scholars and remains a grey area (Hemels, 2005, pp. 16-18; Koopmans et al., 2005, pp. 35-36; H. S. Rosen & Gayer, 2010, p. 397). Tax experts tend to look at 1) the normative concept for the tax base, e.g. what is perceived as the ideal tax base; or 2) the current applicable fiscal concept of the tax base (Hemels, 2005, pp. 13-17). Jochum (2012, p. 593), for example, regards all tax expenditures that benefit a person's private expenditure by making it deductible as 'special expenditures'. Economists see all deductions and exemptions as interruptions in the primary tax structure (Koopmans et al., 2005, pp. 35-36).

Indirect subsidies go at the cost of government revenue. Figures of different countries show the estimated size of tax expenditures for charitable gifts. In Australia the deduction of charitable gifts in private income tax was estimated to reduce tax revenue by AUD 860 million in the fiscal year 2006-2007 (Productivity Commission, 2010, p. 155). In Canada the tax expenditures for the deduction of charitable contributions by individuals and companies were estimated at CAD 2.9 billion in 2011 (Standing Committee on Finance, 2013, p. 9). Tax expenditures in Ireland for the year 2010 totalled EUR 50 million, of which EUR 19.8 million accrued directly to the donor and EUR 30.2 million accrued to eligible PBOs (Breen & Carroll, 2015, p. 193). Between 2008 and 2014, on average per year, Dutch taxpayers deducted EUR 825 million in gifts from their taxable income. The average loss in tax revenue per year due to these donations was estimated at EUR 330 million (Brennenraedts et al., 2016). In the US deductions for charitable contributions were taken into account at USD 58.21 billion in indirect expenditures in 2016 for the deduction of charitable contributions (Office of Management and Budget, 2015, p. 240). An estimate from the US on decrease in tax revenue due to tax incentives for contributions to the arts, culture and the humanities gives an impression on the size of indirect support for arts and culture. With private contributions⁹ to arts, culture and the humanities ranging between USD 10 and USD 11 billion, it is estimated that the reduced revenue due to tax incentives in income tax and wealth-transfer taxes is USD 4 billion annually (Netzer, 2006, pp. 1240-1241).

2.3.1 Tax incentives for philanthropy and price elasticity

Tax incentives are a widespread tool used to achieve policy objectives by stimulating private initiatives. Philanthropy is one of the sectors where tax incentives are frequently applied. The index *Rules to Give by. A Global Philanthropy Legal Environment Index*, shows that among the 177 United Nations (UN) Member States analysed, the majority of 66% offer a tax incentive for giving by individual donors.¹⁰ When focussing on high-income countries, the level is even 87%, whereas this level is only 44% in low-income countries (Quick et al., 2014). Governments use tax incentives as a measure to provide an incentive that stimulates private contributions to public goods, which would otherwise be underprovided (Frey, 2003, p. 389; Throsby, 2001). The idea behind tax incentives is that they decrease the relative cost of the gift compared to other consumption and, therefore, stimulate philanthropy. This assumption, however, only applies if philanthropy is price-elastic. Price elasticity means that if the price of a good decreases, the consumption of a good increases, all else being equal. If donations are price-elastic, the decrease in price due to the incentive thus leads to an increase in philanthropy, whether it is the tax benefit, more private money or both (Gruber, 2011, pp. 540-542; Feld

⁹ Private contributions here include gifts by foundations, corporations and individuals.

¹⁰ Of the 193 UN Member States, sixteen were exempt from analysis, due to absence of corporate and/or personal income taxes or due to incomplete information.

et al., 1983, pp. 26-27). This does not mean, however, that donors are motivated by self-gain, as donating money obviously costs money and donors are financially better off if they do not donate (Bekkers & Wiepking, 2011a, pp. 23-26).

Since the 1970s, the effects of tax incentives on charitable contributions have been studied extensively. A review of these studies conducted over time suggests that giving is price-elastic, at least among high incomes (List, 2011, p. 172). The meta-study by Pelozo & Steel (2005, p. 266) also demonstrates a price elasticity of giving, with rates between -1.11 and -1.44. In case the price of giving is decreased by USD 1, charitable giving thus increases with amounts larger than USD 1. This shows that tax incentives encourage charitable giving. The strength of the effect of a reduced price of giving, though, varies across countries. A comparison of articles reviewed by Bekkers & Wiepking (2011a, pp. 23-26) shows that research on price effects for donations in Singapore witnessed a much stronger effect (varying from -2.0 to -5.5) than what was found in similar studies in the US. In Taiwan effects ranged from -2.2 to -3.3. In the UK donors seem to be less responsive to changes in price.

The effect of an incentive also depends on the type of benefactor. Among the largest and wealthiest donors, the tax incentives seem to have less impact (Lin & Lo, 2012). There is also a difference in responsiveness to tax incentives depending on the type of beneficiary. Donations to religious causes, for example, are less sensitive to changes in price than donations to other organisations. Finally, the number of donors that include a donation in their tax declarations varies across countries. Dutch donors to religious organisations use tax incentives often, whereas this is not the case for Canadian donors (Bekkers & Wiepking, 2011a, pp. 23-26).

2.3.2 Composition of the charitable gift

When an individual makes a financial contribution to an arts organisation, the transaction is rather straightforward; there are only two parties involved and there is one sum of money. When a donor makes a donation with the benefit of a tax incentive, it becomes more complex. As soon as tax incentives apply, the government is involved in the transaction, since tax incentives are not costless for governments as was discussed in section 2.3. This makes the donation a transaction between three parties, each with their own objectives.

In the case of a donation for which a tax incentive applies, the sum of money consists of a private contribution and a tax expenditure. The private contribution is that part of the donation given by the donor from his own money. All taxes foregone are excluded from this amount. The tax expenditures are that part of the donation that would have ended up at the government, but does not, due to the tax incentive. For individual donations, the private contribution can be separated in a base gift and an induced gift. The base gift is the amount of money the donor would give without the tax incentive. The induced gift is the amount with which the donor increases his gift due to the tax incentive (Feld et al., 1983, pp. 26-27; Schuster, 2006, p. 1273).

Depending on the applicable tax incentives, tax rates of the donor, gift and inheritance tax for the arts organisation and amount donated, the government – and thus other taxpayers – contribute a certain percentage to the donation made by an individual to a PBO. When spending the donation, this should be borne in mind (Feld et al., 1983, p. 145). Ideally the objectives of the individual donor, the PBO and those of the taxpayers are taken into account.

2.3.3 Public benefit organisations: Eligible recipients

Not every gift is granted a tax incentive. Only those gifts that are made to eligible organisations, which I refer to as PBOs, can benefit from a tax incentive. What is considered a PBO differs between countries. It depends on the legislation in the donor's country. Every jurisdiction imposes its own requirements on eligible organisations. Usually, eligible organisations must contribute to the 'public benefit'. Different countries, however, have different understandings of what it means to benefit the public. A common understanding of the concept is missing, but strong overlaps do exist in the definition of public benefit (Bater, 2004, pp. 23-24; Drache, 2004). Fields that are generally agreed to deserve tax benefits are relief of poverty, advancement of health and education, international disaster relief efforts and preservation of heritage sites.

The formal requirements imposed on eligible organisations are a tool to limit the scope of the tax benefits. Some countries require eligible organisations to be a legal entity, while others do not. Authorities can also require a PBO to have a certain size or organisational structure. Furthermore, countries can limit the eligibility of organisations based on the location of the PBO and its activities. This type of limitations is crucial when it comes to tax benefits for cross-border charitable donations.

Last, the scope of activities can be limited. In some countries the arts might even fall outside the scope of what governments define as charitable activities (Jochum, 2012, p. 594; Klamer et al., 2006, p. 33). In South Africa, for example, arts organisations can register as PBOs, but their beneficiaries cannot get a tax benefit for their donation because registered PBOs in South Africa are classified into two categories; the first group only acquires tax exempt status, while donors to the second group may also deduct their gifts from taxable income. The second group includes PBOs providing services to the poor, needy, elderly or handicapped, or relating to provision of education and housing, nature conservation, HIV prevention, disaster and poverty relief, etc.¹¹ Organisations involved in arts and culture are not included in this list.

Moreover, organisations that have the PBO status are often also granted special tax treatment in other fields of taxation. They may, for example, qualify for reduced CIT rates or are excluded from CIT altogether. These are two major incentives for charitable organisations to register as a PBO in their home country for tax purposes, on top of their eligibility to receive gifts with a tax benefit. In a country where a PBO is not liable for CIT, there is no direct stimulus for the charitable organisation to register as a PBO, as there is no gain from a reduced tax rate for CIT or exclusion from CIT. Here, the benefit for the donor is the only indirect advantage. Charitable organisations in these countries thus have to consider whether they are willing to go the extra mile for their foreign donors.

2.3.4 Tax incentives for donors

In most countries, some kind of favourable tax policy for philanthropy to the arts exists. Several scholars and institutions have described the different national tax policies. The index *Rules to Give by, A Global Philanthropy Legal Environment Index*, for example, provides an extensive overview of the different tax incentives for charitable donations used around the world (Quick et al., 2014). The European Foundation Centre (2015) has compared foundation laws, including tax incentives for charitable gifts, across Europe. Schuster (2006, pp. 1286-1293) made an overview of tax incentives in Chile, Australia, Singapore, France, the United States

11 J. Hattingh, *South Africa – Individual Taxation* sec. 1, Country Surveys IBFD.

and Romania. Heidenbauer (2011) and Irish & Simon (2004), amongst others, have compared the different ways in which countries apply tax incentives to stimulate philanthropy. Hemels (2017c) provides an overview of the different tax incentives for museums and cultural heritage and she (Hemels, 2005; 2013) gives an overview of Dutch tax incentives specifically supporting arts and culture, among which are tax incentives for donors. From these descriptions of different tax policies it becomes apparent that there are many variations in the ways in which tax incentives for donations can be implemented. Some policies allow tax incentives for donations in-kind; in other countries in-kind donations are excluded. Some countries introduce time restrictions on the deductible donations in order to stimulate yearly payments. Donations may only be deductible, for example, if a certain amount is donated within a certain time frame. Other countries might not include any time restrictions. The following four schemes are the dominant ways in which tax incentives for charitable gifts are facilitated.

2.3.4.1 Deduction of donations from taxable income

A tax deduction allows donors to deduct donations from their taxable income. It thus reduces the gross amount on which tax is calculated and decreases the cost of the donation. In case of a progressive tax rate, the size of the benefit for the donor depends on the tax rate to which he or she is subject. The higher the tax bracket, the higher the benefit of the tax deduction, so those with a high income benefit most. In case of a flat rate, the financial benefit of the tax incentive increases equally to the increase in donation (Gruber, 2011, pp. 546-547). Observations show that a reduction in tax rates led to a decrease in donations to the arts (Frey, 2003, p. 389). Most countries that grant tax deductions on donations limit the deductibility in some way. How this is done, however, varies among countries. First, the amount or value of the donation can be restricted to a minimum and/or maximum. The tax value of the deduction is another way in which the amount of the fiscal relief can be influenced. Limits to the value of a gift can be introduced when objects are donated. For example, a painting could be deducted for a certain percentage of its worth at the moment of the donation. The tax value can also be enlarged. A super deduction might apply, for example, which allows for a deduction of more than 100% (Jochum, 2012). In the Netherlands, up and until 2017, a so called 'multiplier' applies for donations to cultural organisations. The deductible amount for private donations is increased by 25%, with a maximum of EUR 1.250.¹²

2.3.4.2 Gift aid or top-up schemes

Gift aid, or top-up schemes, are similar to an income deduction. The difference is that the PBO can claim the tax benefit instead of the donor. It works as follows: A contribution is made by a donor to a PBO. The financial tax benefit that would normally be granted to the donor can now be claimed by the PBO. Tax authorities pay the tax benefit to the PBO (Heidenbauer, 2011, pp. 69-72). This makes the 'tax expenditure' character of tax incentives explicit. This is similar to matching grants. When a matching grant applies, a third party – for example, a government – matches the donation made by a certain rate (Bekkers, 2005, p. 2).

The practice of gift aid is common in the UK.¹³ When a donation is made, the HMRC regards it as if the basic rate tax is deducted by the donor. The designated PBO can reclaim the basic rate tax, which is 20%. To give an example: when a UK taxpayer donates GBP 20 to a

¹² NL: Art. 6.39a IB 2013.

¹³ UK: Finance Act 1990, Part II, Chapter I Charities, Article 25 "Donations to charity by individuals".

PBO, the PBO can reclaim GBP 4 from HMRC. A precondition is that the amount of income tax and/or capital gains tax paid by the taxpayer is at least equal to the basic rate tax reclaimed by the PBO.¹⁴ A similar scheme is used in Ireland. There, instead of the basic rate of 20% in the UK, the gift is grossed up at 31%. The PBO can claim a refund of the tax on the grossed-up amount of the donation.¹⁵

2.3.4.3 Tax credits

Tax credits allow donors to reduce the amount of tax they owe to the government by a certain amount. In contrast to a tax deduction in a progressive tax rate structure, a tax credit is proportional since the reduced amount does not vary across incomes. Instead, it is proportional to the size of the gift. This makes tax credits more equitable than tax deductions (Gruber, 2011, pp. 546-547). Countries that apply tax credits are Belgium, Canada and Spain. In Spain a tax credit of 10% or 25% of the donation can be deducted from the tax owed to the government.¹⁶ In Belgium also a tax credit applies. Here the tax credit is 45% of the value of the gift.¹⁷ The tax credit in Canada can be found both at the federal and the provincial/territorial level. The tax credit for the first CAD 200 is equal to the lowest personal tax rate (this was 15% at the federal level in 2016).¹⁸

Gifts greater than this amount are granted a tax credit at the highest personal tax rate (which was 29% at the federal level in 2016).¹⁹ The tax credit in Canada is limited to gifts up to 75% of the net income.²⁰

2.3.4.4 Tax allocation schemes

Tax allocation schemes allow taxpayers to allocate a certain percentage of their taxes owed to a PBO (Irish & Simon, 2004, p. 316). Hungary, Italy, Lithuania, Poland, Romania, Slovakia and the Czech Republic are countries in the EU that use a tax designation scheme (Strečanský & Török, 2016).

2.3.5 Concluding remarks

Tax incentives can be used to stimulate philanthropy. In PIT this can be done through the deduction of the gift from taxable income by applying a top-up scheme, either through a credit on taxes due or by allowing taxpayers to allocate a percentage of their taxes paid to a PBO. Figures on price elasticity of donations suggest that tax incentives seem to nudge philanthropy. They, however, are not determinative of philanthropy and do not make people generous. In the next section, tax incentives are compared to direct subsidies.

2.4 Advantages and disadvantages of indirect subsidies

Indirect subsidies have advantages over direct subsidies and vice versa. The advantages and disadvantages of indirect subsidies are discussed in this section.

14 <http://www.hmrc.gov.uk/individuals/giving/gift-aid.htm#3>. Accessed 30 March 2017.

15 <http://www.revenue.ie/en/personal/charities.html>. Accessed 30 March 2017.

16 ES: Law 49/2002 of 24 November 2002 Á. de la Cueva González-Cotera & J. Rubio Hípola, *Spain - Individual Taxation* sec. 1., Country Analyses IBFD http://online.ibfd.org/document/ita_es_s_1. Accessed 30 March 2017.

17 BE: Art. 145/33 §1 Wetboek van de Inkomstenbelasting 1992.

18 Except for Quebec, there the middle personal tax rate is used. This was 20% in 2015.

19 Except for Alberta, New Brunswick, Ontario and Yukon. In these provinces other tax rates are used.

20 <http://www.taxtips.ca/filing/donations/tax-credit-rates-2016.htm>. Accessed 28 April 2017.

2.4.1 Indirect support crowds in private support

When governments provide direct support for public goods, taxpayers might not feel the need to donate to these causes since their tax money is already spent on these causes. This is what is called crowding out of private contributions to public goods. It is difficult to precisely determine how large this crowd out is. Research shows that for each dollar of government spending, spending by individuals reduces by a minimum of 10% to a maximum of 70%. Thus, there is no full crowding out effect of private support for public goods, but private contributions do decrease when governments provide more direct support (Gruber, 2011, pp. 540-542; Steinberg, 1991).

The crowding out literature that specifically focusses on the arts suggests that the findings on crowding out of private support for public goods in general due to government spending does not apply to the arts sector. Instead, in the arts sector a crowding in effect for government support to the arts is found. Although there are also strong differences within different fields in the arts sector. Thus, if governments increase their funding to the arts, this seems to lead to an increase of private funding from individuals, corporations and foundations. This effect, however, is only present up to a certain level. After that point, crowding out starts (Schuster, 2006). Based on this finding, it might be wise to combine a portion of government funding, to crowd in private contributions to the arts.

2.4.2 Allocation decision by private sector

Direct subsidies and indirect subsidies differ from each other when it comes to the decision-making process. With direct subsidies, the decisions are made by the public sector, including political representatives, bureaucrats, advisory committees and interest groups. Decisions on indirect subsidies are led less by the public sector and more by the taxpayer (Feld, 2008, p. 276; Frey, 2003, p. 390). It is the taxpayer who chooses which PBO to donate to and, if the gift and the recipient meet legal requirements, the government grants indirect support. Indirect support improves the consumer sovereignty (Gruber, 2011, pp. 544-545; Layton, 2015, p. 541). Public choice theory, which is the study of political behaviour with economic tools, prefers indirect support over direct support for this reason.

The underlying assumption is that public agents are (mainly) guided by self-interest, instead of the public interest. It is plausible that government officials prefer to support well established arts organisations, providing generally well accepted art instead of controversial and experimental art. This has to do with the fact that government officials are dependent on the public opinion and re-election and therefore choose 'safe' art that is less likely to cause scandals. Indirect support is less often influenced by such pressures (Frey, 2003, p. 390). Therefore, indirect support can result in a different type of art being supported. In case of delegation of authority from political representatives to bureaucratic agencies, a loss of political control may be caused. This can lead to agencies pursuing their personal interests when initiating or implementing policies, such as re-election or following personal preferences. This causes allocative inefficiencies and overspending and is not in line with the public interest (Mazza, 2003).

Furthermore, information is distributed asymmetrically among public agents. Cultural policy is ill-defined when it comes to content and range of intervention. Which visual arts or performing arts should be supported is not made explicit. This leaves public agents to decide what art should get direct support and in what manner. This gives them the role of the gatekeeper (Mazza, 2003) – or persons that decide which art is supplied – before it is offered to the consumer (V. D. Alexander, 2003, p. 90). The gatekeeping process hinders free

entry into the market and makes the art market non-competitive. It may even lead to public agents extracting benefits from the market through favourable decisions for certain types of art (Mazza, 2003).

Indirect subsidies are less influenced by the public sectors' decision-making and are, therefore, more democratic. By implementing indirect subsidies, the decision-making power is shifted from the government to the public. Government officials are no longer the main gatekeepers and the market mechanism is partially restored. Through this shift the outcome of government support might change dramatically. Still, this could have its limitations. Donors to the arts are usually wealthy. This implies that a relatively small group of wealthy people would decide on allocation of government spending – i.e. public money – for the arts, if tax incentives are solely relied on to stimulate the arts (Feld et al., 1983, p. 128). Besides, governments can still influence the choice of private donors by determining the conditions under which a tax benefit is granted.

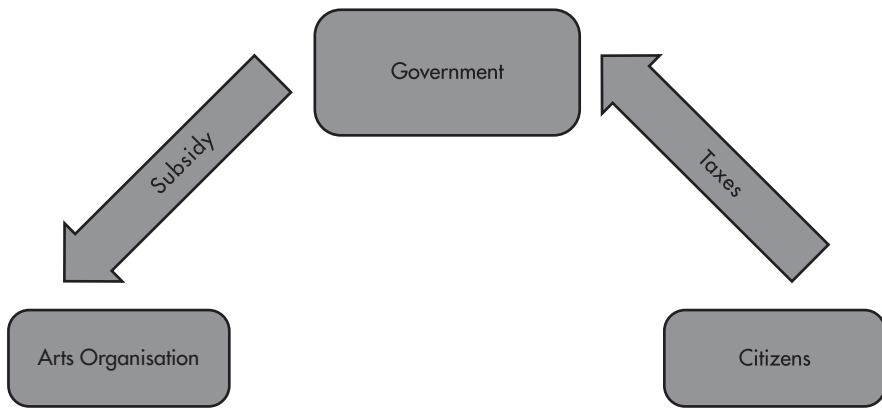


Figure 1A - Direct subsidy

2.4.3 Involvement of the public with the arts

In contrast to direct support, indirect support manages to involve the public with the arts; it allows them to vote with their money (Layton, 2015, p. 541). For governments, indirect support is a way in which to show private initiative is appreciated (Bekkers, 2010, p. 11). Hemels (2017a, pp. 56-60) emphasises this advantage of indirect support as a specific benefit of the public involvement with the decision-making process of indirect support. When governments provide direct subsidies, they hire experts in the arts sector to decide on which art should be supported. This entirely excludes the private sector from the transaction and thus decreases the involvement of individuals with the arts because experts from within the art sector and government officials decide on what will be financially supported. The gap between the arts sector and those who are less familiar with the arts is increased and the arts become something for the elite. Not only has the involvement of the public decreased, their financial contributions will decrease as well. According to Hemels (2017a, pp. 56-60), the relations between the government, taxpayers and the arts organisations in case of direct subsidies can be depicted as follows in figure 1A.

By providing for indirect support, arts organisations are forced to involve the public with their activities, since they are dependent on the public for financial contributions. Arts organisations will become more oriented to their audience. This leads to the production of a type of art that better resembles the preference of the audience. The relations between the government, tax payers and the arts organisations according to Hemels (2017a, pp. 56-60) in the case of direct subsidies can be depicted as follows in figure 1B.

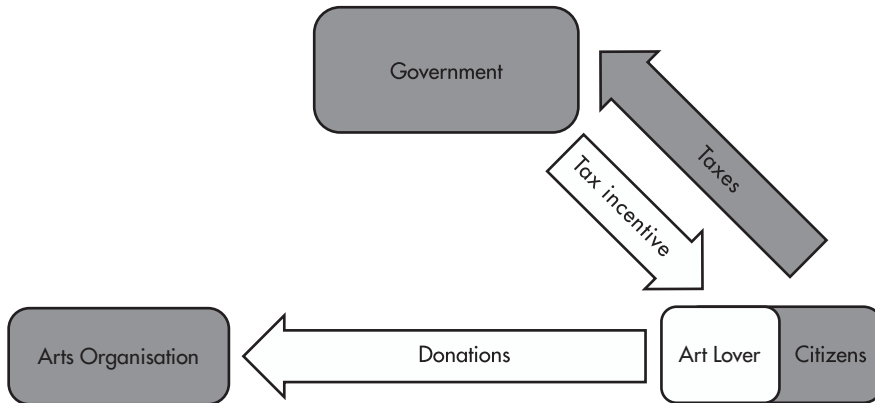


Figure 1B - Indirect subsidy

In order for arts organisations to get in contact with a broader audience, marketing expenses will increase. On the other hand, public involvement with the arts immediately raises the level of financial support for the arts, first, by donations made by individuals, and second, through larger audiences, which leads to an increase in ticket sales. Surrey (1970, pp. 718-719), however, stresses that inclusion of the private sector in the decision-making process can also be achieved by direct support. A matching grant is a form of direct government support which includes the private sector in the decision-making process.

2.4.4 Ability to pay principle

A disadvantage of indirect subsidies involves a legal issue. Indirect subsidies that are dependent on the amount of income an individual makes go against the ability to pay principle. Due to the indirect subsidy, unequal circumstances arise among taxpayers with equal incomes. Besides, it could further increase the unequal situation between persons with different incomes. This creates a situation in which not everybody pays according to their ability to pay (Hemels, 2005, pp. 41-44). This entails that when there is a progressive tax rate, people with high income will benefit most from the tax deduction. Those who earn little pay lower rates and thus benefit less, which is also referred to as the 'upside down effect' (Surrey, 1970, p. 720). When tax rates are flat, this does not hold; in that instance, benefits are equal according to the tax rate. It also does not hold for a tax credit, as (a percentage of) the gift is deducted from total taxes due.

The ability to pay principle can be debated, however. Tax systems are used to achieve certain policy goals. The main objective of the tax system is the budgetary function. If the ability to pay principle suffers but the policy goals can be justified for the benefit of society, then this does not have to be a problem. In this case it is more important for a tax system to

meet social justice than legal justice. What justice is, however, is hard to determine (Hemels, 2005, pp. 41-44).

2.4.5 Efficiency & effectiveness

Policy goals should be realised in the most efficient manner. Some argue that the market can realise certain goals more efficiently, in terms of profitability, than the government can (Layton, 2015, p. 541). The non-profit sector is the natural competitor of the government. Both provide public goods and by being each other's competitors, they encourage each other to be efficient (Cornuelle, 1965, p. 75). It is argued that the PBO sector is more efficient and effective in achieving some kinds of social benefits than public benefits. This also justifies the tax-privileged treatment of philanthropy. Under neo-liberalist ideology, the non-profit sector is necessary as an alternative source to the public sector for providing welfare, educational and cultural services to society. (Anheier & Daly, 2004, pp. 158-159, 171). When governments provide indirect support, they also provide indirect support to those who might have given for the public benefit anyway. In these cases, the government spends tax revenue where it would not have been necessary, which is not efficient. Whether this is cumbersome depends on the proportion of the tax break that goes to those who would have made a donation anyway and those who donated because of the tax incentive (Gruber, 2011, p. 541); however, it is difficult, if not impossible, to disentangle the motives as a total of eight mechanisms are at work (Bekkers & Wiepking, 2011a).

When comparing the administrative costs of indirect subsidies with direct subsidies, the former are usually more efficient. The existing administrative structure can be used to process indirect subsidies, which usually makes it cost-efficient in comparison to direct subsidies. Besides, the threshold to use indirect subsidies is typically lower than for direct subsidies, since a taxpayer can qualify for it when making the tax declaration. With direct subsidies, a taxpayer often has to write a formal request and must meet very specific requirements. In terms of efficiency, there can be reasons for governments to opt for indirect subsidies rather than direct subsidies (Hemels, 2005, pp. 58-61). Governments could also decide to design a direct expenditure programme that is simpler, which is compatible with indirect support in terms of efficiency (Surrey, 1970, p. 717).

An advantage of direct subsidies is that they are easy to recognise and the goal they serve is clearly defined and can thus be evaluated. For indirect subsidies this can be more complicated; goals might not be as clearly defined as with direct subsidies. However, whether direct subsidies are more effective than indirect subsidies largely depends on the aim of the policy. With broad policy aims, such as the stimulation of philanthropy, a tax incentive can be a very effective manner to reach them. Aiming at a more specific target can be more complicated though, as indirect subsidies become less effective since detailed descriptions are needed in order to relate a certain subsidy to a certain target group. These very specific requirements complicate the tax system (Hemels, 2005, pp. 62-73; Schuster, 1999, p. 60).

2.4.6 Complex legislation

A disadvantage of indirect subsidies is that they complicate tax law. Indirect subsidies create exceptions on the primary tax structure, which reduce the simplicity and understandability of the tax system. When policymakers try to reduce the side effects of tax incentives, the tax system gets even more complicated. Direct subsidies by themselves might not complicate tax law; however, complex regulations are often attached to them (Surrey, 1970, pp. 731-732; Koop-

mans et al., 2005, p. 35; Hemels, 2005, pp. 56-58). A further difficulty with indirect support is that tax incentives usually fall under the responsibility of ministries of finance, whereas direct subsidies are usually subject to a ministry that is involved with the substantive part of the policy goal at which the government support is intending to target. Indirect support is thus further isolated from the department that is responsible for the substance of the regulation, which has three drawbacks:

1. It complicates the structure of legislation as a whole;
2. There is the risk that officials without sufficient knowledge about the substance will be required to decide whether indirect subsidies apply;
3. It can have a negative influence on the coordination and oversight over the policy.

This can be overcome if departments collaborate well (Surrey, 1970, pp. 728-732; Hemels, 2005, pp. 24-25).

2.4.7 Controlling the size of subsidies

A disadvantage of indirect support is that the size of tax expenditures is hard to control, since they are not visible on the budget of the government and are often 'open-end' measures. This can cause budget problems. Governments attempt to prevent this by making estimations of the size of indirect subsidies in the so-called 'tax expenditure budgets'. It is impossible, however, to calculate the exact size of the indirect support. With direct subsidies, the amount that is spent is far easier to control (Feld, 2008; Hemels, 2005, pp. 22-28).

Tax expenditures decrease government revenue and thus influence the spending margin of governments. Because tax expenditures are not taken into account as expenditures – in this case for the arts – the chances are small that these will decrease direct expenditures for the arts. However, the tax expenditures for the arts can be 'spent' at the cost of other policy aims. This could lead to an increase in tax rates, additional loans or budget cuts in order for governments to finance expenditures. It is not this straightforward though. When direct and indirect subsidies are seen as complementary to each other, an increase in indirect support should lead to a decrease in direct support. Tax expenditures should thus decrease the total spending of the government and there would not be a need to increase tax rates (Hemels, 2005, pp. 22-27). Or, as Surrey (1970, p. 726) puts it: *"If we choose government provision or assistance, then dollars must be spent, and whether they are dollars forgone through lost tax revenues or dollars spent directly through direct expenditures, the effect on tax rates will be the same."*

2.4.8 Changes in and abolishment of subsidies

Some fear that indirect support is vulnerable to shifts in economic situations. Contributions to PBOs in America have decreased significantly since the start of the financial crisis and are recovering slowly (Lilly Family School of Philanthropy, 2013). Although this is a fact, the same holds for direct contributions. In times of economic crisis, governments also tend to cut subsidies to the arts. Indirect support, however, stimulates organisations to derive their income from different sources, which leads to a more stable flow of income (Hemels, 2005, pp. 93-94).

Indirect support through tax incentives is considered by some to be more continual and less subject to changes in government standpoints in comparison to direct subsidies (Feld, 2008; Hemels, 2005, pp. 32-33). Subsidy policies often change together with the change of a government. Because visibility of tax incentives is limited, the chances are limited that these are abolished.

The limited visibility, however, also rubs the other way. Tax incentives enforced to achieve certain policy goals might be overlooked when making changes in tax policy for other purposes. A change in tax rate on income, for example, immediately influences the effect of a deduction from taxable income. In the worst-case scenario, a tax incentive might be unintentionally reduced (Feld, 2008, p. 227; Koopmans et al., 2005, p. 298). Another drawback of the limited visibility of indirect support is that the democratic control over these measures is limited. Since indirect subsidies are not mentioned in the budget, they are not evaluated on a regular basis. Therefore, it is not examined whether they contribute to the policy aim and whether this is done in an efficient manner. Furthermore, due to their limited visibility, they are an interesting tool for pressure groups to focus on (Hemels, 2005, pp. 22-23).

It is debatable whether it is easier to abolish direct subsidies. They are more visible and thus when governments come up with the idea to abolish a direct subsidy, stakeholders might immediately start a lobby to prevent it from being abolished (Hemels, 2005, p. 37). The same holds for changes or abolishment in indirect subsidies. Taxpayers usually take the existing tax regulations into account when planning their future. A reliable and stable tax policy is, therefore, important to them. With the abolishment of certain indirect subsidies, governments can expect resistance from the groups who benefit from these subsidies (Hemels, 2005, pp. 33-35). The use of legislation that automatically expires after a certain period unless it is explicitly prolonged – so called “sunset legislation” – could be a solution (Hemels, 2017a).

2.4.9 Final remarks

When comparing direct and indirect support for the arts, there are pros and cons to both and it is up to governments to decide which measures best meet their policy goals for the arts.

One aspect that was not addressed in the discussion above is the type of art produced by both types of support. Some fear that indirect support decreases the quality of art and that excellent art may no longer be stimulated. I do not fully support this claim. First of all, some famous artists have created their best works for the free market (Hemels, 2005, pp. 82-100). Second, it goes against consumer sovereignty to claim that individual consumers cannot decide on what is good art. If certain art is excellent, it should be able to prove that it deserves support – to the government, as well as to individual donors. However, there are some exceptions to this, in my opinion. Some types of art, such as innovative art and art that requires a high degree of training in order to appreciate it, would not get the support it needs if it is left up to individual donors. Individuals also do not represent the demand for art by future generations, as discussed above. Expert advice and direct government funding can help out here. A combination of both direct and indirect support for the arts, therefore, is most suitable, in my opinion, to maintain a variety of artistic expressions.

2.5 International philanthropy

Philanthropists can make donations across borders and can make donations to PBOs in their own country, who spend it abroad. Both these types of philanthropy are considered international philanthropy here, as they benefit a foreign cause. This section focusses on cross-border philanthropy for all kinds of public benefit purposes, not just the arts. Although international philanthropy is still very much a topic that is underexplored, some first steps have been made. Researchers and research organisations have started exploring the field. Unfortunately, however, the figures available on cross-border philanthropy are limited and the data that is available is difficult to compare.

We know that in the early-1990s the largest foundations in the US gave 10% of their annual giving, amounting to more than USD 500 million, to causes abroad. Ten years later this amount nearly doubled to nearly 20% of their grants, amounting to USD 3.8 billion, being given to international causes (Pozen, 2006a). Pozen (2006a) also made a rough estimate of tax expenditures foregone on donations leaving the US. For this, he totalled the revenue loss from federal gift and estate tax deductions and the federal income tax deductions and conservatively estimated that 2% of all gifts leave the US. This would entail that roughly USD 1.06 billion of tax expenditures leaves the US, calculating conservatively. Pozen states that doubling this amount to USD 2.12 billion, so 4% of gifts leaving the US, would be a more realistic figure. 40% of tax expenditures on cross-border gifts, USD 850 million, goes to emerging or developed countries, of which again a smaller portion ends up supporting arts and culture.

The *Index of Global Philanthropy and Remittances* (Hudson Institute, Center for Global Prosperity, 2013a) is one of the few indexes that provides some insight into cross-border philanthropy by individuals from a variety of countries, although focussing on capital flow from developed countries to developing countries. Private flows of investment capital, philanthropy and remittances accumulated to a total of USD 59.24 billion in the countries measured (Hudson Institute, Center for Global Prosperity, 2013a, p. 25).²¹

Figures with a broader scope than solely philanthropy to developing countries can also be found at intermediary organisations that help channel money from donors in one country to a PBO in another country. These data also include donations from developed countries to developed countries, developed countries to emerging countries and – in theory – can include donations from developing countries to developed countries. Still, these figures are limited in scope as they only encompass donations channelled through this one intermediary organisation.

TGE is one of these intermediary organisations. It is a network of PBOs in Europe that channel money from donors in one European country to PBOs in another European country. In 2009 at the start of TGE, EUR 2,946,708 was channelled through them. By 2014 this had more than quadrupled to EUR 12,055,641. In 2015 a total amount of EUR 7,906,892 and EUR 6,378,678 in 2016 was transferred through them to over 300 PBOs across almost 20 European countries (European Foundation Centre & Transnational Giving Europe, 2017; Transnational Giving Europe, 2016). The KBFUS is another intermediary organisation that transfers gifts from American donors to PBOs abroad. In 2003 they channelled USD 852,921 to PBOs outside the US. In 2013 this amount rose to USD 15,801,941.²² In 2014 this further increased to an exceptionally high rate of USD 20,229,537 (King Baudouin Foundation United States, 2015). In 2015 it was USD 17.5 million (King Baudouin Foundation United States, 2016).

It seems that both intermediary organisations witnessed an impressive growth over the years, with an exceptional peak in 2015. When interpreting these figures, one has to be cautious in assigning trends to global philanthropy, as incidental large gifts, start-up effects and other organisational factors might also be at work. Therefore, more long run data that controls for different variables is necessary before conclusions on cross-border giving can be distilled.

21 The included developed countries are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States. The included emerging economies are: Brazil, China, India and South Africa.

22 <http://kbfus.insight.foundationcenter.org/>. Accessed 7 July 2016. The figures on the size of grants refer to the grants made to final recipients by KBFUS. Therefore, multiple donations to one single recipient might be accumulated in these grants. Thus, the size of the average donation is likely to be below that of the average grant.

Some more general facts on gifts transferred through KBFUS are known. The size of grants transferred varies from USD 48 to USD 3,700,000. The average grant amounted to USD 89,359.²³ In 2014 the United Kingdom, the Netherlands, Belgium, France and Germany were the European countries that received most grants (as a result from received gifts from US donors). In 2015 France and Germany were no longer included in the top five and were replaced by Sweden and Switzerland. The top five of African countries consisted of South Africa, Egypt, Kenya, Tanzania and Zambia in 2014. In 2015 the latter two were replaced by Liberia and Mauritius (King Baudouin Foundation United States, 2015; 2016). Most grants were made to programmes in health (USD 3,730,501), followed by education (USD 3,136,675), peace and human rights (USD 2,432,595), human services (USD 2,248,827), arts and culture (USD 1,990,473), science and technology (USD 301,132), environment (USD 285,014). USD 3,424,810 was given to causes in the residual category of other programme areas (King Baudouin Foundation United States, 2016).

A look at the models through which philanthropy is financed at a cross-border level show differences from more traditional domestic philanthropy. Technology plays an important role here. The internet enlarged the pool in which fundraising parties can search for potential donors. The opposite also holds: donors can choose from a larger array of public benefit causes because of the internet. New models of financing also emerged due to technological developments. Donations can, for example, be made online or by sending a text message. Then there is the phenomenon of crowd funding, in which websites provide those in need of funds a platform to raise a crowd of people to finance their projects, including art projects. On the website Indiegogo,²⁴ for example, photographer Angelo Merendina managed to finance his photo project *The Battle We Didn't Choose*. 206 individual funders contributed USD 15,105 to realise his photo exhibition. This art project brings us to the international value of art.

2.6 Art in a Global World

How come philanthropists increasingly support arts organisations located abroad? How can this be explained from a theoretical perspective? The notion of common goods or shared goods, which Klamer (2002, pp. 468-470; 2004) elaborated on with reference to the conversation as a metaphor, offers an approach to gain more insight in the relationship between globalisation and art. Understanding this relationship helps explain why people are willing to contribute to arts organisations.

Art can be categorised in three types of goods: private goods, public goods and common goods. Public goods are those goods that are non-rival and non-excludable; think of the canals in Amsterdam. Private goods are those goods that are privately owned, are rival and excludable. The owner can exclude others from enjoying a good and only a limited amount of people can own and thus enjoy said type of good, for example a painting in a home. The painting is owned by the family that lives in the house and only those that are invited by the family will get the chance to enjoy the painting, until the family abandons it. In relation to

23 <http://kbfus.insight.foundationcenter.org/>. Accessed 7 July 2016. The figures on the size of grants refer to the grants made to final recipients by KBFUS. Therefore, multiple donations to one single recipient might be accumulated in these grants. Thus, the size of the average donation is likely to be below that of the average grant.

24 <https://www.indiegogo.com/projects/the-battle-we-didn-t-choose-my-wife-s-fight-with-breast-cancer#/>. Accessed 12 June 2017.

globalisation the concept of the common good is important. Common goods are “*the goods that are shared by a group of people in consumption and possession*” (Klamer, 2004, p. 1). The ownership of the good is far less well-defined than the terms private good or public good. No particular person owns the good, but the good is also not publicly owned. Instead, the good is owned by a group. Ownership here refers to cultural ownership, not to juridical ownership. Members of the group cannot be excluded from ownership of the good, but non-members usually are excluded. Rivalry can exist within as well as outside the group.

Most art belongs to the latter category of common goods. Art derives large parts of its value from shared knowledge on the piece of art. The more widespread and profound the knowledge, the more valuable a work of art becomes. The work of art will only keep its value if the knowledge is continuously shared between people and thus sustained. Whenever the sharing of knowledge ends, the value floats away and the piece of art is no longer a common good. Those who participate in sharing knowledge on the work of art benefit from this. It is not so much economic value that they gain, but rather social value by way of recognition, membership and status. The number of persons sharing knowledge on art is limited to some extent, but it is not a well-defined group. Everyone who is involved in the sharing owns the knowledge, however, this does require active participation. The contribution of each participant is important, whether it is consuming the work of art or making a theoretical contribution. It is a manner of producing shared knowledge (Klamer, 2004, p. 5).

This can be clarified with an example. If I purchase a painting and keep it at home above the couch, then it is a private good. It derives its main value from its decorative characteristics. However, as soon as the gallery where I bought the painting shares with me information on the origin of the painting, this gives a new dimension to the value of the painting for me. If I loan my painting to a museum, the sharing of knowledge expands among a larger group. The more people sharing knowledge on the painting I own, the higher my social status. Others who share knowledge on the painting and have contemplated – or consumed – the painting will also derive value from it. They can contribute to the shared knowledge on the painting and thus are partial owners of the culture the painting belongs to.

Common goods require cooperative behaviour: sharing knowledge. This specific characteristic of common goods triggers loyalty, altruistic actions and the prevalence of trust and responsibility. It is exactly these features a good need to be financed through philanthropic support. Besides, in this manner, free-riding is circumvented when it comes to common goods (Klamer, 2004, p. 1). In case people share a common good, they thus become more willing to contribute, for example, by making a financial contribution.

Now the concept of art as a common good is described, I would like to expand it to a global setting. Due to globalisation, time and space are compressed and interactions and activities of people have stretched across the globe. The consciousness of the individual has expanded due to globalisation. Notions about a larger global community have surpassed the sense of belonging to a national community (Scholte, 2008). Travelling around the world, doing business with people in different countries, having friends at the other end of the globe, etc., have become feasible options for many people. It also entails that information on a common good can be shared around the globe. Instead of sharing a common good with those in your physical proximity, common goods can be shared with interested persons from all over the world. This results in global communities that share their culture rather than citizens of a nation sharing a culture. Due to the larger consciousness, individuals explore art beyond the boundaries of their own countries and perceive (parts of this) art as belonging

to their community. Works of art are sold across borders, performing artists tour around the world, museum collections have been digitised and are accessible online. These are just a few examples of the influence of globalisation on the arts sector.

Because of globalisation, people are no longer solely exposed to art in their own country, but have easy access to art in other countries as well. This influences the manner in which art is perceived (Throsby, 2010, pp. 2, 3, 157-170). With the sense of belonging to a larger global community comes the feeling of responsibility for this particular community. As explained in the previous paragraph, sharing knowledge on a good brings about feelings of loyalty, altruistic behaviour, trust and responsibility. When these feelings are shared in global communities, the corresponding behaviour will also occur in these global communities. Exactly herein lies the explanation to why individuals donate to charitable arts organisations in other countries.

An example that illustrates the concept of cultural heritage contributing to the common good is that of the Buddhas of Bamiyan in Afghanistan. These two 6th century Buddha sculptures in classical Greek-Buddhist style controlled the news in Western countries in 2001 when the Taliban threatened to demolish these ancient sculptures. The case appeared in the British newspaper *The Telegraph*, amongst others (Spillius, 2001). When the Taliban did demolish the statues, a shock ran through Western countries (Harding, 2001). People were devastated by the loss of these sculptures. This event demonstrated that the Buddhas of Bamiyan not only belonged to the culture of the Afghan people or Buddhists, but to communities stretching far further. This is reflected in, amongst others, the governments of Japan and Switzerland offering to help reconstruct the sculptures. A similar shock went through the world when it became clear that the financial crisis in Greece and the austerity measures implemented by the International Monetary Fund, the European Union and the European Central Bank could impact the preservation of ancient Greek cultural heritage. That people derive a shared value from these cultural icons and are willing to contribute to conserve and protect them is illustrated by initiatives such as Saving Antiquities for Everyone (Barford, 2012). In 1966 Venice was hit by severe floods, and in 1971 some of the American members of the Venice Committee of the International Fund for Monuments of UNESCO decided to form Save Venice Inc., an American organisation that was formed to save the cultural patrimony of Venice (Save Venice, 2014). This demonstrates that American citizens care for the Italian cultural heritage and are willing to contribute to its preservation, although it is not part of the American national heritage. The American organisation has raised more than USD 20 million to restore art and architecture in Venice.

Other examples of a global common good can be derived from fine art. In 1901, the French artist Claude Monet painted several scenes in London. The paintings, titled *Waterloo Bridge, London* and *Charing Cross Bridge, London*, belong to the collection of the Dutch Triton Foundation. The scenes might appeal to the English; therefore, they can reasonably argue that the paintings belong to their culture. People from France, the Netherlands and Europe as a whole could also argue that the paintings belong to their culture, because of the French origin of the artist or the Dutch legal ownership of the paintings. What these groups all have in common is that they derive value from the shared knowledge of the paintings, which might even reach further than Europe. This gives people feelings of loyalty towards the paintings. The international shared value derived from the works of art of Claude Monet and several other artists came to light when a major art theft took place at the Kunsthal in Rotterdam on the 16 October 2012 (Boon, 2013). The two paintings, together with works of Henri Matisse, Jacob Meijer de Haan, Paul Gauguin, Picasso and Lucien Freud, were stolen. Seven

stolen paintings in total have, most likely, been burned by one of the relatives of the thieves. Art enthusiasts around the world considered this a major loss. Ernest Oberlander-Tarnoveanu, director of the National History Museum of Romania, for example, referred to it as “a crime against humanity” (BBC, 2013). The works of Van Gogh are also highly appreciated by people from different countries. Citizens from France, the Netherlands, Japan and other countries consider this collection a part of their culture. This became tangible when the Japanese businessman Rieoi Sato, who purchased the Van Gogh painting *Portrait of Doctor Gachet* for USD 75 million, stunned the world when he announced that he wanted to be cremated with the painting (Klamer, 1996, p. 14). Many more examples exist of art that is shared in cultures across countries, also in the performing arts. *MacBeth* by Shakespeare and works of Bach have been performed by theatre companies and orchestras around the world. The international shared value of art becomes tangible whenever its conservation is at stake. Similar feelings of loyalty arise among people from different countries, which are expressed in their urge to help preserve works of art.

The willingness to contribute to shared goods shows the high degree of loyalty, altruistic and cooperative behaviour that is involved in common goods. People want to contribute to the shared culture they are part of. A Japanese tourist visiting the Latvian Song and Dance Festival, for example, was so moved by the event that he decided that he would establish his own choir in Japan and practice for five years in order to participate in the next edition of the Song and Dance Festival in Riga (Best of Baltic Entertainment, 2013). This might be an extreme case, but many tourists feel a sense of loyalty as soon as they visit a place. This does not always result in them wanting to participate actively, but could result in a desire to contribute in some way, for example by making a financial contribution. This is what the figures of KBFUS and TGE in section 2.7 illustrate.

In short, it can be stated that globalisation has caused common goods, such as art, to be shared among worldwide communities instead of within a country. This influences the manner in which art is perceived. No longer is culture solely attached to a country. Due to the loyalty that arises for expressions of culture outside the own country, cross-border donations increase. As these communities expand across the globe, potential donors can be found in more countries. This creates new opportunities to raise funds abroad for arts organisations.

2.7 What we know about cross-border donations to the arts

Less data is available on cross-border donations to the arts than on cross-border donations in general. Media coverage and incidental data from intermediary organisations on cross-border donations, however, show beyond doubt that cross-border philanthropy to the arts exists and might even happen more frequently than recorded.

2.7.1 Data on grants to the arts from KBFUS

Thanks to KBFUS, we do know how much is given to arts and culture by American donors through them, as they provide figures on grants per category.²⁵ Figure 2 shows the amounts granted to the arts. To match the definition of art in this research, in the figure below, only grants to art services, folk arts, museums, performing arts, public arts and visual arts are included.

²⁵ Data on grants received and given by KBFUS can be derived from <https://maps.foundationcenter.org/?acct=kbfus> (Accessed 20 July 2016) and is used for the following charts.

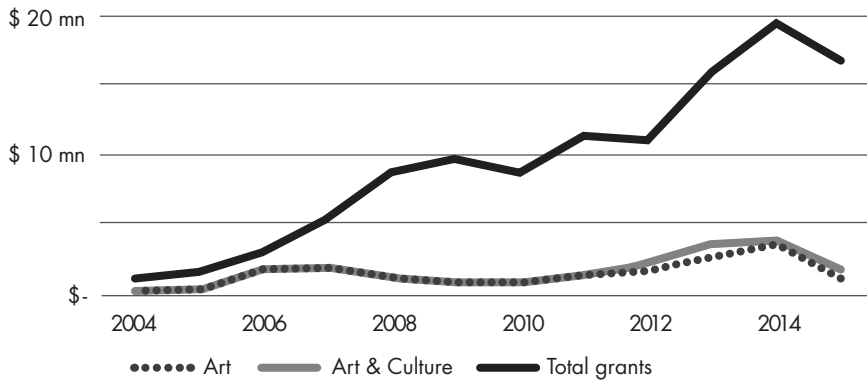


Figure 2 - KBFUS Grants to the Arts

After the growth to just over USD 1.7 million in grants in the start-up years from 2004 to 2007 we see a decrease, reaching its lowest point in 2010, when roughly only USD 600,000 was granted to the arts. After that, the gifts increase to a massive USD 3.3 million in 2014. This high number for 2014 might be explained by a major contribution to the Dutch Rijksmuseum, whose Rijksmuseum American Friends Fund was among the top five recipient American friends funds registered at KBFUS in 2014 (King Baudouin Foundation United States, 2015; 2016).

When comparing these figures to grants to the broader category of arts and culture (including grants to organisations specialising in arts, multipurpose art centres and art programmes, media and communication, visual arts, museums, performing arts, humanities, historical activities, cultural awareness and arts services) and total grants made by KBFUS, it is clear that the grants to the arts follow the trends in both larger categories, as displayed in figure 3.

In 2015 KBFUS initiated a new service: KBFUS ART, which “helps donors navigate the cultural, legal and tax complexities involved in donating art overseas” (King Baudouin Foundation United States, 2016). Through this service, KBFUS received a unique library of medieval Europe, which was given on loan to the city of Cluny in France and a Roman coin with Emperor Didius Julianus on it, which was given on loan to the Royal Library of Belgium (King Baudouin Foundation United States, 2016).

2.7.2 Cross-border giving to the arts in media coverage

Information available on cross-border philanthropy to the arts must mainly be derived from incidental messages in the media, often based on press releases by the arts organisations. They show that cross-border donations to the arts are made both in cash and in-kind.

Stimulated by the large number of Americans among their visitors, some European museums see the thriving American culture of giving as an opportunity to compensate for the government cuts back home, whereas other arts organisations have been raising funds in America for a long time. Tate, for example, started raising funds in America in 1989 with a USD 6 million gift. To date gifts raised add up to roughly USD 300 million (Fabrikant, 2016). By setting up international advisory boards, international councils and similar groups, American arts organisations seek financial support abroad (Catton, 2014).

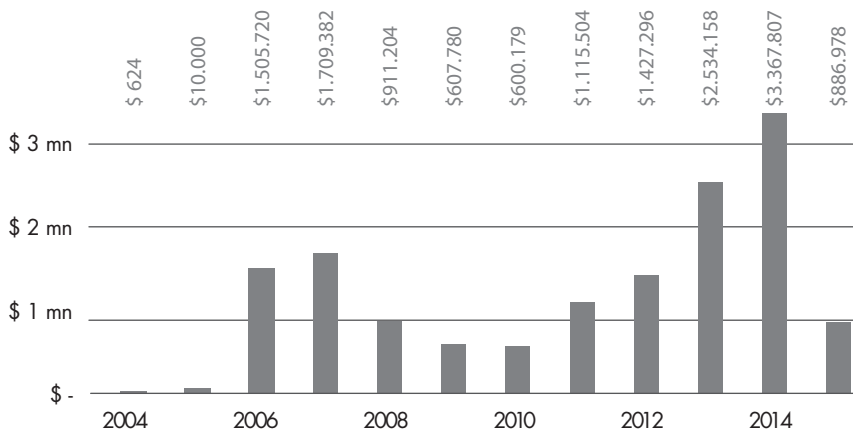


Figure 3 - KBFUS Grants: total, art & culture, art

Not just arts organisations take the initiative to start raising funds abroad; passionate, foreign supporters might also decide to set up a fundraising structure in their own country, as Peter Solomon did for Musée d'Orsay in America (Fabrikant, 2016). What started off as an initiative by one passionate person resulted in record breaking gifts for the Musée d'Orsay. The American couple Marlene and Spencer Hays donated 187 artworks with an estimated value of EUR 173 million to Musée d'Orsay in 2016. The couple bequeathed the other pieces of their collection of 600 works with an estimated worth of EUR 350 million upon their death. One reason the Hays donated their collection to Musée d'Orsay instead of a US arts organisation was because their collection fitted very well within the Musée d'Orsay topic-wise. Another factor that played a role in their decision to give their collection to a French museum is that they wanted their collection to stay together, which is legally possible in France, whereas in the US deaccessioning is allowed (H. Alexander, 2016; France 24, 2016). French law prohibits separation of artworks from a collection under public ownership.²⁶

Cross-border philanthropy for the arts does not only flow from America and Europe and vice versa. Incidental evidence shows that the flows are much wider spread. American arts organisations, for example, receive gifts from Brazil, China, Germany, Philippines, Switzerland, the United Kingdom and Dubai (Catton, 2014). For some arts organisations support from abroad is vital to their existence. The Israel Museum in Jerusalem was founded by an international group of supporters and still relies for more than half of its operating needs on international support (Fabrikant, 2016).

2.7.3 Concluding remarks and opportunities for further research

Since data on cross-border giving to the arts is extremely limited, little is known about the trends in- and flows of cross-border giving to the arts. Figures on donations going abroad via intermediary charities as well as media coverage shed some light on charitable giving to foreign arts organisations. Still, knowledge is extremely limited. This requires more research on international philanthropy for the arts. The following questions arise: How much money is involved in international philanthropy for the arts? Which are the recipient organisations and countries? Which are the beneficiary countries? Who are international philanthropists

26 FR: Loi n° 2002-5 du 4 janvier 2002 relative aux musées de France.

and what motivates them? How do arts organisations try to attract foreign benefactors? In Chapters 6 and 7 I make an effort to further this knowledge by exploring cross-border giving to the arts in a qualitative manner based on interviews with fundraisers of arts organisations, two donors, tax advisors and philanthropy advisors. The need for more quantitative and qualitative data, however, remains.

2.8 Barriers to cross-border philanthropy

Although financial models have been developed that make cross-border fundraising easier, there are severe boundaries to global fundraising that hinder philanthropic freedom. Many of the barriers are rooted in law. Although some of the legal barriers are very legitimate, as they prevent abuse of PBOs for tax evasion, money-laundering and terrorism (Crimm, 2008; Financial Action Task Force, 2001; Organisation for Economic Cooperation and Development, 2009), which can also be stimulated by the EU,²⁷ they might also – intentionally or unintentionally – prevent sincere cross-border philanthropy.

2.8.1 Legal barriers

Governments can raise legal barriers to cross-border giving in several ways. Commissioned by the Council of Foundations, the International Center for Not-for-Profit Law has researched the legal barriers on global philanthropy, focussing on legal barriers imposed by the donor country, the recipient country and legal barriers to the formation and operation of eligible PBOs (Council on Foundations, 2010; Moore & Rutzen, 2011).²⁸ The research provides a summary of the legal barriers, with illustrative examples.

Government approval can be required when making a cross-border gift. Examples of countries where government approval was necessary, at least up to 2010, are Egypt, the United Arab Emirates, Malaysia and Indonesia. Governments have a great discretion when deciding whether a cross-border contribution is allowed and thus this is a serious barrier to cross-border giving (Council on Foundations, 2010, p. 5; Flaherty, 1992, pp. 341-345). The measure of advanced government approval is also used by recipient countries. Without government approval, organisations are not allowed to receive funds from abroad. Sometimes the approval has to be explicit, in other countries the donations have to meet certain requirements. In Afghanistan, at least until 2010, it was prohibited entirely for social organisations to receive foreign funds. This was, however, not enforced (Council on Foundations, 2010, pp. 11-13).

Other ways in which recipient countries can raise legal boundaries to international fundraising are restrictions to the purposes and activities to which foreign donations can be made, restrictions on foreign exchange rates, routing of foreign funding through governmental bodies or domestic non-profit organisations and complex and burdensome requirements on the notification and reporting of foreign funds (Council on Foundations, 2010, pp. 13-15). Furthermore, governments from donor countries can restrict cross-border contributions through the creation of procedural requirements (Council on Foundations, 2010, pp. 8-9).

The prohibition of contributions moves beyond these previous two measures.

²⁷ COM (2005) 620 final, *Combating terrorist financing: enhancement of national-level coordination and greater transparency of the non-profit sector*, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133253>. Accessed 12 June 2017.

²⁸ Initially, the report was published online by the Council on Foundations. In April 2011 a version of the report was published as an article in the *International Journal of Not-for-Profit Law*.

Amongst others are the UK, Canada and the US, but also international bodies such as the UN, have prohibited gifts to certain designated individuals and entities. This is to prevent donations being made to terrorism organisations, but also to prevent money laundering. Not only gifts, but also financial transactions to certain countries and organisations with terrorist affiliations are prohibited or restricted. Iran is one of the countries that was sanctioned in this manner by the UN and the EU (Council on Foundations, 2010, pp. 8-9).

There are also legal barriers that impede the development of PBOs. Several countries impose requirements on the formation of PBOs, such as limited rights to associate, restrictions on founders, high minimum capital requirements, burdensome registration procedures and vague grounds for refusal of registration of certain associations. These requirements ultimately hinder the formation of PBOs (Council on Foundations, 2010, p. 17; Flaherty, 1992, p. 344). Countries can also set certain measures to limit the freedom of PBOs in their activities. Some activities may be prohibited, may require advanced approval or may have government-imposed supervisory oversight (Council on Foundations, 2010, pp. 18-19). Taxes are another legal measure through which countries can influence cross-border giving.

2.8.2 Tax barriers

The majority of countries offer a tax incentive for giving by individuals (Quick et al., 2014). There is less consensus among countries on the application of these incentives in cross-border situations (Buijze, 2016a; Heidenbauer et al., 2013). Koele (2007, p. 5) introduced the term 'landlock' for this type of tax barriers. A landlock exists when a PBO that engages in cross-border activities is treated disadvantageously in comparison to a PBO that works domestically. An example of this landlock is a gift to a foreign philanthropic organisation that is not eligible for a tax incentive, whereas it would be eligible in a domestic situation.

Depending on the level of legal and tax barriers, it might be more or less difficult to contribute to a foreign cause. The pilot study *Philanthropic Freedom* (2013b) and its follow-up report *Philanthropic Freedom* (2015), both conducted by the Hudson Institute, ranks countries according to their level of freedom to contribute to a foreign cause. Experts on philanthropy were consulted to gain insight into the freedom individuals have to give to civil society organisations abroad. For the 2013 edition, thirteen experts from Australia, Brazil, China, Egypt, India, Japan, Mexico, the Netherlands, Russia, South Africa, Sweden, Turkey and the US filled out a questionnaire and wrote a report on their countries. By 2015 this was extended to 64 countries.

Focus is on three indicators that operationalise philanthropic freedom, namely 1) civil society regulations, 2) domestic tax policy, and 3) cross-border flows, which are again divided into several sub-indicators (Hudson Institute, Center for Global Prosperity, 2013b, pp. 5-8; The Hudson Institute, Center for Global Prosperity, 2015).

Although this was a good first attempt of exploring philanthropic freedom, the research method used has its limitations. As the study also addresses, more countries should be researched for it to be used as a full comparative index (2013b, pp. 6-8). Furthermore, the research method could be more refined by consulting more experts on one country, preferably in combination with analysis of primary resources in order to get a good understanding of the legislation in place and their functioning in practice. Although I am not familiar with the legislation around the world, based on the insights I have into Dutch law, I found an inconsistency between Dutch law and the manner in which it was displayed in the pilot study. This, in my opinion, is reason to be cautious with the outcomes of the research as paraphrased below,

as well as a reason to strive for further research on this topic, especially because legislation on philanthropy changes rapidly in many countries. The *Philanthropic Freedom* research, however, does give a rough idea of barriers to cross-border fundraising.

When analysing the combination of all three indicators, it shows that high-income countries, such as the Netherlands, the US, Sweden, Canada and France have a great amount of philanthropic freedom (The Hudson Institute, Center for Global Prosperity, 2015). On the individual indicators, some additional interesting observations were noted in the pilot study. First of all, in emerging countries the regulations on civil society might not differ too much from those in high-income countries, but might turn out to be quite different in practice due to government bureaucracies being inefficient in most of the emerging economies researched (Hudson Institute, Center for Global Prosperity, 2013b, pp. 10-11).

Established economies like the Netherlands, the US and Australia get a high score on their domestic tax regulations when looking at the tax incentives they provide for individual donations to PBOs and the process to obtain these incentives, as well as the tax benefits for PBOs and receiving tax benefits and public benefit status. In the research, India and South Africa showed to be countries with potential growth in philanthropy due to their fairly progressive regulations to stimulate philanthropic activities. Russia, China and Turkey, on the other hand, are all countries that provide for tax incentives to donations; however, obtaining these incentives is a very cumbersome procedure and it only applies for donations made to a limited selection of organisations (Hudson Institute, Center for Global Prosperity, 2013b, pp. 14-17).

When it comes to the barriers to sending and receiving donations across borders, there are relatively few barriers in the Netherlands and Sweden. No taxes, fees or additional costs have to be paid when donations cross borders. When certain regulations are met, the donor might even benefit from the same tax incentive that would apply for domestic donations. This is something that is not witnessed in the other countries researched. The “relatively minor” deductions in the Netherlands and Sweden are provided as an explanation for the relatively large philanthropic freedom in these countries: “Furthermore, while Swedish and Dutch donors can receive the same tax deductions for international donations as for domestic donations, these deductions are relatively minor because of their domestic tax policies” (Hudson Institute, Center for Global Prosperity, 2013b, p. 18). In the Dutch case, however, this explanation rests on a misunderstanding of Dutch tax law.²⁹ For the Swedish case, it has to be noted that from 1 January 2016 the tax benefits for charitable donations have been removed from the Swedish tax code.

29 The report bases this explanation on the following incorrect summary of Dutch tax incentives for individuals and corporate donors: “Individuals can obtain deductions on their donations. For individuals, there is a minimum threshold for deductions of 1% (before tax) of income or €60,000 (\$80,000), whichever is higher. For corporations, there is no minimum threshold for deductions, but a maximum of €100,000 (\$135,000)” (Hudson Institute, Center for Global Prosperity, 2013b, p. 15). In personal income tax, Dutch law distinguishes between periodic gifts and other gifts. Periodic gifts are gifts made annually for at least five years in a row. There is no minimum threshold for the deduction of these gifts and up to 100% of the income of a certain year is deductible. The remainder can even be deducted in the following year (NL: Art. 6.34 and 6.38 IB). Other gifts are deductible with a minimum threshold of 1% of the gross income or €60 and a maximum of 10% of the gross income (NL Art. 6.35 and 6.39 IB). Also for corporations the deductibility of gifts is more nuanced than summarised in the pilot study of the Center for Global Prosperity. There is no minimum threshold, but the maximum threshold is 50% of the profit with a maximum threshold of €100,000 (NL Art. 16 VPB). The example of imprecision displayed here in the data the pilot study relies on stresses that we have to be cautious with the findings and conclusions of the pilot study and that there is plenty of room to further explore this topic based on additional data.

2.8.3 Concluding remarks

Cross-border donations can be inhibited by laws, either deliberately or as a side effect to anti-terrorism, anti-money laundering and anti-tax evasion measures. To what extent these barriers are in place differs by country, resulting in different levels of philanthropic freedom. Removing the legal barriers can enable cross-border philanthropy. Specifically, tax laws hold the potential not only to enable but also to incentivise or disincentivise cross-border philanthropy by allowing or not allowing tax incentives on cross-border gifts (Buijze, 2016a; Drache, 2004; Heidenbauer et al., 2013; Hemels, 2009). How tax incentives on cross-border donations in PIT can be obtained is discussed in Chapter 4. In Chapter 5 the tax treatment of cross-border donations in PIT in selected countries is further explored, based on a doctrinal study of selected countries.

2.9 Debate on the application of tax incentives for cross-border donations³⁰

The legal and tax barriers, as discussed in section 2.8, stand in the way of international philanthropy. But why do governments create such regulations? And why do other governments decide to remove obstacles that hinder international philanthropy? Several rationales are at work here that can explain this sometimes opposing legislation. This section explores the debate on the use of tax incentives for cross-border donations. Arguments used in favour of tax incentive restrictions to the own country are discussed as well as reasons for applying tax incentives in cross-border situations.

2.9.1 Drainage of tax revenue

An often-used argument for restricting tax incentives to the own country is that tax expenditures should benefit the country. As discussed in section 2.3, tax incentives are indirect expenditures by governments. Granting a tax deduction on a cross-border donation implies an expenditure of tax revenue to a cause in another country. Subsequently, this ignores national benefits (Bater, 2004; Koele, 2007). It could even be seen as opposed to the national benefit, since tax is paid by individuals in order for the government to provide collective goods and to fulfil instrumental functions such as the redistribution of income. This causes tax expenditures on cross-border donations to drain tax revenue at the cost of the taxpayers.

As Heidenbauer et al. (2013, p. 611) phrase it: *‘The fiscal objective of relieving the public budget from the need to fund the purposes pursued by charitable organisations, which can only be achieved if the beneficiary of the charitable contribution is resident in the same country as the donor.’* In my view, whether or not a private donation to a foreign PBO relieves part of the government burden depends on what ‘government burden’ constitutes. In a case where government burden solely includes tasks within the territory of the country, it is not justifiable from this perspective to apply a tax incentive for cross-border donations. The same holds when tax incentives are used as an alternative to direct subsidies to stimulate certain domestic policy objectives. In these cases, arguments are justifiable for countries to limit their tax incentives for philanthropy to the domestic situation. However, when part of the government burden is located outside the country’s territory, as is the case with foreign aid and international affairs

30 This section is partially based on section 3 in my earlier published article, see Buijze, R. (2016). Approaches towards the application of tax incentives for cross-border philanthropy. *Intertax*, 44(1), 14-28.

in many countries, it becomes easier to justify a tax incentive for a cross-border donation. This is illustrated by most countries spending tax revenue on foreign aid and international affairs. Tax incentives can be a form of foreign aid. It stimulates private contributions and might even relieve part of the government burden. Pozen (2006b, p. 874) makes a rough estimate that approximately USD 1.27 billion on tax expenditures is lost in tax revenue due to tax incentives on donations to developing countries. The donations made to developing countries are likely to be tenfold this amount. In comparison, in 2003 the official development aid in the United States was USD 16.3 billion.

A sub-argument to the drainage of tax revenue is that it limits the control over the indirect tax expenditures. If tax incentives are limited to the domestic situation, the amount of designated PBOs is limited by the geographical borders of the country. This allows tax authorities to make a reasonable estimation of the amount of indirect tax expenditures they will possibly make due to the application of tax incentives on philanthropic donations, which is important in light of the annual government budget. When tax incentives are applied to cross-border donations, it is more difficult for governments to estimate tax expenditures on philanthropic gifts. However, governments have several tools to restrict tax expenditures by, amongst others, implementing maximum thresholds and creating formal requirements, as discussed in section 2.3.4.

2.9.2 Anti-abuse arguments

When a domestic donation is made with the benefit of a tax incentive, the tax authorities can supervise the PBO. They can ensure that the donation is actually spent on a philanthropic cause as defined under the applicable laws and regulations. In case of cross-border donations, however, governments are afraid to lose oversight over the recipient PBOs. A lack of fiscal control over the foreign recipient organisation could lead to donations being made with indirect government support to ineligible organisations (Hemels & Stevens, 2012; Hemels, 2015; Koele, 2007), which was also referred to by the Dutch tax authorities.³¹ According to the evaluation on the practice of PBPE by the Dutch tax authorities,³² supervising foreign PBPE requires a significant administrative effort and is therefore difficult and sometimes even impossible.

Since in cross-border situations there is a lack of fiscal control, higher risks of abusive structuring and tax evasion exist. Without wanting to, governments might support tax evasion, money laundry or even terrorism. The combat of abuse of tax incentives is an argument for some governments to disallow tax incentives in cross-border situations. However, if countries could trust each other's supervising structures, this would not be a reason to restrict the tax incentives to the domestic situation. Specifically for the Dutch situation, it is somewhat contradictory that the evaluation claims that it is sometimes impossible for the Dutch tax authorities to supervise foreign PBPE, as one of the requirements to be recognised as a PBPE is that the country in which the charity is located ensures exchange of information with the Dutch tax authorities.

With terrorism, however, the problem is not so much in the tax legislation as in the anti-terrorism legislation. As long as there is no well-balanced anti-terrorism legislation, international fundraising is hindered by anti-terrorism measures (Bater, 2004; Jochum, 2012, p.

31 NL: Ministerie van Financiën, *Evaluatie van de praktijk rondom ANBI's en SBBI's*, January 2017.

32 NL: Ministerie van Financiën, *Evaluatie van de praktijk rondom ANBI's en SBBI's*, January 2017, p. 5.

596; Koele, 2007, pp. 11-12). Ironically, if anti-terrorism measures hinder international philanthropy so much that well-intended global aid is hindered, this might have a counterproductive effect, as poverty and social inequality are a matrix for terrorism (Crimm, 2008).

2.9.3 Legal differences

The requirements imposed on eligible PBOs, thus determining which PBOs qualify, differ among countries (Koele, 2007). The minimum asset requirements for eligible PBOs in one country can, for example, exceed the maximum assets of an eligible PBO in another country. An eligible PBO in one country might thus not meet the requirements to become an eligible PBO in another country.

Furthermore, the lack of a common understanding of the concept 'public benefit' or 'charity' can lead to governments refraining from applying tax incentives to cross-border donations (Bater, 2004; Koele, 2007, pp. 8-9). Both Drache and Bater (2004), however, point out that strong overlaps also exist in the definition of public benefit of certain countries. Examples of fields that are generally agreed to deserve tax benefits are relief of poverty, advancement of health and education, international disaster relief efforts and preservation of heritage sites. The global public benefit these causes relate to could be a possible reason for some governments to stimulate private contributions to these causes through tax incentives.

2.9.4 The political philosophy of pluralism

One of the main arguments that underlies the presence of tax incentives for donations to PBOs in the majority of western democratic high-income countries is the political philosophy of pluralism. This entails that it is beneficial if there are multiple providers of public goods. It argues that, first, society benefits from the application of private wealth to public benefit purposes. Second, society benefits from the plurality of choices in the provision of the public benefit. As PBOs provide an alternative to the supply of public goods by the government, they – in this view – prevent a monopoly position for the government in the provision of public goods and its accompanying effects. To avoid interference with the private provision of public goods PBOs – and the donations they receive – are not taxed. In this sense, not taxing philanthropy is an extension of democracy, in which citizens can develop their own alternatives to the activities of the government without the government discouraging them through taxation. If this view is extended to the international context, the plural powers that are present in an international society should not be hindered by taxes either. Therefore, the tax barriers to cross-border giving to PBOs should, according to the political philosophy of pluralism, be removed (Koele, 2007).

2.9.5 Transnational objectives

There is a significant number of PBOs, among which are art organisations, that have objectives that are not restricted to the country in which they are established, such as organisations with supranational objectives and organisations working in border regions. Globalisation reinforces the tendency of organisations to work across countries. This is stimulated by supranational agreements, such as the European Union, but also the Economic Partnership Agreements.

An argument that favours the application of tax incentives on gifts to international operating organisations is that these PBOs increasingly deal with transcending causes. Instead of increasing the public benefit of one country, they contribute to the public benefit of society as a whole (Bater, 2004; Koele, 2007), for example through providing such high-quality operas

that they attract an international audience. By contributing to these transcending causes, the PBOs can be regarded as increasing global social welfare (Pozen, 2006a, p. 580). Some of these transcending causes, also called global public goods, can only be realised in an efficient manner when dealt with in an international context. Finding and implementing a solution to protect cultural heritage in war zones, for example, can only be reached if countries collaborate.

The international support for transcending causes can be explained by the theory of global public goods. In section 2.2.7 the public good argument was brought forward as a reason for governments to support the arts. Public goods were addressed here as a national matter. When, however, a good is more or less available worldwide, these are global public goods (Barrett, 2007). Both individuals and individual states do not have an incentive to produce or maintain the global public goods. This might lead to an undersupply of these specific goods on a global level. Besides, it allows for free-riding by individuals as well as individual countries (Cafaggi & Caron, 2012, pp. 644-645). These tendencies have to be adjusted at a supranational level. Supranational legal bodies can play a role here, for example, by forcing countries to apply a tax incentive on donations to organisations that provide global public goods.

The concept of global public goods further relates to the ‘common heritage of mankind’, which was first addressed in the preamble of the 1954 *The Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*.³³ It refers to heritage of humanity that should be conserved for future generations and protected from danger by individual states and corporations. The 1954 *The Hague Convention* furthermore states: “*Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world; considering the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection.*” This implies that people from one country have an interest in the art of other countries, and that all countries have a responsibility towards each other’s cultural property (Buranich, 1988-1989, p. 159; Merryman, 1983, p. 759), which is in line with art as a common good, as addressed in section 2.6.

2.9.6 Healthy international competition

If only donations to domestic organisations are stimulated by tax benefits, foreign organisations are in a disadvantageous position when competing with domestic organisations for private funding. This creates an unequal position that hinders international competition.

Governments do not have the sole right to produce or support public goods. Therefore, it can be argued that they should not hinder, nor influence the allocation of, actions by other parties whose action radius might surpass the nation state. The disadvantageous position can be overcome by applying tax incentives in cross-border situations or by removing tax incentives on all philanthropic donations. In this view, however, both require a global approach towards indirect support of PBOs.

33 UNESCO, *Convention for the Protection of Cultural Property in the Event of Armed Conflict*. The Hague 14 May 1954 http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html. Accessed 12 June 2017.

2.9.7 International relations

The stronger the social, cultural, diplomatic and economic ties between countries are, the more desirable it is for them to allow tax incentives in cross-border situations, as this has a positive effect on cross-border donations – assuming donations are price-elastic – and it can reinforce ties between countries. This is what the bilateral tax treaty between the US and Canada illustrates. Their physical proximity, the large size of their bilateral trade, the huge number of tourists and employees travelling between these countries, etc., create great interest in making cross-border philanthropic donations (Drache, 2004). It, therefore, seems a matter of logical deduction that this is the reason to include a provision on the application of tax incentives in the tax treaty in order to make philanthropic donations between these countries more attractive. The same holds for supranational agreements. In order to strengthen the market within a supranational agreement, tax incentives might apply to cross-border donations, whether or not this was intended beforehand by the signing countries. This is what happens in the EU with the enforcement of the four fundamental freedoms as stipulated in the TFEU.³⁴

2.9.8 Concluding remarks

Governments might want to restrict tax incentives for cross-border giving to their own country, as it is difficult to supervise PBOs abroad, there are differences among countries on what is considered a PBO and there is the risk that tax revenue might end up abroad. On the other hand, cross-border support for PBOs might provide a solution to tackle international issues and provide for global public goods. Furthermore, granting foreign donors with a tax benefit might help stimulate positive international relations and a healthy international competition.

Regardless of one's personal standpoint, the application of a tax incentive in a cross-border situation to support cross-border philanthropy depends on the prevailing socio-political ideas in the country where the tax incentives are granted. These dominant ideas differ across countries and subsequently the application of tax incentives in cross-border situations differs, resulting in a broad range of approaches towards the application of tax incentives in cross-border situations.

2.10 Concluding remarks

In this chapter, theories and concepts important to this research were put forward, providing insight in the characteristics and size of philanthropy and the use of tax incentives to stimulate philanthropy.

There are strong differences in philanthropy across countries. One aspect is present in the majority of countries: indirect support for PBOs through tax incentives. Donors are stimulated to give to PBOs – among which are arts organisations – through, for example, tax deductions, tax credits, top-up schemes and percentage designation schemes in personal income tax. Tax incentives alone, however, do not make an individual give and other mechanisms are at work here as well. One of them is solicitation, in which fundraising plays a crucial role. Chapters 6 and 7 of this research will add to the limited available research on fundraising

34 Treaty on the Functioning of the European Union (TFEU) and EU Treaty (as amended through 2007).

by mapping the process of cross-border fundraising. More research on international philanthropy, however, is necessary to fill the gaps identified in this chapter. By elaborating on the tax (and other legal) barriers that inhibit cross-border philanthropy, the current chapter also paves the way for Chapter 4, in which the solutions to overcoming tax barriers are elaborated on.

Debates on governments' support for the arts, the use of tax incentives to support the arts and the application of these incentives on cross-border donations were outlined. For each of these debates, it holds that whichever side one chooses depends on one's ethical conviction and political beliefs. In the end, these are decisions to be made by governments. This chapter does not argue in favour or against the application of tax incentives on cross-border donations to the arts. All it does is observe that cross-border philanthropy to the arts exists and that there are governments who wish to stimulate cross-border giving through tax incentives. These are the starting points of this research.

3 ● Methodology

In this chapter I account for the methods according to which the main research question is answered. In section 3.1 I discuss the interdisciplinary nature of the research and how the two main pillars – doctrinal research and qualitative empirical research – connect. In sections 3.2 and 3.3 I explain how both parts of the research are set up and carried out.

3.1 An interdisciplinary research approach

The research combines different academic disciplines in order to answer the main research question: “*How can the existing solutions for tax-efficient international philanthropy be used optimally by arts organisations?*” At the core of this research are Tax Law and Cultural Economics. Combining the two disciplines helps to get a thorough understanding of the effects of tax legislation on international fundraising. Tax Law gives insight into the tax regulations and legal structures involved in cross-border fundraising. Cultural Economics contributes in understanding the role of tax incentives on philanthropy and gives insight into the relevant characteristics of arts organisations. Besides, the economic concepts used in Cultural Economics help clarify the phenomena at hand, as was demonstrated in Chapter 2.

The manner in which these fields are combined can be specified as perspectivist interdisciplinary research. Characteristic of perspectivist interdisciplinary research is that two or more disciplines are used to provide an answer to a research question, by using concepts and methods of both disciplines, since one discipline alone cannot solve it (Taekema & Van Klink, 2011, pp. 7-13). This is exactly where the added value lies in the combination of Tax Law and Cultural Economics. The research topic concerns a tax issue and has to be understood in its legal context through the study of Tax Law. The concepts used in Cultural Economics provide for new perspectives on tax incentives on donations in a global context. Furthermore, combining the two different methodologies allows the assessment of the legal solutions from a practical perspective. The empirical research method of Cultural Economics provides for an assessment framework, whereas the legal doctrinal approach allows for a detailed understanding of the solutions to tax-efficient giving across borders.

To understand the role of each discipline and to shed light on the difficulties involved in interdisciplinary research, I take a closer look at the research elements in the next paragraphs (Taekema & Van Klink, 2011, pp. 7-13). The tax barrier on cross-border donations is a problem that stems from the practice of both tax lawyers and fundraisers for arts organisations. In both fields the difficulties involved with cross-border donations are experienced. For fundraisers it can be difficult to convince donors abroad to donate to their arts organisation since they compete with domestic PBOs for which a tax incentive usually applies. When fundraisers

or donors turn to tax lawyers for advice, the tax lawyers are faced with a challenging case. Besides an overlap in practice, there is also an overlap in the scientific arms of Cultural Economics and Tax Law, in that both study tax incentives. Cultural Economics researches, amongst others, indirect subsidies as a method to financing the arts. For researchers in the field of Tax Law, the study of tax incentives for the arts is part of the broader topic of tax incentives for charitable causes.

There are also differences in the study of tax incentives for donations between Tax Law and Cultural Economics. The research goal differs. Tax Law mainly aims at explaining legislation, providing a normative evaluation of legislation and providing solutions for problems found through text-based research. In general, it either studies what the law is and how it ought to be. Cultural Economics, however, mainly aims at explaining and sometimes even predicting the effects of tax incentives. These are two different focusses within the same topic, each with a different research approach. In Tax Law research a hermeneutic approach is often used, which entails that the research be subject to interpretation. Researchers are aware of the subjective component, but see it as an inevitable, since they can only give their own interpretation of legislation; this in itself is an invented normative matter. In Cultural Economics a positive approach is more common, meaning that researchers study observable behaviour and try to eliminate their own subjective view from the research as much as possible. This is perceived as more objective in comparison to the approach of legal research. In this research, the focus is on both exploring and understanding the tax system. A hermeneutic approach is used when analysing law, but when analysing arts organisations and their donors, a positive approach is taken. The presumption that there is a tax disadvantage in cross-border situations in comparison to domestic situations is a given in this research. Whether this is desirable or not is left to politicians to decide, just as it is their decision whether a tax incentive applies in the domestic situation or not. The fact that politicians – and thus governments – have different opinions on this topic is clear from the different approaches countries take towards the application of tax incentives to cross-border situations. Although it is not the aim of this research to form an opinion, it does explore the different approaches countries have in Chapter 5.

The differences in research goals and research approaches result in the use of a different research method. In legal studies, doctrinal research is the commonly used method in which law is studied as a normative system. The sources that are studied are legal texts and court decisions. The legal reality is excluded from this type of research (Van Hoecke, 2011, pp. 2-3). This type of research differs heavily from empirical research, which is used in social sciences, such as Cultural Economics. These sciences engage in empirical research, which can either be quantitative or qualitative. Quantitative research is mainly focussed on quantification in the collection and analysis of data. It analyses the prevalence of a phenomenon, which makes it deductivist. Qualitative research, on the other hand, is focussed more on words and descriptions in order to understand phenomena. It is more based on the peculiarities of certain issues at hand (Bryman, 2008, p. 697). In this research, both legal doctrinal research and qualitative empirical research methods are used.

The first step in this research is the legal doctrinal research. Legislation regarding tax incentives for cross-border donations is compared across countries. Based on this comparative doctrinal study, countries are classified into four ideal types according to the level of their fiscal support for cross-border donations. Section 3.2 elaborates on the comparative doctrinal research. In the second step, an assessment framework is developed to find the optimal solu-

tion in context for each ideal type. The assessment framework consists of criteria to evaluate the existing solutions for tax-efficient cross-border philanthropy in its context. The criteria are gathered through qualitative empirical research among donors and professionals in the field of art philanthropy. The criteria derived from the empirical research are complemented with criteria discussed in literature available on the solutions for tax-efficient cross-border philanthropy. Together they form an assessment framework to evaluate the existing solutions for tax-efficient cross-border philanthropy. The empirical research is discussed in section 3.3.

3.2 Doctrinal research

Doctrinal research aims at describing a body of law and how it applies. This approach is helpful in order to grasp the different approaches countries hold towards the application of tax incentives in cross-border situations. The relevant tax jurisdictions in this research are the resident countries of donors, as the resident countries determine whether a tax incentive applies to a gift. Besides, the resident countries determine what type of gifts qualify, to which organisations and under what circumstances. The donor's residence country, thus, also determines whether a tax incentive applies to donations that leave the country. Studying these tax jurisdictions also reveals which of the existing solutions can be used in the country concerned to obtain a tax incentive on a cross-border gift.

Legal doctrinal research helps to find the applicable legislation and its interpretation. Primary sources, such as case law on tax incentives for cross-border donations and relevant legislation, are analysed. It is thus a theoretical study (Dobinson & Johns, 2007, pp. 18-19). Van Hoecke (2011, pp. 4-11) enumerates the many different views on legal doctrinal research, varying from an argumentative or normative discipline to an empirical discipline. The view taken in this research on legal doctrinal research is that it is a hermeneutic and argumentative discipline, in which the interpretation of the text is the core matter.

In order to grasp the different approaches that countries may take towards tax incentives in cross-border situations, this research studies tax jurisdictions. The following sub-questions are mainly answered through doctrinal legal research, supported by literature and/or empirical research where necessary:

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?*
4. *What public and private solutions exist to overcome the problems with cross-border philanthropy and tax incentives?*
5. *What criteria does a solution to tax-efficient cross-border giving have to meet to be optimal from the perspective of arts organisations?*

Literature is studied and tax legislation of different countries is described and compared in order to answer sub-question 1. This results in a classification of tax jurisdictions into four ideal types (sub-question 2), which form an important basis for the empirical research. In sub-question 4 the legal research covers the public initiatives to overcome problems with cross-border fundraising and tax incentives. The private solutions are derived from literature study and empirical research. To answer sub-question 5, knowledge of tax measures is necessary, as well as knowledge of the needs and wishes of the arts organisations. The legal method used to answer these questions is described in the following two sub-sections.

3.2.1 The classification of tax jurisdictions³⁵

The approach of countries towards tax incentives in cross-border situations is studied through comparative doctrinal research. As the scope of the comparison is limited to a specific provision in PIT, the comparison is a micro-comparison (Marian, 2010, pp. 449-451). In order to identify the different approaches countries may take towards tax incentives in cross-border situations, tax jurisdictions are compared with each other.

The comparison of countries, however, is complicated by three aspects of tax law: rapid legislative change, the complexity of tax systems and the heterogeneity of local tax concepts (Garbarino, 2009, pp. 686-688). These challenges apply for comparative tax research in general, but are perhaps even more pronounced when comparing topics in the field of cross-border taxation. The heterogeneity of local concepts appears in many fields of comparative law and is discussed extensively by others (De Groot & Van Laer, 2006; Hantrais, 2009). Therefore, I only mention that the translation of foreign concepts requires great caution and that one should be aware of the different meanings of seemingly similar concepts (Livingston, 2005, p. 119; Garbarino, 2009, pp. 686-688).

The other two aspects of tax law, however, do require some explanation. Comparative research on tax legislation is complicated by continuous political pressure. This results in ongoing changes in tax legislation over time. For instance, the requirements for PBPE in the Netherlands have changed five times between 2008 and 2014 (Hemels & Van Vliet, 2015). The tax legislation of two countries must be taken into account when dealing with cross-border issues, which increases the changes in tax legislation one is faced with. Political changes and decisions at the international level also add to the rapid pace of changes in tax law. The case law of the ECJ, for example, is a source for amendments to national law. This makes tax law, especially cross-border taxation, a fast-moving target that is difficult to grasp and poses the risk of comparative tax research quickly becoming outdated.

Another challenge in comparative tax research is dealing with the complex nature of tax law, especially in cross-border situations. The complexity of tax law stems from its distinctive tax vocabulary. Furthermore, the high degree of refinement in the tax provisions adds to the complex structure of tax law (Livingston, 2005, p. 120; Thuronyi, 2003, pp. 17-20). These tax provisions might be laid down in a large volume of varying legal sources. This can lead to 'Russian doll' situations, where the reference in one article to another article – and so forth – makes it complicated to get a hold on the applicable legislation. The impact of national, international and/or supranational legislation on each other further adds to the degree of complexity of tax law, especially on cross-border tax issues. It provokes a 'vertical comparison', which is a comparison that compares legal systems at different legal levels (Momirov & Fourie Naude, 2009, p. 291). So unlike the traditional horizontal comparison, which is a comparison occurring among systems belonging to the same level (Momirov & Fourie Naude, 2009, p. 291), comparisons of (cross-border) taxation provoke both horizontal and vertical comparisons. Furthermore, in some cases, an unequal comparison might arise because some countries have larger sovereign powers than others.

The foregoing aspects of tax law make it difficult to get a hold on one's own tax jurisdiction, let alone fully understanding multiple tax jurisdictions. The boundaries between legal orders, expressed in horizontal and vertical relations, get blurred due to the integration of

35 This section is mostly based on the following article: Buijze, R. (2016). The Categorisation of Tax Jurisdictions in Comparative Law Research. *Erasmus Law Review*, (4). 189-198.

legal orders (Devroe, 2010, pp. 37-56). At the same time, the large impact that legislation at the international and/or supranational level has on national legislation and vice versa increases the demand for comparative tax law. As Thuronyi nicely puts it: “*EU integration fuels some of the demand for comparative tax law knowledge*” (2012, p. 862).

To overcome the challenges that the fast-changing tax regulations and complex nature of international tax law pose to the comparison of approaches towards the application of tax incentives on cross-border gifts, I propose a method for comparative tax law that categorises tax jurisdictions into ideal types. An ideal type is a construct consisting of individual elements abstracted from real life phenomena that are combined into a whole. It functions as a concept against which real-life scenarios can be measured.³⁶ The benefits of this method are that it enables a systematic analysis of tax jurisdictions in their international legal context and that it provides durable outcomes. Besides, the ideal types enable generalisation of the conclusions to other countries. Specifically for this research, the categorisation of tax jurisdictions has the following three advantages.

First, categorising tax jurisdictions helps by clustering jurisdictions in which donors can rely on the same existing solutions. Governments can enable or prevent the use of tax incentives by actively engaging in the existing solutions or by prohibiting or hindering them. In a case where a government wants to minimise the chance that donations leaving the country receive a tax incentive, they will not engage in unilateral, bilateral or supranational solutions. The amount of solutions that can be used in this specific tax jurisdiction are thus limited. Therefore, finding the best solution in this context solely requires further analysis of the solutions that can be used in the jurisdiction concerned. This is a first step to finding the best solution in context for a specific category of jurisdictions.

Second, there is the issue of generalisability. Aim of this research is to cater to arts organisations wanting to raise funds from a broad range of countries. By using ideal types, the research can cater to arts organisations, regardless of which country they want to raise funds in. Arts organisations can check under which ideal type the tax jurisdiction of their donor falls in order to get an indication of the best solution in context. By using ideal types, the results of this research can be applied to cross-border situations in general. The use of ideal types does have a drawback here. Being able to provide advice for the best solution for cross-border donations from all kinds of countries requires a high level of generalisation. Every jurisdiction, however, has its own peculiarities which require detailed analysis. Therefore, the use of ideal types only gives an indication of what would be the best solution in context and detailed analysis of the concerned jurisdiction is still necessary if one is in search of advice for a specific country. However, the use of ideal types suits this research better than selecting a limited number of jurisdictions, also due to the third and following reason.

This dissertation deals with a novel issue. Until recently it was not such an issue that tax incentives for donations were only applicable in domestic situations. This has changed as people increasingly make cross-border donations. Due to the novelty of the phenomenon, there is not a large pool of cases of cross-border donations to choose from for the empirical part of the research. Besides, the information on the origin of the gift is not commonly available.

³⁶ The ‘ideal type’ was developed by Max Weber (1864-1920). In this research the concept is merely used as a benchmark concept.

Only after consultation with arts organisations does it become clear from which countries they receive gifts. Therefore, no large random sample can be drawn beforehand when studying donations originating from specific countries. Through ideal types, multiple tax jurisdictions can be studied and compared and this tax barrier to cross-border philanthropy can be overcome. In the next section I explain how the tax jurisdictions are categorised into ideal types.

3.2.2 Distinguishing ideal types³⁷

To categorise the tax jurisdictions into ideal types based on their approach towards the application of tax incentives on cross-border donations, I largely followed the five steps for conducting comparative research as distinguished by Zweigert and Kötz (1998, pp. 32-47): (a) definition of the research topic and research question; (b) selection and interpretation of sources; (c) selection of countries; (d) comparison of the country reports and (e) building of a system. Other comparative law scholars like Kamba (1974) and Örüçü (2012) provide similar guidelines for conducting comparative law, albeit with slightly different emphases. Infanti (2002), who also conducted research on the tax treatment of cross-border contributions to PBOs, adopted the guidelines proposed by Kamba. Although we study the same topic, the different aims of our comparative tax law research, logically, direct me to a different approach. Whereas Infanti's work aims to develop a method that achieves simplification of the domestic tax regime through tax coordination at the international level, my research aims to explore the different approaches towards the application of tax incentives for cross-border donations.

The starting point of the research was the exploration of the literature on cross-border philanthropy, as was discussed in Chapter 2. This exploration led to the research question: *“What are the main approaches of countries towards tax incentives for cross-border philanthropy?”* In line with the advice of Zweigert and Kötz, I kept away from terms related to a specific jurisdiction. Instead, I selected a concept that grasps the functionality of the rules I wanted to study. I chose the term ‘tax incentives’ instead of ‘tax credit’, ‘tax deduction’ and the like, because the latter refer to measures used in specific jurisdictions, whereas the former covers the entire category of measures that support philanthropy through the income tax system.

For the exploratory research, I consulted scientific articles by tax law scholars from a diverse set of countries. This provided a good idea of the primary sources to consult for the actual research. Although I had initially considered the comparison of domestic tax legislation and a separate discussion of international and supranational legislation, I soon learned that this was insufficient. Domestic tax legislation, bilateral tax treaties and supranational agreements all had to be taken into account in the comparison. During the data collection I thus searched for information relevant to tax incentives for philanthropy in all these three sources. The advantage of studying a tax benefit is that these benefits are generally well-described in the written law. The great consensus among high-income countries in regard to the application of tax incentives for philanthropy helped me a great deal in finding the relevant provisions in the legislation.

In addition to the written law, important case law was studied. This was initially limited to case law of courts at the international level, such as the ECJ. Later, when it showed that written law was not in line with the ECJ case law in one jurisdiction and there was uncertainty about the law in practice, clarification was found in the case law of the highest tax court in this country.

³⁷ This section is mostly based on the following article: Buijze, R. (2016). The Categorisation of Tax Jurisdictions in Comparative Tax Law Research. *Erasmus Law Review*, (4), 189-198.

To gain insight into the application of domestic tax law, I first consulted the original documents. But when language barriers forced consultation of secondary sources, I turned to respectable secondary sources and explicitly noted in the reports wherever applicable that they were based on secondary sources.³⁸ Even though translations of the original documents were available, caution was required since certain concepts are difficult to translate. Besides, similar concepts can have a different meaning, owing to the influence of the socio-cultural context in a country.

The exploratory research included a broad variety of jurisdictions. For the actual research, the initial selection of jurisdictions had to be limited. Zweigert and Kötz (1998, pp. 40-42) propose two approaches for the selection of jurisdictions: (a) selecting jurisdictions from different legal families or (b) selecting on the basis of the function of the topic in the research. I chose the latter, as I wanted to ensure that a variety of approaches towards the application of tax incentives for cross-border philanthropy were included in the research. I identified the most common varieties of tax incentives for philanthropy in the exploratory research. The exploratory research also provided insight into the relevant legal orders that influence the approaches governments hold towards the application of tax incentives for cross-border philanthropy. These factors were used as guidance in the selection of jurisdictions in order to ensure that the existing diversity of jurisdictions would be represented in the selection. On the basis of this purposeful selection process, I chose the following jurisdictions: Australia, Barbados, Belgium, France, Germany, Hungary, Japan, Lithuania, Luxemburg, the Netherlands, Spain, Sweden, the UK and the US. This selection of jurisdictions includes examples of the entire spectrum of approaches towards the application of tax incentives on cross-border philanthropy. Additional countries would closely resemble one of the jurisdictions included in the selection and would therefore not offer new insights. In other words, I had reached the point of decreasing marginal returns (Zweigert & Kötz, 1998, p. 41). Since the research focusses on a very specific provision, it was feasible to study this rather large selection of jurisdictions.

Despite using a purposeful selection, the selected jurisdictions unintentionally cover most of the tax law families as identified by Thuronyi (2003, pp. 23-44). Barbados, Australia and the UK represent the Commonwealth family; the US represents the American family; the French family is covered by France; Hungary and Lithuania belong to the Transition and post-conflict family; the Netherlands, Belgium, Germany, Luxemburg and Sweden represent the Northern European family; Spain belongs to the Southern European family; and Japan represents the Japanese/Korean family. The families identified by Thuronyi that are not covered by this selection are the Latin American family and the miscellaneous family. None of the countries in the miscellaneous family are high-income countries and therefore fall outside my comparison. Among the Latin American family, Uruguay and Chile qualify as high-income countries and the latter also seems to have a tax incentive in place for private giving (Quick et al., 2014). The existing literature on cross-border philanthropy did not give rise to the necessity to include this country in the selection, although it might be interesting to include in future studies.

38 Respectable secondary sources were used in case language barriers prevented consultation of original legislation, such as the Tax Research Platform of IBFD (<<http://online.ibfd.org>>) country reports gathered by the European Foundation Centre and Transnational Giving Europe (<http://www.transnationalgiving.eu/en/country-profiles/>, Accessed 14 June 2017), the Council on Foundations (www.cof.org) and the publication following the 2012 Conference of European Tax Law Professors (F. Vanistendael (ed.), *Taxation of Charities* (2015)).

For each of the fourteen selected jurisdictions I made a brief country report. In order to enlarge the reliability of my interpretation of the sources consulted, I cross-checked my findings with academic articles by native scholars of the relevant jurisdictions, in so far as these were available. To make the country reports comparable, I had to use an approach for all jurisdictions that would allow me to eliminate the elements that are peculiar to a jurisdiction and stand in the way of comparison. These elements are, for example, tax concepts specific to one jurisdiction and cultural interpretations. To eliminate these, I followed the functional approach. This commonly-used approach in comparative law, which is also adopted in comparative tax law, assumes that the basic function of legislation in each country can be compared. It starts from a specific problem and then examines which mechanisms are used in the jurisdictions studied to resolve it. The mechanisms for each function can then be grouped on the basis of the function (Garbarino, 2009, p. 688). My method differs from the functional approach in later steps, where the functional approach searches for similarities in tax legislation and is used as a tool *“for reform leading to harmonisation or even unification of tax laws”* (Marian, 2010, p. 438). Instead, my aim is not to reform tax law, but to map the different legislative models. Here I find my approach close to that of Thuronyi (2003, p. 2), who sees comparative tax law as an instrument that provides a structure for reference in tax law. Besides, I did not focus solely on the similarities, but also took into account the differences between jurisdictions.

While constructing the country reports, similarities and differences between countries started to become clear. I could see patterns crystallising, and that is how I came to the division of jurisdictions into ideal types. However, before describing the categorisation of jurisdictions in the next section, a word of caution is necessary. Although categorisation is helpful as a system, the discussion of tax law in terms of ideal types does come with some drawbacks. As in every legal comparison, there are the language barriers to overcome (De Groot & Van Laer, 2006; Devroe, 2010, pp. 50-53). Furthermore, jurisdictions are heavily interrelated with the societal and cultural background of the country (Devroe, 2010, p. 44; Thuronyi, 2003, pp. 23-25). In addition, one should look not only at the written law, but also at the law in action (Barker, 2004, pp. 723-724). Therefore, getting a thorough understanding of another jurisdiction can be difficult. One should be aware, when engaging in comparative tax law, that systems might seem the same but the institutional and cultural backgrounds might differ (Ault & Arnold, 2004). This can be a threat to a successful comparison. With the help of work by native scholars and the support of generous reviewers and colleagues, however, it is possible to gain a working understanding of a foreign legal system.

The country summaries allowed me to build a system in which the jurisdictions can be ordered into a meaningful sequence based on the type of tax incentive available, the availability of legal measures at different legal levels and the requirements imposed on qualifying donations. This ‘system building’ is the last step in comparative research according to Zweigert and Kötz (1998, pp. 44-46), as the division into ideal types enables a macro-perspective on a specific and detailed topic. The relation between the different legal levels and the level of openness of a country towards the application of tax incentives for cross-border philanthropy proved to be the key to a system based on which the different approaches could be divided into ideal types. This requires some further explanation.

At the national level, countries choose a specific tax incentive scheme, such as a credit on taxes due, a deduction from taxable income or a percentage designation scheme. In principle, these tax incentives can all be applied in cross-border situations. Countries grant tax

incentives in cross-border situations under certain conditions. They can allow for a tax incentive on direct cross-border donations or on cross-border donations through a local intermediary organisation. The local intermediary organisation is a qualifying PBO in the country of the donor that receives the gift and then transfers it to a foreign PBO. Since the transaction from the donor to the local intermediary organisation is a donation to a qualifying domestic organisation, a tax incentive is granted on the gift. Obviously, a country that allows for direct cross-border donations has a more open approach than countries that only allow for tax incentives on indirect cross-border donations.

Governments can nuance the application of the tax incentive through the design of the tax incentive and the requirements imposed on a qualifying donation. These can vary from administrative requirements, to requirements on the location of the designated organisation, to definitions on what activities qualify as a contribution to the public benefit and who controls the receiving PBO. The requirements imposed on qualifying donations are a strong tool that can be used to limit or loosen the applicability of tax incentives to cross-border donations, for countries that allow for tax incentives on cross-border donations based on national legislation as well as for countries that allow for this based on international and/or supranational legislation. The more requirements and the stricter the requirements imposed on a qualifying donation, the more difficult it is to make a cross-border donation with the benefit of a tax incentive, and thus the more closed a jurisdiction is on this issue.

At the international level, countries can engage in bilateral tax treaties in which they recognise each other's PBOs and mutually apply their tax incentives to cross-border donations. The more bilateral tax treaties a country has that include a provision on charitable contributions, the more open the approach of a country is. Countries can also engage in agreements on this topic at the supranational legal level.

The factors that influence the applicability of a tax incentive for cross-border donations are measures at different legal levels that guide the comparison and ranking of tax jurisdictions according to their openness towards the application of tax incentives for cross-border donations. The following road map summarises this in a more structured manner. Applying this road map results in five ideal types: (0) jurisdiction with no applicable tax incentive for gifts; (1) closed jurisdictions; (2) restrictive jurisdictions; (3) relatively open jurisdictions; and (4) open jurisdictions. These ideal types inform on how open a jurisdiction is towards the application of a tax incentive on a gift. Countries without a tax incentive in place at the domestic level fall outside the scope of this comparison.

Although the jurisdictions could have been divided into a different number of categories, four ideal types proved to be the right number, as these four ideal types summarise the spectrum of different approaches governments take towards the application of tax incentives for cross-border philanthropy. While developing the system, I also made an attempt to divide the jurisdictions into three and five ideal types. Three ideal types did not allow inclusion of all the factors discussed above. More than four ideal types forced a divide on less meaningful components and would have made it more complex to deal with the categories.

The categorisation of the jurisdictions into ideal types was done as systematically as possible in order to increase the internal validity. The following steps were taken:

1. Does the domestic tax legislation include a tax incentive for gifts by individuals? If no, ideal type (0) jurisdiction with no applicable tax incentive for gifts.
2. Does the domestic tax legislation allow for tax incentives on direct cross-border donations? If yes, > ideal type (4) open jurisdiction.

3. Does the domestic tax legislation allow for tax incentives on indirect cross-border donations (through a local intermediary organisation) and/or does the country have international agreements, such as tax treaties and/or supranational agreements, that allow for tax incentives on cross-border donations
 - a) with at least ten countries? And
 - b) of which the facts and circumstances make it practically possible to obtain a tax benefit on a cross-border situation? If yes > ideal type (3) relatively open jurisdictions.
4. Does the country have international agreements, but with less than ten countries, and/or are the facts and circumstances such that it is impossible to obtain a tax benefit for a cross-border donation in practice? If yes, > ideal type (2) restrictive jurisdiction.
5. None of the above? If yes, > ideal type (1) closed jurisdictions.

Based on the road map above, the different jurisdictions were divided into four categories that summarise the spectrum of the different approaches governments take towards the application of tax incentives for cross-border donations. A last step to take was to identify the common qualities of each category in order to define the four ideal types. To identify these characteristics, I went back again to the country reports, but this time to search for similarities within the jurisdictions that belong to one category in order to describe the ideal types. Chapter 5 describes the categorisation of tax jurisdictions into ideal types.

3.2.3 Describing and evaluating the existing solutions

In order to get an overview of the existing solutions that can help overcome the tax barriers to cross-border gifts (sub-question 4), the solutions are described in Chapter 4. The existing solutions initiated by states are found in tax legislation on different legal levels: 1) domestic legislation, 2) bilateral agreements and 3) supranational agreements. To identify and describe these solutions, tax legislation at the different legal levels is analysed, as well as tax law literature.

The existing solutions that are initiated by private parties and that make strategic use of tax legislation are found by studying fundraising literature. Furthermore, in the empirical research, interviewees were asked which solutions they know and use. The information provided by this literature and through the interviews gives an overview of the private initiatives to overcome the tax barriers to cross-border philanthropy.

To answer the main research question, the existing solutions are evaluated and compared with each other in Chapter 9. The solutions are evaluated based on the perspective of arts organisations. This perspective is captured in an assessment framework based on interviews with employees of arts organisations. The methodology of this empirical part of the research is described in section 3.3. The assessment framework, furthermore, takes into account legal elements that the solutions have to meet. These are derived from legal literature and the analysis of tax legislation.

3.3 Empirical research

Legal research is not enough to find the optimal existing solution for arts organisations that allows their foreign donors to give with the benefit of a tax incentive. It requires the perspective of arts organisations. Therefore, empirical research that captures the daily practice of arts philanthropy is necessary. The following sub-questions are answered through empirical research:

3. *What does international philanthropy for the arts currently look like?*
5. *What criteria does a solution to tax-efficient cross-border giving have to meet to be optimal from the perspective of arts organisations?*

A combination of empirical research and legal research is used to answer an additional sub-question:

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

I specify the research strategy and methods used to answer these questions in the following paragraphs.

3.3.1 Qualitative research

The aim of the empirical part in this research is to gain insight in the daily practice of international arts philanthropy and fundraising. Besides, empirical research is necessary to identify the criteria arts organisations use when choosing a solution to facilitate their foreign benefactors with a tax incentive, since these criteria are the base for the assessment framework I have created to evaluate the existing solutions. Qualitative research is the most suitable research strategy to reach these aims, as it can be used to trace operational links and provide an understanding of decisions made in its context (Yin, 2003b, pp. 1-9). Thus, a qualitative strategy is best suited to explore cross-border philanthropy for the arts and to identify the relevant criteria arts organisations use when selecting a solution to overcome tax barriers for cross-border giving.

An additional advantage of qualitative research is that it allows for a holistic view on the taxation of international arts philanthropy. Due to this holistic view, relevant nuances in tax law can be included in the research. This is of great importance, as details in tax provisions can have a significant influence on the application of tax benefits on cross-border donations and, thus, on the tax outcomes for taxpayers. Since both qualitative research and legal research allow for great attention to details (Dobinson & Johns, 2007; Van Hoecke, 2011), this makes it easier to merge these two research methods into one assessment framework to evaluate the existing solutions to tax-efficient cross-border giving.

Furthermore, qualitative research allows for expanding a theory, as is the case in this research. The gross majority of literature on tax incentives for philanthropy takes the legal perspective and I expand this literature by exploring the topic from a social science perspective. Through an inductive approach, this research explores the practice of international philanthropy and contributes to the existing literature. After writing up the initial findings, additional cases serve to test and refine the findings in the iterative stage, which can be described as a deductive part within the inductive approach (Bryman, 2008, pp. 4, 9-11, 54-57).

3.3.2 Multiple case studies

This research employs case studies, since the aim is to explore international philanthropy and to evaluate the solutions that allow for a tax benefit on a cross-border gift in their context. The context in which cross-border fundraising takes place is particularly relevant, since this context contains factors that influence the perspective of the arts organisations. Case studies allow studying this context (Bryman, 2008, p. 697; Yin, 2003b, pp. 1-9). The unit of research is a specific cross-border donation to an arts organisation in a specific setting. The specific context, complexity and particular nature of the cross-border donation are examined extensively (Bryman, 2008, pp. 52-53). To reach conclusions that apply to a variety of cross-border situa-

tions, a comparative form is used in which multiple cases are studied (Bryman, 2008, p. 60). The first reason why I chose a multiple case study design is because the scope of the research includes multiple tax jurisdictions. Therefore, case studies of all these tax jurisdictions have to be analysed in order to compare them. Second, studying multiple possible cases per type of tax jurisdiction minimises the risk that the chosen case turns out to be unable to answer the research question. The logic of replication is applied – as opposed to the logic of sampling – to derive findings from the data. According to the logic of replication, if a result can be distinguished from a single case, the result is tested on additional cases in order to refine it and to create a theory. This can take place in a literal replication or in a theoretical replication. In a literal replication, the theory is tested on a comparable cross-border donation. This should lead to the same outcome as the suggested theory. In the case of a theoretical replication, the theory is tested on a cross-border donation with different characteristics, which should lead to a different outcome. If this is not the case, the theory has to be revised (Yin, 2003b, pp. 17-18). The purpose of the exploration of cross-border philanthropy is:

1. To gain an understanding of the demand and supply side of international arts philanthropy; and
2. To identify the criteria used by arts organisations when choosing a solution to overcome the tax barriers to cross-border philanthropy; and
3. To obtain insight into the solutions used by arts organisations and donors to overcome the tax barriers to cross-border giving.

Explicating these purposes helps to identify relevant cases, which brings me to the identification of the unit of analysis (Yin, 2003b, pp. 22-26); in this research, the event of a cross-border donation from a donor to an arts organisation.

One single art organisation might deal with multiple cross-border donations. I could have, therefore, used all of these cross-border donations, perhaps originating from different tax jurisdictions, as sub-units of analysis embedded in the unit of analysis, which is a multiple embedded case study design. However, I cluster all donations coming from a single tax jurisdiction to one arts organisation as a sub-unit of data analysis. I decided this after a handful of interviews when it became clear that most interviewees had great difficulty discussing one donation from a specific country at one point in time, which led to vague and incoherent responses to questions. Interviewees had difficulty talking about a single unit at hand because they were afraid it would harm the privacy of the donor, or because they had too little specific knowledge of these specific donations. This lack of knowledge had different origins. The interviewees dealt with multiple donations from the same country and had difficulty distinguishing one from another, or the organisations only received cross-border donations occasionally and, therefore, they could not remember details as it had been too long ago or the donation had been supervised by a (former) colleague. For these reasons, I altered the original research setup slightly to a multiple embedded case study where donation streams from one single country to the arts organisation are a single unit of analysis. In relation to the logic of replication, a literal replication now means that a donation stream from one single specific country to an arts organisation is compared with a donation stream from the same single specific country to another comparable arts organisation. This should lead to the same outcome, *ceteris paribus*. As not all arts organisations are comparable, I differentiate between small, medium, major and superstar arts organisations, on which I elaborate in the next section.

3.3.3 Differentiation among arts organisations

Arts organisations come in different shapes because they are active in different fields: fine arts, performing arts and cultural heritage. Some have year-round programmes, such as museums, whereas others have activities only once every one to five years, such as festivals. There are arts organisations that have a fixed location, such as museums, and there are arts organisations that travel to different locations, such as theatre companies and orchestras. A variety of all these different arts organisations is represented in this research and I labelled them according to their discipline and type of organisation in Table 1.

Sizes of arts organisations also differ, even among arts organisations within the same sub-discipline. The largest museum in this research has an annual income of approximately EUR 475 million and over 6 million visitors a year, whereas the annual income of the smallest museum is just over EUR 300,000 and receives just under 15,000 visitors a year. To date, studies have tended to disregard the differences in size of arts organisations, but in light of comparison,

	Fixed location	Festival	Network organisation	Mobile organisations	Total amount organisations
Fine arts	3, 4, 8, 10, 13, 14, 18, 19, 22, 23, 24, 25, 29, 30, 32, 33, 34, 36	21	16		20
Performing art	28	5, 27, 35		2, 7, 9, 12, 15	9
Cultural heritage	1, 6, 11, 26		17, 20, 31		7
Total amount	23	4	4	5	36

Table 1

this is an important factor. Notable exceptions are the studies by Chang (2010), who writes on small arts organisations and Frey (1998), who studied superstar museums. Chang (2010) explored the indicators used by arts agencies and national arts service associations in the US. He finds that the following indicators are used to group arts organisations:

- number of employees,
- number of volunteers,
- amount of shows or productions (in performing arts),
- physical size (for museums),
- number of visitors,
- collection size (for museums), and
- annual budget.

Chang (2010) aims at determining the different variants of small arts organisations and, therefore, pleads for definition based on multiple indicators for ‘smallness’. I, however, aim to categorise arts organisations according to their size and choose a single indicator to measure the size of arts organisations. The annual budget size is the most frequently-used indicator for the size of an arts organisation (W. J. Chang, 2010). Because this dissertation focusses on donations, which is related to the financial need of an organisation, I also use the annual budget as an indicator of the size of an arts organisation. Table 2 depicts the groups I created.

Ranking the arts organisations was not a straightforward task, as no uniform guidelines exist to group arts organisations according to their size based on the annual budget.

	Annual budget	Cases arts organisations	Total amount organisations
Small	<€5.000.000	2, 4, 11, 14, 16, 17, 19, 26, 29	9
Medium	€5.000.0000- €19.999.999	1, 3, 5, 6, 8, 12, 15, 23, 24, 31, 33	11
Major	€20.000.000 - €49.999.999	7, 13, 18, 20, 21, 30, 35	7
Superstar	>€50.000.000	9, 10, 22, 25, 27, 28, 32, 34, 36	9

Table 2

The articles by Chang (2010) and Frey (1998) served as anchor points to group the arts organisations included in this research according to their size. Chang (2010) explores the various operational definitions – used by arts agencies and national arts service associations in the US – of small arts organisations, and by implication that of medium and major arts organisations, by mapping and comparing the different groupings used. He finds that there are differences between, and sometimes even within, disciplines. Chang’s research (2010) does not include those arts organisations that are so well-known, that they are of world fame. For these arts organisations, I use the ‘superstar effect’ (Adler, 1985; S. Rosen, 1981). Frey (1998) applied this effect to museums and assigns the following characteristics to superstar museums:

1. They are of great prominence among tourists and have world fame among the general public;
2. They receive a large number of visitors;
3. They have a collection of world famous artists and artworks;
4. They have an exceptional architecture;
5. They are commercial in respect of their own income and have a major impact on local economies.

However, he does not translate these characteristics into measurable indicators. Based on the total annual budget and number of visitors of the museums Frey (1998) uses as examples, I find that annual budgets of EUR 50,000,000 is an indicator.

Strictly speaking, annual income, annual revenue, annual receipts and annual budgets are subtly different from one another. Since differences are relatively small, I used the total income in 2014 as a measure to group the arts organisations, as this was available for most organisations. If data was not available for this year, I used data from the year closest to 2014. For organisations that do not account per calendar year, details for the accounting year 2013/2014 were used. This was mainly the case for American organisations. For arts organisations 18, 26 and 35, no information was available online, therefore, I inquired via e-mail.

3.3.4 Selection of cases

The ideal selection of cases would be to draw a random sample. In practice, however, this is not efficient. First, no worldwide overview of arts organisations exists. Second, not all arts organisations receive gifts from abroad. Third, in order to cover all types of tax jurisdictions, the origin of received donations needs to be determined beforehand. Random sampling of arts organisations is, therefore, not feasible (Yin, 2003b, pp. 77-78). Instead a purposive sample is made. Arts organisations are selected on both their heterogeneity as well as homogeneity (Bryman, 2008, pp. 375-376). Selection criteria based on the homogeneity of arts organisations are:

1. The organisation is of some international relevance;
2. Knowledge is available among employees of the arts organisation on cross-border philanthropy. The organisation either:
 - a) received donations from abroad, or;
 - b) made a serious attempt to raise funds abroad.

Selection criteria based on heterogeneity of the sample are:

3. The organisations cover the fields of
 - a) fine art;
 - b) performing art, or;
 - c) cultural heritage;
4. The organisations cover organisations with different budget sizes;
5. The gifts received by the organisations come from all four types of tax jurisdictions;
6. The organisations are familiar with the diverse existing solutions that facilitate a tax benefit on cross-border giving.

To select arts organisations that meet these criteria, a non-probability sampling strategy was used. For a first inquiry of arts organisations that receive gifts from abroad, experts – mostly tax advisers and fundraisers – and media coverage on cross-border arts philanthropy were consulted. Based on this information I created a list of arts organisations that I expected to meet the criteria above. I approached these arts organisations to inquire whether they truly met the requirements and whether they were willing to cooperate with this research. The majority of arts organisations responded positively. Interviewees were asked whether they knew peers that also engage in cross-border philanthropy, who I then approached. This sampling strategy comes closest to snowball sampling, in which each respondent is asked to recommend further respondents (Bryman, 2008, pp. 183-186). Three arts organisations that did not receive donations from abroad were included, because they either have the desire to raise funds abroad and undertook some first steps (arts organisations 9 and 14) or were faced with a foreign benefactor who in the end decided not to proceed with its donation (arts organisation 1).

All selected arts organisations are public benefit organisations in their resident country, and as such, qualify to receive donations with a tax benefit according to the legislation in their resident country. It is not the resident country of the arts organisation, but rather the country in which the donor pays taxes that determines whether tax incentives are applicable; the resident country of the arts organisation is thus arbitrary in the case studies. For practical reasons, arts organisations in the Netherlands and Belgium were chosen as a starting point to select cases. Not all heterogeneity criteria were covered by donations to Dutch and Belgian arts organisations. Arts organisations with a very large budget size and arts organisations that had experience with tax treaties and supranational agreements as a solution to overcoming tax barriers to cross-border gifts were underrepresented. Furthermore, not all types of tax jurisdictions were covered. Therefore, cases from arts organisations in additional countries were added to the sample. Arts organisations located in the following countries are included in the research: Austria, Belgium, Denmark, France, Germany, Italy, the Netherlands, the United Kingdom and the United States. Cases were added until the point that data saturation was reached. This was reached when 1) all homogeneity and heterogeneity criteria were met and 2) an additional case no longer led to additional findings.

3.3.5 Research methods: interviews and document analysis

In this research, semi-structured interviews with a derivative vignette are combined with confined document analysis to inform the findings. This is explicated in this section. A pilot case study with arts organisation 10 was performed to test the data collection procedure and develop the topic list for the interview. Arts organisation 10 was chosen because they met the homogeneity requirements and the existing contact with arts organisation 10 made it easy to access it for additional questions after the initial pilot study.

Confined document analysis

In preparation of the interviews, I carried out a document analysis of websites, annual reports and news items on the arts organisations that participated in the research. This document analysis is a confined analysis because it is restricted to a rather limited level of analysis. I created an overview of the gathered information, which served two purposes: 1) the overview served as background information to prepare for the interviews; and 2) the information gathered during the interviews could be cross-checked and complemented with information from the earlier document analysis. Interviewees sometimes addressed additional documents, such as brochures for their donors and correspondence with tax authorities. In that case I asked for these documents and included them in the document analysis.

For each unit of analysis, multiple sources of data were collected. This is called triangulation. It allows for testing on converging lines of inquiry, which results in a greater confidence in the findings. This on its turn strengthens the construct validity, since multiple data sources provide different measures for cross-border donations (Yin, 2003a, pp. 97-101; Bryman, 2008, p. 379).

Semi-structured interviews

I held interviews with several groups of informants, mainly fundraisers, tax advisors, patrons, employees of intermediary organisations and other experts on cross-border giving. Key informants were employees of arts organisations responsible for fundraising among private donors. These persons work with foreign donors and, therefore, are the persons within the arts organisations with the most knowledge on the tax issues involved in cross-border giving. Besides, they – to a large extent – have insight into the decision-making processes of donors. The function of those responsible for fundraising among private donors differs across arts organisations. The majority of arts organisations have a fundraiser or development department, but in some arts organisations the managing director is responsible for raising funds. Job titles varied from ‘director’, ‘manager friends’, ‘membership consultant’, ‘head of funding’, ‘coordination of international friends’, ‘head of development’, ‘associate development officer’ to ‘senior deputy director of external affairs’. For the sake of readability, the job titles were limited to two categories: ‘director’ and ‘fundraiser’. Regardless of the job title and responsibilities, the interviewees were always those within the organisation responsible for cross-border individual donations. In a few cases, multiple people within the organisation were interviewed. Each employee of an arts organisation who provided information was assigned the number of the arts organisation in order to anonymize them. If there were multiple respondents from one organisation with the same function, an affix was added.

To retrieve maximum input from the interviews, I used semi-structured interviews. These are interviews that follow a flexible interview guide consisting of relevant topics and general questions. The sequence of the questions can be varied and there is room to address

topics that come up during the interview. This allowed me to match the questions with the interviewee's level of experience in cross-border fundraising. In a case where the interviewee addressed a relevant topic which was not taken into account in the guide, the semi-structured interview setup allowed for follow-up questions to explore the topics that seemed to be relevant, but were not included in the interview guide. However, in order to be able to compare the different case studies with each other, the same topics were addressed in broad lines as much as possible (Bryman, 2008, pp. 196, 438-442). The interview guide is attached as Appendix 1.

In total, interviewees of 36 arts organisations were consulted. The interviews with arts organisations 5, 7, 10, 30 and 36 were spread across two sessions because not all topics were discussed during the scheduled time or because the first session brought forward relevant issues that gave reason to schedule an additional session. For arts organisations 6, 10, 20 and 34, two of their employees were interviewed jointly. For arts organisations 20 and 22, two interviewees were consulted separately. The interviews with arts organisations 17, 27 and 33 were written interviews. After the interviews with fundraisers 18A and B and 32A and B, the legal councils of these organisations answered written questions.

A second group of informants, whom I interviewed according to the same procedure, are advisors of donors and arts organisations. Advisors are tax advisors, accountants and philanthropy and fundraising advisors. They could provide the necessary in-depth information on the tax law that was applicable in certain cross-border situations and give more insight into the potential consequences of opting for one solution over the other. Initially, the plan was to link the advisor to the arts organisation they advised and to include them in one case study. In practice, this proved to be impossible, as advisors were bound to confidentiality about their clients. In total, 14 advisors of 9 different organisations were interviewed in 10 separate interviews. To anonymise the interviewees, each advisor was assigned one of the following three functions that suited him or her best: tax advisor, philanthropy advisor or accountant, together with a number.

Finally, interviews were conducted with a variety of informants involved in cross-border philanthropy. Four employees of three intermediary organisations were interviewed, since they are experts in cross-border giving and deal on a regular basis with cross-border donations. Also, four experts within the Dutch government on tax and arts organisations were consulted, as well as an employee of a network of PBOs. Two donors were willing to share their experiences with cross-border philanthropy in an interview. These particular cases of cross-border donations are treated as revelatory cases, since they cannot be compared with all other cases and will thus be analysed separately.

In total, 56 interviews and 69 people were consulted. An overview of the interviewees is added in Appendix 2. Respondents spoke freely and at length about their professions, with interviews lasting an average of 64 minutes, and ranging from 23 minutes to 2 hours and 37 minutes. Three interviews were held at university; 17 via Skype or phone and all other interviews were held at the offices of the interviewees. The language used in the interviews was either English or Dutch. If a citation is used in the research from an interview that took place in Dutch, the citation is translated into English by the researcher. All interviews are recorded and transcribed according to the 'system for simple transcription' (Dresing, Pehl, & Schmieder, 2015). While transcribing, sometimes additional questions came to the mind of the researcher, which were posed to the interviewee via e-mail. This correspondence was added to the case study. When direct quotes were used from the transcript, these are written

in italic between quotation marks. For the purpose of readability, some quotes are edited by the author without changing their meaning. All editing by the author is put between squared brackets, according to the usual conventions (Bryman, 2008, pp. 454-455).

The majority of arts organisations did not object to making their names publicly-known. However, as some interviewees wanted to stay anonymous, especially the advisors, all interviews were treated anonymously. In a few cases, the interviewees of arts organisations did not want the information they shared during the interview to be shared with other arts organisations. One interviewee said: *“I do have to mention that I am very hesitant in placing our activities in the publicity. I do not want to make the competition much wiser than necessary.”* This was mentioned by interviewees of arts organisations that are further advanced in international fundraising than their peers. In most cases, it did not seem to inspire them to withhold information from the researcher.

Using a derivative vignette

After conducting interviews with eleven arts organisations, it became clear that some arts organisations have limited knowledge of the existing solutions that enable cross-border gifts with the benefit of a tax incentive. Nine interviewees were familiar with one or more intermediary organisation. Two interviewees had experience with foreign friends organisations. Only one interviewee was familiar with tax treaties as a solution and none of the interviewees were even aware of the solutions on a unilateral or supranational legal level. This hindered the discussion of the existing solutions in the interviews and made it difficult to gain insight into the preferences of arts organisations when trying to facilitate foreign donors with a tax benefit.

To overcome this issue, a derivative of the vignette was introduced as a last part of the semi-structured interviews. Aim of the vignettes was to provide a focus for interviewees who had little to no knowledge on the existing solutions that allow for cross-border giving. With aid of the vignettes, the perspective of interviewees who had little knowledge of the possible solutions could be explored.

The vignette is a technique in which respondents are presented with different scenarios. They are asked how they would respond to such a scenario under the given circumstances. Usually, vignettes are used to see how certain contexts mould behaviour and to gain understanding of people’s attitudes, perceptions and beliefs (Bryman, 2008, pp. 245-250; Hughes & Hubby, 2002, p. 382; Wallander, 2009). In the traditional use of a vignette, variables that seem to be of influence on people’s choices are manipulated, resulting in different versions of the vignette, which are randomly assigned to respondents. This is called a fractional replication design (C. S. Alexander & Becker, 1978; Wallander, 2009).

In this research, the vignettes were not used to measure causal relationships and their significance, nor was a fractional replication design used; therefore, I call it a derivative vignette. Instead, the vignette was used to inform respondents with little to no knowledge on existing solutions to tax-efficient cross-border giving in a standardised manner in order to see what selection criteria the interviewees use when selecting a solution. Through the use of the vignette, these interviewees get the same description of the existing solutions, and it thus prevents the interviewee’s response from being influenced by the chosen wording of the researcher. To let the interviewees immerse themselves and make the vignette credible, a scenario derived from a real-life situation served as an introduction. In the scenario, a donor who resides abroad wants to contribute to the arts organisation, under the condition that he gets a tax benefit in his country of residence, followed by an overview, including a brief description

of all six existing solutions. After constructing the vignette, it was tested on a tax expert and a layperson to ensure that they properly summarised the solutions and were comprehensible for interviewees. The vignette is set out in Appendix 3. During some interviews, some difficulties were encountered with the language in the vignette. Some interviewees were not familiar with the term ‘tax treaty’, which was then explained by the interviewer as ‘an agreement in which states decide whose tax law applies in situations where double taxation or non-taxation might be an issue’.

Interviewees were asked whether they facilitated their foreign donors with a tax incentive, and if so, which solution they used. The response of the interviewee to the vignette allowed the interviewer to ask follow-up questions that aim at distilling the used criteria behind the choice for a certain solution. Subsequently, interviewees were asked why they chose this solution over other solutions. By asking the ‘why’ question, arguments came forward that can be translated into criteria based on which arts organisations decide which solution to use. After determining the criteria on which the interviewee made its decision, the researcher asked the interviewee what the interviewee thought of the alternative solutions to identify reasons why these were not favoured by the interviewee. This resulted in a distinction between *ex ante* and *ex post* criteria, where the *ex ante* criteria are those used as a reaction to a hypothetical case and the *ex post* criteria are those used in an actual decision-making process. The vignette thus activates the fundraiser’s thinking about the different existing solutions and gives insight into the criteria used to determine the best solution in context. As interviewees were most confident when talking about solutions they knew, the discussion on solutions they were familiar with resulted in the most nuanced and specific criteria.

3.3.6 Analysis of the data

The interviews were transcribed to allow document analysis to identify themes from the transcripts in the interviews. The interviews were analysed with the software for qualitative analysis, ‘Atlas TI’, as were the annual reports, newspaper articles and websites. Initially, coding was done pragmatically, resulting in 954 codes. In the next round of analysis, quotations were checked again, which in some cases led to a finer-grained coding. Furthermore, similar codes were merged, resulting in 889 different codes.

Codes covering a specific topic were grouped. In another interpretation round, patterns within these groups were uncovered. Reoccurring observations, as well as remarkable observations, were described. These descriptions form the basis of Chapters 6 and 7, where a first attempt to explore the practice of international arts philanthropy is made.

To create the assessment framework based on which the solutions are evaluated in Chapter 9, I untangled the criteria used by interviewees and grouped them. Each time a criterion was mentioned by an interviewee based on which they selected a solution to facilitate their foreign benefactors with a tax incentive, a pragmatic code (P) was added to this quotation, starting with ‘P criteria choosing solution’ supplemented with a keyword for the specific criterion. This resulted in a list of 77 individual criteria. The discussion of the solutions based on actual experiences of fundraisers takes the *ex post* perspective, while the discussion of the solutions based on the vignette takes the *ex ante* perspective. Consequently, they measure two different things. Therefore, this was taken into account when analysing the interviews, where more weight was assigned to those cases where the fundraiser had experience with the solution. As it is the aim of this research to find the optimal solution from the perspective of arts organisations, the criteria that came forward in interviews with tax advisors, philanthropy

advisors, auditors, donors and other experts active in the field of cross-border philanthropy were left aside for the assessment framework and a list of 64 criteria remained. These 64 criteria were grouped into eight main criteria. Where relevant and available, these criteria were linked to existing literature. Together, the eight criteria form the assessment framework based on which the existing solutions are evaluated.

3.3.7 Limitations, validity and reliability of multiple case studies

In preparation for the empirical research and throughout the empirical research, the quality of the design is tested on the following four criteria: construct validity, internal validity, external validity and reliability. The construct validity monitors whether the concepts discussed are operationalised in the correct way. The internal validity checks the causality of a relationship. The external validity is concerned with the relationships that can be drawn to other cases, so the generalisability of the findings. A high reliability is achieved when the data collection and analysing procedures can be repeated with the same results (Bryman, 2008, pp. 376-377; Yin, 2003a, pp. 33-39).

In preparation of the research, the first steps in guarding the construct validity are taken by specifying the event studied in section 3.3.2. Here it is taken into account that it is likely that donors won't be willing to provide information on their tax declarations. This restricts the construct validity of the research. However, by detecting this in an early stage, a second-best source of information is found in the fundraisers of arts organisations. During the research, construct validity is increased through the use of multiple sources of evidence. By using multiple sources of evidence, it can be checked whether the measures are convergent with the concepts studied. Besides, the first 14 interviewees were asked to review the reports made of the interviews, to check whether the information they provided during the interviews was correctly interpreted (Yin, 2003a, pp. 35-36). The construct validity does pose a limitation on the findings on the exploration of international philanthropy and, specifically, the motivations of international philanthropists as discussed in section 6.3.2. As only two international philanthropists were consulted and other information on the motivations to give to a foreign arts organisation are derived from the input of fundraisers, tax advisors and philanthropy experts, these findings in this section have to be regarded with special caution.

Internal validity in a narrow sense is important in explanatory research. Since this research is exploratory, it is not applicable to this research. When a broader view is taken on internal validity, however, there are some concerns regarding internal validity. During the research, the conclusions found have to be controlled for other possible events that might influence the case conclusions (Yin, 2003a, p. 36). This is done through analytic strategies. Whenever it is possible, theoretical propositions are used as an analytical strategy. The literature review is used as a handhold to analyse the case studies. However, the strand of literature on cross-border fundraising is limited, so only a limited amount of propositions can be derived from it. Therefore, an additional analytical strategy is used, namely defining and testing rival explanations. This is done by defining alternative propositions and testing whether these could explain the findings as well. If this is the case, the initial conclusion can be overthrown and the analysis has to be revised until there is no other plausible explanation (Yin, 2003a, pp. 111-115).

I acknowledge that generalisation on a statistical basis is not feasible in case studies. This research does not aim at generally applicable claims for all arts organisations that receive gifts from abroad. Instead, the aim is to generalise a set of findings to a broader theory, which

is analytical generalisation (Yin, 2003a, pp. 10-11, 37). Bryman (2008, p. 57) adds that the aim of case studies is not to generalise other cases or broader populations than the research unit and, therefore, the external validity is limited. In this research, the generalisation of findings of similar case studies within one jurisdiction can be generalised to that jurisdiction. When generalising to the entire category that the jurisdiction belongs to, or to arts organisations that differ from the specific case, great caution has to be taken into account. The limited external validity in a case study design makes the theoretical reasoning more vulnerable. The generalisation is not as much an issue, but more important, the manner in which a theory is developed based on a case study. By using a multiple case study design, the theory developed is tested according to the so-called replication logic (Yin, 2003a, p. 37), which strengthens the analytical generalisation.

The reliability of this research is enlarged by documenting the steps made in the research with as much detail as possible. By doing so, the research can be repeated and it can be tested whether the same results are found. This diminishes the errors and biases in the research (Yin, 2003a, pp. 37-38). Furthermore, reliability is increased by the chain of evidence that is created by multiple sources of evidence. By describing the steps taken, from the initial research questions up to the case analysis and conclusions, the reader can track how conclusions were derived (Yin, 2003a, pp. 105-106).

Due to the fact that case studies require researchers to immediately interpret their findings, the researcher has a more influential role in the data collection in case studies than in any other type of research (Yin, 2003a, pp. 57-62), of which I am aware. To reduce this influence, steps are undertaken throughout the different data collection stages. In preparation of the data collection, I explicated my expectations. During the data collection, I discussed my preliminary findings with a few critical peers, who were asked to give alternative explanations.

3.4 Concluding remarks

The methodology of this research consists of two parts: the doctrinal part and the empirical part. In the doctrinal part, tax law is analysed in a hermeneutic manner. The relevant tax sources are found in domestic legislation, tax treaties and supranational agreements. Whenever possible, primary sources are used. However, due to language barriers and cultural differences, it is sometimes necessary to rely on country tax experts. Based on this analysis, countries are classified into four ideal types, according to the level to which they allow for tax incentives on cross-border donations. The four ideal types are compared with each other in order to find the best solution in context to enable cross-border donations with a tax benefit.

The empirical part consists of multiple case studies of cross-border donations received by arts organisations. Websites, annual reports and media coverage of the arts organisations were analysed. Semi-structured interviews were held with tax advisors, philanthropy experts, two donors and fundraisers and directors of arts organisations. The interviews with the latter two provided the input to build an assessment framework based on which the existing solutions to tax-efficient cross-border philanthropy can be evaluated. Whenever these interviewees lacked information on the existing solutions to overcome tax barriers to cross-border donations, a derivative vignette was used. The case study method and purposive sampling strategy used in the empirical part impose some limitations to the study, especially in Chapters 6 and 7. The findings are not statistically generalisable. However, as Chapters 6 and 7 are a first exploration of cross-border arts philanthropy, the insights seemed useful and can serve as a first starting point for future theory testing.

Existing solutions³⁹ ● 4

The roots of the tax barriers to cross-border philanthropy are found in domestic tax law. The tax provision on qualifying PBOs typically limits the geographical scope of the applicability of the tax incentive. In the majority of cases, the tax incentive for donations is limited to donations made to PBOs which either have their seat in the state that grants the tax incentive or conduct (at least part of) their activities in the state where the tax incentive to international PBOs is offered (Jochum & Savvaidou, 2015, pp. 69-70). As the roots of the tax barriers to cross-border giving can be found in legislation, the solutions to overcome the tax barrier can also be found in legislation.

The application of tax incentives in cross-border situations can be regulated at different legal levels. At the national level, countries can remove geographical restrictions from the provisions on tax incentives for gifts. At the international level, countries can engage in bilateral solutions by concluding tax treaties in which they recognise each other's PBOs and mutually apply their tax incentives to cross-border donations. On a supranational level, they have overcome the inapplicability of tax incentives by recognising equivalent PBOs in states with which they have concluded a supranational agreement or through the introduction of a common PBO status with the same tax preferences as a domestic PBO status. These solutions at three different levels are initiated by governments and therefore I label them 'public'.

Private parties can also take the initiative to solve the tax barrier to cross-border giving. This is done by facilitating the donor in donating to a domestic PBO, which then spends the donation abroad, thus circumventing the cross-border situation. A legal entity can be established in the donor's country that sponsors public benefit activities or fundraising activities. The latter is also known as a foreign friends organisation. Furthermore, the tax barrier can be overcome by making strategic use of intermediary organisations. The effectiveness of private initiatives, however, depends on the tax legislation in the donor's country of residence.

I exemplify the solutions states and private parties can initiate to enable cross-border giving with the benefit of tax incentives in the next sections. To get a thorough understanding of each solution, I have added information found in literature. Furthermore, to get a better understanding of the practical implementation of the solutions, I have added information from the interviews with tax advisors, philanthropy advisors and other experts on their experiences with the different solutions.

39 The core section of this chapter is mostly based on the book chapter Buijze, R. (2017b). Tax Incentives Crossing Borders. Considering the example of tax incentives for charitable giving. In S.J.C. Hemels & K. Goto (Eds.), *Tax Incentives for the Creative Industries*. Singapore: Springer, 85-103.

4.1 Unilateral solution

Countries are sovereign concerning their tax policy. Therefore, each country can shape its own tax policy and decide:

- a) Whether it wants to include a tax incentive for gifts in its PIT;
- b) What requirements a gift and a recipient organisation must meet in order to qualify.

One of the requirements can be that the PBO must be located in a certain geographical area. If this geographical area is limited to the country of the taxpayer, this is where the tax barrier arises. As the root of the tax barrier lies in national law, national law is also the first place to search for a solution.

A country can unilaterally decide to apply tax incentives to donations to foreign PBOs. To do so, the provision in domestic law on qualifying PBOs has to be formulated in such a way that foreign PBOs can meet the requirements imposed on qualifying PBOs and the geographic scope of the tax provision has to extend beyond the domestic situation. Countries could, for example, include PBOs resident in specific foreign countries in the scope of the tax provision on qualifying PBOs. In theory, the geographical restriction on qualifying PBOs could even be removed from the tax provision, allowing PBOs around the world to qualify for receiving gifts with a tax benefit, provided that the PBO meets the requirements imposed on qualifying organisations. The country where the donor is resident for tax purposes can also decide the conditions under which a donation qualifies for a tax benefit. By adding specific requirements to the provision, the government can target the tax incentives to specific causes.

In addition, the requirements allow governments to determine where the supervision over the PBO is situated; in other words, governments can decide which country's requirements an organisation has to meet to be considered a PBO (see also section 2.3.3). Home country control, host country control and a combination of both can be implemented. In the case of home country control, the country where the PBO resides decides whether the organisation is a PBO and therefore qualifies to receive tax rebate donations. Host country control refers to control of the PBO by the country that grants the tax incentive. In the case of both home and host country control, the PBO has to meet requirements for qualifying organisations in both countries (Hemels, 2009).

4.1.1 The Netherlands, an example of host country control

An example of a country that unilaterally solves the tax barrier to cross-border giving based on host country control is the Netherlands. The Netherlands does not put geographical restrictions on the tax benefits for gifts. Dutch taxpayers can deduct their gift, whether it is a domestic gift or a cross-border gift, from PIT when the donation is made to an organisation that is recognised as a 'Public Benefit Pursuing Entity' (*Algemeen Nut Beogende Instelling*, hereinafter PBPE) by the Dutch tax authorities. This holds for both domestic and foreign charities. By imposing its own requirements on foreign PBOs for eligibility to receive tax deductible gifts, the Netherlands uses a host country control system. If the PBO wants to raise funds in multiple countries, this might complicate matters, as it would have to meet the requirements of all these countries. Resident PBOs of the Kingdom of the Netherlands, another EU Member State or a state designated by the Ministry of Finance must all meet the same requirements to qualify as a PBPE in the Netherlands.⁴⁰ States with which the Netherlands

⁴⁰ NL: article 5b (1)b AWR.

has an information exchange agreement on personal income tax, corporate income tax and gift and inheritance tax are states designated by the Ministry of Finance. If a PBO resides in a country that does not have such an agreement with the Netherlands, it can still meet the requirements of a PBPE by accepting the obligation to provide additional information to the Dutch tax authorities.⁴¹

To obtain the PBPE status in the Netherlands, an organisation needs to meet certain requirements, of which the most important requirement is that the organisation pursues the public benefit exclusively or almost exclusively (at least 90%). The General State Taxes Act provides a list with public benefit activities. Culture is included in this list.⁴² Besides the incentives on which organisations with a PBPE status can rely, additional incentives exist for PBPEs with at least 90% of the activities it engages in being cultural activities. Both domestic and foreign PBPEs that mainly focus on art and culture can request a recognition as a 'Cultural PBPE'.⁴³ In 2016 a total of 6,629 Cultural PBPEs were registered by the tax authorities.⁴⁴

By consulting the PBPE register at the Dutch tax authorities the donor can look up which cultural organisations qualify as a PBPE. Several arts organisations located outside the Netherlands have registered as Cultural PBPEs, such as the Emsländisches Kammermusikensemble, a chamber music ensemble in the German border town of Lingen. Arts organisations located in different European cities register as such, for example the Tate Gallery in London and the Royal Museum for Fine Art and History in Brussels. Examples from outside Europe are the Museum of Modern Art in New York, the Museum of Contemporary Arts in San Diego, the San Diego Museum of Art in La Jolla and The Israel Philharmonic Orchestra in Tel-Aviv.⁴⁵

4.1.2 Luxembourg, an example of home country control

An example of a country that allows for cross-border donations with a tax benefit based on home country control is Luxembourg.⁴⁶ The legislation provides a list of qualifying organisations in Luxembourg *“as well as similar entities and non-governmental organisations in another Member State of the European Union or in a Member State of the European Free Trade Association.”*⁴⁷ With this provision, the application of the tax deductibility of gifts is extended to donations to similar organisations in Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, the Netherlands, Norway, Poland, Portugal, the Czech Republic, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the UK.

The accompanying *circulaire* explains that gifts to organisations in the abovementioned countries are eligible for a tax deduction if the organisation qualifies to receive tax deductible gifts under the laws of its home country.⁴⁸ This, thus, points to home country control. In case

41 NL: article 1c Uitvoeringsregeling AWR

42 NL: article 5b AWR.

43 NL: article 5b (4) AWR. Up and until 2017, gifts to cultural PBPEs are deductible from the donor's tax base for 125% (NL: article 6.39a IB). So a donation of €100 to a museum that qualifies as a Cultural PBPE allows a donor to deduct €125 from their income tax base. In the highest tax bracket of 52%, this leads to a tax benefit of €65. The maximum additional deduction is €1,250.

44 NL: Ministerie van Financiën, *Evaluatie van de praktijk rondom ANBI's en SBI's*, January 2017, p. 23.

45 http://www.belastingdienst.nl/rekenhulpen/giften/anbi_zoeken/.

46 LU: articles 109 and 112 LIR.

47 LU: article 112 LIR *“[...] ainsi qu'aux organismes et organisations non gouvernementales similaires dans un autre État membre de l'Union européenne ou dans un État membre de l'Association Européenne de Libre Échange.”*

48 LU: Circulaire du directeur des contributions L.I.R. n° 112/2 du 7 avril 2010.

of doubt whether an organisation is eligible to receive tax deductible gifts, the Luxembourg tax authorities rely on the right to ask assistance of the competent authorities in the field of direct taxation of the Member State where the PBO has its headquarters based on the mutual assistance directive or based on existing treaties to avoid double taxation.⁴⁹

The donor who wants to deduct a cross-border donation from his taxable income has to show that the recipient is a public benefit organisation in its country of residence and, subsequently, is eligible to receive gifts with a tax benefit within its home country and is exempt from income tax and wealth tax.⁵⁰ The donor has to demonstrate this in a certificate based on the model certificate that is added to the circular.⁵¹ The model certificate lists the requirements

Annexe 3: modèle de certificat, version anglaise

CERTIFICATE

The undersigned persons
.....
.....

representatives of:
.....
.....
(precise denomination and head office address, hereafter called « organization »)

hereby certify :

1. That the organization is a legal entity established as from
(day/month/year) at (city), in accordance with the laws of
the State of
2. That the organization directly and exclusively pursues one or more non lucrative aims
within the scopes indicated hereafter (check the applicable cases) :
 Art Education Philanthropy Worship/Religion
 Science Social Sports Tourism Development cooperation
3. That according to the laws of the State of establishment, these selfless aims are
recognised as being of general interest and fiscally favoured.
4. That the organization is exempt from taxes on income and wealth in its country of
establishment for the year of the received donation and that such donations are
fiscally deductible by donors residing in its country of establishment.

The undersigned undertake to deliver on first demand to the donor a copy of the
organization's fiscal approval documents.

Place and date : made in, on

Signatures :
.....
.....
(complete name of the undersigned)

Figure 4 - model certificate

49 EU: Council Directive 77/799/EEC of 19 December 1977.

50 LU: Circulaire du directeur des contributions L.I.R. n° 112/2 du 7 avril 2010.

51 LU: Circulaire du directeur des contributions L.I.R. n° 112/2 du 7 avril 2010.

that must be certified by a representative of the foreign recipient charitable organisation. As this model certificate is available in French, German and English, language barriers are limited here. The English version of the certificate is added in figure 4. In addition, the Luxembourg tax authority may ask for additional translated documents, such as a receipt of the donation and the articles of association and/or financial statements of the PBO. However, it can also decide based on the model certificate.

4.1.3 Reflections on the unilateral solution

Because a unilateral solution does not involve negotiation or cooperation between different countries, this solution is regarded as a realistic process to remove the tax barrier from cross-border giving in academia (Koele, 2007, p. 389).

The low priority for amendments of national legislation concerning this topic, however, is perceived as a threat and it is considered unlikely that countries will voluntarily lift restrictions on tax incentives for cross-border giving (Heidenbauer et al., 2013; Koele, 2007). Unlike scholars, the tax and philanthropy advisors I interviewed did not seem to be occupied with the development of legislation and challenges involved in amendments of national legislation to overcome the tax barriers to cross-border giving. Instead, they are more occupied with the actual implementation of the legislation, as this directly affects their work.

What an organisation must do to rely on a unilateral solution to overcome the tax barrier is not always clear. A few interviewees point out that it is not always transparent how foreign PBOs can meet the requirements to qualify as a PBO in a foreign country. Tax advisor 9 confirms this:

“Since January 1st we have had legislation that refers to implementing regulations, [but] these regulations took a long time. But it was published somewhere in the midst of April. First, we did not have legislation. Then we knew too little about how it would work in practice. Now we have a complete set of legislation and implementing regulations. So that was not easy at first, because we had to wait. Now the wording is here, we know what to do.”

Overall consensus among philanthropy and tax advisors regarding foreign organisations’ reliance on unilateral solutions is that the simpler the procedures are, the better. Furthermore, in their view it is helpful if organisations know up-front that they qualify as a PBO. Tax advisor 4 says:

“[With the registration as a PBO in the donor’s country] you, of course, achieve the tax benefit for the donor. As soon as the PBPE status is obtained, the tax benefit is secured. Perhaps it is a bit cumbersome, because of the fact that sometimes administrative difficulties are experienced, especially because the forms are always in Dutch. So the foreign organisation has to call in a Dutch advisor. But I think that does not have to be insurmountable. It is more [an issue] that the foreign organisation also already has a local organisation, so that makes it feel insurmountable.”

It makes a big difference whether a country relies on home country control or host country control. If a foreign country relies on the qualification of the organisation in its home

country, then little barriers are perceived by the tax advisors in this research and the unilateral solution is considered a helpful solution to overcoming the tax barriers to cross-border charitable giving. However, when host country control is used to determine whether a foreign organisation qualifies as a PBO, both tax advisors as well as scholars are concerned about the requirements that have to be met.

Heidenbauer et al. (2013) bring forward that in the case of host country control, the organisation has to meet the public benefit purpose in the country of the donor. This can be confusing for PBOs, as the organisation might qualify as a PBO in one country, but might not qualify as such in another country. Organisations that have the PBO status in their home country might, therefore, be surprised to find out they do not qualify for PBO status in another country. Tax advisor 10, for example, had a foreign organisation as her client who was involved in religion. In its home country, it qualified as a PBO; however, religion was not included in the list of causes that qualify for special tax treatment in the donor's country. This was a confusing experience for the PBO.

In case of host country control, the host country can also impose requirements on the foreign PBO that are closely tied to the national legal framework and administration. These country-specific requirements vary from specific requirements concerning the legal form of the organisation, certain provisions in the articles of association, registration requirements and requirements concerning the disclosure of certain documents. These country-specific requirements were frequently brought forward in interviews by tax advisors as obstacles to obtaining the PBO status based on a unilateral solution in a country where host country control was exercised.

Tax advisor 1 had difficulty getting a foreign organisation recognised as a PBO because of country-specific requirements as regarded the legal form, the articles of association and the disclosure of documents:

“So that entity, that was a problem, because in [home country organisation] it is apparently common to have such a legal form for a charitable entity. But eventually [the tax authorities] agreed. And there was also another big problem, well, a big obstacle that the [host country] required that [certain details] had to be published [...]. And finally, the articles of association are designed in a very different way. There is something like a liquidation provision, or that sort of thing, that according to our legislation had to be included in the articles of association. So yeah, eventually it worked out, but there were a lot of hurdles.”

The articles of association of an organisation might have to meet specific requirements, as this example illustrates. What provisions have to be included in the articles of association can differ across countries. Countries can, for example, require that PBOs have a certain liquidation provision in their articles of association.

Countries can also require PBOs to have a specific legal form. An association might qualify as a PBO in one country, but this might not be the case in another country. Furthermore, legal forms are country-specific and differ across countries. For example, what an association is required to contain can differ across countries. This can make it difficult to meet the specific requirements regarding the legal form in a foreign country. Tax advisor 5 succeeded in registering a German ‘Verrein’ in the Netherlands as a PBO:

“But that did cost an effort. In any case, if you see the word: ‘Verrein’, or association, then immediately [the tax authorities] put on the brakes. That is already a barrier: the foreign legal form. [Tax advisor 6] also mentioned it. You really have to take a close look at it, because you have to translate it and you have to [convince the tax authorities] that it contributes to the public benefit. Yes, you can also sense that the tax authorities have to trust it. And that means that it helps when someone they [think is trustworthy explains this to the tax authorities].”

A variety of other examples of country-specific requirements were mentioned during the interviews by tax advisors. In some countries PBOs may reimburse their board members, whereas this is not allowed, or is capped, in other countries. Furthermore, PBOs might have to register at the tax authorities, a commission or another central vehicle that keeps track of PBOs. Finally, some country-specific administrative requirements were mentioned by tax advisors. Meeting these country-specific requirements can be challenging for PBOs. Expert 5, however, underlines that although it can be difficult for foreign organisations to meet the requirements in another country, it would not be desirable if foreign entities were treated with more leniency than domestic PBOs. Tax advisor 4 even remarked that tax authorities find it difficult to control foreign PBOs and, therefore, create extra requirements for them. Tax advisor 3, on the other hand, had a positive experience in registering a foreign organisation as a PBO in his country. The only element that made the registration of the foreign organisation more difficult than registering a domestic organisation was that everything had to be translated. He credits the simplicity of the registration of the foreign organisation partly to the fact that it concerned a renowned organisation for which little doubt could exist that it was eligible to receive donations with a tax benefit. Tax advisors 5 and 6 also stressed that it helps if an organisation that wants to register works for a well-known cause. Furthermore, they have the impression that it helps if a well-known party, like tax advisors from a renowned law firm, helps the organisation to get recognised as a PBO.

The majority of the interviewed tax advisors, however, are of the opinion that a strict and literal application of country-specific requirements highly restricts organisations that wish to qualify as PBOs abroad. Therefore, some tax advisors plead in favour of looser interpretations of the country-specific requirements. This should allow foreign organisations that meet the core requirements, but have difficulty meeting the more specific and detailed administrative requirements in the foreign country, to obtain a PBO status. Tax advisor 9 explains that she appreciates that in France there are a few country-specific requirements that leave room for interpretation:

“There are requirements that could induce some interpretation. I give an example. France has written down norms on the compensation of directors of institutions. If [the compensation] is more, then France could invoke that [norm] to state that the requirement was not met. [...] So there are some fields where there is room for interpretation. Where it is clear that the tax authorities will not admit that it is ok, but where foreign institutions really have a chance, or the possibility, to successfully combat the decision of the tax authorities at the French court.”

Strict application of tax law is not the only obstacle in the way of PBOs relying on the unilateral solution; the frequent changes in tax law also create problems. Tax advisor 5 recog-

nises that it is difficult for the foreign PBOs among her clients to meet all the requirements imposed on them. The frequent – almost yearly – changes in tax law for PBOs and the increase in requirements imposed on PBOs makes it even more difficult for PBOs to meet the tax requirements. Tax advisor 5 is therefore reluctant in advising her clients to register as a PBO in her country, especially because of the frequent changes in tax law.

Furthermore, tax advisors frequently underlined in the interviews that organisations that want to obtain the PBO status in multiple countries have to meet the requirements in all these countries. Tax advisor 7 points out to her colleague – tax advisor 8, who perceives the unilateral solution as a useful solution – that it is problematic that PBOs have to meet requirements in multiple countries if they want to rely on the unilateral solution and want to raise funds in multiple countries.

T7: “You mention it a few times that it is relatively easy to register [as a PBO] in [a country], but could you really keep up registrations in multiple countries, [taking into consideration] the differences in compliance and legislation?”

T8: “For charities it is of course [...] Yes, [charities] are anyway simply busy with their cause and they already have to meet all kinds of requirements from all kinds of directions. Annual report requirements, fiscal requirements in the country of residence. And then indeed extra requirements are added. That, of course, requires capacity from an administrative point of view. And of course you need to have that as an organisation. That is a bit of an issue.”

Heidenbauer et al. (2013) also stress that when an organisation is active in multiple countries and it wants to rely on a unilateral solution to get the benefits of a domestic PBO, the organisation has to meet the requirements in all the countries where it is active.

Finally, Heidenbauer et al. (2013) highlight that organisations might face language barriers and that meeting requirements abroad might be a costly affair. This is also recognised by tax advisors. Some report that it is difficult to find information in English or other languages on the website of the tax authorities in their country. Tax advisor 6 says:

“You have to hand over all kinds of [documents] from abroad and eventually translate them. So it is literally an enormous translation.”

Tax advisor 9 even had a case where the PBO status of a foreign organisation was temporarily withdrawn until it had translated its website into a language accepted by the tax authorities.

When PBOs try to rely on the unilateral solution to facilitate their foreign benefactors with a tax incentive, this might lead to translation and other costs. The more requirements an organisation has to meet to obtain the PBO status in a foreign country, the higher the costs involved.

4.2 Bilateral solutions: Tax treaties

Another way in which countries can overcome the tax barriers to cross-border charitable giving is to mutually agree on granting tax incentives to cross-border gifts. This can be done in bilateral tax treaties. Most bilateral tax treaties are based on the model tax treaties by either

the UN⁵² or the OECD.⁵³ Both model treaties include a non-discrimination provision that prevents nationals of a contracting state to be subject to taxation in another contracting state other, or more burdensome, than the taxation of nationals in the other contracting state under the same circumstances.⁵⁴ Under the model tax treaties, however, the PBOs cannot turn to the tax authorities of the contracting state, since it does not recognise the arts organisation in the other contracting state as a PBO, nor is it obliged to do so under the model tax treaties. In the official commentary⁵⁵ of both the OECD Income and Capital Model Convention and the UN Model Double Taxation Convention, it is stated that:

“Neither are [the contracting states] to be construed as obliging a State which accords special taxation privileges to private institutions not for profit whose activities are performed for purposes of public benefit, which are specific to that State, to extend the same privileges to similar institutions whose activities are not for its benefit.”

PBOs are thus excluded from the mutual recognition. Furthermore, the cross-border application of personal allowances – which tax incentives on gifts to PBOs are classed as – is not taken into account in the OECD Income and Capital Convention and the UN Model Double Taxation Convention. It is assumed that the home state of the taxpayer takes this into account. No changes in the OECD Income and Capital Convention and the UN Model Double Taxation Convention are expected. Even if these model tax treaties would change, the implementation would be difficult and slow, as each single tax treaty would have to be negotiated and ratified. A supranational instrument, as used for the implementation of BEPS,⁵⁶ would potentially ease this process. Until then, countries explicitly have to agree on the inclusion of a provision on the mutual application of tax incentives for gifts to charitable organisations in the other contracting state. Although rare, this does happen. Again, as with the unilateral solution, countries have to decide whether they base control over recipient PBOs on host country control, home country control, or both. Koele (2007, pp. 20-37) divides the position of PBOs under tax treaties into different categories based on the type of control. Because tax treaties decide which law is applicable, but do not shape laws, the requirements imposed on charitable gifts of either the home state, host state, or both apply. In principle, no additional requirements can be incorporated in the tax treaties.

4.2.1 Charitable contributions under the Barbados tax treaties

The tax treaties that Barbados concluded with Mauritius, Mexico, the Netherlands and the Seychelles all include a provision on donations to charitable institutions.⁵⁷ Furthermore, the

52 UN: United Nations Model Double Taxation Convention between Developed and Developing Countries (2011).

53 OECD Income and Capital Model Convention and Commentary (2010).

54 UN: article 24 Model Double Taxation Convention between Developed and Developing Countries and OECD: article 24 Income and Capital Model Convention.

55 UN: commentary on article 24, paragraph 1, point 11 Model Double Taxation Convention between Developed and Developing Countries and OECD: commentary on article 24, paragraph 1, point 11 Income and Capital Model Convention.

56 OECD, Action 15: A Mandate for the Development of a Multilateral Instrument on Tax Treaty Measures to Tackle BEPS (2015).

57 Barbados-Mauritius Income Tax Treaty (2004); Barbados-Mexico Income Tax Treaty (2008); Barbados-the Netherlands Income Tax Treaty (2006, as amended through 2009); Barbados-Seychelles Income and Capital Tax Treaty (2007).

treaty between Barbados and Ghana includes a provision on donations to charitable institutions, but this treaty is not yet in force.⁵⁸ It seems to be the policy of Barbados to include a provision on charitable contributions in its tax treaties.⁵⁹ The Dutch parliamentary documents accompanying the tax treaty between Barbados and the Netherlands state that it was the explicit desire of Barbados to include a provision on charitable contributions in the tax treaty.⁶⁰ The Notes of Exchange accompanying the initial tax treaty between Barbados and the United States also explicitly states that:

“During the course of the negotiation of this Convention, the delegation of Barbados sought agreement to include in the Convention a provision which would treat as charitable contributions for tax purposes, gifts by residents of one Contracting State to a charitable organisation in the other.”⁶¹

The income tax treaty between the Barbados and Netherlands states:

“Contributions by a resident of a Contracting State to an organisation constituting a charitable organisation under the income tax laws of the other Contracting State shall be deductible for the purposes of computing the tax liability of that resident under the tax laws of the firstmentioned Contracting State under the same terms and conditions as are applicable to contributions to charitable organisations of the firstmentioned State where the competent authority of the first-mentioned State agrees that the organisation qualifies as a charitable organisation for the purposes of granting a deduction under its income tax laws.”⁶²

The treaty requires both home and host country control, as the PBO has to be recognised as such by the tax laws in its country of residence and it also has to meet the requirements put upon PBOs in the country of the donor.

4.2.2 Charitable contributions under the US tax treaties

PBOs are explicitly included in the United States Model Income Tax Convention as residents of a contracting state, regardless of whether they are liable for income tax in the state where they are established. However, it does not include a provision for the donors of PBOs. The model states:

“The term “resident of a Contracting State” includes: a) a pension fund established in that State; and b) an organization that is established and maintained in that State exclusively for religious, charitable, scientific, artistic, cultural or educational purposes, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.”⁶³

58 Barbados-Ghana Income Tax Treaty (2008), not yet in force.

59 A Model Double Taxation Convention of Barbados is not available online.

60 NL: Letter of the Minister of Foreign Affairs to the Dutch Parliament, 1 May 2007, KST106966, nr. 31 020.

61 Notes of Exchange of the American Charge d’Affaires ad interim to the Barbadian Minister of Foreign Affairs, 31 December 1984.

62 Article 22 Barbados-the Netherlands Income Tax Treaty (2006, as amended through 2009).

63 US: Art. 4 sec. 2 United States Model Income Tax Convention (November 15, 2016).

The charitable organisations, as referred to in the above citation under b), are thus resident for tax purposes in their country of establishment and qualify for tax benefits in accordance with the applicable legislation in this contracting state. The treaty, however, does not mention the benefactors of charitable organisations, nor the donations they make. In the model tax treaty, consequently, no solution is provided for the tax barrier to cross-border charitable giving by US residents to PBOs in contracting states and vice versa.

The US, however, has ratified treaties that contain provisions for charitable deductions with Canada, Israel, and Mexico.⁶⁴ The provisions on charitable donations in these treaties, however, are limited to the deduction of the donation to the other contracting state from income derived from that same country. The treaty between the United States and Canada reads:

“For the purposes of United States taxation, contributions by a citizen or resident of the United States to an organization which is resident in Canada, which is generally exempt from Canadian tax and which could qualify in the United States to receive deductible contributions if it were resident in the United States, shall be treated as charitable contributions; however, such contributions (other than such contributions to a college or university at which the citizen or resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions to the income of such citizen or resident arising in Canada. The preceding sentence shall not be interpreted to allow in any taxable year deductions for charitable contributions in excess of the amount allowed under the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions. For the purposes of this paragraph, a company that is a resident of Canada and that is taxable in the United States as if it were a resident of the United States, shall be deemed to be a resident of the United States.

For the purposes of Canadian taxation, gifts by a resident of Canada to an organization that is a resident of the United States, that is generally exempt from United States tax and that could qualify in Canada as a registered charity if it were a resident of Canada and created or established in Canada, shall be treated as gifts to a registered charity; however, no relief from taxation shall be available in any taxation year with respect to such gifts (other than such gifts to a college or university at which the resident or a member of the resident's family is or was enrolled) to the extent that such relief would exceed the amount of relief that would be available under the Income Tax Act if the only income of the resident for that year were the resident's income arising in the United States. The preceding sentence shall not be interpreted to allow in any taxation year relief from taxation for gifts to registered charities in excess of the amount of relief allowed under the percentage limitations of the laws of Canada in respect of relief for gifts to registered charities.”⁶⁵

64 Canada-United States Income and Capital Tax Treaty (1980 as amended through 2007); Israel-United States Income Tax Treaty (1975); and Mexico-United States Income Tax Treaty (1992 as amended through 2002).

65 Article XXI, Canada - United States of America Income and Capital Tax Treaty (1980, as amended through 2007).

A donor resident for tax purposes in the US may thus only deduct his charitable gift to a Canadian organisation from the income he derives from Canada (source income), up to the maximum amount as capped in US tax law, which is 50% of the income (if it concerns a private foundation, this is 30%).⁶⁶ The cap does not apply only if the PBO concerns a Canadian college or university that the donor or one of his family members attended. In a case where the US donor does not have Canadian source income, he cannot rely on a tax benefit. The same, though vice versa, holds for Canadian taxpayers who wish to contribute to a charitable organisation in the US. The tax treaty concluded by the US with Mexico and Israel also limits deductibility of charitable contributions to source income, although the cap in the US-Israel tax treaty is limited to 25% of taxable income from sources in the foreign country (the country where the charitable organisation is resident).⁶⁷

There are differences in the treaties between the US and Canada, the US and Mexico and the US and Israel concerning the recognition of a foreign organisation as a qualifying PBO under the treaty. The US-Canada tax treaty states that the Canadian organisation has to be recognised as a PBO in Canada and also has to meet the requirements in the US, except for the residence requirements. Furthermore, all the US interpretations, including revenue rulings and court cases, have to be taken into account when determining whether a tax deduction is applicable. In the Exchange of Notes between the US and Canada dated 26 September 1980 it is stated that application of philanthropic organisations in two countries should be avoided. Canada and the US agree that their procedures to determine philanthropic status are comparable and, therefore, they accept the certification as a PBO of the relevant authority of the other state.⁶⁸ The US made a similar agreement with the Israeli authorities.⁶⁹ The tax treaty with Mexico does not include such an agreement.

It provides that the US recognises PBOs that qualify as such under Mexican law if the Mexican laws on charitable organisations are equivalent to those of the US and vice versa, which appears to be the case.⁷⁰ The interpretation of legislation concerning eligible organisations in the one country do not have to be taken into account in the other Contracting State. Still, the US tax authorities have the right under the Mexico tax treaty to refuse a tax benefit on a cross-border donation if they consider the tax-exempt status of the organisation 'inappropriate'.⁷¹ Guidelines for what is considered inappropriate, however, are not specified in the protocol.

4.2.3 Reflections on the bilateral solution

Interviewees at arts organisations have hardly any knowledge of tax treaties. Two interviewees, during the interview, asked what tax treaties are. Other interviewees were less explicit, but their vague and general responses regarding tax treaties demonstrated that most of them had heard of tax treaties in general, but were not familiar with tax treaties as a possible vehicle to overcome the tax barrier for cross-border donations. As tax law is not their field of expertise and provisions on charitable giving in tax treaties are not widespread, this is fully justifiable.

66 US: I.R.C. § 170 (b)(1)(A) and (B).

67 Article 15A, Israel – United States Income Tax Treaty (1975); and Article 22, Mexico – United States Income Tax Treaty (1992 as amended through 2002).

68 Notes of Exchange, Canada - United States Income and Capital Tax Treaty, 26 September 1980.

69 Notes of Exchange, Israel - United States Income and Capital Tax Treaty, 30 May 1980.

70 Article 22, Mexico – United States Income Tax Treaty (1992 as amended through 2002).

71 First Protocol, point 17, para. (b)(II) Mexico-United States Income Tax Treaty (1992 as amended through 2002).

Even interviewees from US arts organisations are unfamiliar with the charitable provisions their country has in its tax treaties with Mexico, Canada and Israel, even though several of the US arts organisations included in this research do have benefactors in one or more of these countries. Arts organisations 34 and 36, for example, have Mexican benefactors. The fundraisers of these organisations are, however, not aware of the charitable provision in the Mexico-US tax treaty and that this might provide their donors with a tax benefit in their home country. When I asked fundraiser 28 – who works for an American arts organisation – whether she is familiar with the tax treaty of the US and Mexico, her reply was as follows:

“Mexico [...] I [...] you know [...] we have not done much, we have not investigated Mexico. We have, and you know, it is, it requires time and energy and expertise to research all of this and so far we have not had enough staff power, or we have not deemed it a big enough pay off to invest in doing all of the research on this. So I cannot, I do not have an answer to that question, because we have not asked or tried very much”.

This quote demonstrates that fundraising departments, even though very large, do not have the expertise, nor the time to investigate specific tax treaties. For them, this does not pay off.

Tax advisors are well aware of the functioning of tax treaties, but several of the tax advisors I interviewed had never seen a provision on charitable giving in a tax treaty. The obvious explanation for this finding is that the tax advisors I interviewed mainly work in the Netherlands and the Netherlands has only one tax treaty with a provision on charitable giving. As tax advisor 4 says: *“It is an exceptional provision and I am not familiar with it.”* Tax advisor 2 is the only tax advisor that has experience with using a tax treaty to facilitate a tax benefit on a cross-border donation. When arts organisation 10 received a gift from Canada she recommended that they discuss with the donor whether the donation could be made with a tax incentive by relying on the tax treaty between Canada and the US and then using an intermediary organisation to transfer the funds from the US to arts organisation 10 in the Netherlands. For tax advisor 2 it was a satisfying solution. The Canadian donor could invoke the tax treaty and include a receipt of the gift in her tax declaration and deduct the gift from her taxable income. They never heard back from the tax authorities in the donor’s country of residence. Other tax lawyers do have experience in using tax treaties to facilitate their clients with issues including cross-border inheritances.

The lack of knowledge on foreign tax law and tax treaties requires arts organisations to hire foreign tax advisors to inform them on the use of tax treaties to overcome the barrier to cross-border charitable giving. The majority of interviewees are reluctant to hire a foreign tax lawyer as it is costly. Some interviewees also bring forward that they would not know who to hire, as they do not have a network in the country in which they raise funds that they can consult regarding which tax lawyer to hire. For director 29 the costs of hiring a foreign tax lawyer makes the tax treaty an undesirable solution. He could imagine, however, that under certain circumstances it is desirable to rely on a tax treaty. For example, when a donor anyway relies on a tax treaty for his PIT:

“Imagine that if you have a circle of Dutch persons who live here and you receive a gift, yes, then you automatically end up with a tax treaty. So in that sense, there can really be specific circumstances. But then it involves a benefactor who is in a specific situation and probably has the [tax] expertise, or brings the expertise.”

Tax advisor 9 is of the opinion that the tax treaty is an effective solution in theory. Koele (2007, pp. 389-390) also perceives bilateral treaties as suitable vehicles with which to overcome the tax barrier to cross-border charitable giving, as tax treaties provide the possibility to specify whether or not the national legislation of one contracting state is essentially equivalent to the national legislation in the other contracting state with regard to philanthropic organisations. By describing the equivalence of national legislations on philanthropic organisations in bilateral treaties, the treaties allow a loosening of the requirements for philanthropic organisations in the specific cross-border situation at hand. If the legislation in the country of residence of the arts organisation is equivalent to the legislation concerning philanthropic organisations in the other contracting state, home country control suffices. Sovereignty issues, however, arise when one contracting state adds equivalence requirements in the tax treaty. Chang et al. (1996) brought this forward in relation to the Mexico-US treaty, which required Mexico to adopt standards concerning PBOs equivalent to that of the US. Besides, if no equivalence of legislation on PBOs is established in the tax treaty, it might be complicated for the PBO to meet the requirements in both its country of residence and the donor's country. In the worst-case scenario, the tax treaty might not resolve the tax barrier to cross-border charitable giving.

Furthermore, tax treaties are often formulated in such a way that the benefits are restricted. In practice the tax treaties are, therefore, not as attractive as might be thought as a vehicle to overcome the tax barriers to cross-border charitable giving. Tax advisor 4 sees the high degree of limitations in tax treaties as a complicating factor. She says: *"This often happens with tax treaties. The treaty seems very nice in principle, but in practice it does not solve everything. It depends very much on the exact wording of the treaty and how national legislation taps into it."* Chang et al. (1996) are sceptical of the tax treaty as a vehicle with which tax incentives on cross-border donations can be obtained due to the limitations that are included in the charitable provision. In the tax treaties with a provision on tax incentives for cross-border charitable giving the scope of the provision can be limited, for example to foreign source income, as under the treaties between the US and Mexico, Israel and Canada. This diminishes their impact for individual donors.

An advantage of tax treaties is that they are feasible, as it requires a consensus amongst only two parties. Tax advisor 5 and expert 5 put this forward as an advantage of the tax treaty over a supranational solution. On the other hand, they, like tax advisor 9, see the lengthy process of adjusting existing treaties and concluding new tax treaties as a threat to the feasibility in the short- and medium-term.

4.3 Supranational solutions

A supranational legal authority can take measures to overcome the tax barriers to cross-border charitable giving amongst multiple countries. The EU is based on such supranational agreements that have the potential to overcome tax barriers to cross-border charitable giving. Supranational solutions can take multiple forms, of which two can be found in the EU. Although it is extremely difficult to harmonise taxes within the EU due to countries refusing to give up their sovereignty over their tax systems, EU law does have the potential to overcome tax barriers to cross-border charitable giving. This potential lies in the four fundamental freedoms as stipulated in the TFEU⁷² and its enforcement by the ECJ.

72 Treaty on the Functioning of the European Union (TFEU) and EU Treaty (as amended through 2007).

Furthermore, the Proposal for a Council Regulation on the Statute for a European Foundation⁷³ (hereinafter: the Proposal) was an initiative of the EC to overcome barriers that hinder the philanthropic sector in the EU through civil law. In the Proposal specific provisions were included that were targeted at the taxation of PBOs and their beneficiaries. Both the EU law and the Proposal are discussed in the next two sub-paragraphs.

4.3.1 EU Law

The four freedoms in the TFEU have the potential to overcome the tax barriers involved in cross-border charitable giving within the EU. In four landmark cases the ECJ has ruled that if a country provides tax incentives for PBOs and charitable giving, these incentives should also apply in comparable situations within the EU. EU Member States retain the right to decide whether they want to provide these tax incentives in general and under what conditions. A residence requirement is prohibited, since this would infringe the four fundamental freedoms. The cases in which this was ruled are Stauffer,⁷⁴ Persche,⁷⁵ Missionwerk,⁷⁶ Commission v. Austria⁷⁷ and Commission v. France.⁷⁸ The Persche case is most important in the light of this research, since it concerned the applicability of a tax incentive on a charitable donation to a PBO in another EU Member State.

In the Persche Case,⁷⁹ the German resident Hein Persche claimed a tax deduction on contributions in-kind which he made to a Portuguese PBO. The PBO was recognised by the Portuguese tax authorities as a charitable body and was therefore, under Portuguese tax law, eligible to receive tax deductible donations. Germany also has a deduction for charitable contributions in its tax law.⁸⁰ The German tax authorities, however, did not grant the deduction since the recipient of the gift was not resident in Germany and the required donation certificate did not meet German standards. In line with the previous decision in the Stauffer case, the ECJ ruled that this decision was not in line with the free movement of capital in article 63 of the TFEU. As regards the free movement of capital, the article provides: *Within the framework of the provisions set out in this chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.*⁸¹ The German authorities tried to justify the unequal treatment of a foreign PBO by the need to safeguard the effectiveness of fiscal supervision, which was refused by the ECJ. This implies that tax laws which discriminate against donations to PBOs based in other EU Member States, but are otherwise equivalent to resident PBOs, are in breach of the TFEU. The ECJ does not require Member States to mutually recognise each other's PBOs. The court, however, did highlight that the tax authorities can require the taxpayer to provide such proof as they may consider necessary in order to determine whether the conditions for deducting expenses provided for in the legislation at issue have been met and, consequently, whether to allow the deduction requested.⁸²

73 COM(2012) 35 final, 2012/0022 (APP).

74 Case C-386/04, *Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften* (2006).

75 Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

76 Case C-025/10, *Missionswerk Werner Heukelbach eV v. État Belge* (2011).

77 Case C-10/10, *European Commission v. Republic of Austria* (2011).

78 Case C-485/14, *European Commission v. French Republic* (2015).

79 Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

80 DE: EStG section 10b.

81 EU: art. 63.1 TFEU.

82 Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

Based on the TFEU, PBOs and their contributors in other EU Member States may not be discriminated against. Since 2005 the EC started infringement procedures to achieve non-discrimination of PBOs and their contributors in the EU, amongst others with regards to gift and inheritance tax. The EC had conducted 28 infringements by the end of 2013 (Heidenbauer et al., 2013). Following infringement procedures specifically on the topic of tax incentives for cross-border donations in PIT, France⁸³ changed its legislation. The cases against Spain⁸⁴ and Austria⁸⁵ are still pending. The majority of the EU Member States have adapted the text of their tax law provisions on charitable donations to the non-discrimination principle as established by the ECJ. Still, in March 2016, the wording of the provision on tax incentives for charitable gifts in the legislation of Croatia, Portugal, Romania and Spain discriminate against PBOs in other EU Member States.⁸⁶

4.3.1.1 Reflections on EU law

Although the majority of EU Member State have removed discriminatory elements from their provision on tax incentives for charitable donations, scholars and tax experts are reluctant to regard EU law as a solution to overcome the tax barriers for cross-border charitable giving. The main issues are the lack of uniform comparability tests among the 28 EU Member States and a lack of clarity about equivalence of PBOs. Every country imposes a different comparability test upon foreign PBOs, which requires PBOs who wish to work across all EU Member States to deal with 28 different sets of requirements and processes to obtain a status equivalent to a domestic PBO. These requirements can vary significantly. Tax advisor 3 mentions in this regard that he had a case where the requirements in the country of the PBO were much stricter than in the home country of the donor. Furthermore, few countries give clear guidance on the comparability test for foreign PBOs.

In theory, there are three main processes by which the comparability of a foreign PBO can be tested:

1. Automatic recognition is granted to PBOs that have tax exempt status in the EU Member State where they are resident, also called home country control (Hemels, 2009);
2. The eligibility of a foreign PBO is the same as the general provisions for domestic PBOs, also referred to as host country control;
3. A special regime is applied to govern the requirements that have to be met to meet the comparability test. This can, for example, be a combination of host and home country control.

The ECJ focusses on the second approach, where the comparability is tested based on the requirements imposed by the country that has to grant the tax benefit (Hemels, 2009). This approach is currently most common in the EU, whereas the first and the final processes are exceptional.

83 Case No 2006/5003, 2007/4203 and 2007/4823, Press Release 10 July 2014, http://europa.eu/rapid/press-release_IP-14-808_en.htm.

84 Case No 2013-4086, MEMO15/6006 19 November 2015, http://europa.eu/rapid/press-release_MEMO-15-6006_en.htm.

85 Case No 2009/2335, MEMO12/708, 27 September 2012, http://europa.eu/rapid/press-release_MEMO-12-708_en.htm?locale=en and Case No 2007/2079, 19 March 2009, http://europa.eu/rapid/press-release_IP-09-428_en.htm?locale=en.

86 European Foundation Centre (internal document) *Overview of Member States' compliance with the ECJ non-discrimination principle according to the latest available information on the applicable national laws*, March 2016.

Furthermore, there is a difference in the process for assessing equivalence of a foreign PBO based on a case-by-case decision versus a general decision. A case-by-case decision entails that for every single donation for which a donor seeks a tax benefit, a separate decision is made by the supervisory tax authorities. No repository or list is kept of decisions made. The decision is usually made *ex post*, so only after making the donation does the donor know whether his donation qualified for a tax benefit. Some EU Member States do allow donors and/or PBOs to request an *ex ante* decision. In case of a general decision, the foreign PBO has the opportunity to apply for the tax privileged status. Usually a repository or register is kept of qualifying PBOs in case of a general decision and thus the donor knows *ex ante* whether his donation is eligible for a tax benefit. Arts organisation 18 applied for charitable status in four EU countries. This process was relatively easy in two countries, where arts organisation 18 did receive PBO status. In the other two countries the application turned out to be a heavy and very lengthy procedure. Arts organisation 18 was still waiting for a response after one year and had to hand over new documents in one of the countries. The administrative burden to get recognised as equivalent of a domestic PBO seems to differ widely across EU countries.

In some countries the local tax authorities decide whether the foreign PBO receives the tax privileged status. In other countries a central organ decides this. In most EU Member States that employ this process, the tax privileged status applies until it is revoked. Some EU Member States, however, require renewal of the status after a specific period of time (Von Hippel, 2014, pp. 34-35). A case by case decision currently seems predominant among EU Member States.

The burden of proof is generally carried by the person who wants to obtain the tax benefit or on the PBO that receives the donation. What proof is needed differs across countries. In some countries it suffices to provide proof that the recipient PBO is recognised as such in its country of residence and that it serves a public benefit purpose as defined under the domestic legislation where the benefit is claimed. In other countries, the PBO might have to show that it is equivalent to a domestic PBO by handing over all relevant documents in official translations, such as a policy plan, balance sheet, articles of association, evidence of the actual spending of resources, etc. In some countries it is not clear at all what proof is required. Several of the tax advisors I interviewed reported that for organisations that are well-known internationally and have a good reputation, it is often much easier to obtain equivalence to a domestic PBO. Also Von Hippel (2014, p. 37) mentions that *'large, well-recognised national or international PBOs have an advantage based on their reputation, which can result in less stringent checks being carried out.'*

Finally, the actual wording of the tax provision in the majority of EU Member States might be non-discriminatory, but it might still be practically difficult to obtain a tax benefit on a cross-border donation due to extensive requirements that PBOs have to meet and the strict application of these requirements. The wording of the UK legislation, for example, does not discriminate against foreign PBOs, as it includes bodies of persons and trusts that fall under the control of a Member State other than the United Kingdom.⁸⁷ According to the wording of this provision, PBOs from other EU Member States can register as charitable entities at the Charity Commission in the UK. By 2015, 142 PBOs from other EU Member States tried to register at the Charity Commission, however, only 11 were accepted. Fewer than five of these 11 PBOs made gift aid claims and the HMRC did not disclose whether these claims have been

87 UK: FA 2010 Schedule 6 Part 1 Section 2.

successful.⁸⁸ This illustrates that it is still practically difficult to rely on EU law to overcome the tax barrier on cross-border charitable giving in case a country applies its comparability test in a very strict way. If countries involuntarily remove the geographical restriction from their tax provision on tax incentives for charitable giving – in this case because they are forced to do so by EU law – then the change in tax provision might not remove the tax barrier from cross-border charitable giving, as countries have the power to impose all kinds of practical boundaries, for example, by creating lengthy procedures. Some countries use bureaucratic complexity, a high administrative burden and vagueness concerning procedures to make it practically impossible to obtain a tax benefit on a cross-border donation (European Foundation Centre & Transnational Giving Europe, 2017). When trying to get a foreign organisation recognised as a PBO abroad, tax advisor 9 experienced that it took an extremely long amount of time before her request was taken into account. After seven months, she still had not received any news and decided to contact the tax administration in the foreign country.

Despite EU Member States not being allowed to discriminate against foreign PBOs, some specific considerations have to be taken into account for donations to cultural organisations. EU Member States retain the right to decide whether they want to provide tax incentives for donations and under what conditions. Countries can thus decide which public benefit purposes they want to support through tax incentives and under which circumstances. EU Member States may thus exclude arts and culture from the purposes of what they perceive as contributing to the public benefit and want to stimulate with a tax incentive, as long as they do not discriminate based on a residency requirement. If an EU Member State decides that it does not want to allow tax incentives on donations that go to foreign arts organisations, it can thus simply exclude arts organisations from the list of eligible organisations. Domestic arts organisations, however, may not receive tax deductible donations either.

Even if arts and culture are included as eligible public benefit purposes, it is debatable whether there are grounds based on which EU law allows beneficial treatment of domestic arts organisations over foreign arts organisations. Tax advisor 5 and 9 bring culture forward as potential grounds on which discrimination is justified. In this respect, they refer to the ECJ Bean House case and a case concerning a castle in Belgium protected under that Member State's legislation on historic buildings.⁸⁹

The Bean House case concerns a property in the UK of a Dutch resident. She wanted to give the property to her son. She claimed exemption from gift tax, as – according to her – the property fell under the Dutch Environmental Beauty and Cultural Heritage Law⁹⁰ and properties that fall under this legislation are exempt from gift and inheritance tax in the Netherlands. Based on the four fundamental freedoms she claimed that this should also apply to her property that is situated in the UK. The ECJ observed that because the Dutch Environmental Beauty and Cultural Heritage Law⁹¹ aims at protecting nature and cultural heritage that belongs to Dutch cultural heritage, this does not have to apply to cultural heritage not belonging to the Netherlands. If, however, property fits the definition of Dutch cultural heritage, despite being located outside the territory of the Netherlands, the tax benefits should apply. As there was no proof that the Bean House belonged to the Dutch cultural heritage, the exemption of gift tax was rejected.

88 Bates Wells Braithwaite, *Charity and Social Enterprise Update*, summer 2015, pp. 20-21.

89 Case C-133/13, *Staatssecretaris van Economische Zaken v. Q* (2013); Case C-87/13, *Hoge Raad der Nederlanden v. Party X* (2013).

90 NL: Natuurschoonwet 1928.

91 NL: Natuurschoonwet 1928.

In the case of the Belgian castle, the Dutch owner of the castle claimed a tax deduction for monuments in his Dutch PIT declaration. This was rejected by the Dutch tax authorities, although the castle was protected in Belgium as a historic building. The tax incentives only applied to monuments included in the Dutch register of protected historic buildings.⁹² The Belgian castle, however, was not included in this register. The ECJ observed that, based on article 49 of the TFEU, there could be discrimination between residents and non-residents. However, the purpose of the national legislation is to preserve and safeguard the cultural and historical heritage of the Netherlands. Therefore, the ECJ justified the rejection of the tax deduction for the owner of the Belgian castle. If the owner could demonstrate that the castle belonged to the Dutch cultural and historical heritage – despite it being located in Belgium – only then could a deduction from taxable income be granted.⁹³

These decisions did not concern tax incentives in the PIT for donations to a PBO. Still, in my opinion, it can have consequences for tax benefits for PBOs. If a donor's resident country specifies that an organisations must contribute to arts and culture that serves the national cultural heritage to qualify for a tax benefit, this can be used as grounds to not grant a tax benefit on a donation to a foreign cultural organisation that does not contribute to the national cultural heritage of the country where the donor is resident for tax purposes.

As EU case law on PBOs refers to the free movement of capital, this might also have implications on cross-border donations from EU Member States to PBOs outside the EU; article 63 of the TFEU, in which the free of movement of capital is laid down, also applies to situations between EU Member States and third countries. Based on this provision, donations made by donors in EU Member States to PBOs in third countries that are equivalent to domestic qualifying organisations should be treated, in principle, equal to domestic donations. No reciprocity by the third country is required (Heidenbauer et al., 2013). However, the scope of article 63 of the TFEU is limited by article 64 of the TFEU. Based on article 64 of the TFEU, with few exceptions, EU Member States may retain the restrictions that existed on 31 December 1993.⁹⁴ As in many EU Member States, the tax provisions on charitable giving were in place before that date, so the tax benefits do not have to apply in cross-border situations between EU Member States and third countries. Besides, ECJ case law provides some room to further limit the application of the freedoms of movement based on effectiveness of fiscal supervision and to combat tax avoidance and tax evasion in case no agreement on the exchange of information is concluded between the relevant EU Member State and third country (Heidenbauer et al., 2013). This is acknowledged in the Persche case:

[A]s regards charitable bodies in a non-member country, it must be added that it is, as a rule, legitimate for the Member State of taxation to refuse to grant such a tax advantage if, in particular because that non-member country is not under any international obligation to provide information, it proves impossible to obtain the necessary information from that country.⁹⁵

92 NL: Monumentenwet 1988.

93 Case C-87/13, *Hoge Raad der Nederlanden v. Party X* (2013).

94 For Bulgaria, Estonia and Hungary, the relevant date is 31 December 1999 and for Croatia it is 31 December 2002.

95 Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

4.3.2 The Proposal for a Council Regulation on the Statute for a European Foundation

On February 8th, 2012 the EC presented a Proposal for a Council Regulation on the Statute for a European Foundation.⁹⁶ It intended to provide for a European-wide uniform and supranational legal form for organisations with public benefit purposes. These organisations and their benefactors would receive the same tax privileges as domestic PBOs in every EU Member State. This provision thus had the potential to remove the tax barrier to cross-border charitable giving within the EU. Although the Proposal could have provided a solution to the inapplicability of tax incentives for cross-border gifts, agreement between Member States proved difficult to obtain. By November 2013, the tax provision was excluded in the discussion of the Proposal.⁹⁷ At the end of 2014, withdrawal of the Proposal was suggested due to a lack of prospects that an agreement could be reached.⁹⁸ In March 2015 it was withdrawn.⁹⁹ Notwithstanding this fact, it is insightful to discuss this proposal.

The reason the commission proposed the FE was that the Commission was of the opinion that part of the charitable organisation's funds was inefficiently spent due to juridical and administrative costs when working across borders within the EU. The aim of this new proposed European legal form was to overcome this inefficiency and make it easier for charitable organisations to conduct cross-border activities within the EU. The Commission explicitly mentioned: "*It will allow foundations to more efficiently channel private funds to public benefit purposes on a cross-border basis in the EU.*"¹⁰⁰ As a result, more funds were supposed to flow to the public benefit purpose activities. On its turn, this had to benefit the public welfare and the economy of the EU.

The European Foundation – or *Fundatio Europaea* – was proposed as a separately constituted entity in private law for a public benefit purpose. This entity had to serve the public interest at large as defined by the Council Regulation via uniform and agreed-upon joint material and formal standards. The FE was allowed to engage in economic activities, as long as the profit was used to pursue its public benefit purpose. Unrelated economic activities were restricted to 10% of the annual net turnover of the FE. Each Member State was supposed to appoint a supervisory body that would monitor whether the FEs registered in that Member State met the requirements.¹⁰¹ National charity law would only apply to the FE if a certain matter was not regulated by the Proposal or the statutes of the FE.¹⁰²

One of the requirements was that the FE served the public interest at large. Arts, culture, and historical preservation were the first activities on the list of activities that serve the public interest at large.¹⁰³ Arts organisations could thus qualify as an FE. However, amongst others, the FE was also required to have assets equivalent to EUR 25,000,¹⁰⁴ potentially limiting the ability of arts organisations with insufficient assets to register. Another important requirement was that the FE should have activities, or aim to carry out activities, in at least two EU

96 COM(2012) 35 final, 2012/0022 (APP).

97 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/141115.pdf. Accessed 14 August 2015.

98 <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-910-EN-F1-1-ANNEX-4.Pdf>. Accessed 14 August 2015.

99 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_2015.080.01.0017.01.ENG. Accessed 14 August 2015.

100 COM(2012) 35 final, 2012/0022 (APP), p. 3.

101 Article 47 FE Proposal.

102 Preamble, para 6. and Art. 3.

103 Article 5 FE Proposal.

104 COM(2012) 35 final, 2012/0022 (APP).

Member States.¹⁰⁵ The FE did not aim at replacing the foundation or other legal forms at the national level, but this was proposed as an additional possibility.

Several provisions that ensure the exchange of information with respect to the FE were included in the FE Proposal.¹⁰⁶ Backed up by these provisions, Member States had to regard the FE in the same way as domestic public benefit entities. This implied that its donors and beneficiaries would have received the same tax benefits as those of domestic PBOs. Chapter VIII of the proposal on the fiscal treatment of FEs stated that all EU Member States had to treat FEs equally to public benefit entities under national legislation. Article 50 of the Proposal specifically monitored the equal treatment of beneficiaries of the FE to beneficiaries of public benefit entities within the country of residence of the beneficiary.¹⁰⁷

4.3.2.1 Reflections on the Proposal for a Council Regulation on the Statute for a European Foundation

One of the major difficulties for PBOs with activities abroad is to work in a different legal environment, including the tax issues involved. Therefore, an aim of the European Foundation was to reduce the transfer costs of cross-border activities of PBOs, including legal and tax advice costs, amongst others. In the feasibility study it was estimated that these costs would be reduced by EUR 101.7 million and EUR 178.7 million (Hopt et al., 2009, p. 178).

The European Foundation had the potential to improve this situation for active PBOs across Europe. In the eyes of fundraiser 7 it would have been the ideal scenario to have a PBO status recognised throughout Europe:

“Or I hope that there will be European legislation in the future that says ‘if you give money to a European PBO, then of course you can deduct it in your own country [where you are resident for tax purposes]. That would of course just be the easiest solution.”

Like other fundraisers and directors of arts organisations, however, he was not aware that this possibility was actually discussed at a European level. Fundraisers 20B and 20C were vaguely aware of the developments at the European level, but were also not familiar with the specifics. When I asked them whether they were familiar with the Proposal for a European Foundation, they responded:

“Actually no, we are not very familiar with what’s going on with the European Union, because it is basically [...]. People tell us that they are working on it, and that probably we will see some developments and some solutions, but we don’t know when and in what terms.”

An advantage of the European Foundation over EU law was that the latter leaves discretion to the Member States on which public benefit purposes it supports. The European Foundation Proposal, however, included a list of public benefit purposes and under the initial proposal, these had to be granted the same tax benefits as domestic PBOs (Hemels & Stevens,

105 Article 6 FE Proposal.

106 Article 45-48 FE Proposal.

107 Article 50 FE Proposal.

2012, p. 299; Weitemeyer, 2013, p. 305). Arts organisations with the form of a European Foundation would thus get the same tax privileges in all EU Member States as domestic PBOs. When relying on EU law, Member States can still determine which public benefit purposes they support and this might exclude art and culture. Furthermore, even if art and culture are included in the list of public benefit purposes in the Member State, culture might be a grounds on which discrimination is allowed, as is explained in section 4.3.1.1.

Research shows that a European Foundation would have only been a partial solution (Hemels, 2014). Although it seemed effective in removing tax barriers for cross-border charitable giving, this would have only been the case if the requirement that activities had to be undertaken in at least two Member States also had included fundraising activities, and was not solely targeting the charitable projects themselves. Furthermore, for PBOs active in fields not included in the list of eligible public benefit purposes, such as religion, the FE would not have been a solution (Hemels & Stevens, 2012, p. 305).

The FE would not have been efficient for countries that had to establish a supervisory structure. For fundraising PBOs that would choose to obtain FE status, the solution would have been efficient, but for PBOs with a different legal status, the tax barrier would remain unresolved (Hemels, 2014; Korving & Wijnvliet, 2013, p. 162).

Furthermore, many countries often include provisions on the maximum number of assets, the minimum expenditures to charitable causes, the maximum proportion of operating costs in relation to charitable spending or the remuneration of board members in order to prevent abuse of the PBO. The FE did not include such provisions (Heidenbauer et al., 2013, pp. 622-623). Also in terms of interpretation of the Proposal there were some obstacles. The Proposal took a civil law approach, causing discrepancies that would make it difficult for common law countries to implement the Proposal with regard to definitions such as the public benefit purposes. Also, the meaning of 'competent authority' would have required further clarification (Breen, 2013).

Besides, the Proposal did not address the risk of abuse of tax incentives. For small or poor countries, setting up a supervisory body for PBOs may not be the highest priority. This would have triggered the risk that PBOs would have established themselves in such a country with a weak supervisory system. Still, other Member States would have to rely on these countries for supervision over the PBOs and grant tax benefits to donations to PBOs with FE status in these countries (Hemels & Stevens, 2012, pp. 306-307; Hemels, 2014; Verbrugh & Koster, 2014, pp. 622-623). To avoid this problem, Breen (2013, p. 12) suggested that consensus among Member States would have been required on what triggers action from the supervisory authority and which level of FE failure would have been tolerated. This would have required common accountability standards for FEs and a uniform way of presenting this information.

The biggest problem with the FE, however, was its feasibility, due to the fact that it required Member States to trust each other's supervising authorities (Heidenbauer et al., 2013; Hemels, 2014; Verbrugh & Koster, 2014; Weitemeyer, 2013). Both accountant 1, tax advisor 6 and tax advisor 8 explicitly mention that they thought the FE would have been an interesting solution for overcoming the tax barriers to cross-border charitable giving and they regret that the Proposal floundered. Tax advisor 6 says:

"If something like the Fundatio Europaea did exist, imagine if the regulation would be present [...] that would require that in every Member State – and then you are only talking about Europe of course – but [international PBOs] would be treated

equal to domestic PBOs. That would be a step forward. In terms of legal certainty that would definitely be an improvement. [...] From the perspective of organisations that want to raise funds abroad this would be preferred, because they then only need one thing that leads to the desirable fiscal consequences. [...] also for the donors it would be easy. They know that if they give to an entity with the FE status that it is deductible, conform our legislation. Done. But yeah, then you end up at the practical objections. [Individual governments] do not want it. But I do think that if you could get agreement, it would be a step in the right direction.”

4.4 Establishing a legal entity abroad

The cross-border situation that creates tax barriers can be overcome by setting up legal entities in the donor’s country of residence. In the previous solutions, the donation made to a charitable organisation abroad acts to contribute to a charitable cause abroad (as depicted in figure 5A); a legal entity in the donor’s country can avoid the cross-border donation and still enable international philanthropy. Figure 5B depicts the situation where the cross-border situation is avoided.

Arts organisations can do this in two ways: A) establishing a legal entity in the donor’s country of residence with charitable activities; or B) setting up a legal entity in the donor’s country of residence solely for fundraising activities. The latter is also known as a foreign friends organisation.

Obtaining a tax benefit on a cross-border donation via a legal entity with charitable activities works as follows. When an arts organisation establishes a legal entity abroad that conducts charitable activities that qualify as such under the foreign jurisdiction, it can receive a charitable status in that country that allows the local foreign donors to use the applicable tax incentive on their gifts to that organisation. By doing so, the cross-border situation is circumvented and the donor can contribute to a PBO in his home country and obtain a tax benefit, while the initial recipient PBO transfers the donation to the affiliated PBO abroad.

A legal entity for fundraising purposes provides a tax incentive on a donation to a foreign PBO as follows. The cross-border situation that creates tax barriers is circumvented by setting up a legal entity for fundraising purposes in the donor’s country, also called a ‘friends of organisation’ or foreign friends organisation. For this solution to be effective, the foreign friends organisation has to qualify as an organisation that can receive donations with a tax

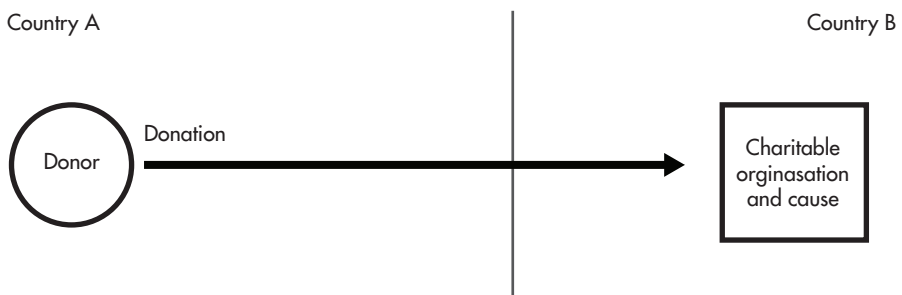


Figure 5A – contribution foreign charitable cause

benefit. In that case, the donor can contribute to the foreign friends organisation and benefit from the applicable tax incentive in his own country. The foreign friends organisation can transfer the donation to the foreign organisation for which it raises funds.

In the next sub-paragraphs, I provide examples of both an arts organisation with branches abroad and of arts organisations that have foreign friends organisations.

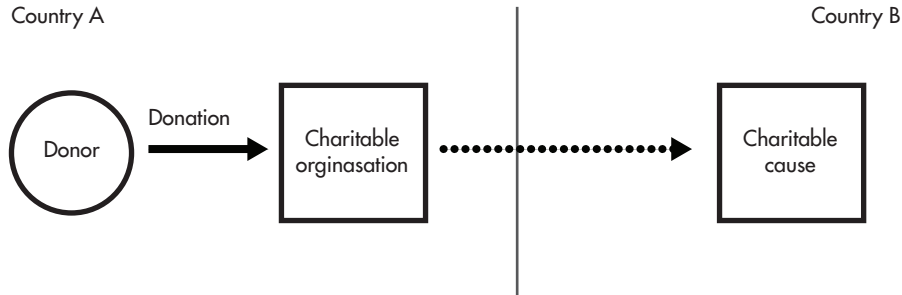


Figure 5B – cross-border situation avoided

4.4.1 The Guggenheim, an example of an arts organisation with counterparts abroad

The Guggenheim is an example of an arts organisation with counterparts and activities abroad. Guggenheim Museums can be visited in New York, Venice and Bilbao. Although affiliated with the US-based Solomon R. Guggenheim Foundation, they are not all run by one legal entity. The Solomon R. Guggenheim Museum in New York and the Peggy Guggenheim Collection in Venice are owned and operated by the Solomon R. Guggenheim Foundation.¹⁰⁸ The Solomon R. Guggenheim Foundation is registered in both the US and Italy and is eligible to receive tax deductible gifts in both countries.¹⁰⁹ Both Italian donors and US donors can thus deduct their donation to the Solomon R. Guggenheim Foundation from taxable income.

The museum in Bilbao solely follows the guidelines and ethics code set by the Solomon R. Guggenheim Foundation, but is a separate legal entity, namely the Guggenheim Museum Bilbao Foundation, with a charitable status in Spain.¹¹⁰ Spanish donors can thus donate to the Guggenheim Museum Bilbao in their own country and benefit from the applicable tax incentive.

In theory the two foundations could collaborate to facilitate Italian and US donors who wish to give to the Guggenheim Museum Bilbao Foundation and Spanish donors who wish to give to the Solomon R. Guggenheim Museum with a tax incentive. By giving donors the possibility to give to the foreign foundation they want to support via the foundation with a tax privileged status in their country of residence, donors can obtain a tax benefit on a donation that is spent abroad.

108 According to the website of the Peggy Guggenheim Collection, the Solomon R. Guggenheim Foundation is recognised by the Italian tax authorities as a charitable organisation that can receive tax deductible gifts (http://www.guggenheim-venice.it/inglese/membership/tax_deduction.html). Accessed 27 January 2017. This is an example of a unilateral solution, where a foreign charity is recognised by the local tax authorities.

109 http://www.guggenheim-venice.it/inglese/membership/tax_deduction.html. Accessed 27 January 2017.

110 <http://www.guggenheim-bilbao-corp.es/en/guggenheim-network/>. Accessed 27 January 2017.

4.4.2 Reflections on a legal entity abroad with charitable activities

Byrne et al. (2003, p. 33) address this solution in the US context, as ‘US PBOs operating abroad’, where the US PBOs have counterparts or operations abroad. According to IRS rulings, contributions to organisations that qualify for tax benefits in the US but are used for the organisation’s non-US counterpart are being regarded as for the use of the qualifying organisation and thus qualify for a tax benefit.¹¹¹ Regulations in other countries might be stricter, however. Countries like Australia and other closed tax jurisdictions, as I will explain in section 5.2, do not grant tax incentives to donations that are spent abroad, even though they are initially made to a domestic organisation that is eligible to receive donations with a tax incentive.

As one can imagine when considering the Guggenheim Museums, setting up a legal entity abroad with charitable activities comes at a significant cost and it would be irrational to do this solely for donors to receive a tax benefit on their donations. Besides, while fine arts and performing arts institutions are geographically movable to a certain extent, this is not the case for heritage sites and exhibition and performance spaces. For these organisations it would be much more complex to set up a foreign entity with charitable activities, as they would have to duplicate themselves, which may not be possible at all. Establishing a legal entity abroad with charitable activities can avoid a cross-border situation and thus the tax barriers involved, but for the majority of arts organisations, it is nothing more than a theoretical solution to overcoming the tax barriers to cross-border charitable giving to the arts. For other charitable causes, such as disaster relief and development aid and environmental causes this solution might well be practically feasible, since their activities consist of providing aid and sharing knowledge, which is less attached to one physical location. Tax advisor 8 also mentions that in development aid there are organisations that have networks of entities across countries.

4.4.3 Establishing a foreign friends organisation

In the Netherlands, organisations that provide financial support to entities that pursue the public benefit or support them otherwise can qualify as a PBPE.¹¹² The examples of two foreign PBOs that have established a foreign friends organisation in the Netherlands show that the final recipient of the donation in practice does not need to be a Dutch registered PBPE for the foreign friends organisation to be able to qualify as a PBPE. The Stichting Nederlandse Vrienden van het Israelisch Philharmonisch Orkest [Foundation for the Dutch Friends of the Israeli Philharmonic Orchestra] and the Stichting Nederlandse Vrienden van de Bibliotheca Alexandrina [Foundation for the Dutch Friends of the Bibliotheca Alexandrina] both have the cultural PBPE status in the Netherlands.¹¹³ Therefore, their Dutch donors can benefit from a tax incentive when making a donation.

Dutch arts organisations, on their turn, have established foreign friends organisations abroad for fundraising purposes. In the United States, for example, organisations can set up a foreign friends organisation under the laws of the US to raise funds in the US for a specific foreign charitable organisation.¹¹⁴ To qualify as such, the foreign friends organisation must meet certain requirements, such as serving a charitable purpose as defined in section 501(c)(3). Furthermore, it must have an appropriate governing instrument that describes the exempt purpose, it may not be empowered to engage in substantial non-exempt purposes, it must

111 US: Rev. Rul. 63-252, 1963-2 CV 101; Rev. Rul. 71-460, 1971-2 CB 231; Rev. Rul. 75-65, 1975-1 CB 79.

112 NL: article 5b AWR.

113 http://www.belastingdienst.nl/rekenhulpen/giften/anbi_zoeken/.

114 US: IRC section 170 (f)(18).

submit a detailed statement of its proposed activities and its assets may not be distributed to shareholders or members.¹¹⁵ In addition, friends of organisations are not allowed to transfer the funds they receive to a foreign entity by virtue of a charter or by-law provision. The friends of organisation must exercise some scrutiny over the foreign entity for which it raises funds, in order to ensure that it is an eligible charity within the definition of section 501(c)(3).¹¹⁶ Earmarked gifts, thus, are not allowed and the friends of organisation may not function as a mere conduit organisation. The Mauritshuis, a fine art museum with a collection of paintings by Dutch and Flemish masters from the Golden Age, has such a friends of organisation in the US, namely the American Friends of the Mauritshuis.¹¹⁷ Also, arts organisations from other countries have set up American friends organisations, for example the American Friends of the Louvre, the American Friends of the Israel Museum, the American Friends of Covent Garden & the Royal Opera, the Royal Ballet, the American Friends of the British Museum, Inc., the American Friends of the St. Petersburg Philharmonic Orchestra and the American Friends of the Shanghai Museum, Inc.¹¹⁸

But there are also examples in other countries. The Dutch Royal Concertgebouw Orchestra has friends of organisations in Belgium, Switzerland and France. In the United Kingdom there is a support foundation named the Dutch Masters Foundation that raises funds for the Mauritshuis, the Royal Concertgebouw Orchestra and the Nederlands Dans Theater [Dutch Dance Theatre].¹¹⁹

4.4.4 Reflections on the foreign friends organisation

It might seem somewhat contradictory that in countries like the US, direct cross-border donations are not eligible for tax benefits, whereas a donation via a foreign friends organisation to a foreign PBO does receive a tax benefit. This, however, allows the country of the donor to have a certain degree of supervision over the PBO. The tax authorities can check whether the organisation is actually devoted to a public benefit purpose and is not merely a conduit organisation (J. Chang et al., 1996, pp. 576-577). Both tax advisor 3 and philanthropy advisor 7 see it as an obstacle that these requirements also entail finding people who are willing to be on the board of the charity and that annual audits and board meetings are required.

Whether the foreign friends organisation qualifies to receive donations with a tax benefit depends on the requirements it must meet to be eligible to receive tax deductible donations. If, for example, there are high requirements on the assets the organisation needs to have, this might make it difficult to establish a foreign friends organisation. Requirements applicable on qualifying donations also influence the effectiveness of the solution. If the friends of organisation is not allowed to transfer the funds to the arts organisation abroad, this solution is not effective.

115 US: IRC section 501(c)(3).

116 US: Revenue Ruling 63-252.

117 www.americanfriendsofthemauritshuis.org.

118 The American Friends of the Louvre, see: www.aflouvre.org; the American Friends of the Israel Museum, see: www.afimnyc.org; the American Friends of Covent Garden & the Royal Opera, the Royal Ballet, see: www.afocg.org; the American Friends of the British Museum, Inc., see: www.afbm.org; the American Friends of the St. Petersburg Philharmonic Orchestra, see: www.friendsofthestpetephil.com; the American Friends of the Shanghai Museum, Inc., see: www.shanghaimuseum.org.

119 www.dutchmasters.org.uk.

4.5 Strategic use of organisations with charitable status

PBOs and their donors try to overcome the inapplicability of tax incentives to cross-border donations by making strategic use of organisations with a charitable status. Through the collaboration of organisations with a charitable status, donors can get the same tax benefit on cross-border donations as on domestic donations (Heidenbauer et al., 2013, p. 624; Hemels, 2009; Von Hippel, 2009, p. 291). In these networks, the donor donates to an intermediary party with a charity status in their own country and can therefore benefit from the tax incentive. The intermediary party transfers this donation to the charity abroad. The intermediary party usually charges a percentage fee of the donation for this service. In the US this practice is known as ‘fiscal sponsorship’.

The intermediary party can have varying relationships with the charity and the benefactor. Roughly two different forms can be distinguished from practice: 1) the donor takes the initiative to bring his capital into an entity with charitable status and designates it for charitable donations to public benefit purposes abroad; 2) a charitable organisation – the intermediary charity – offers foreign charitable organisations the service to receive gifts on their behalf. Variations to these two different forms can also be created. In the first form, the donor can either set up his own charitable entity, or open a so-called ‘designated fund’ at an existing PBO.

If the donor takes the initiative to set up an entity, for example a foundation, the donor contributes assets to the foundation. If the foundation obtains charitable status, the donor can obtain a tax benefit on his contribution. The board of the foundation distributes the assets to a foreign charity. When establishing the legal entity, the donor can determine the object of the entity. In this manner, he can determine – to a certain extent – which (foreign) causes he wants to stimulate with the assets he contributes. The donor might also be a board member, although this is not necessarily the case, and may not even be allowed in some countries. The donor can also be an advisor to the board.

If the donor decides to establish a designated fund at an existing PBO, the donor gives to an existing PBO and can therefore benefit from a tax reduction. The PBO may decide to donate the gift to a (foreign) entity that pursues the intended goal of the donor. At the Prins Bernhard Cultuurfonds, for example, donors can establish a cultural fund in their name. To do so, they need to give a minimum of EUR 50,000. Currently, the Prins Bernhard Cultuurfonds has more than 400 designated cultural funds.¹²⁰ The King Baudouin Foundation also facilitates designated funds. The minimum assets they require are EUR 75,000, or an annual contribution of assets.¹²¹

It is not always possible to trace back what the origin of the assets in a foundation or similar entity are for an outsider. The following entities, however, seem to be established by individuals and spend (part of) their assets abroad: the Getty Foundation,¹²² Dena Foundation for Contemporary Art,¹²³ the Daniel and Estrellita Brodsky Family foundation,¹²⁴ the Bill and

120 <https://www.cultuurfonds.nl/geven> Accessed 14 June 2017.

121 <https://www.kbs-frb.be/nl/Centre-for-Philanthropy/Our-philanthropy-vehicles/Individual-Philanthropy>. Accessed 14 June 2017.

122 www.getty.edu.

123 www.denafoundation.fr.

124 <https://fconline.foundationcenter.org/grantmaker-profile/?collection=grantmakers&activity=results&key=BROD045>. Accessed 14 June 2017.

Melinda Gates Foundation,¹²⁵ the Annenberg Foundation,¹²⁶ the Rockefeller Foundation,¹²⁷ Crown Family Philanthropies,¹²⁸ Calouste Gulbenkian Foundation,¹²⁹ Burger Collection,¹³⁰ V-A-C Foundation,¹³¹ Fiorucci Art Trust¹³² and The A.G. Leventis Foundation.¹³³ Whether these individuals also benefitted from a tax incentive when they contributed them to the legal entity is unclear.

In the second form, the intermediary charity – an organisation with charitable status in the country of the donor – offers the service to receive donations from a benefactor in the same country who wants to give to a foreign PBO. For the donor, the cross-border situation is circumvented and since they donate to an organisation with charitable status in their own country, their donation is stimulated with a tax benefit. After checking whether the foreign PBO meets the necessary requirements, the intermediary charity passes down the donation to the intended PBO abroad. The intermediary organisations may charge a fee for this service. Examples of PBOs that function as intermediary organisations are the King Baudouin Foundation United States for gifts to non-profit initiatives in Europe and Africa;¹³⁴ Israel Gives for donations from Canada, the UK and the US to Israeli PBOs;¹³⁵ Give2Asia for gifts from Hong Kong and the US to Asia-based PBOs;¹³⁶ the Resource Foundation for gifts by US donors to PBOs in Latin America and the Caribbean;¹³⁷ Kigyo Mécénat Kyogikai for gifts by Japanese donors focussing on donations to the arts;¹³⁸ and the Silicon Valley Community Foundation for American donors who wish to make a contribution abroad.¹³⁹ Serving as an intermediary organisation, however, is not the only purpose of these organisations. The intermediary parties often have multiple purposes and serve not only as an intermediary organisation for cross-border donations; their core business is often to contribute to the public benefit by giving philanthropic advice, finding potential recipients, monitoring gifts, administering donations, conducting charitable activities or fundraising for these activities.

Variations to these two forms are possible. PBOs who expect a donation from a foreign benefactor can, of course, approach a charitable organisation in their network in the donor's country and request them to accept a gift for them. Arts organisation 21, for example, uses its network of arts organisations to allow foreign donors to give with a tax benefit. When it received a gift from a Canadian donor, it was transferred via a Canadian arts organisation with whom arts organisation 21 had collaborated before. Fundraiser 21 says: *“With Canada, we worked with the [arts organisation], that is an art centre where the advisor [who brought arts organisation 21 in contact with the donor] worked. It is huge. So they were able to make out a tax receipt because they were accepted for international fostering of Canadian artists. So that money went to the [arts] centre and we were also able to operate with other arts institutions who have a charitable status.”*

125 www.gatesfoundation.org.

126 www.annenberg.org.

127 <https://www.rockefellerfoundation.org/our-work/topics/arts-and-culture/>. Accessed 14 June 2017.

128 www.crownfamilyphilanthropies.org.

129 www.gulbenkian.pt.

130 www.burgercollection.org.

131 www.v-a-c.ru.

132 <https://fiorucciarttrust.com/about/>. Accessed 14 June 2017

133 www.agleventisfoundation.org.

134 www.kbfus.org.

135 www.israelgives.org.

136 www.give2asia.org.

137 www.resourcefnd.org.

138 <http://www.mecenat.or.jp/english/about-us/>. Accessed 14 June 2017.

139 <http://www.siliconvalleycf.org>

If the charitable organisation serves once as an intermediary, it is more an informal favour for a befriended organisation than a service provided. Another variation on an individual organisation that serves as an intermediary organisation is Transnational Giving Europe, which is a network of intermediary organisations. This network functions as follows. The donor contributes to an intermediary charity in his country of residence for tax purposes. This intermediary charity verifies with his partner organisation in the home country of the recipient charity, whether the recipient is eligible to receive donations with a tax benefit in its home country or not. If this is the case, the intermediary charity transfers the donation to the partner organisation who then transfers it to the recipient charity, or the intermediary charity directly transfers the donation to the recipient charity abroad. Transnational Giving Europe consists of large registered PBOs in 19 European countries who partnered up to allow residents in their countries to give abroad and receive a tax benefit.¹⁴⁰ The main added value of such networks over individual intermediary organisations is that there is a PBO that supervises whether the recipient PBOs in its country of residence meet the necessary requirements in their home country to be eligible to receive donations with a tax benefit.

In the next three sections I first elaborate on two examples of intermediary organisations. I discuss the King Baudouin Foundation United States and Transnational Giving Europe as examples of intermediary organisations initiated by PBOs. Then I reflect on the intermediary organisation as a solution to obtaining a tax benefit on a cross-border gift.

4.5.1 King Baudouin Foundation United States

The King Baudouin Foundation United States (KBFUS) is a private initiative for American taxpayers who want to make a contribution to PBOs in Europe or Africa with the benefit of a tax incentive.¹⁴¹ Over the period 2003-2016, USD 113.2 million was donated through the King Baudouin Foundation United States. Of this total amount, USD 16.5 million was designated to PBOs working in the field of arts and culture.¹⁴² In 2015, USD 16.8 million was given to PBOs in Europe and Africa. Of this total amount of grants, USD 2.2 million was designated to activities in the field of arts and culture.¹⁴³

In the United States, donations can be deducted from taxes when they are made to an organisation that meets the requirements under section 501(c)(3) of the IRC. Obtaining this status can be time consuming and costly. Therefore, it often does not pay off for foreign charitable organisations to apply for this status. An alternative for PBOs located outside the US is to rely on the support of a qualifying organisation under IRC 501(c)(3). This is exactly what KBFUS offers. KBFUS qualifies as a 501(c)(3) organisation. European and African PBOs can register at KBFUS, or create an 'American friends fund' at KBFUS. To do so, they need to fill out a due diligence form in which KBFUS, amongst others, validates whether the charity qualifies as such under its own tax law and whether it has a mission that is consistent with the mission of KBFUS. When the foreign charity meets the standards required by KBFUS, an 'American friends fund' can be created at KBFUS using the name of the organisation. This is not a legal status; it means only that the foreign charity is supported by KBFUS and can benefit from their 501(c)(3) status. This allows the American donors of the foreign charity to donate through KBFUS and deduct their donation from their taxes. KBFUS takes care of all

140 <http://www.transnationalgiving.eu/en/article/2016/07/14/tge-extends-once-again/9/>. Accessed 14 June 2017.

141 <http://www.kbfus.org>.

142 <http://kbfus.insight.foundationcenter.org/>. Accessed 10 February 2017.

143 <http://kbfus.insight.foundationcenter.org/>. Accessed 10 February 2017.

the administrative work involved. The foreign charity hands in an application for financial support at KBFUS and KBFUS decides whether it will transfer the donation. To cover administrative costs involved with setting up an 'American friends fund' the KBFUS charges USD 1,500. In addition, a management fee of between 5% and 0.5% of the cumulative total of contributions is charged within one calendar year.¹⁴⁴

In 2016, a total of 249 American friends funds were registered at KBFUS. Among these organisations, 68 are cultural organisations. A few examples of arts organisations who have registered an American friends fund at KBFUS are: the Bayerische Staatsoper in Germany, Benaki Museum in Greece, the Bruges Municipal Musea in Belgium, Château de Chambord in France, Harare International Festival of the Arts from Zimbabwe, Jacob A. Riis Museum in Denmark, the National Museum in Warsaw Poland and Rome Heritage in Italy.¹⁴⁵

Another service of the King Baudouin Foundation United States is 'KBFUS ART!', which is a service for benefactors who want to donate artwork and have it displayed abroad. The King Baudouin Foundation United States helps them with the cultural, legal and tax peculiarities of giving art across borders.¹⁴⁶ A donor who would like his artwork to be put on exhibit at a foreign museum can give his art to KBFUS. After the KBFUS ART! Advisory Committee has reviewed the intended gift, a gift agreement is made and the donor can deduct the gift from their taxable income. Subsequently, a long-term loan agreement is made between KBFUS and the foreign museum that exhibits the artwork. KBFUS then charges a handling fee of USD 2,500 for these services. The donor has the possibility to advise KBFUS to donate the artwork to a museum or cultural institution in Europe or Africa. If KBFUS decides to indeed donate the artwork, a management fee is charged to cover the operational expenses of KBFUS ART!, starting at 5% of the first USD 100,000 of the value of the artwork, 2% of the next USD 300,000 and 1% of the next USD 300,000 and 0.5% of the value in excess of USD 700,000.¹⁴⁷

4.5.2 Transnational Giving Europe

Transnational Giving Europe (TGE) is a network of European PBOs that help each other channel gifts between donors and PBOs resident in certain EU Member States or Switzerland. It is interesting that, despite the judgments by the ECJ as discussed in section 4.3.1, the TGE's figures show that there is an increasing demand for their services. At the start of TGE in 2009 EUR 2,946,708 was channelled through TGE. By 2013 this amount had almost tripled to EUR 8,767,454 and in 2014 it reached EUR 12,055,641, slowly decreasing in 2015 to EUR 7,906,892 and EUR 6,378,678 in 2016 (European Foundation Centre & Transnational Giving Europe, 2017). This demonstrates that the supranational solution as currently applied in EU Member States is not yet sufficient enough to overcome the tax barrier. As TGE indicates, it may only be a matter of time before the EU Member States adjust their legislation in line with the ECJ rulings and TGE becomes superfluous. Currently though, there is still demand for the services TGE provides. TGE covers nineteen countries and serves more than 300 organisations and 3,000 donors.¹⁴⁸

144 http://kbfus.org/wp-content/uploads/2016/10/AFF_american-friends-funds.pdf. Accessed 14 June 2017.

145 https://kbfus.networkforgood.com/projects?cat=545&projects_page=1&search_string=&utf8=%E2%9C%93%2F. Accessed 14 June 2017.

146 <http://kbfus.org/our-services/services-for-donors/kbfus-art/>. Accessed 14 June 2017.

147 http://kbfus.org/wp-content/uploads/2015/01/KBFUS-ART_Brochure-online_correct.pdf. Accessed 14 June 2017.

148 www.transnationalgiving.eu.

One of the beneficiaries of TGE is the Royal Concertgebouw Orchestra in the Netherlands.¹⁴⁹ If one of the donors resides in another country that is covered by TGE, the donor can make a donation to the Orchestra and benefit from a tax incentive. Let us assume their donor resides in Spain. In Spain a donation qualifies for a tax credit if the recipient meets the requirements under article 16 of Law 49/2002 of 24 November 2002 ‘law concerning the tax regime of non-profit entities and tax incentives for patronage’. Since it refers to the term foundation as a foundation created under Spanish law, it entails that the Royal Concertgebouw Orchestra should establish itself as a Spanish foundation in order to meet the requirements (Von Hippel, 2014).

To circumvent the need for the Royal Concertgebouw Orchestra to establish itself in Spain to be eligible to receive donations with a tax credit in Spain, the donor or the orchestra could approach TGE. The Dutch partner of TGE validates whether the orchestra is eligible for tax deductible donations under Dutch tax law. If the orchestra turns out to be eligible, which is the case, the donor can make his donation to the Spanish TGE partner, which is the Fundacion Carlos de Amberes. Since the Fundacion Carlos de Amberes holds a PBPE status under Spanish tax law, the donor can deduct the donation from his taxable income. The Fundacion Carlos de Amberes then transfers the donation to the Royal Concertgebouw Orchestra. For this service, a fee of 5% is retained for donations up to EUR 100,000 and a 1% fee if the amount exceeds this number. The fee will, however, never be more than EUR 15,000.¹⁵⁰

By using the services of TGE, the donor knows beforehand that his donation will be tax deductible. This would not be the case if the Royal Concertgebouw Orchestra were to rely on EU jurisprudence. Furthermore, for the Royal Concertgebouw Orchestra, the costs for the service of TGE are transparent. This is not the case when the Royal Concertgebouw Orchestra has to opt for the PBPE status in Spain, especially since it might run the risk of having to go to court to overcome the tax barrier.

4.5.3 Reflections on intermediary organisations

The intermediary charity fulfils the requirements to be allowed to receive gifts with a tax benefit. For foreign PBOs, this is difficult or cumbersome. By doing so, it forms a buffer between the tax authorities’ concerns of inadequate supervision and misuse of funds and the foreign PBOs (Heidenbauer et al., 2013, p. 624). The intermediary takes responsibility for the funds it receives, ensuring that they are spent adequately and are in line with domestic legislation. With every single transaction it engages its own reputation, much like a brand name of franchise enterprise (Norton, 1988). The intermediary organisations take the risk of losing their own tax-exempt status if it engages in collaborating with untrustworthy initiatives (Solomon, 2008). To avoid this, intermediary organisations need to be strict in donating gifts to PBOs abroad and supervise whether the gift is eligible for a tax benefit. The supervision by the intermediary organisation adds another layer of administrative work – and thus expenses – to the cross-border donation. This diverges resources away from the ultimate beneficiary of the gift (Flaherty, 1992, p. 345). As long as the expenses for the intermediary charity are smaller than the cost of setting up a charity in the country of the donor, this is perceived as a good intermediate solution, specifically for one-time donations and relatively small donations (Heidenbauer et al., 2013, p. 624).

149 <http://www.transnationalgiving.eu/en/beneficiary/nl/s/>. Accessed 14 June 2017.

150 <http://www.transnationalgiving.eu/en/procedure/>. Accessed 14 June 2017.

There are several prerequisites for the structure of the intermediary charity to work. The requirements imposed by the donor's tax jurisdiction (host country) play an important role here. The country where the donor pays their taxes has to permit organisations with a charitable status to spend their donations on activities abroad. If this is not the case, like it is in Australia, the donor cannot utilise the intermediary charity to donate to a foreign charity (Heidenbauer et al., 2013, p. 615).

Furthermore, the local tax legislation should not designate intermediary organisations as fiscally transparent entities. If the tax authorities decide that the donation is made through the intermediary charity solely for tax purposes and domestic legislation stipulates that this donation should be considered to be made directly from the donor to the foreign charity, the intermediary charity cannot provide a solution to obtain a tax incentive in a cross-border situation.

In the Netherlands, for example, the deductibility of charitable gifts is limited to organisations that are registered as PBPEs. If such a PBPE merely functions as a conduit, the tax authorities look through the conduit to the final recipient. If the final recipient is not registered as a PBPE, the donation cannot be deducted, even if the conduit does have PBPE status. In a case where the final recipient is a PBPE, only the sum that is received by that recipient can be deducted from taxable income.¹⁵¹ A PBPE is regarded as a conduit if it forwards a gift to another organisation on the request of the donor and not in the interest of its own public benefit goals and, thus, the tax authorities see through it.

Besides, in many jurisdictions, the mission of the recipient charity has to be consistent with that of the intermediary party and it has to spend its funds in line with the legislation that applies to the intermediary charity, as the intermediary charity in some instances may be legally responsible for the operations and activities of the recipient charity, like in the US (Satorius & Pollard, 2010). If the recipient charity or the intermediary charity does not respect the local legislation and abuses the tax status of the intermediary charity, the intermediary charity could lose its charitable status. In Austria, there is a special provision for intermediary organisations that act exclusively as donation collectors. If it is located in Austria it has to meet a separate set of requirements and then the donation can be granted a tax benefit. The funds the intermediary charity collects must be forwarded to:

- a) An entity located in the EU or EEA and included in the list held by the Austrian Ministry of Finance;
- b) Other entities directly pursuing benevolent purposes within the EU/EEA territory; or
- c) Entities pursuing purposes related to the fight against poverty and distress in developing countries, the support of national and international cases of disaster, the protection of the environment or animal welfare.

The entities under the last two points are responsible for ensuring the proper use of the donations. All these organisations have to meet annual auditing requirements (Heidenbauer et al., 2013, pp. 616-617).

For donors who regularly want to give to foreign PBOs, it might be interesting to set up their own foundation. However, this also brings about regulatory and administrative requirements of which donors must be aware. When comparing an intermediary charity initiated by the donor with an intermediary charity that professionally offers its services, tax advisor 4 says:

¹⁵¹ NL: decree of 19 December 2014, BLKB2014/1415M and case 14/06262, *Online donatiemodule geen ANBI*, 22 April 2016, Dutch High Court.

“I, sometimes, also tell my clients – who say ‘I want my own foundation’ – you have to know that you also take on a lot of hassle. You have to meet all PBO requirements. You are not the sole board member. [The PBO] has to be officially independent. So you have to gather some people [to join you on the board]. It also includes some administrative obligations. So it is not just fun to have [a foundation]. It also has other sides to it. So if someone does not have very specific plans to actually actively do something with [the foundation] then you may ask yourself whether it is worth it. You might be better off donating to an existing PBO. And then you also obtain a tax benefit in principle.”

Finally, it is noteworthy to mention that in some countries, such as Belgium and Luxembourg, intermediary organisations are also used in the domestic situation. The King Baudouin Foundation, for example, allows charitable organisations who do not have the right to write out a tax certificate to open a project account at the King Baudouin Foundation. The donor gives to the King Baudouin Foundation – who can hand out tax certificates – and then receives a tax benefit. The King Baudouin Foundation hands over the donation to the intended beneficiary charity.¹⁵² Arts organisation 29, for example, makes use of this facility.

4.6 Concluding remarks

There are several public initiatives available to overcome the tax barrier to cross-border charitable giving and also the charity sector and other private parties can make an effort to get access to solutions that allow donors to receive a tax incentive on their gift to an arts organisation abroad. Solutions to tax barriers on cross-border charitable giving exist on different legal levels. On a unilateral level, governments can remove residence requirements from their tax provisions. Tax treaties are bilateral solutions. Examples of supranational solutions are the enforcement of EU law and the withdrawn proposal for a European Foundation. Private initiatives are solutions that make strategic use of existing tax legislation, namely: (1) establishing a charity in multiple countries; (2) ‘friends of’ organisations; and (3) the strategic use of organisations with charitable status to allow donors to receive tax incentives in a cross-border situation.

Depending on the legal context of the countries where the cross-border transaction takes place, one solution might be effective in solving the tax barrier where another fails. It is important to have in place the requirements imposed on qualifying gifts and the conditions imposed on PBOs, as well as access to bilateral tax treaties and supranational agreements. For the private initiatives to work, for example, it is necessary that charitable organisations in the donor’s tax jurisdiction are allowed to spend their funds abroad. For a public solution to work, the type of control required is of importance. From the perspective of PBOs, home country control would be most efficient, since meeting one set of requirements is sufficient in that case. Host country control would entail that if the charity wants to raise funds both in its residence country and abroad, it must meet multiple sets of requirements, which can put severe restrictions on the charity. This also holds true when a country requires both home country control and host country control. In theory, it could even be impossible to meet

¹⁵² <https://www.kbs-frb.be/nl/Centre-for-Philanthropy/Our-philanthropy-vehicles/Philanthropy-close-to-home>. Accessed 14 June 2017.

the requirements of both the home and host country if they have conflicting requirements. Therefore, the success of a solution largely depends on the kind of control that the legislator chooses. In any case, it is a prerequisite that a tax incentive is available in the donor's tax jurisdiction in the first place in order for a tax incentive to apply in a cross-border situation.

It is valuable to know which solution is most successful in overcoming the tax barriers to cross-border charitable fundraising for arts organisations. This provides arts organisations and their donors with the necessary information to lobby for a certain public solution, or to choose to invest in creating their own networks to be able to benefit from the potential donors located abroad. Chapter 9 evaluates the solutions described in this chapter based on the assessment framework that is developed in Chapter 8. In the next chapter, however, first the different approaches that countries hold towards the application of tax incentives on cross-border donations are explored and categorised.

Analysis of tax legislation regarding cross-border charitable giving¹⁵³ **5**

Countries hold different approaches towards the application of tax incentives to cross-border charitable donations. The broad range of approaches are reflected in the tax legislation of each country. I cluster the different approaches into four ideal types, based on the differences in tax legislation. I distinguish ‘closed tax jurisdictions’, ‘restrictive tax jurisdictions’, ‘relatively open tax jurisdictions’ and ‘open tax jurisdictions’. This allows for comparison between the different approaches.

Per category examples are provided of tax jurisdictions belonging to that category. The country examples are selected based on the jurisdictions from which the interviewed arts organisations receive donations. Furthermore, countries have been selected that represent the extremes in the range of approaches. There are countries that fall outside the scope of the four categories; namely those countries that do not provide tax incentives for donations in the domestic situation. These belong to ideal type zero: ‘countries without a tax incentive for charitable gifts’. After discussing this ideal type, the chapter continues with the four ideal types that do provide a tax incentive in the domestic situation.

5.1 Ideal type 0: Countries without a tax incentive for charitable gifts

There are countries that do not provide a tax incentive for individual charitable donations, neither in domestic situations, nor in cross-border situations. Individual donors in Finland, for example, did not receive a tax benefit on charitable donations until 2016.¹⁵⁴ In Finland currently, only donations to higher educational institutions are deductible. Donations to other charities are still not granted a tax incentive.¹⁵⁵ Sweden is also a country where currently no tax incentive exists for charitable donations in PIT. Since no tax incentives exist in the domestic situation, they are also not applicable in cross-border situations. Therefore, no inequality exists between the domestic situation and the cross-border situation when one wants to make a gift. The countries that do not apply a tax incentive and therefore cannot be included in any of the four other categories.

153 The core section of this chapter is mostly based on the following article. Buijze, R. (2016). Approaches towards the Application of Tax Incentives for Cross-Border Philanthropy. *Intertax*, 44(1), 14-28.

154 L. Ambagtsheer-Pakarinen, *Finland – Individual Taxation* sec. 1.7.1, Country Surveys IBFD. http://online.ibfd.org/collections/gthb/printversion/pdf/gthb_fi.pdf. Accessed 8 April 2015.

155 L. Ambagtsheer-Pakarinen, *Finland – Individual Taxation* sec. 1.7.1, Country Surveys IBFD. https://online.ibfd.org/kbase/#topic=doc&url=%252Fcollections%252Fgthb%252Fhtml%252Fgthb_fi_s_001.html&WT.z_nav=out-line&hash=gthb_fi_s_1.7.1. Accessed 29 March 2017.

5.2 Ideal type 1: Closed tax jurisdictions

Countries that stimulate charitable gifts through tax incentives in the domestic situation, but not in a cross-border situation, are considered closed tax jurisdictions. In their tax system, these countries provide a benefit to benefactors of charitable organisations, for example, through a tax credit or deduction from taxable income. Closed jurisdictions, however, have neither domestic legislation that allows for a tax benefit for cross-border donations nor bilateral or supranational agreements with other countries on tax incentives for cross-border donations. Examples of these countries are Australia and Japan. Countries that use a tax designation scheme (also known as percentage schemes) typically also belong to this ideal type, since the charities included in these schemes are usually only domestic organisations. Jurisdictions that use a tax designation scheme, however, are not closed jurisdictions by definition. It depends on the way in which the specific jurisdiction adopted the tax designation scheme.

5.2.1 Australia¹⁵⁶

In Australia gifts by individuals to specific recipient organisations are deductible from taxable income.¹⁵⁷ Organisations that are eligible to receive tax deductible gifts have to qualify as DGR. The requirements for these organisations are specified in the Income Tax Assessment Act 1997.¹⁵⁸ One of the requirements is that the organisation must be in Australia. This is a strict requirement, entailing that the organisation must be established and operated in Australia.¹⁵⁹ Due to this condition, donations to organisations in other countries are not tax deductible in Australia based on domestic tax legislation.

Whether DGRs may spend gifts abroad – and thus whether an intermediary charity can provide a solution for tax-efficient cross-border giving – currently remains uncertain (Silver, McGregor-Lowndes, & Tarr, 2017). This is due to recent changes in the interpretation of the law. For the last 50 years, the Australian Tax Offices have interpreted the ‘in Australia’ criteria as the organisation having to be established and operated in Australia with their purposes and beneficiaries also in Australia.¹⁶⁰ The only organizations that were allowed to have their purposes and beneficiaries outside Australia were overseas aid funds, developed country disaster relief funds, DGRs listed by name in the income tax law and public funds on the Register of Environmental Organisations. Still, these organisations had to be established and operated in Australia.¹⁶¹ This did allow a little room to contribute to a cause abroad with the benefit of a tax incentive, however, the gift could not benefit a foreign organisation, since the DGR had to provide the services.¹⁶² Therefore, an Australian DGR could not function as an intermediary charity to make a cross-border donation. It currently seems that an Australian DGR is allowed to have its purposes and beneficiaries outside Australia. A public ruling will hopefully give

156 For an extensive discussion of the treatment of cross-border donations under Australian tax law see: Silver, N. S. (2016). *Beyond the water's edge: Re-thinking the tax treatment of Australian cross-border donations* (Doctoral dissertation, Queensland University of Technology).

157 AU: Income Tax Assessment Act 1997 Sub-Division 30A.

158 AU: Income Tax Assessment Act 1997 Sub-Division 30B.

159 Australian Taxation Office, *In Australia*, https://www.ato.gov.au/non-profit/getting-started/endorsement/deductible-gift-recipient-%28dgr%29-endorsement/can-you-be-endorsed-as-a-dgr-/#In_Australia. Accessed 30 March 2017.

160 Australian Taxation Office, *In Australia*, https://www.ato.gov.au/Non-profit/Guides/In-detail/Guides---booklets/Gifts---fundraising/GiftPack/?anchor=In_Australia#In_Australia. Accessed 8 June 2015.

161 *Ibid.*

162 Australian Taxation Office – Tax Ruling TR 2003/5 at para. 131.

some guidance on the spending of funds abroad by DGRs. Until the Australian Tax Office issues a public ruling however, uncertainty remains.

Even though Australian DGRs were highly restricted in spending their funds abroad, Stewart (2012) points to anecdotal historical evidence that an Australian Trust, recognised as a DGR, may have been used as an intermediary organisation. Silver et al. (2017) also point to workarounds using third-party intermediaries to send funds abroad. The donors, however, could not oblige the third-party to contribute their gift to a particular foreign organisation, since this would have undermined the tax deductibility of the gift. In the domestic tax legislation, there was thus next to no room to obtain a tax incentive when contributing to a foreign charity.

Australia has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations,¹⁶³ nor is it part of a supranational agreement on this issue. Therefore, and because of the current lack of clarity concerning the ‘in Australia’ requirement, Australia qualifies as a closed tax jurisdiction for now. However, if a public ruling relaxes the ‘in Australia’ requirement and the use of intermediary charities becomes a solution to obtaining a tax incentive on a cross-border gift, Australia would become a restrictive tax jurisdiction.

5.2.2 Japan¹⁶⁴

Japanese taxpayers can benefit from a tax incentive when they contribute to a Japanese charity. They can choose between deducting the donation from taxable income or a tax credit of 40% of the amount donated.¹⁶⁵ The receiving charity needs to have a specific authorisation from the National Tax Administration for the tax incentive to apply. The Japanese charity can qualify for this authorisation if it is a Public Interest Corporation, an organisation eligible for ‘designated contributions’ or a Special Non-profit Corporation.¹⁶⁶ An overview with requirements that charities have to meet to receive authorisation from the National Tax Administration is not available. However, foreign charitable organisations have not received this authorisation and from that I derive that tax incentives do not apply for cross-border donations. Eligible Japanese charities can contribute to charitable causes abroad. However, the foreign causes have to be exactly in line with the Japanese charity’s aims and meet certain strict requirements, as I interpret from the website of a Japanese charity active abroad.¹⁶⁷ The Japanese tax legislation thus also seems to leave next to no room for tax incentives for cross-border donations.

Furthermore, Japan has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations,¹⁶⁸ nor is Japan part of a supranational agreement on this issue. Therefore, Japan is characterised as a closed country when it comes to the applicability of tax incentives for cross-border charitable donations.

163 All bilateral tax treaties of Australia that were in force on 8 June 2015 were consulted on IBFD.org. The search term ‘charit’ was used to track potential provisions on charitable donations.

164 For Japan, no legislation could be consulted. Instead, the country details are based on the Country Information as provided by the Council on Foundations on the website of the United States International Grantmaking and the fiscal information provided by the IBFD Research Platform.

165 Professor Kazuko Goto, 17 June 2015.

166 Council on Foundations, *Japan*, <http://www.cof.org/content/japan>. Accessed 29 March 2017.

167 Japan Foundation, *Designated Donations Program*, <https://www.jpf.go.jp/e/about/donation/program/index.html>. Accessed 29 March 2017.

168 All bilateral tax treaties of Japan that were in force on 29 March 2017 were consulted on IBFD.org. The search term ‘charit’ was used to track potential provisions on charitable donations.

5.2.3 Hungary

Residents of Hungary who pay income tax in Hungary are entitled to designate 1% of their income tax to specific charitable organisations.¹⁶⁹ The charitable organisations qualifying for the tax designation scheme have to be established in Hungary and have to pursue a public benefit activity.¹⁷⁰ This public benefit activity must directly or indirectly help accomplish a state or municipal task as defined within a law. Therefore, the public benefit activity has to refer to a suitable law (Von Hippel, 2014, p. 39).

Although Hungary is an EU Member State, it avoids granting tax incentives on cross-border donations to charities in other EU Member States through its tax designation scheme, as only charitable organisations established in Hungary are eligible.¹⁷¹ Before 1 January 2011, a tax base deduction applied in Hungary. Individual donors could receive a tax credit of 30% of the value of their donation, with an additional 5% credit on regular donations.¹⁷² The Hungarian government abandoned this incentive for individuals, possibly to avoid an infringement procedure of the EC. By doing so, they have made it impossible to stimulate a foreign charity through the tax system. Furthermore, Hungary has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.¹⁷³ For these reasons, Hungary is a closed tax jurisdiction.

5.3 Ideal type 2: Restrictive tax jurisdictions

In restrictive jurisdictions, a tax incentive can be obtained for cross-border donations, based on bilateral tax treaties or supranational agreements. However, the range of countries in which these agreements exist are limited; I set a limit at a range of agreements with ten countries. Furthermore, countries with more agreements, but where it is cumbersome in practice to receive a tax benefit, are included in this ideal type. I add this criterion to avoid that those countries where it is legally possible to receive a tax benefit on a cross-border donation, but nearly impossible in practice, to end up in the 'relatively open' category. For example, EU Member States need to allow for tax incentives in cross-border situations. However, in practice, it proves to be extremely difficult in some Member States to obtain this benefit, since EU law based on the TFEU and ECJ case law is simply not applied.

A local intermediary organisation might provide a solution in this type of jurisdictions to obtain a tax incentive for cross-border donations. These jurisdictions try to restrict the tax incentives to the domestic situation as much as possible and are therefore effectively in the category 'restrictive jurisdictions'.

5.3.1 Belgium

In Belgium a tax credit applies to donations to qualifying charities.¹⁷⁴ Gifts to organisations that allow for a tax credit are organisations that are either explicitly approved by law, recognised by the Ministry of Finance or have received recognition by royal decree.

169 HU: Act CXXVI of 1996.

170 HU: Act CXXVI of 1996, s. 4 jo Act CLVI of 1997, para. 2.1.

171 HU: Act CXXVI of 1996, s. 4.

172 Transnational Giving Europe & European Foundation Centre, *Questionnaire for Hungary*, http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_Hungary.pdf. Accessed 8 June 2015.

173 All bilateral tax treaties of Hungary that were in force on 29 March 2017 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

174 BE: art. 145/33 §1 Wetboek van de Inkomstenbelasting 1992.

Universities, academic hospitals, the Royal Academies, the Red Cross of Belgium or departments of the Red Cross in other EEA Member States, the King Baudouin Foundation, the Palace of Fine Arts and the Royal Theatre 'La Monnaie / De Munt' are, amongst others, explicitly included as charitable organisations by law. Belgian qualifying charities can be used as intermediary charities. A list of qualifying organisations can be consulted on the website of the Belgian tax authorities.¹⁷⁵

Cash gifts to qualifying organisations are rewarded with a tax credit in Belgium. This also applies to donations to associations or institutions in other EEA Member States as long as the donor can provide proof that the association or institution qualifies as an equivalent of a Belgian qualifying charity and has been recognised in a similar manner by the other Member State. This entails that the charity in the EEA Member State needs to meet both requirements in the home country and the host country.¹⁷⁶ The process on how to obtain equivalence, however, remains unclear. There has been communication from the head of the central service in charge of deductible gifts, where it was confirmed that foreign charities can seek some certainty in advance on their tax status by requesting a ruling at the Ruling Commission. By April 2016, however, only two (positive) rulings were given to foreign PBOs.¹⁷⁷

The tax credit also applies to in-kind donations that belong to the movable heritage of Belgium or are of international fame according to the Ministry of Finance. Furthermore, the beneficiary of the donated work has to be a national museum or a community, a region, a province, a municipality or a public centre for social welfare, under the condition that these public entities designate the work of art to their museum.¹⁷⁸ This measure does not apply to donations to National Museums in other countries.¹⁷⁹ Belgium has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.¹⁸⁰ Since cash donations to charities in other EEA Member States are rewarded with a tax incentive, but it is not entirely clear how foreign PBOs should conduct the comparability test and it proves to be difficult in practice, Belgium is an example of a restrictive jurisdiction.

5.3.2 The United Kingdom

Donations by individuals can benefit from 'Gift Aid' in the UK. This entails that donations are deemed to be made under the deduction of basic rate tax, which the charity can then reclaim from the UK tax authorities (HMRC).¹⁸¹ For Gift Aid to apply, the receiving organisation needs to be recognised by the HMRC as a charity.

Effective 1 April 2010, for Gift Aid, the law relating to charity exemption and the definition of 'charity' was extended to include charities established in the EU and other EEA countries,¹⁸² since the UK, as an EU Member State, may not discriminate between comparable

175 List with organisations eligible to receive gifts with a tax credit in Belgium: <https://financien.belgium.be/sites/default/files/downloads/116-lijst-instellingen-20170302.pdf>. Accessed 25 March 2017.

176 BE: Article 145/33 §2 Wetboek van Inkomstenbelastingen 92.

177 Houben, Francis. 14 April 2016. Information provided at the European Foundation & Transnational Giving Europe roundtable on the taxation of PBOs in Europe. Also see Transnational Giving Europe & European Foundation Centre, *Questionnaire for Belgium*. http://www.transnationalgiving.eu/wp-content/uploads/2017/09/FRB-TGE_EFC_Belgium-2016.pdf. Accessed 25 March 2017

178 BE: Article 145/133 §1(4^o) Wetboek van Inkomstenbelastingen 92.

179 BE: Article 145/33 §2 Wetboek van Inkomstenbelastingen 92.

180 All bilateral tax treaties of Belgium that were in force on 29 March 2017 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

181 UK: Income Tax Act 2007 Ch. 2 of Part 8 s. 521.

182 UK: Finance Act 2010 Sch. 6 Part 1 s. 1.

charitable organisations in other EU Member States.¹⁸³ In practice, however, it is still difficult for foreign organisations to obtain the charity status. The HMRC decides on a case-by-case basis whether foreign organisations meet the UK charity requirements. The foreign organisation must prove that it would qualify as a charity if it were established in the UK. Furthermore, it must prove that it is managed by fit and proper persons.¹⁸⁴ By December 2013, 103 foreign organisations had applied to qualify as a charity in the UK; only nine were accepted. Most organisations were rejected because they did not meet the requirements for charities under UK law.¹⁸⁵ With the upcoming withdrawal of the United Kingdom from the EU, there is no outlook for UK taxpayers for a change that would make it easier to obtain a tax benefit on a cross-border donation.

The UK has not concluded any bilateral tax treaties that include a provision on the mutual application of tax incentives to charitable donations.¹⁸⁶ Since it is practically cumbersome to register as a charity in the UK and the UK did not conclude bilateral tax treaties in which a provision on charitable contributions is included, the country is classified as a restrictive jurisdiction.

5.3.3 The United States

In the US, donations can be deducted from federal income tax when made to a qualifying organisation. The deductions allowed and their conditions and limitations are described in detail in the Internal Revenue Code (IRC).¹⁸⁷ Qualifying organisations must be organised and operated for exempt purposes, which are described in the IRC under section 501(c)(3). Therefore, these organisations are also referred to as US 501(c)(3) organisations.

To qualify as a 501(c)(3) organisation, the charity has to be created in or under the laws of any state in the US, the District of Columbia or any territory of the US (including Puerto Rico). This puts high territorial restrictions on the qualifying organisations, and all organisations that are not established under the laws of the US are excluded. This makes the US restrictive towards tax incentives for cross-border donations. It does not, however, restrict qualifying organisations from spending their assets within the US. This creates room for US charities to engage in activities abroad, to function as local intermediary charities and for foreign charities to engage in the American fundraising market by establishing themselves under US law. This can be done by establishing a ‘friends of’ organisation in the US. This organisation is set up under the laws of the US to raise funds in the US for a specific foreign charitable organisation. Donors that wish to contribute to a charity abroad can also establish a donor-advised fund under a US 501(c)(3) organisation. The US 501(c)(3) organisation owns, controls and administers the funds, but the donor can make recommendations on how the funds are spent.¹⁸⁸

The only charities established under foreign law that can receive tax deductible gifts are those created under Israeli, Mexican or Canadian law. This is due to the income tax treaties

183 Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

184 Finance Act 2010 Sch. 6 Part 1 s. 2.

185 As presented by I.A. Koele during the seminar *Cross-Border Philanthropy in Europe after Persche and Stauffer: from Landlock to Non-Discrimination* (13 Feb. 2014).

186 All bilateral tax treaties of the UK that were in force on 29 March 2017 were consulted on IBFD.org. The search term ‘charit’ was used to track potential provisions on charitable donations.

187 US: IRC, s. 170.

188 US: IRC, s. 170 (f)(18).

that the US holds with these countries.¹⁸⁹ For the gift of a US taxpayer to an Israeli, Mexican or Canadian charity to be deductible, the charity must be tax exempt in its country of residence and should meet the US requirements for qualifying organisations if it were established in the US. Furthermore and foremost, the donation is only deductible from the source income generated by the US taxpayer in the country where the charity is resident. The donations are only deductible from that source income for a maximum amount that can be determined by applying the US percentage limitations.¹⁹⁰

5.3.4 Spain¹⁹¹

In Spain, donors can receive a tax credit for donations to qualifying organisations. Donations can be made in cash and in-kind.¹⁹² Transnational Giving Europe has Spanish partners, from which I derive that Spanish charities are allowed to act as local intermediary charities.¹⁹³

Donors can only receive a tax credit for donations to foreign organisations when a branch of that organisation is registered with the Spanish Register of Foundations and carries out its activities in Spain. To be included in the register, the PBO must meet all the requirements under the Non-profit Foundations Law 49/2002 and the deed of incorporation of the foundation must be translated into Spanish.¹⁹⁴ Setting up a 'friends of' organisation in Spain for fundraising purposes does not solve the problem, as in the Non-profit Foundations law, raising funds and/or investments is not considered to be 'activities'.¹⁹⁵

Although Spain is an EU Member State, it does try to restrict the application of tax incentives to charitable donations to Spanish charities by requiring that charities resident in other EU Member States to have a branch in Spain and to carry out activities in Spain. Spanish donors to non-profit entities located in other EU Member States or EEA Member States without a branch in Spain do not get the same tax incentives as Spanish donors contributing to Spanish charities. This is considered discriminatory by the European Commission and is not in line with the free movement of capital. Therefore, the European Commission started an infringement procedure, requesting that Spain amends its legislation.¹⁹⁶

In its reasoned opinion, the European Commission also requested Spain to amend its legislation concerning the taxation of certain income obtained by foreign non-profit entities, as Spanish non-profit entities are exempt from taxation on certain income, and foreign non-profit entities cannot benefit from this exemption.¹⁹⁷ Foreign non-profit entities have been successful in appealing in front of the High Court of Madrid¹⁹⁸ and the Spanish Court

189 Canada-United States Income and Capital Tax Treaty (1980 as amended through 2007); Israel-United States Income Tax Treaty (1975); and Mexico-United States Income Tax Treaty (1992 as amended through 2002).

190 Canada-United States Income and Capital Tax Treaty (1980 as amended through 2007); Israel-United States Income Tax Treaty (1975); and Mexico-United States Income Tax Treaty (1992 as amended through 2002).

191 For Spain no legislation could be consulted. Instead, the country details are based on the IBFD Tax Research Platform and the Spanish country profile of Transnational Giving Europe.

192 *Ibid.*

193 Transnational Giving Europe & European Foundation Centre, *Questionnaire for Spain*, http://www.transnationalgiving.eu/wp-content/uploads/2017/09/TGE_EFC_CountryProfile_Spain_2016.pdf. Accessed 29 March 2017.

194 *Ibid.*

195 European Foundation Centre & Transnational Giving Europe, *Meeting on Cross-border taxation of philanthropy in Europe – Summary note*. 14 April 2016.

196 Case No 2013-4086, Press Release 19 November 2015, http://ec.europa.eu/taxation_customs/common/infringements/infringement_cases/bycountry/index_en.htm.

197 http://europa.eu/rapid/press-release_MEMO-15-6006_en.htm.

198 ES: High Court of Madrid, 19 November 2013, Case 328/2011.

of Appeals¹⁹⁹ against taxation of their Spanish income, for which comparable Spanish entities would be exempt. For a more elaborate discussion of the taxation of Spanish income by foreign foundations, I refer to the article by De Urrutia Coduras (2016).

Spain has not concluded any bilateral tax treaties that include a provision on tax incentives for donors on charitable contributions.²⁰⁰ For all these reasons, Spain is a restrictive jurisdiction.

5.4 Relatively open tax jurisdictions

A more moderate category are the relatively open tax jurisdictions, which do allow for tax incentives on cross-border donations, but mainly based on tax treaties, supranational agreements and through local intermediary charities. I set a limit at the amount of ten or more countries with which the country has agreed to allow for tax incentives on cross-border donations. Furthermore, the facts and circumstances make it practically feasible to obtain a tax benefit on a cross-border donation.

5.4.1 France

Individual donors can get a tax credit for donations to qualifying PBOs, which are organisations with a general interest status and organisations with a public benefit status.²⁰¹ To obtain this status, organisations must adopt articles of association that comply with the model articles of association set out by the Council of State and satisfy requirements regarding the financial viability and size of the organisation, next to engaging primarily in general interest activities.²⁰² French PBOs can spend their funds abroad, and thus they can function as local intermediary charities for cross-border donations. France has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.²⁰³

Donations to PBOs in EU or EEA Member States can also benefit from the available tax credit if several requirements are met. For the tax credit to apply, the foreign PBO, first of all, has to be established in a country which signed a Convention on Mutual Administrative Assistance in Tax Matters with France that includes a clause for assistance against tax fraud or evasion. Second, it has to meet the French requirements for qualifying PBOs. For some time, it was unclear when a foreign organisation would meet the French requirements.²⁰⁴ However, in a case on a British charitable trust, the *Conseil d'État* decided that the French law shall be applied with some flexibility.²⁰⁵ In the case concerned, the governors of the British charitable trust received a remuneration for their work that exceeded the remuneration set by the French tax authorities. The *Conseil d'État* considered the remuneration of the governors of the British charitable trust justifiable, though, as under British law they are subject to larger liabilities. In its judgment, the *Conseil d'État* explicitly states that the applicable legislation in the resident country of the PBO should be taken into account when deciding whether the

199 ES: Court of Appeals, 29 January 2015, Case 456/2011.

200 All bilateral tax treaties of Spain that were in force on 29 March 2017 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

201 FR: Articles 200 and 238*bis* Code Général des Impôts.

202 FR: Article 200 Code Général des Impôts.

203 All bilateral tax treaties of France that were in force on 29 March 2017 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

204 E. de Crouy-Chanel, *France*, in *Taxation of Charities* (F. Vanistendael ed., IBFD 2015), 278.

205 FR: case nr. 369819 and 369820 22 May 2015 Conseil d'État.

foreign organisation meets the requirements for French PBOs.²⁰⁶ Third, the foreign organisation has to obtain a special status from the French tax authorities.²⁰⁷ This status has a limited validity of three years, after which the organisation has to re-apply. In practice it proved to be rather cumbersome to obtain this status. Also, the impermanence of this status is an obstacle. However, as case law suggests that there is some flexibility to the application of the French requirements to foreign PBOs and the application regulations were published,²⁰⁸ improvements are expected and France is classified as a relatively open tax jurisdiction.

5.4.2 Germany

In Germany a deduction from taxable income applies for donations and contributions to PBOs.²⁰⁹ Both cash and in-kind donations qualify for tax deductibility. For the tax deduction to apply, the receiving organisation has to be recognised by the German tax authority as a PBO. This is done whenever the organisation pursues a public benefit purpose, a charitable purpose or a religious purpose which is included in the German Fiscal Code. Public benefit activities must be dedicated to the altruistic advancement of the general public in a material, spiritual or moral sense.²¹⁰ The qualifying organisation has to issue a donation certificate to the donor so that he can present it to the tax authorities to obtain the deduction. Since German PBOs can spend their assets abroad, German PBOs can serve as local intermediary charities, through which German taxpayers can make a gift to a foreign charity with the benefit of a tax incentive.

When direct donations are made to charities established in other EU or EEA Member States, these are also deductible, as is required of EU Member States. One of the requirements to be recognised by the German tax authorities as a qualifying PBO is that the activities of foreign PBOs are deemed to be able to contribute to the Federal Republic of Germany's international reputation.²¹¹ They could fulfil this requirement by (partially) conducting their tax privileged activities in Germany. In case the foreign PBO conducts its activities solely outside of Germany, the requirement can be met by carrying out activities that promote persons who live in Germany and are abroad for a limited amount of time.²¹² The effect – where the German tax authorities assume that German PBOs that conduct tax privileged activities abroad contribute to the international reputation of the Federal Republic of Germany – is not applicable to foreign PBOs.²¹³ In practice, however, the German tax authorities have not applied this requirement to limit the scope of the tax deduction, thus allowing German taxpayers to deduct their donations to foreign PBOs.

For a German taxpayer to be able to benefit from the tax deduction when a donation is made to a foreign PBO, the PBO has to be established in another EU or EEA Member State and the other state has to apply the mutual assistance directive in the field of direct taxation and taxation of insurance premiums as well as the mutual assistance directive on mutual

206 FR: case nr. 369819 and 369820 22 May 2015 Conseil d'État.

207 FR: Article 200 Code Général des Impôts and Annex III Art. 46 AW.

208 FR: NOR: FCPE1507471D <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000030491431>. Accessed 14 June 2017.

209 DE: Einkommensteuergesetz s. 10b.

210 DE: Abgabenordnung ss 52, 53 and 54.

211 DE: Abgabenordnung s. 51 para. 2.

212 DE: Anwendungserlass zur Abgabenordnung no. 7 of s. 51 Fiscal Code.

213 *Ibid.*

assistance for the recovery of claims relating to certain levies, duties, taxes and other measures.²¹⁴ Furthermore, the donor needs to provide the German tax authorities with all the necessary proof that the foreign PBO meets the requirements for qualifying PBOs. The requirements for this proof were once rather strict, but in a judgment of the German Federal Fiscal Court, these requirements were loosened, making it easier to obtain a tax incentive for a cross-border donation.²¹⁵

Germany has not concluded any bilateral tax treaties that include a provision on the mutual application of tax incentives for charitable donations.²¹⁶ Still, it is practically feasible for German taxpayers to obtain a tax benefit for cross-border gifts to ten or more countries because the fiscal authorities do not apply the requirements in the tax provision that could limit the scope of the tax deduction. Germany is therefore classified as a relatively open jurisdiction.

5.5 Ideal type 4: Open tax jurisdictions

Open tax jurisdictions are those countries that allow for tax incentives on cross-border donations, based on domestic tax regulations. They do so in cross-border situations with multiple countries. I set the limit at twenty or more countries. Regardless of whether donations are made domestically or internationally, tax privileges can be obtained. Thus, there is no discrimination between donations made to domestic charities and foreign charities. In both cases the donor receives the same tax privilege.

5.5.1 Luxembourg

The tax legislation in Luxembourg includes an incentive for gifts to charitable organisations. Arts and culture are included in the list of public benefit purposes. Benefactors of arts organisations can, therefore, obtain a tax deduction in their personal income tax declaration.²¹⁷ In line with the non-discrimination principle in EU law, Luxembourg also allows this tax benefit on donations to equivalent charities in other EU Member States. For a charity to be equivalent to a qualifying charity in Luxembourg, the donor has to present the necessary proof that the beneficiary is an equivalent charity. First, the donor has to show that the recipient is a public benefit organisation in its country of residence and, subsequently, is eligible to receive gifts with a tax benefit within its country of residence and is exempt from income tax and wealth tax.²¹⁸ This circular includes a model certificate.²¹⁹ The model certificate lists four requirements that must be certified by a representative of the foreign recipient charitable organisation:

1. When the organisation was established as a legal entity in its home country and that it meets the requirements of its home country.

214 EU: Council Directive 77/779/EEC of 19 December 1977 and Council Directive 2008/55/EC of 16 May 2008.

215 DE: German Federal Fiscal Court, 21 Jan. 2015, X R 7/13.

216 All bilateral tax treaties of Germany that were in force on 29 March 2017 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

217 LU: Art. 109 and art. 112 L.I.R.

218 LU: Circulaire du directeur des contributions L.I.R. n° 112/2 du 7 avril 2010 (déductibilité des dons versés à des organismes ayant leur siège dans un autre Etat et reconnus d'intérêt général selon le droit de ce dernier) http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi10/Circulaire_L_I_R_n__112-2_du_7_avril_2010.pdf. Accessed 29 March 2017.

219 *Ibid.*

2. The organisation directly and exclusively pursues one or more of the following nine purposes: art, education, philanthropy, worship/religion, science, social issues, sports, tourism or development cooperation.
3. That, according to the laws of the country of residence, these selfless aims are recognised as being of general interest and fiscally-favoured.
4. That the organisation was exempt from income tax and wealth tax in its home country in the year it received the donation and that such donations are also deductible by donors in its home country.

The organisation, furthermore, has to declare that it will deliver a copy of the organisation's fiscal approval to the donor on first demand. As this model certificate is available in French, German and English, language barriers are limited here.²²⁰

Interestingly, donors reported to receive a tax benefit on their charitable contribution to a recipient in a foreign EU Member State, without the model certificate. In these cases, it was sufficient proof that a donation was made by adding a bank statement of the gift to the tax declaration. In these cases, it did happen that the tax authorities requested a (translated) copy of the articles of association of the foreign charitable organisation, together with a letter that stated that the charity is recognised as a public benefit entity in its home country.

The Luxembourg tax authorities, with the proof provided by the donor, performs the comparability test for the specific tax incentive requested by the donor. The Luxembourg tax authorities, to a large extent, rely on the judgment of the tax authorities in the home country of the charity. In addition, the charity has to meet the substantive requirement of meeting the public benefit purpose as described in the Luxembourg legislation. Thus, a combination of home and host country control is used, where there is more emphasis on home country control.

Luxembourg is classified as an open tax jurisdiction, as it allows for tax incentives on cross-border donations with more than twenty countries based on domestic tax legislation.

5.5.2 The Netherlands

In line with EU law, the Dutch tax legislation does not put a geographical restriction on the tax benefits for gifts. Dutch taxpayers can deduct their gift – whether it is a domestic gift or a cross-border gift – from personal income tax when certain requirements are met. For the gift to be tax deductible, the recipient organisation has to qualify as a PBPE and be registered as such by the Dutch tax authorities. The Netherlands thus uses host country control. This holds for both domestic and foreign charities. Resident charities of the Kingdom of the Netherlands, another EU Member State or a state designated by the Ministry of Finance all have to meet the same requirements.²²¹ States designated by the Ministry of Finance are states with which the Netherlands has an information exchange agreement on personal income tax, corporate income tax, and gift and inheritance tax. If a charity resides in a country that does not have such an agreement with the Netherlands, it can still meet the requirements of a PBPE by accepting the obligation to provide additional information to the Dutch tax authorities.²²²

To obtain the PBPE status, an organisation has to meet a set of requirements, of which the most important requirement is that the organisation pursues the public benefit exclusively

²²⁰ *Ibid.*

²²¹ NL: article 5b AWR.

²²² NL: article 1c Uitvoeringsregeling AWR.

or almost exclusively (at least 90%). The following activities are considered to contribute to the public benefit: a) welfare; b) culture; c) education, science and research; d) protection of nature and environment, including the promotion of sustainability; e) healthcare; f) youth and eldercare; g) development; h) animal welfare; i) religion, ideology and spirituality; j) promotion of the democratic legal order; k) public housing; l) a combination of the above and; m) financial support, or support in another manner of a PBPE.²²³

By consulting the PBPE register at the Dutch tax authorities, the donor can see which organisations qualify to receive tax deductible gifts. Several arts organisations located outside the Netherlands have registered as a Cultural PBPE. It is not only arts organisations located within the border area of the Netherlands that can register as Cultural PBPE; the Emsländisches Kammermusikensemble, a chamber music ensemble in the German border town of Lingen, is registered as a Cultural PBPE in the Netherlands. Also, arts organisations located elsewhere register as such, such as the Tate Gallery in London, the Royal Museum for Fine Art and History in Brussels, the Museum of Modern Art in New York, the Museum of Contemporary Arts in San Diego and the San Diego Museum of Art in La Jolla.²²⁴

In addition to the PBPE status that can be obtained by foreign charitable organisations, the Netherlands in one instance allows for the application of tax incentives on charitable contributions based on the tax treaty with Barbados in which a provision is included on charitable contributions.²²⁵

Until recently, Dutch PBPE could function as an intermediary charity for cross-border contributions. Measures were taken to restrict the use of PBPEs as intermediary charities, however. First, in December 2014 the Ministry of Finance took the stance in a decree that a PBPE should not function as a conduit organisation.²²⁶ Since there is no distinction in Dutch tax legislation between Dutch PBPE and PBPE located abroad, this applies to both domestic as well as cross-border situations. The implication of this decree, however, is not yet clear. Second, in 2016 the Dutch Supreme Court judged in the case of a facilitator of an online donation platform that it is not a PBPE.²²⁷ In this jurisprudence, the Dutch Supreme Court further clarified that PBPEs that provide financial support to other PBPEs, or support PBPEs in another manner, should directly aim at serving the public benefit. To directly serve the public benefit, they should sufficiently specify in advance which PBPE they support. If a donation is made via an organisation that indirectly serves the public benefit, it is fiscally-transparent and the donation is considered to be a direct gift from the donor to the final recipient. This means that the tax incentive only applies if the final recipient has the PBPE status.

Since a tax incentive can be obtained on donations to foreign charitable organisations located in more than twenty countries, as long as they are registered by the Dutch tax authorities as a PBPE, the Netherlands qualifies as an open jurisdiction.

5.5.3 Barbados

In Barbados, donations to registered charities are deductible from taxable income.²²⁸

223 NL: article 5b AWR.

224 http://www.belastingdienst.nl/rekenhulpen/giften/anbi_zoeken/.

225 Article 22 Barbados-the Netherlands Income Tax Treaty (2006, as amended through 2009).

226 NL: Resolution of 19 Dec. 2014, nr. BLKB2014/1415M.

227 NL: Supreme Court 14/06262 22 April 2016.

228 IBFD, *Barbados – Individual Taxation – Country Surveys*, http://online.ibfd.org/kbase/#topic=doc&url=%252Flinkresolver%252Fstatic%252Fgthb_bb_s_1.7.1.&q=barbados&WT.z_nav=outline&colid=4915&hash=gthb_bb_s_1.7.1. Accessed 29 March. 2017).

To register as a charity, the organisation has to be established for charitable objects and purposes and operate for the public benefit.²²⁹ The Barbados Charities Act does not require charities to be established in Barbados and, therefore, also foreign charities can register as a charity in Barbados.

In Barbados' bilateral tax treaties with Mauritius, Mexico, the Netherlands, the Seychelles and Ghana (not yet in force), a provision is included on charitable contributions.²³⁰ The relevant article in these treaties reads:

Donations to charitable institutions.

1. *In the computation of the tax liability of a resident of a Contracting State for any taxable year under the income tax laws of that State, there shall be allowed as a deduction, subject to any conditions provided under the income tax laws of that State, donations to any organisation qualifying as a charitable institution under the income tax laws of the other Contracting State.*

2. *The competent authority of a Contracting State may consult the other Contracting State to determine whether an organisation qualifies as a charitable institution under the laws of that other State.*

Since the Barbados Charities Act does not require charities to be established in Barbados and because of the tax treaties in place, Barbados enables cross-border charitable gifts with a tax incentive. Therefore, it is classified as an open tax jurisdiction.

5.6 Conclusion

Countries have different approaches towards the application of tax incentives to cross-border philanthropy. Some countries, such as the Netherlands, are very open, providing the same tax incentives on charitable gifts that go abroad. Other countries, such as Australia and Japan, are closed and a tax incentive only applies if the majority of the donation is spent within the country. A wide variety of tax policies exist between these two extremes. I classified the different approaches into four ideal types, ranging from closed jurisdictions, restrictive jurisdictions, relatively open jurisdictions to open jurisdictions. Finally, there are countries that do not grant tax incentives on donations at all, neither in the domestic situation nor in the cross-border situation. Sweden is an example of such a country.

The categorisation of countries into the ideal types I suggested in this chapter gives an overview and structure to the broad range of approaches. Determining the position of one's own tax jurisdiction in the broad range of tax jurisdictions is not always straightforward, as nuances in tax law can complicate matters. However, the categorisation does provide a clear structure that provides guidelines to analyse a tax jurisdiction. By doing so, the use of the categorisation goes beyond the country examples given in this chapter. The ideal types contribute to the comparability of countries concerning the application of tax incentives to cross-border philanthropy. In the following chapters, the ideal types are applied to identify the optimal solution in place to obtain a tax incentive on a cross-border donation.

229 BB: Charities Act, Cap. 243.

230 Barbados-Mauritius Income Tax Treaty (2004); Barbados-Mexico Income Tax Treaty (2008); Barbados-the Netherlands Income Tax Treaty (2006, as amended through 2009); Barbados-Seychelles Income Tax Treaty (2007); Barbados-Ghana Income Tax Treaty (not yet in force).

6. Tax incentives and international donors

6.1 Introduction

The arts organisations I interviewed for this research receive gifts from many different countries, such as Belgium, Bermuda, Hong Kong, India, Italy, Mexico, Montenegro, the Netherlands, Peru, Poland, Russia, Sweden, Turkey, the AE, the UK, the US and Switzerland. In this and the following chapter, I explore the practice of international philanthropy for the arts. The following sub-question is answered:

3. *What does international philanthropy for the arts currently look like?*

The answer to this question provides the necessary context of international philanthropy for the arts. The criteria used by arts organisations when choosing a solution that enables tax efficient cross-border giving – which are discussed in Chapter 8 – find their origins in this context. Chapter 7 focusses on the practice of international fundraising. In this chapter, the focus lies on the use of tax incentives on cross-border donations and the donors who give to arts organisations abroad.

Section 6.2 explains how fundraisers deal with the tax incentives involved in cross-border gifts and which solutions they currently use to facilitate foreign donors with a tax benefit. Section 6.3 explores who the donors are that give across borders.

6.2 Tax incentives for cross-border donations

I start this chapter by exploring the role of tax incentives in international fundraising. I explore how arts organisations advertise tax incentives in their fundraising campaigns. In the next section I explore whether the tax incentives are used for cross-border donations. Then I turn to the solutions: Are fundraisers aware of these solutions and which solutions are most frequently used? And finally I address donors who themselves arrange a solution.

6.2.1 Advertising tax incentives

Since tax incentives decrease the cost of a gift and this nudges philanthropy (Gruber, 2011, pp. 540-542; Feld et al., 1983, pp. 26-27), it can be an interesting point for arts organisations to advertise the fact that donors can give to them with a tax benefit. From the analysis of the websites and brochures of arts organisations, it shows that all arts organisations advertise the tax benefits domestic donors can obtain when contributing to their organisation. Also in conversations with donors, the tax benefit is brought forward as an additional factor to convince donors to contribute.

Only those arts organisations that proactively raise funds abroad advertise the tax incentive for their foreign donors. Arts organisation 36, for example, mentions on its website how US, Italian and UK donors can obtain a tax benefit. Arts organisations 7, 16, 25, 26, 27 and 30 mention how the members of their foreign friends groups can obtain a tax benefit. Arts organisation 6 explains on its website how its American friends can obtain a tax benefit. It also mentions the tax-deductible amount for the different gift levels. Arts organisations that do not actively engage in international fundraising do not advertise the tax benefit on their website, even though they might have a structure in place that facilitates foreign benefactors with a tax benefit.

6.2.2 The use of tax incentives on cross-border donations

For arts organisations, tax incentives are a factor that can help them persuade donors. According to the fundraisers and tax advisors, however, tax incentives are not the main motive for donors to give to an arts organisation. Some foreign donors contribute without a tax benefit, such as one of the UK-based donors of arts organisation 13. Fundraiser 35 thinks that one of the Austrian donors of her organisation does not make use of a tax benefit on his contribution either. Fundraiser 21 expects that all his donors use a tax benefit, as they ask for a tax receipt, in order to deduct their gift from income tax. Fundraisers, however, do not always know whether their foreign benefactors contribute with a tax benefit. Fundraiser 11, for example, does not know whether donors from Hong Kong can benefit from a tax incentive, and if so, whether they make use of it.

Fundraisers seem to agree, though, that if possible, donors generally like to give with a tax benefit, as this decreases the cost of giving. This is in line with the findings on domestic philanthropy in general, as the literature review by Bekker & Wiepking (2011a) indicates. Fundraiser 3 has a US donor for whom the tax incentive was even a prerequisite for giving. For this donor, arts organisation 3 registered at an intermediary charity in the US. Arts organisation 24 also had a donor for whom the tax benefit was a prerequisite. It established a 501(c)(3) organisation for an American person who wanted to give. Fundraiser 24 says:

“Actually, it was him who said I would like to support that exhibition – it was back in [home country] – I would like to support this exhibition with my American company, but I can only do it if you have a 501(c)(3) and then we said ‘ooh, what is a 501(c)(3)? And then we started the whole process.’”

Arts organisation 1 also has experience with a US person for whom it was a prerequisite to obtain a tax incentive on his donation. This person wanted to donate paintings to arts organisation 1. Unlike the other organisations, arts organisation 1 was not able to facilitate its US donor with a tax incentive. Tax advisors were consulted and several options were suggested, but it turned out that giving the paintings to arts organisation 1 at this point would not be tax beneficial. Therefore, he did not donate the paintings but instead decided to give the artworks on loan to arts organisation 1. This demonstrates that if arts organisations are not able to facilitate their foreign benefactors with a tax benefit, there is a chance that the foreign donor renounces its intention to make a gift.

6.2.3 Tax knowledge among fundraisers

The tax aspects of cross-border gifts seem to be rather complex for fundraisers. Various interviewees mentioned during our initial contact that they could not take part in this research, as they had little or no knowledge on tax incentives for gifts from abroad. This already shows that they do not have much knowledge on tax legislation. When I explained the research and how fundraisers could contribute to it, the fundraisers usually agreed to participate in this research, with only a few exceptions.

The majority of fundraisers I talked to were quite convinced that they were familiar with the domestic tax incentives available for contributions to a PBO, as domestic fundraising is their priority. Fundraiser 10A during the interview mentioned that she is happy that she knows the available tax incentives for domestic cash donations. For these types of donations, she can confidently bring forward the tax advantages of contributing to arts organisation 10 as an additional argument to persuade potential donors. If a domestic donor wants to contribute an art object, fundraiser 10A is more cautious, as there is less certainty on the value of the gift and thus the tax benefit involved. Therefore, she consults fiscal experts when arts organisation 10 receives an in-kind gift. The same holds for donations from abroad. Fundraiser 10A is exemplary in this regard compared to other fundraisers I spoke to. The majority of fundraisers made themselves familiar with the current applicable domestic tax facilities for donations, but not with tax incentives for donations from abroad. Tax advisor 7 also observed that directors and fundraisers of PBOs do understand domestic tax incentives, and that they have difficulty understanding the principles underlying these tax incentives, let alone international tax law.

For some fundraisers it is a deliberate choice not to invest in international tax knowledge. Since arts organisation 9 has not been proactive in cross-border fundraising, its fundraiser did not do anything with the taxes involved in cross-border giving. Fundraiser 9 does not see this as a problem, as she says: *“Given that I know how [intermediary charity] works, I do know that it is feasible and it will not take very long before it is arranged. So if [arts organisation 9 receives a cross-border gift] we can still [provide a solution via the intermediary charity].”* Arts organisation 16 receives donations from one couple residing in a South American country. Director 16, however, did not look into the tax facilities in that country. She perceives these donations as too incidental to investigate the tax facilities. The fact that investigating tax issues involved in cross-border charitable giving is time consuming, but is not a priority of arts organisations, leads to *ad hoc* actions. Fundraiser 12, for example, says:

“When it occurs I will definitely look into it. So when I talk to a foreign benefactor who really wants to give a significant amount, then I have to make sure [...] I have to investigate how we can do this as tax-efficiently as possible. And of course, then I have time for it. But if you now ask me whether I have the time to research how [the tax benefits on cross-border gifts] works in a random European country, well, then that is closer to the bottom of my list than to the top.”

During the interviews, there were several fundraisers who appeared to be familiar with foreign tax law. When I did a fact-check after the interview it happened several times that information provided by the fundraiser proved to be incorrect. One fundraiser, for example, said: *“[...] I formulate this with care, as in the US, but also in Belgium, actually in all countries, one of course has to conduct specific activities in that country. [...] The requirements often state: you receive deductibility if you can demonstrate that you make a contribution to the American society.”*

Some countries do use this reasoning, like Australia, but neither in the US nor in Belgium is this a criterion.²³¹ The quoted fundraiser, however, spends at least part of the funds they raise abroad in the donor's resident country because they have the idea that in countries with more strict legislation on tax benefits for cross-border donations, the funds must be used for activities in that country in order to justify the tax benefit. In fact, however, these countries do not impose this on the organisation and with a foreign friends organisation, the money can be spent outside that country. In this sense, the organisation holds more strict standards than required by law. This phenomenon is also known as 'overcompliance'.

Another fundraiser is aware that foreign arts organisations can establish foreign friends organisations in her country. She, however, thinks that her organisation cannot establish a foreign friends organisation in other countries that would allow a tax incentive for foreign donors. She says: "*Unfortunately, the reverse is not true. The foreign governments do not allow American people to establish a 'Dutch friends of the [arts organisation]' or 'English friends of the [arts organisation].'*" It is, however, possible in the Netherlands, England and many other countries to establish a foreign friends organisation. Other fundraisers were not even aware that tax incentives for charitable gifts are relatively common. One fragment of an interview went as follows:

F: "*But there are no tax incentives in Spain, are there?*"

R: "*I think so.*"

F: "*I don't think there are any tax incentives in either Italy or Spain for charitable contributions.*"

Because of the lack of legal and fiscal knowledge among fundraisers, the tax issues involved in cross-border donations are rather difficult for them to grasp. Often, expert advice can overcome this issue. Sometimes, though, the tax issues are so overwhelming, time consuming and costly for fundraisers and the arts organisation they work for that they consider rejecting a gift. A Canadian donor pledged a gift to arts organisation 10 with the condition that the Canadian donor would receive a tax benefit. The tax aspects, however, turned out to be so complex that fundraiser 10A explained during the interview that she almost wanted to reject the gift. In the end, a tax lawyer was hired who sorted out the tax aspects, but still, the fundraisers of arts organisation 10 perceived this process as "*quite a complex exercise*".

Fundraisers are not tax lawyers and it is not their task to provide tax advice. It is, however, helpful if knowledge on tax benefits for charitable gifts is available at arts organisations, as these benefits stimulate charitable giving. Furthermore, it is helpful for fundraisers to have knowledge of the available tax incentives as it allows them to inform donors about the procedures to obtain a tax benefit for their gift. Although individuals with a high net worth often have their own tax advisor, it is still important for fundraisers to understand the tax issues involved in charitable giving since major donors also want to be able to converse about the tax benefits involved in a gift with them, as fundraiser 13 also underlines.

In-house tax advisors are scarce among arts organisations, but there are a few major arts organisations that have an in-house lawyer and superstar arts organisations might even have a team of lawyers. The larger the legal team of an arts organisation, the higher the degree of specialisation in the team. But if the organisation employs only one or a few in-house lawyers, such as arts organisation 18, the in-house lawyer has to deal with a broad range of topics, varying from intellectual property rights to tax law.

231 AU: Income Tax Assessment Act 1997 Sub-Division 30B ; US: IRC, section 501(c)(3) and BE: article 145/33 §2 WIB 92.

The collaboration between the in-house lawyers and fundraisers is not always flawless. Fundraiser 18A, for example, was not aware that in-house lawyer 18 registered the organisation as a PBO in a few EU countries and was in the process of registering the organisation in more EU countries in order to allow donors from these countries to give with a tax benefit. Instead of relying on the PBO status abroad, fundraiser 18A told me she was not familiar with this solution and instead used an intermediary charity. Arts organisation 18 is not alone in this regard. There are more employees of arts organisations who proved to be misinformed, despite having an in-house tax lawyer, about the solutions available to their foreign benefactors to obtain a tax benefit. Fundraiser 34B, for instance, was not aware that the arts organisation she works for was registered in a foreign country as a PBO.

The majority of arts organisations do not have an in-house lawyer. The fundraisers at these arts organisations do not have formal training in tax law either. They are autodidact or are dependent on information from secondary sources. Their knowledge, therefore, is limited to the current applicable tax incentives in the home country. They lack a wider understanding of tax structures and international tax law and because of this, they do not have the skills to make themselves familiar with a tax incentive in a foreign country. For straightforward gifts in the domestic situation this limited knowledge, however, suffices. Besides, as fundraiser 22A also stresses, they are not supposed to give any kind of tax advice. Exceptions to the limited knowledge on tax incentives for charitable gifts among fundraisers are a handful of fundraisers who had legal training, like fundraiser 13, although in a different legal sub-discipline. For fundraiser 13, it is easier to understand the international hierarchy in taxation, although she also relies on tax experts for fiscal advice. To compensate for the lack of knowledge on tax issues, fundraisers try to gather knowledge in various ways.

6.2.4 Gathering information: External advice

One way of gathering tax knowledge is through peers, both in the domestic and in the cross-border situation. Fundraiser 13 mentions that an arts organisation from the same city contacted her with questions about domestic taxes. In the cross-border situation, learning from the experiences of peers clearly plays a role, especially when selecting a solution to facilitate a foreign benefactor with a tax benefit. Fundraiser 3 explains: “[...] *it is just nice to know from the organisations surrounding you that [the solution] functions well and that they collaborate well with your benefactor.*” Arts organisation 5 even received help from arts organisation 12 when searching for a solution to facilitate a tax benefit for their foreign benefactors. In fact, it turns out that they had the same foreign benefactor and the foreign benefactor asked arts organisation 5 whether it could facilitate them with a tax benefit in the same way arts organisation 12 had done. Other arts organisations also rely on the experiences of peers. Director 16 consulted two peer arts organisations who had a foreign friends organisation before deciding whether he wanted to establish one or not. Director 29 also knows several arts organisations who have a foreign friends organisation. This inspired him to consider this option as a potential solution to facilitating his foreign benefactors with a tax benefit, when the time was right. The proven success convinced him that this might be an option for him.

An alternative way of gathering fiscal knowledge is through the persons in the network of the arts organisation. These persons can be board members, people in advisory boards and/or committees and even in-house *pro bono* tax advisors from corporate sponsors of the arts organisation. These persons provide *pro bono* advice. These tax advisors, however, are not always familiar with tax law for charitable organisations, let alone tax law on cross-border

donations to charitable organisations. Director 14, for example, consulted a tax advisor to find out whether she could offer donors from the foreign bordering province the same tax benefit as her domestic donors. The tax advisor, however, did not have a straightforward answer, nor was the answer satisfactory. Director 14 says: *“He really had to dive into the topic to figure it out. And eventually, he found that [the foreign donors] can only benefit from [fiscal incentives in their country of residence for tax purposes].”* The tax advisor did not explain how foreign donors can benefit from the tax incentives in their country of residence when donating to arts organisation 14. A more successful way of gathering tax expertise is by actively expanding the network of the arts organisations with experts in this particular field. Arts organisation 3, for example, has an informal circle of civil law notaries and tax lawyers that the fundraisers consult. In exchange, they offer guided tours and visits behind the scenes to these notaries and tax advisors. Arts organisation 29 is creating a similar group.

Other arts organisations hire professional tax advisors to gather information. This is often a last resort for arts organisations to gather expertise, as they perceive tax advice to be costly. Hiring professional tax advice does not always come without difficulties. Fundraiser 20A says: *“They can tell you how to set up a charity, but then there are many governance issues [...]”* she later adds: *“And then we had a major row with the lawyers. What happened is that they didn’t mention that there was this option of having the [...] [home] organisation’s charitable status recognised by the tax office in the UK, which is, you know, this new European requirement.”* This leads to arts organisations not being satisfied with the advice provided.

6.2.5 Awareness of solutions to tax-efficient cross-border giving

For arts organisations, it can be valuable to know the solutions to facilitate foreign benefactors with a tax benefit as it can be used in their international fundraising campaign. Furthermore, if arts organisations know how they can facilitate a foreign benefactor with a tax benefit, this can prevent donors from renouncing their intention to give. The interviews, however, indicate that most fundraisers do not have full oversight of the different solutions that allow for cross-border tax-efficient giving. Fundraiser 5, like many other fundraisers I interviewed, is only familiar with the intermediary charity and the foreign friends organisation as solutions to tax issues with cross-border donations. A general underlying reason seems to be that fundraisers have only the minimum necessary tax knowledge.

Most fundraisers do not have the time, skills or knowledge to consider all the existing solutions to obtain a tax incentive on a cross-border situation. For fundraisers, it is sufficient to be familiar with one easy solution that they know works well. When I asked fundraiser 21 why he chose to join an intermediary charity instead of establishing a foreign friends organisation, he explains that he considers it an easier solution. In follow-up questions, however, he could not substantiate why he perceived the intermediary charity to be easier than the foreign friends organisation. In fact, it turned out that the key reason a fundraiser chose to use the intermediary charity as a solution was because they were familiar with the intermediary organisation. Arts organisation 17 used the intermediary charity to facilitate its foreign benefactors with a tax incentive, as *“[i]t is the only system providing this type of services known to us.”*

During the interviews, it became very clear that there is a great deal of unawareness among fundraisers as regards the different existing solutions. Only one fundraiser had heard of the four fundamental freedoms in the TFEU as a solution to overcoming the barriers to cross-border charitable giving. He gathered this information via a colleague who knew a tax

advisor who provided this information. Another fundraiser was not familiar with the four fundamental freedoms in the TFEU as a solution to obtaining a tax benefit on a cross-border gift and wondered where she could have found this information. The first person she thought of is the civil-law notary of the arts organisation. He, however, did not inform her.

The majority of fundraisers were not aware that tax treaties might provide a solution for their donors to obtain a tax benefit in the cross-border situation either. Directors 16 and 29 and fundraiser 36, for example, explicitly mentioned that they had not heard of this solution. Several fundraisers were unfamiliar with tax treaties in general. Several times during interviews I was asked to clarify what a tax treaty is. Director 29 is one of the exceptions; he is familiar with tax treaties because he had to rely on a tax treaty when he moved abroad for his current job. Based on this experience, he is reluctant to recommend to his donors to rely on a tax treaty, as he perceived the tax treaty as being highly complex.

The solution where an arts organisation gets itself recognised as a PBO abroad is another solution with which a limited number of fundraisers are familiar. Fundraisers, such as those of arts organisations 15, 19 and 28 had not heard of this solution until it came up during the interviews. Arts organisation 28 was not familiar with it, but once explained, fundraiser 28 realised it would be interesting for arts organisation 28 to register as a PBPE at the Dutch tax authorities, as it has Dutch donors who now cannot use a tax benefit.

An interviewee's familiarity with a certain solution proves to be a factor that influences the solution they choose. Eight arts organisations explicitly mentioned that they preferred one solution over another simply because they were familiar with it, or because they heard from their peers that it worked well. This is nicely illustrated by the brief discussion with fundraiser 15:

“R: Option B is registering [arts organisation 15] at the tax authorities abroad. Would that be an option?”

F15: That could be an option.

R: Why doesn't this option have your preference in comparison to the other two we have discussed?

F15: Because we are not familiar with it at all.”

Arts organisations also take into account whether their donors are familiar with the solution. As an interviewee of arts organisation 10 stated:

“It is very common in America. In the beginning we also thought it was a bit strange. We thought it is something one does not do. We thought something had to be in between, a board. But we never received any question. Never. And that is nice.”

6.2.6 Popular solutions: Intermediary organisation and foreign friends organisation

Although, in general, there is a lack of awareness among fundraisers of the solutions to obtain a tax benefit on a cross-border donation, there are two solutions that are quite widely known. Intermediary charities and foreign friends organisations are far better known among the interviewees than the legal solutions and the entity with charitable activities. As a result, these solutions are used far more frequently to obtain a tax incentive on a cross-border donation than the unilateral solution, tax treaty, four fundamental freedoms in EU law and the entity with charitable activities abroad.

The popularity of these two solutions seems to stem from the publicity they receive on the one hand and the fact that arts organisations tend to look at their peers when they search for a solution to facilitate their foreign benefactors with a tax incentive on the other hand. Intermediary organisations advertise themselves through their websites as well as by sending out newsletters and organising events for fundraising professionals. In selecting an intermediary charity, arts organisations also often opt for organisations with which they are familiar; thus, the more advertisement, the more familiar arts organizations are with a solution. Foreign friends organisations are, of course, advertised in order to attract foreign benefactors. One of the intermediary charities in the US organises seminars for European fundraisers. The interviewees of arts organisations 3, 19 and 21 were familiar with this intermediary charity because of this seminar. This was one of the factors that played a role in the selection of the intermediary charity. Another reason for these charities to choose this American intermediary charity was because they were also familiar with its European counterpart. Arts organisation 8 became familiar with an intermediary organisation when it received donations through this intermediary organisation. Therefore, it was a logical choice for them to choose this intermediary charity.

6.2.7 Donor arranges solution

Sometimes, donors will arrange for their own tax benefits and arts organisations – for different reasons – are not involved. Donors may, for example, have their own tax advisor, which is often the case with individuals who have a high net worth. If a donor has founded a charitable foundation, there may already be a solution in place to obtain a tax benefit on a gift, despite that the recipient charity is foreign. The donor already benefitted from a tax incentive when giving to the foundation.

Some arts organisations stimulate donors to seek tax advice. Arts organisation 32, for example, explicitly mentions in its information for donors that they should seek independent tax advice on their own before making a gift to the arts organisation. Fundraiser 22A also says that *“I don’t have a tax advisor on my staff and an individual should really be speaking with their own tax advisor about those kinds of things.”* The donor then arranges the tax benefit on their own, for which they sometimes need some documents or information from arts organisations.

6.2.8 Concluding remarks

All arts organisations advertise the tax benefits for domestic donations. This happens to a lesser extent for cross-border donations. Although the tax incentive is not the main motive to give for either domestic donors or for cross-border donors, according to fundraisers, the majority of donors use a tax incentive if they get the opportunity, which is in line with the literature on philanthropic giving. There are few examples where donors claim not to use the tax benefit, although it is available and there are an equal number of examples of donors for whom the tax incentive is an absolute requirement.

Among the interviewees at arts organisations, the knowledge on the available solutions to facilitate foreign benefactors with a tax benefit is limited. The best known solutions are the foreign friends organisation and the intermediary charity. These solutions are also most frequently used. Other options, such as registering the arts organisation as a PBO abroad, using a tax treaty or relying on the fundamental freedoms in the TFEU are largely unknown possibilities among fundraisers and only incidentally used by arts organisations. In some cases, the donor may arrange the solution on their own, as they have their own tax

advisor or has experience in obtaining a tax benefit on a cross-border donation based on previous cross-border donations.

6.3 International donors and their gifts

This section explores who the people are who make cross-border donations and why they do this. Furthermore, I explore the motivations behind their donations and try to estimate what the financial benefit may be.

6.3.1 Who are international donors?

A review of literature on donors shows that there are certain characteristics that are typical for donors (Bekkers & Wiepking, 2011b). The following characteristics are positively related to philanthropic giving: religious affiliation, religious involvement, level of education, age, income and wealth, home ownership, subjective financial position, marriage, children, paid job, cognitive ability and prosocial personality. Growing up with parents who have a high level of education, higher income, are involved with a religious community and who are active as volunteers also has a positive effect on giving. From the interviews, the impression arises that most of these characteristics are also prevalent among those who donate across borders to arts organisations.

What comes forward from the interviews is that the level of education, age, income and wealth, and home ownership are factors that play an especially important role among international philanthropists. I elaborate on these factors in the next sub-sections. The religious affiliation and religious involvement of donors were not addressed by interviewees at all, however.

Steenbergen (2009, p. 75) briefly addresses foreign benefactors. She mentions well-to-do foreign residents, successful second-generation immigrants and high-earning professionals living part-time in a foreign country as a relatively free-handed group of people. Indeed, the findings in this research confirm those of Steenbergen and show that wealthy individuals residing abroad are generous philanthropists. The findings of this research, however, also show a high level of involvement in the arts among those who contribute.

6.3.1.1 Aging, successful, wealthy individuals

The higher age, high level of education and high income and wealth are characteristics that were specifically addressed by fundraisers in this research. Fundraiser 19 explains: *“It is like the cliché. They are almost solely well-to-do people, higher-educated and well-developed, so involved in the arts.”* This is in line with other research, in which it is demonstrated that arts philanthropy is popular among elite donors (Ostrower, 1997, p. 92).

Interviewees frequently refer to donors as persons being involved in the so-called higher professions, such as lawyers, real estate agents, bankers and business people. When I asked fundraiser 18, for example, what kind of people support her organisation, she explicitly pointed to these professions, alongside other characteristics: *“That is very diverse. A lot of business people. Business people, businessmen [...] lawyers, bankers, civil notaries, and people who just enjoy music and culture. And also people who are searching for a social life.”* Some arts organisations disclose the names of their major benefactors in their annual reports. A search for these persons online shows that indeed, among the foreign donors residing abroad, there are a high number of people with professions that are known for their relatively high incomes.

Arts organisation 13, for instance, has five major foreign donors. Three of these persons have key positions at investment firms, one in the US and the other two in the UK. The higher-income professions go hand-in-hand with a high level of education.

Often the interviewees stress that foreign donors are professionally successful people. Successful entrepreneurs from all different trades are well represented among the foreign donors of arts organisations. Arts organisation 34 has a Greek shipping entrepreneur and an Argentinian businessman in agriculture among its foreign donors. Another interviewee, fundraiser 13, speaks with a lot of enthusiasm and admiration about the enterprise of one of their potential donors. She stresses that he is a very successful entrepreneur: *“And the owner of [enterprise] is one of the richest Japanese persons. [...] And we have a relationship with him. Not the type of relationship that he already gives, but we have the impression it will head in that direction [...]”*

Philanthropy advisor 2 refers to a donor as *“he had been a successful businessman”* and indicated that this person is now retired. Indeed, from the interviews, it came forward that most foreign donors are aging. Some are close to their retirement, but most fundraisers report on donors who have been retired for several years. Only a handful of reports were made about foreign philanthropists in their forties.

6.3.1.2 Involvement in the arts

Typical for arts philanthropy – in comparison to philanthropy for other causes by the elite – is the high integration of the arts into the lives of the donors, both as individuals and as members of their class (Ostrower, 1997, p. 92). This is also witnessed among the international donors of arts organisations in this research. This is a second characteristic of foreign donors that stands out. The foreign donors are involved in the arts either because they are professionally involved or because they are extremely passionate about art and actively take part in the arts scene.

Professionals in the arts sector who are often present among the foreign benefactors of arts organisations are art dealers. Arts organisation 13, like other arts organisations, has an art trader amongst its foreign donors. Among the foreign donors of arts organisations are also a remarkable amount of people who have earned their wealth in the more commercial creative industries, such as design, architecture and fashion. Arts organisation 36, for example, has two major foreign donors – one from Singapore and one from France – who earned their money in the fashion industry.

People who actively take part in the arts sector, but who are not professionally involved in the arts are, for example, art collectors and people who travel the globe to see performances of their favourite artists. Arts organisation 28, for instance, has a donor who travels the world to see opera performances. Fundraiser 28 elaborates:

“He visits [home city arts organisation] three or four times a year, he stays for five or six days, he sees three or four operas while he is here. He loves opera. He is like an art collector, only what he collects is opera performances. He is very knowledgeable about it, he knows who sang what and when. He goes to the opera in Europe all the time and he comes here and he gives us USD 4,000 a year so that he can have good seats and he can go to our patrons’ lounge and he can meet patrons at events and he gets invited to events. When he is in town, I always take him to lunch or to dinner. And, he also, every year now – it is a tradition – he comes the last week of December so he can attend [...] a gala eve for [home city arts organisation] and we premiere a new opera

and there is a dinner afterwards with dancing and fireworks, and it really is a lovely occasion and that costs extra. So he gives us USD 4,000 just to be a patron during the year and he buys a ticket, which costs about USD 2,000 just to come to this dinner and gala and new production premiere. And we always see him well and he meets other people and he has gotten to know a lot of people so [...] he makes friends with other opera lovers, so it is a way of connecting on a personal level with opera lovers from around the world and I think that is one reason that people make a contribution is it gives them a kind of way of meeting other people.”

The foreign donors of arts organisation 16 mainly consist of art collectors. Director 16 explains:

“They are all collectors [...], and that is a very international group. [...] Often they are people who have been involved in [topic arts organisation 16] for a long time and who also actively use our website to get in touch with curators or to gather information.”

Fundraiser 13 also sees major collectors as potential donors. She speaks of these persons with reverence: *“They are people who can give such major amounts, you know, almost too much to oversee.”*

6.3.1.3 Expatriates, emigrants and global citizens

A third characteristic of foreign donors of arts organisations is that they are often people who live or have lived outside the country where they were born or the country of their nationality. They reside (part-time) abroad for different reasons.

Domestic donors move abroad and continue their gifts to the arts organisation. This happened to arts organisations 7 and 12. Both have benefactors who initially resided in the home country of these organisations, but have lived abroad for a few years. Before these donors moved abroad, they were already patrons of the organisation.

Sometimes people who have emigrated start contributing to an arts organisation in their country of origin only after moving abroad. Fundraiser 11 explained that some persons have been abroad for a long time and plan to stay there. They, however, still have a very strong emotional bond with the home country of arts organisation 11. Other examples of emigrant donors are those of arts organisations 3 and 16. One of the major donors of arts organisation 3 was born in the region where the organisation is located, but throughout his life the donor lived in different countries. A major donor of arts organisation 16 was born in the country of residence of arts organisation 16. He was educated abroad, after which he established his company in another country and later on expanded it by establishing counterparts in different countries. Both donors seem to have an international orientation, either having lived or worked in several countries. Tax advisor 7 has experience with donors who reside abroad and are residents there for tax purposes, but work in the home country of arts organisation 7, have their social lives there and give to charities in the home country of arts organisation 7. This puts them in a difficult position, as it depends on the jurisdiction where they are liable for tax purposes and can deduct personal allowances, such as gifts, whether they can or cannot use a tax incentive on their cross-border gift.

Like emigrants, expatriates who reside abroad for work purposes can have the urge to donate to an arts organisation in their country of origin. Arts organisation 8 has such expatriates on its UK friends circle. Arts organisation 5 also has foreign donors who are in

fact expats from the country of residence of arts organisation 25. Economic hubs, such as London, New York, Hong Kong and Paris, where a lot of expats and immigrants are gathered, can be interesting locations for arts organisations to target in this respect. Arts organisation 20 chose London as a location to raise funds as there are a lot of people from home country of arts organisation 20 who live in London. Fundraiser 7, however, explains that expatriates usually only reside temporarily in a certain hub – for a few years – and then they move again. Some foreign friends organisations mainly consist of expatriates and diaspora. Philanthropy advisor 2 talks about a foreign friends organisation that has only three members who do not have the nationality of the home country of the arts organisation; all other members have the nationality of the home country of the arts organisation. Furthermore, she mentions that those members from the home country are not naturally philanthropists. They are mainly business tycoons, bankers, real estate agents and are all individuals with a high net worth who support these organisations because of its relationship to their culture, amongst others. In daily life, they do not see each other, but through the American friends of arts organisation 11, they meet each other four times a year, which they enjoy and throughout the years they have grown into a tight knit group.

It is often seen among the arts organisations studied that indeed the foreign friends circles of arts organisations fulfil an important social role for expatriates, emigrants and global citizens. Fundraiser 7 talks about tight knit groups in the countries where his arts organisation has foreign friends circles. The Swiss donors, for example, host a dinner party every year at one of their homes. They also visit the home country of arts organisation 7 together. The members of the international friends circle of arts organisation 28 all come from different countries and over the years they became a group that organizes their own trip every year to one of their countries of residence. The host that year then shows the group around and takes the members to exclusive cultural events in which they have a shared interest. They do this independent from arts organisation 28.

Some fundraisers also perceive a number of their foreign donors as persons with a true global orientation. They have such a high level of international orientation that they are referred to as global citizens. Fundraiser 13 says

“Also a lot of folks who are very very international people, who live in the US, or in New York, and have residences in several countries, but maybe spend the majority of their times in cities like New York or California or Houston. So their primary residency might be in the US, but they [have] perhaps international heritage or connection. [...] They are born in a different country or they are deeply involved with international cultural activities around the world, so they are not necessarily non-[home country of the arts organisation], but they have an international connection.”

Fundraiser 13 connects this international orientation also to the wealth and professional success of people. She says: *“If you speak with the rich of the world, they are often not just located in country A or B.”* The multiple domiciles of people, where they spend most of their time and what their nationality is makes it sometimes difficult to know whether it concerns a domestic donor or a person who donates across borders. Fundraiser 25: *“Well, the people you refer to, they largely spend their time in the UK or the US in fact. And sometimes their nationality might hide the reality of where they are spending their time. So, yeah, we do have a range of nationalities, certainly.”* This results in donations from persons who are difficult to pinpoint

to one country. The US benefactors of arts organisation 25 are Americans who either live in the residence country of arts organisation 25 or visit the location of the arts organisation frequently. Other donors of arts organisation 25 might have a foreign nationality, but they live in the residence country of arts organisation 25. Furthermore, it has donors who live in other EU countries but wish to contribute through the American friends organisation. Most likely, this is because they are American nationals or because they wish to give in US dollars, instead of the local currency in the home country of arts organisation 25.

Owning a second house abroad might have brought some individuals to support an arts organisation in that country (Catton, 2014). Arts organisation 30 has donors in its own country of residence who wish to contribute through the American friends organisation, as they are Americans living (some part of the year) in the residence country of arts organisation 30. Arts organisations 22, 31 and 35 also have donors who have a second house near the arts organisation, but their main residence is abroad. Arts organisation 11 actually had a domestic donor who was a member of the US friends circle. He had a second home in the US and wanted to get in touch with people from the US friends circle. Fundraiser 28 mentions that several of her foreign donors have a second home in the residence city of arts organisation 28. Other ties with the city that fundraiser 28 mentions are that children of her donors work in the city or because they have business relationships there. Some of the donors, however, just come to the city without having a very specific link. Arts organisation 36 also has donors with multiple residencies. Arts organisation 31 has donors who live in multiple countries. Also, arts organisation 5 has donors with a foreign residence address – often in New York – but who spent part of their time in the home country.

Some of the expatriates, emigrants and global citizens feel the need to establish a bridge between the country they perceive to be their home country and their new country of residence. Philanthropy advisor 3 mentions that people want to support foreign causes because they, or their family, have a personal tie with a foreign cause. Tax advisor 6 recognises that emigrants want to contribute to causes in their country of origin. This need is sometimes translated into a friends circle for one of the arts organisations in their country of origin. The American friends of arts organisation 25, for instance, was initiated by an expatriate in the US. Due to this foreign friends organisation, arts organisation 25 could expand its collection with American artists. Another example is a businessman with the nationality of the home country of arts organisation 20, who lives in France and started a support group there for arts organisation 20. The American friends of arts organisation 30 started in a somewhat atypical manner; the then-president of arts organisation 30, who has the nationality of the home country of arts organisation 30, started the American friends of arts organisation 30 together with some Americans who lived in the home country of arts organisation 30. These people pay taxes in the US and may live in the US part of the year as well.

6.3.1.4 Other international donors

Some foreign donors fit the description of one or more of the three groups above. There is, however, a group of international donors who do not fit in one of the descriptions above. The relationship between them and the arts organisation has divergent origins. Some international donors give to a foreign arts organisations because they have a personal tie with someone in the organisation. Arts organisation 2, for example, has a foreign donor who is a relative of one of the employees of arts organisation 2. Others give because they had a particular experience at an arts organisation, or because they live in the border region. For the sake of brevity, I omit further discussions of these divergent origins of international donors.

6.3.2 Why do donors give across borders?

I asked the interviewees why they think donors give to organisations abroad. The motivations mentioned by the interviewees are comparable to the motivations for domestic donations to charities and can be categorised under the key mechanisms that define philanthropy, which are summarised in the literature overview by Bekkers & Wiepking (2011a), which I also referred to in section 2.1.1.

1. **Awareness of need** – Donors are aware of the need for support. Director 17 says that people from abroad support her organisation “*Because they feel the importance of supporting the work of our organisation in the field of cultural heritage on a European level, not just a local level.*” More often, there is the awareness that financial support is needed to realise a specific goal. Fundraisers 27, 32 and 36 all mention that their foreign donors contribute to their organisations because the donors want to ensure that art and artists from their country are well represented at the arts organisation. Other fundraisers address the awareness of need for support to ensure that the arts organisation survives in the future. Fundraiser 28, for example says, “*[the donors] feel it is important and they don’t want the [arts organisation] to go away. They want it to survive from one year to the other.*”
2. **Solicitation** – Some people join an international friends group because they are asked to join it, or because they are befriended by an employee of the arts organisation who solicits them. In this case, peer pressure is often very strong. Among the social elite, it is found that they perceive philanthropy as an obligation – a *noblesse oblige*. Therefore, individuals with a higher social status are more likely to give. Furthermore, it shows that there is a strong presence of peer pressure among wealthy individuals (Ostrower, 1997, pp. 14-16). This also holds for other groups of donors. The stronger the social tie between the donor and third parties who can observe the donation, or even requests for a donation, the more pronounced its effect is (Bekkers & Wiepking, 2011a, p. 29). Moreover, wealthy individuals not only give in response to requests by friends and associations, but also look down upon those affluent people who do not give. People who do not give risk being perceived as free riders (Ostrower, 1997, pp. 14-16) and this might endanger one’s elite position (Bekkers & Wiepking, 2011a, p. 30). Their position thus makes them more responsive to solicitation. Fundraiser 13 says: “*Some people just give because somebody else asked them. [...] I have people in the [international friends circle] who have never been here. [...] They just follow the advice of their friend, who just says ‘listen, that is such an amazing group, you just have to give money to them. And these people are very affluent and they just give.’*”
3. **Costs and benefits** – Giving to charity always goes at the cost of the wealth of the donor. The interviewees confirm that the tax benefits are never the main motivation to give. However, the costs of giving can be decreased by a tax benefit. The fundraisers do confirm that many donors take this into account when deciding on the size of their gift. As fundraiser 36 says: *If they get a tax incentive, they might feel like ‘oh, then I can give even more’.* Patron 1 confirms this: “*I don’t do it for the tax authorities, but I do know that I give more because of [the tax benefit]. I pretend as if I give the net amount, so I double [the amount].*” For some donors, the tax benefit is a prerequisite to giving.

Fundraisers expect that donors are also motivated by the benefits they receive in exchange for their gift. These benefits can be tangible, like catalogues and recordings, but also events, like cocktail parties, dinners, private viewings and art travels. These events are often accompanied by a high level of exclusivity. Participants get to see private collections, a view behind the scenes of the arts organisation, invitations for opening nights, meetings with

the artists, performances in small and/or extraordinary settings. The exclusivity of these events is an important benefit of contributing and a strong tool for arts organisations to attract donors. One of the reasons patron 2 gives to a German arts organisation is because this gives her priority in buying tickets for the events of this arts organisation, for which there is an extremely high demand.

Increasing their knowledge on art is another reason donors join a friends group. Curators share their knowledge on art, even up to the point where they join donors at art fairs and give them advice on what art to collect and what to avoid. Donors also exchange knowledge amongst each other, especially since they often find each other based on their shared interest in a certain type of art. Director 29 and fundraiser 36 explicitly mention that they received gifts as a ‘thank you’ gesture for expertise their employees shared with donors.

A less explicit but maybe even more important benefit of being part of a friends circle of an arts organisation is that it opens doors to new networks. The majority of fundraisers mention that it is interesting for donors to join a group of people with whom they share a passion for art. Fundraiser 18 expects that donating to an arts organisation as an expat is interesting, as the donor then belongs to a group and this allows him to integrate into the local community. Other interviewees also mention that there is a professional benefit for their donors, as the circles of donors also form a network, in which relationships often grow that are beneficial for professional purposes and thus contribute to obtaining social capital and increasing economic capital (Bourdieu, 1984). These are relationships that might be difficult to obtain in the business world. In the Hong Kong friends circle of arts organisation 11 this is important. It can be rather difficult for non-Hong Kongese to get in touch with native Hong Kongese. With prominent Hong Kong families as members of the Hong Kong friends of arts organisation 11, this is an interesting opportunity for foreigners to get in touch with them.

4. **Altruism** – Donors are motivated to give because they care about the cause, which is opposite to self-gain. If a pure altruist learns that others increase contributions by USD 1, a pure altruist would decrease its contribution by USD 1. This is called the crowding out effect and is a way to measure altruism. The level of crowding out differs between each non-profit sector. For the arts and culture sector, findings on crowding in and out have been mixed. Brooks (2000) suggests, based on research among symphony orchestras, that low levels of government funding crowd in philanthropy, but when government increases beyond a certain point, private giving crowds out. Overall, philanthropy shows to be only partially altruistic, as donors show to care more about the private benefits derived by their contributions than about the public benefits generated. It is not so much about tangible benefits, but about the good feeling one gains about oneself: the warm glow. Philanthropists derive happiness from doing good for a cause that they care about (Ostrower, 1997). It is impure altruism. In the interviews, altruism is also mentioned least by fundraisers. Patron 2, however, does mention it as one of the reasons why she gives. She says *“I don’t limit myself, because I already have such a list. But I would like to give to them all. Things that I care for. There are so many opera companies who could use it very well! They also receive so little subsidy, but do so many good things, but fell off the boat.”* For Patron 2 it is also impure altruism, as she derives psychological benefits from giving.
5. **Psychological benefits** – Patron 2 explicitly mentions that giving money gives her a good feeling. Tax advisors 6 and 7 also mention that some of their clients want to give back to the community they grew up in.

6. **Reputation** – According to the literature review by Bekkers & Wiepking (2011a), one of the motives to give (domestically) is the benefits it generates for one's reputation. Pozen (2006a, p. 576) suggests that there are fewer reputational, social or tangible benefits for donors who make international donations. I (partially) refute this assumption for cross-border donations to arts organisations, as interviewees in this research illustrate that donors derive reputational and social benefits from their donations. Depending on the arts organisation, tangible benefits might be equally available for domestic and foreign donors. Fundraisers at arts organisations 19, 21, 22, 28, 30 and 32 – which are mostly superstar organisations – all mention in a more or less explicit way that the international fame of their organisation attracts donors from abroad. These arts organisations mention that donors choose to support these arts organisations because of their high artistic quality, which is something they want to belong to and be associated with. In this way, the fundraisers hint at arts philanthropy contributing to the cultural capital of a donor (Bourdieu, 1984). This might be the case, but perhaps even more evidence has been gathered in a revised version of the cultural capital theory. Ostrower (1998) revises this theory and states that it is not so much the extensive and exclusive cultural knowledge that creates class solidarity in the arts, but the ways in which elites participate in the arts. The groups of donors in this research show to form interesting social circles within themselves. Fundraisers explicitly address this, by talking about those that donate as though *“They are part of our family.”* This is quite visible in the case of a joint foreign friends organisation where the friends choose to contribute through the joint foreign friends organisation, although the majority of them could also contribute through the domestic friends circle. The joint foreign friends circle, however, consists of prominent people who mainly originate from the home country of the arts organisation. By connecting themselves with a separate foreign friends circle, they benefit from the prestige of this group. The international friends circle of other organisations, like arts organisations 7 and 28, also demonstrate high levels of social cohesion.
7. **Values** – Some foreign donors have a strong belief in the value of art. They believe that art makes the world a better place. A donor of arts organisation 16 says, *“I have always wanted to encourage and help as many people as possible to have direct contact with art [...]. Such contact can provide life changing, humanising experiences, and I would like to do as much as I can to make access available on a wide scale.”* Donors tend to be very passionate about the art, whether it is the arts organisation they love, the art from a specific region or period in time, or the work from a specific artist. Therefore, they assign a very large value to art, which leads them to contribute to an arts organisation, which is sometimes located abroad. Patron 2, for example, has a passion for art from a specific country: *“I visited [the country] for the first time in 1984. And that was a big experience for me. You, of course, end up in a totally different culture. And almost a totally different way of life. Something happened with me and I thought: I want to visit here more frequently. It felt very good. Since then, I have been there every year. Some [years] even twice.”* She started to collect art from that country, but also supports musicians from that country.
8. **Efficacy** – Fundraisers mentioned several times that their donors believe in the cause of their organisation and that they can make a difference. Fundraiser 22, for example, says, *“They really believe in our cause and they want to support that cause.”* Patron 1 says, *“I think talented people are interesting. It fascinates me endlessly to follow their development. I support a young violin player who is very talented. She studies in the US, which costs a lot of money. Recently, she gave a living room performance, and then you see how much she has grown. That is beautiful.”*

The motivations mentioned by the fundraisers were mainly a combination of two or several of the factors summed up below. The following quote of patron 2 also illustrates that there is not a sole factor that motivates donors, but it is a combination of factors: *“You give the money, you get a lot of things in return. A nice feeling, that for sure, but you also get to know people, you come backstage, you get to know the artists and you get access to a different world. Through this you get to know them [...]”*

6.3.3 What do donors support?

Interviewees report that most of the donors support multiple causes, in and outside the arts. Fundraiser 28 acknowledges that many donors contribute to multiple charities in different sectors, such as education, healthcare, environmental protection and culture.

There are a lot of donors who give to multiple arts organisations, both domestically and abroad. This is especially the case among the group of foreign donors who give to the arts. The American philanthropist Marie-Josée Kravis, for instance, supports the Spanish Prado Museum, as well as the Museum of Modern Art in New York (Fabrikant, 2016). Arts organisation 32 has a Mexican benefactor who also contributes to an arts organisation in Spain.

The fact that donors give to multiple arts organisations results in arts organisations having shared donors. Fundraiser 1 also recognises this in the domestic situation: *“[...] I know that our donors also give to other [arts] organisations. I have openly asked some of them and they also honestly answered it. I’m quite curious, because I think the overlap is quite large.”* This phenomenon was also found in another study on New York non-profits (Ostrower, 1997, p. 92). In this research, arts organisations that have overlapping donors are arts organisations 13, 31 and 32; arts organisations 31 and 28; arts organisation 28 and 7; and arts organisation 8, 10 and 25. Also, patron 1 is involved with multiple arts organisations. The arts are an integrated part of her life, as she contributes to several domestic arts organisations and she is active in raising more domestic and international patrons for these organisations.

The donors discussed by interviewees tend to focus on one or two disciplines or sub-topics in which they support multiple organizations. This further increases the overlap of donors among arts organisations. Arts organization 10, for instance, has a donor who largely financed a catalogue on design from a specific era. She has a collection of this type of design herself. Along with arts organisation 10, she also supports a similar organisation in her home country. Patron 2 is yet another donor who gives to multiple arts organisations. Annually she gives significant donations to over five arts organisations in her home country. Furthermore, she annually makes a large contribution to a US arts organisation and a smaller, but still significant, contribution to a German arts organisation.

Both these arts organisations are involved in opera, which is an art discipline patron 2 clearly enjoys, as she travels the globe to attend opera performances. Patron 2 also collects a specific type of fine art herself. Organisations active in that specific field can also rely on her support. Then, there are incidental initiatives she supports.

Projects that are typically popular among foreign donors are projects that A) make the arts organisation more accessible for foreign visitors; B) stimulate the cultural exchange between the arts organisation and the home country of the donor; and C) support talent. Foreign donors or friends circles often contribute to the arts organisation to make it more accessible for foreigners. They provide funds to translate materials in other languages, for example. There are also foreign friends circles who support the representation of arts from their country at the foreign arts organisation. The UK friends of arts organisation 36 support projects at arts organisation 36 that are of cultural importance for the UK.

The US friends of arts organisation 22 also supports US talent to perform and work with arts organisation 22. The US friends of arts organisation 25 buy works of art from US artists for arts organisation 25. More foreign friends of organisations help their mother organisations acquire artworks, such as the US friends of arts organisation 22 and the US friends of arts organisation 8. It also works the other way around. There are friends circles who aim at bringing foreign arts to audiences in their local proximity, such as the US friends of arts organisation 24. Finally, supporting artistic talent from the donor's country is popular among foreign donors. The foreign donors support artists in their effort to exhibit and perform at foreign arts organisations. Foreign supporters of arts organisation 7 form a bridge between talent from their home country and arts organisation 7. They pre-select talent, fund travel grants for auditions and sometimes even finance salaries of artists from their home country who get a position at arts organisation 7. Foreign supporters of arts organisation 19 donate to the arts organisation so that it will display art from artists of their home country. The US friends of arts organisations 8 and 25 fund scholarships for people who want to do internships or research at arts organisation 25.

6.3.4 Benefit of international fundraising

The financial benefits of international fundraising by arts organisations vary significantly. With few exceptions, the total of gifts by domestic donors exceeds the gifts from foreign donors. Some arts organisations do not receive gifts from abroad, such as arts organisation 20, despite the fact that they actively engage in international fundraising. Other arts organisations, such as arts organisation 29, talk about relatively small sums of money. Arts organisation 29 receives incidental gifts of about EUR 5,000 to 10,000 for restoration purposes of artworks from US donors. From the UK, it received a GBP 40,000 gift. Another example is arts organisation 6, who receives USD 20,000 a year on average through the American friends of arts organisation 6. In 2014 this amount was higher, as there was one gift alone of USD 10,000.

Yet, there are also arts organisations that receive significant sums on a yearly basis from their foreign benefactors. Arts organisation 35, for instance, raises USD 300,000 a year in the US and GBP 30,000 to 40,000 in the UK, while arts organisation 20 received EUR 400,000 from its foreign friends circles in 2013. Another EUR 300,000 was added by foreign private foundations. Arts organisation 28 raised approximately USD 1,000,000 from foreign benefactors. These figures also have to be viewed in relation to the total budget and total fundraising. The USD 1,000,000 from foreign benefactors for arts organisation 28 might seem like a lot, but this organisation raised USD 140,000,000 in total in the same year. So, percentage-wise, the contributions from foreign benefactors is limited. This anecdotal evidence shows that single donations skew the overall data, especially incidental large gifts, such as the donation of EUR 350 million by American donors to the Musée d'Orsay in 2016 (Fabrikant, 2016). The fluctuation in donations coming from abroad are also clear in the data of the UK friends of arts organisation 36, of which the actual revenue per year and the exponential trend is displayed in figure 6. The average revenue over the years is GBP 77,172.

The donations sometimes stem from contributions for membership of a certain friends circle or board. The 17 board members of arts organisation 30 all contribute USD 10,000 annually. In other cases, it is support for a specific project. Arts organisation 8 received a USD 100,000 gift in 2013 from its American friends for new lighting of their artworks. Arts organisation 30 received a grant of EUR 65,000 in 2016 to refurbish the lighting in some spaces in the arts organisation. Furthermore, it received a total of EUR 200,000 to help restore a paint-

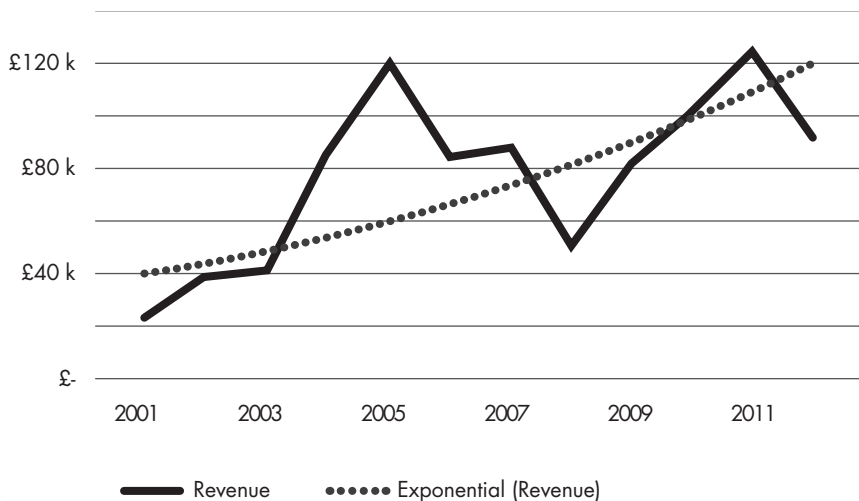


Figure 6

ing, spread across two years. Yet another source for donations are events and travel organised by the arts organisation. Arts organisation 30, for instance, earns money from their foreign benefactors by organising trips. The organisation charges a fee for the trip which exceeds the expenses. The remainder is a contribution to arts organisation 30.

Besides the financial benefit, there are other benefits of having a strong support group abroad. The foreign donors are often well-connected people. They can introduce the organisation to others, which can result in new opportunities for the arts organisation. Arts organisation 7, for example, has a foreign donor who introduced the arts organisation to the minister of culture in his country. This resulted in arts organisation 7 giving a first performance in that country. From the perspective of arts organisations, it can be beneficial to have good ties with art collectors. Advantage for the arts organisations is that the art collectors know who has which artwork. Besides, it provides the art organisation with a network of people they can approach to borrow works from to create exhibitions. Furthermore, the art collectors can help provide interesting and exclusive counter benefits for the friends circles of arts organisations. The joint UK friends of several arts organisations, for example, hosted a reception at the house of one of its supporters, who organised a viewing of their private collection of artworks. Moreover, art collectors often have a lot of knowledge of the objects they collect. With this knowledge, they are an important source for curators to gather and exchange information. For art collectors, it is nice that their artwork is exposed and not hidden in a depot so that others can enjoy the artworks too. An additional advantage is that when artworks are given on loan to a museum, additional information comes to light. Furthermore, for art collectors, it is often an honour if their works are on display in a world-famous museum. Director 16 says: *“When a painting hangs in a museum or is included in a catalogue, it gains yet another value. Not only financial value, but its value within art history also becomes visible.”* This makes it interesting for art collectors to maintain relationships with an arts organisation, for example by donating to the arts organisation. Many of the patrons of arts organisation 16 are art collectors. There is an ethical side to this practice, which director 16 also mentions. Art collectors can gain a lot from giving or loaning a work as it can increase the value of a work when it has been included in a museum exhibition. There was some controversy, for example, when an art collector brought several of his artworks to auction in London just a few months after they were exhibited at the Gemeentemuseum in The Hague (Pontzen, 2013).

6.3.5 Concluding remarks

Donors that give across borders are much like domestic donors. However, certain characteristics are omnipresent among foreign donors: a) they are wealthy; b) they have a high level of education; c) they are involved in the higher professions or are successful entrepreneurs; d) they have a strong involvement in the arts sector; e) they (temporarily) reside, or have resided abroad. Based on the interviews, their motivation to give seems to be similar to that of domestic donors. However, the validity of the findings on the motivation of international philanthropists is necessary, as these findings are derived from second-hand information. More research among international philanthropists is needed to verify or falsify these findings based on first-hand information.

The financial benefit of international fundraising varies widely. Efforts of some arts organisations have not resulted in additional funds, whereas others have a decent and continuous income from foreign donors. General and comparable figures, however, are not available. First of all, no compiled data is available. Second, the influence of large, one-off gifts on data from a single organisation create a skewed image. It is clear, however, that there are more benefits to having a foreign support base than just financial benefits. It extends the network of arts organisations, provides them with new opportunities for activities and new sources of knowledge on their art.

6.4 Conclusion

Wealthy individuals, expatriates, emigrants, global citizens and persons who have a high level of involvement in the arts are typically those who give to arts organisations abroad. They typically give to multiple causes, both locally and abroad. Within the arts, their focus is often on a specific discipline or type of art. Data on the size of total international philanthropy for the arts is not available. Still, anecdotal evidence shows that donations by foreign benefactors can be significant.

A challenge to attract foreign benefactors is created by the tax issues involved. Arts organisations want to arrange for a solution that allows their foreign donors to obtain a tax benefit on their donation, as this is something most donors do like to benefit from. Fundraisers, however, have a very limited knowledge of foreign tax law and the possible solutions. To obtain some tax knowledge, fundraisers learn from their peers and search for tax advice within their networks. Intermediary charities and foreign friends organisations are the best known and most used solutions. Tax treaties, registration as a PBO in a foreign country and the fundamental freedoms in the EU are hardly known among fundraisers as a solution to overcoming the tax barriers to cross-border giving.

7

Exploring the practice of international fundraising

7.1 Introduction

This chapter further explores the practice of international philanthropy. Where the previous chapter discussed the use of tax incentives and the persons who give to the arts across borders, the focus in this chapter shifts to the arts organisations that try to attract these international philanthropists. It explores which strategies arts organisations use when they try to attract foreign benefactors. Other questions that are answered are the following. Do arts organisations engage in international fundraising? How does an arts organisation set up international fundraising? Who is responsible within these arts organisations for international fundraising? Best practices in international fundraising by arts organisations are discussed. Furthermore, the chapter maps the challenges arts organisations come across when entering a foreign market, such as language barriers, fluctuating exchange rates and different cultures of giving.

7.2 The role of international fundraising for arts organisations

For arts organisations, international fundraising is only one potential source of income among many (Pommerehne & Frey, 1990). This section explores the significance of international fundraising as one of these sources of income.

7.2.1 Cross-border fundraising, not for every arts organisation

The majority of arts organisations only receive incidental gifts from abroad and do not actively engage in international fundraising. For those organisations that do engage in international fundraising, it is something their organisation either engages in alongside domestic fundraising or the organisation does not distinguish between domestic and international fundraising, but receive support from both domestic and foreign donors. None of the arts organisations researched engages in international fundraising without also engaging in domestic fundraising. In this sense, international fundraising is not a primary source of income; instead, it is an additional source of income. Experts, like philanthropy advisor 1 and tax advisors 1, 2, 5, 7, 8 and 10, recognise that they only come across cross-border philanthropy cases occasionally and domestic donations are far more common. Cross-border giving is a relatively small phenomenon in comparison to philanthropy as a whole. Even though arts organisations do not aim at international fundraising, they are still faced with cross-border donations.

7.2.2 Spontaneous cross-border gifts

Even though arts organisations do not proactively raise funds abroad, they may still receive donations from abroad. Often this concerns incidental gifts or annual gifts by one or a few foreign donors. A large number of arts organisations in the sample receive only incidental gifts from abroad, such as arts organisations 2, 4, 5, 6, 12, 18, 23, 29, and 33. Fundraiser 18 explains that the majority of the foreign donors live in the city where the arts organisation is located. She, however, does not see any use in proactive international fundraising among individuals. She says, “*Well, because actually, we do not see why people who do not live here would support us.*”

Despite arts organisations not proactively raising funds abroad, they might still have structures in place that facilitate foreign donors who spontaneously give with a tax benefit. When I consulted in-house lawyer 18, she informed me that the organisation does make an effort to provide the foreign donors that it does have with a tax incentive by registering as a PBO in other EU countries, despite fundraiser 18 mentioning that her organisation does not proactively raise funds abroad. Other arts organisations do the same. Arts organisation 33 has registered as a PBPE in the Netherlands. However, it does not actively engage in fundraising in the Netherlands. The registration in the Netherlands as a PBPE was a result of a legacy the organisation received from long time donors who moved to the Netherlands at a later age. In-house accountant 33 says, “*Unfortunately, that was a single occurrence and we do not have anyone within our organisation that solicits gifts from individuals in other countries.*” Arts organisations 6, 23, 24, and 25 are examples of other arts organisations that do not actively raise funds in the US, but all have a structure that allows American taxpayers to donate to them with a tax benefit. The arts organisations either have an American friends organisation or they are registered with an intermediary charity. These structures were mainly initiated upon the request of a spontaneous donor or in response to a cross-border donation received. Now that the structures exist, the arts organisations receive incidental donations through these structures of anywhere from USD 5,000 to 30,000 a year, but there is no steady flow of income. Arts organisation 6, for example, does not actively engage in activities in the US, but receives USD 20,000 a year on average through its American friends organisation.

Having a structure that provides foreign benefactors with a tax benefit, such as a foreign friends organisation, does not mean that arts organisations receive donations from abroad. For example, arts organisation 20 has a UK friends organisation. Although UK taxpayers can contribute through this entity to arts organisation 20 and receive a tax benefit, arts organisation 20 had not received any contributions to its UK friends organisation two years after launching the entity.

For some arts organisations, the existence of a structure that solves the barriers to cross-border giving becomes a reason to start proactively raising funds abroad. If they see that spontaneous gifts are made via the structure, this is an indication for them that it might pay off to make an effort for international fundraising. Arts organisation 24, for example, established an American friends organisation for a gift that it received from the US. After several years of just maintaining the American friends organisation, arts organisation 24 decided to actively raise funds in the US.

7.2.3 The wish to raise funds abroad, but not a priority

There are more arts organisations that want to raise funds abroad, but are not currently. This stems from different reasons. Some arts organisations first want to better establish themselves

before raising funds abroad, such as the relatively young arts organisation 14, which was established three years before this research. Other arts organisations first want to cultivate local potential donors. Arts organisation 3, for example, wanted to further develop its local and national support and streamline the development department – which had only been established three years before the time of this research – before raising funds abroad. Finally, raising funds abroad is not a straightforward task without challenges. It requires an investment before funds can be attracted. Therefore, it does not seem to be the first option for organisations that want to increase funding. If funds can be gathered in an easier way, arts organisations usually do not proceed with their idea of raising funds abroad.

7.2.4 Concluding remarks

The majority of arts organisations does not actively raise funds abroad. An increasing number of arts organisations, however, are faced with cross-border donations, as their donors move abroad or they receive spontaneous contributions from abroad. Some arts organisations do want to raise funds abroad, however, it is not a high priority. If there are other potential sources of income that require less effort, they chose the path of least resistance.

7.3 Raising funds abroad

Arts organisations that raise funds abroad do so in different manners. Each arts organisation has its own strategy to attract foreign benefactors. Before exploring the strategies used, I first discuss the persons who raise funds abroad for arts organisations and the initial steps in international fundraising.

7.3.1 Initial steps in international fundraising

Those organisations that do engage in international fundraising did not do so immediately, and in fact took a long time before starting international fundraising. The exploration time between the initial thought of raising funds abroad and the actual act of raising funds abroad is rather long. Fundraiser 34B specified this for corporate international fundraising. He started exploring the opportunity of raising funds among international corporations in 2009. Only after a period of two years, in 2011, arts organisation 34 established an international corporate support group. For some arts organisations it is also a matter of waiting for the right opportunity to come along. Among the fundraisers of arts organisation 10, the idea of raising funds abroad was present long before they actually started raising funds abroad. They waited until some of the artworks of arts organisation 10 travelled abroad before setting up international fundraising.

For fundraiser 21, an opportunity arose when his organisation hired an artistic director with working experience in various countries. The artistic director had a group of curators from around the world to advise her, each with their own network of people interested in the topic of the organisations among which fundraiser 21 could raise funds. He sent out a letter to these people, in which he explained that he was searching for supporters. This resulted in eight memberships, after which a second letter was sent out in which it was announced that an international circle of friends had been established and people were invited to join. This led to a substantial growth in the number of memberships.

The plans to raise funds abroad are often much more ambitious than what is eventually done. Fundraiser 15, for example, says, “[...] and so we have tried to set up an international friends circle in each of these cities. From [home country], this is extremely difficult, because it is so far away. Singapore [...], Saint-Petersburg, New York and we were eager to go to Sao Paulo. What is left of these plans is that we said: we will create opportunities to give international [donors opportunities], but we will not do it per city.” Fundraiser 15 now focusses on New York, since the arts organisation has a large circle of people it knows in New York.

Raising funds abroad requires a proactive approach. As noted in 7.2.2, several arts organisations had set up a structure to facilitate their American donors with a tax benefit, but for a long time did not raise funds proactively in the US. A few of them have now, or have recently, started to change this into proactive fundraising in the US. Arts organisations 24 and 25 are now making an effort to change their dormant American friends organisations into active groups of contributors.

7.3.2 Foreign support as alternative and additional source of funding

The main reason arts organisations start raising funds abroad is that they are in need of an alternative or additional source of income. Cross-border donations can compensate for a decrease in domestic funding from individuals, corporations or the government, but also for a decrease in other sources of income. When there is, for example, an economic downturn in one country but other countries are doing well, cross-border fundraising can provide interesting opportunities.

As European governments decrease their subsidies and arts organisations become more independent of governments, arts organisations search for alternative sources of income. This makes them more dependent on private funding. Several Dutch arts organisations explicitly mention in their annual report that support from these friends organisations is vital as they face subsidy cuts in the Netherlands. Arts organisation 24 sees its American friends organisation as a new way of obtaining funds to compensate for the budget cuts on arts and culture by the government and to supplement the income it receives from the government, foundations and companies in its own country. For arts organisation 12, subsidy cuts were not the reason to start raising funds among individuals. The arts organisation had already decided to start raising funds among individuals before the subsidy cuts started. The subsidy cuts, however, increased the urgency of fundraising among individuals and was a push factor to start raising funds among foreign individuals.

International fundraising is not solely a response to a decrease in government subsidies; interviewees also report that it is an alternative to corporate support. The weakening of the economy in the residence country of arts organisation 34 in 2008, due to the financial crisis, led to a decrease in corporate support. In 2009 arts organisation 34 started looking at stronger economies. In these countries, the arts organisation started to raise funds in order to compensate for the decrease in domestic corporate support.

A risk of the fast implementation of international fundraising in response to a decrease in another source of income is that it leads to *ad hoc* decisions and a lack of long-term strategy. Philanthropy advisor 2 sees a positive development when she looks at the UK after the subsidy cuts in 1997, however. There, philanthropy developed after an initial shock reaction. A downside of sudden subsidy cuts is that fundraising among individuals is suddenly implemented in an unprofessional manner. Fundraiser 12 mentions that because of the unprofessional implementation of fundraising among individuals, a large number of counter-benefits are offered. This threatens the long-term benefit of individual fundraising.

International fundraising is also used as an additional source of income. Arts organisation 28 started to raise funds abroad because its general manager wanted to launch a new initiative and the organisation had to increase its income to realise the new initiative. For fine arts organisations, special projects, such as exhibitions abroad or exhibitions of foreign artists, often create the need and desire to raise additional funds. When domestic sources are exhausted and additional funding is necessary, foreign funding can provide a solution. However, when other sources of income are available that require less of an investment, these are preferred. During the process of recruiting interviewees, I quite frequently came across fundraisers who wanted to raise funds abroad, but in the end, they did not engage in it. When I spoke with a fundraiser in the fall of 2014, for example, she was preparing for an exhibition of an American artist. She mentioned that she wanted to raise funds in the US for this exhibition. A year later, the exhibition was held. When I then asked her about the fundraising in the US, she replied that in the end, she did not raise funds abroad for this exhibition, as she found a main corporate sponsor in the home country.²³² I also came across several cases where fine arts organisations had exhibitions abroad, but refrained from raising funds abroad, as the profit margin on their foreign exhibitions were large and there was no urgency to attract additional funds. Arts organisation 8 is one such museum. When an exhibition travelled to the US, Japan and Italy, the organisation decided not to raise funds in Italy, as the exhibition was there for only ten weeks and there was a large profit margin on the exhibition. This made it unnecessary to raise funds in Italy. In the US and Japan, however, the organisation did make an effort to raise funds.²³³ Arts organisation 8 came upon several challenges, especially in Japan, where its fundraising efforts did not turn out to be successful.

In exceptional cases a domestic donor incentivises arts organisations to raise funds abroad. Arts organisation 31 had a major donor who supported it for 10 years in a row with 10 million USD annually. One of the requirements of the donor was that the arts organisation matched his grant with foreign funds, whether private, governmental or corporate funding. After 10 years, however, when the grant expired, there was no replacement for the major donor. Fundraiser 31 says, *“And ideally we would have said, in years five to ten we would have been busy to replace it, but inevitably, I don't know [...]. That was kind of beyond my role. But it was a little baffling to me why yeah [...] I think it was a little bit challenging to the organisation.”*

7.3.3 Who raises funds abroad?

At the majority of arts organisations, international fundraising among individuals falls under the responsibility of employees whose job is individual fundraising in general. Depending on the size of the organisation, the degree of the division of labour differs. This results in different levels of specialisation. The main task of fundraisers 20A, 20B and 34B is international fundraising. In all other arts organisations, this task is covered by somebody with a broader range of tasks. Depending on the size of the arts organisation, the person responsible for international fundraising is responsible for fundraising among individuals, fundraising in general, or the organisation in general (i.e. the directors).

232 Since this organisation had no experience in cross-border fundraising, they were not interviewed, nor was a document analysis performed of their annual report and media coverage.

233 Large sums of money are involved in travelling exhibitions. Costs for producing exhibitions, as well as transportation, insurance and protection of the artworks are expensive. But still, there is a large demand for exhibitions and some organisations are willing to pay a high fee to have a certain exhibition. Arts organisation 39 reports fees for travelling exhibitions of EUR 1.5 to 4 million. Although travelling exhibitions are costly, producing them can also be very profitable due to the high fees paid by visitors.

Medium-size arts organisations and larger employ at least one fundraiser – with the exception of arts organisation 23 which does not employ a fundraiser – but more often they have a development team responsible for fundraising. Some development departments are of significant size. Arts organisation 32 has a development department with 90 employees. This is the largest development department in this research. The tasks within development departments are usually divided among employees based on the type of funding sources they focus on, such as foundations, government agencies, corporate support, individual giving (sometimes further divided into the different levels of giving) and planned giving and legacies. The superstar arts organisations might also have employees in the development department that perform specific tasks, such as planning special events and prospect research.

Among small arts organisations, the presence of a fundraiser is less common. Four out of the nine small arts organisations in this research do not have a fundraiser, one organisation has just appointed a fundraiser and another arts organisation has a freelancer for 0.1 FTE to coordinate the friends circle. In the organisations that do not have a fundraiser, the director takes up this responsibility, sometimes supported by an assistant or volunteer. Director 16, for example, does the majority of fundraising for her organisation. One of her employees supports her by sending out mailings and keeping a registry of donors.

Employees of arts organisations are often supported in their efforts to raise funds abroad by people who voluntarily offer their skills and network to the arts organisation. These can be board members, representatives of the home country of the arts organisation and expatriates and diaspora.

When it comes to organising events abroad and expanding the network, embassies and consulates are of great help to arts organisations. When arts organisations travel abroad with exhibitions or performances, embassies and consulates may host fringe events. During these events, the embassies and consulates invite their network to show the cultural prestige of their country. For the arts organisations, this is an opportunity to get in touch with potential foreign donors and to invite their relations in that country. Embassies often invite their network, provide the location and the catering during these events. Many arts organisations can count on the support of the embassies and consulates. Arts organisations 1, 6, 7, 8, 9, 10, 15, 20, 22, 30, 32 and 34 explicitly mentioned, either in the interviews or in their documents, that they received help from embassies in raising funds abroad. Some embassies also provide financial support to activities of arts organisations.

Some arts organisations deliberately select board members based on the countries in which they want to raise funds, as this often goes hand-in-hand with developing substantive activities in these countries. Arts organisation 36, for example, has several board members from foreign regions where the arts organisation wishes to develop activities and raise funds. Foreign board members are usually influential professionals in the arts sector, successful business people with an art collection, or (former) ambassadors, all with a large network. This seems to be a trend. In the US, international trustees make up 20 percent of a museum's board (Kazakina, 2013). For foreign friends organisations, the board is also key. It can provide the right network in which to raise funds and host events, such as dinners and cocktail parties, to expand the network. Arts organisation 7, for example, relies partially on private events organised by its members and board members abroad to reach out to a wider circle of music enthusiasts and potential donors.

Finally, expats and diaspora play an important role in connecting arts organisations with potential foreign donors. First of all, it is interesting for arts organisations to attract

expatriates who (temporarily) live in the city, as it is likely that these people might leave again and can represent the arts organisation in their new country of residence. Arts organisation 8 aims to attract expatriates who live in its city, amongst others with lectures in English. Second, and more importantly, expats who originate from the country of the arts organisation are interesting connections, as they have established themselves and have a network abroad. At the time of the interview, arts organisation 8 started to raise funds in the US. There, fundraiser 8 got in touch with the partners of Dutch expats. Through these contacts, fundraiser 8 aims to expand the network of arts organisation 8 in the US.

7.3.4 Strategies when raising funds abroad

Arts organisations that raise funds abroad use different strategies to attract foreign benefactors. Among the arts organisations researched, three strategies can be distinguished: A) embracing grassroots initiatives by foreign donors; B) arts organisations focus on one or a few foreign countries and set up friends circles in these countries; C) arts organisations have a friends circle at their home location specially-dedicated to international supporters from all over the world.

One organisation may use a combination of these strategies for different countries. Arts organisation 20, for instance, raises funds in France through grassroots initiatives, as well as focussing on several other specific countries where it set up friends circles.

7.3.4.1 Embracing grassroots initiatives by foreign donors

Spontaneous cross-border gifts received by arts organisations, as discussed in section 7.2.2, illustrated that it is not always the arts organisation that takes the initiative to attract cross-border gifts. Instead, foreign donors sometimes find the organisation, are eager to contribute and are even occasionally willing to take the initiative to raise funds for the foreign arts organisation. Often it concerns donors with a strong involvement in the content of the arts organisation or with a close relationship with the location of the arts organisation.

Arts organisation 20, for instance, has a donor in France who wanted to start the French friends of arts organisation 20. Arts organisation 20 was, however, reluctant to embrace this initiative. The underlying reason was that arts organisation 20 in the US and the UK experienced that having a formal foreign friends organisation is labour intensive. Instead, arts organisation 20, together with the French donor, decided to set up an association and first see how this would develop. The arts organisation made an effort to advertise it on its website and to facilitate the French donor with the necessary information. The donor managed to attract a modest group of members. If it would turn out to be a successful initiative, arts organisation 20 would commit to further formalising the French friends. As it was only set up three months before the interview, the fundraisers of arts organisation 20 could not yet evaluate it. Earlier, arts organisation 20 had collaborated with Swiss donors in a similar manner. There, some people wanted to set up an organisation to support arts organisation 20. They arranged everything themselves, even coming up with the needed amount of CHF 50,000 to set up the legal entity in Switzerland.

Yet another example is that of the Swiss friends of arts organisation 7. That was initiated by two befriended couples who originate from the home country of arts organisation 7 but moved to Switzerland. When they were still living in the home country of arts organisation 7, they were regular attendants of its concerts. After moving to Switzerland, they remained in touch with the fundraiser of arts organisation 7. During one of their conversations, the topic

of establishing a support group in Switzerland came up. They organised an event and these Swiss fans of arts organisations established the legal entity. Since then, the Swiss friends of arts organisation 7 has grown into a group with 60 major donors. One strategy is thus to collaborate with foreign benefactors and enthusiasts for the arts organisation to set up a friends organisation abroad.

7.3.4.2 Foreign friends circles in specific countries

Other arts organisations do not await the initiative of donors to raise funds abroad. Instead, they themselves take action to raise funds abroad. To do so, arts organisations use a strategy in which the focus lies on one or a few specific countries, which are selected with care. In these countries, the arts organisations actively try to create a group of benefactors by establishing (often formal) friends circles in these countries. At the location of these friends circles, activities are undertaken to build the relationship with the foreign benefactors and thank them for their support. From the interviews, it came to light that the majority of arts organisations initially focus on one country. Later on, they might add several countries to this selection. The maximum number of countries on which an arts organisation in this research focussed on was five. In the selection of countries, arts organisations tend to look at the countries where there is a large support base for the arts organisation, but also at countries with which the organisation has some sort of relationship based on which it can justify the fundraising abroad and create a case for support.

Foreign countries where a large support base is expected are selected based on the size of the audience from the specific country. Furthermore, arts organisations tend to look at the existing network of contacts with peers and potential donors. The presence of emigrants and expatriates from the home country of the arts organisation are also taken into account to determine the size of the support base.

Countries with which an arts organisation has a certain relationship, often based on the content of the art it produces or presents, are also potential focus countries. Furthermore, activities abroad are perceived as opportunities to create a case for support. When arts organisation 24 decided it wanted to raise funds in the US, it even arranged an exhibition in the US to create a strong case for support. Arts organisation 8 had a similar approach. According to its 2013 annual report, the exhibition of some of its superstar artworks in the US and accompanying events – a cocktail party and a dinner – led to an increase in the number of members of the American friends organisation and a gift of USD 100,000 for the arts organisation. Activities in collaboration with foreign arts organisations are also used as a justification to raise funds in a specific foreign country. Fundraiser 8, for example, used the exhibition of a US arts organisation that would be held at arts organisation 8 as an argument to raise funds in the US.

Other aspects that are taken into account when selecting a country are the historical and geo-political relationships with a specific country and the philanthropic traditions in a country. These are additional justifications for an arts organisation's presence in a foreign country.

Fundraiser 34 summarises the factors in a matrix when deciding on which countries to focus in international fundraising. The fundraiser puts countries on the one axis and possible links, such as existing contacts in the network, number of visitors from that country, revenue from that country, programmatic links, the level of individual giving in the country, competition of local arts organisations and local prosperity on the other axis.

The more links and the heavier the weight of these touchpoints, the higher the fundraising potential in that country. An example is included in figure 7. It shows that countries B and D score highest on the different factors. Thus, the best fundraising opportunities can be found in these countries.

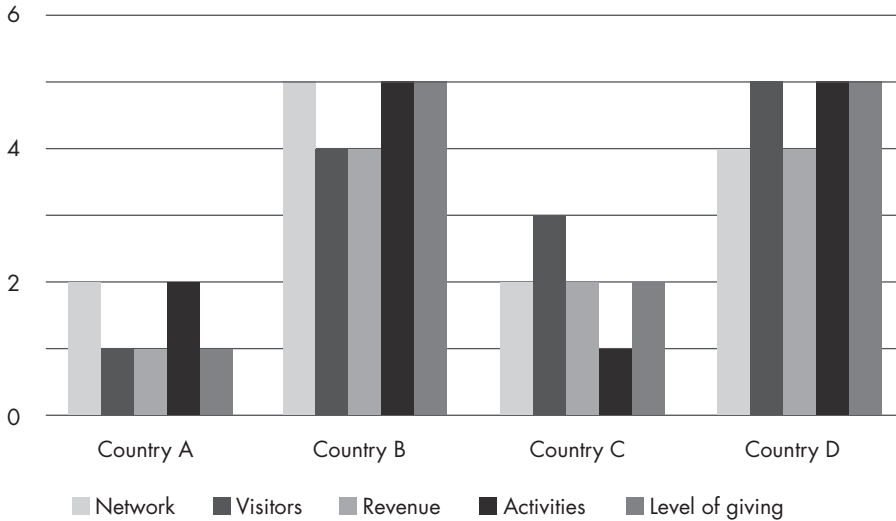


Figure 7 - Fundraising opportunities

Once a country is selected, a friends circle can be established in that country, and the solution to obtain a tax benefit on the cross-border donation is usually established. The friends circle is typically established by identifying a few key persons who can mobilise their networks and local relationships. Peer pressure as well as the exclusive character and prestige of these friends circles are used to attract persons to the friends circle abroad. Arts organisation 11, for example, has developed a system that it employs in every country it focusses on. In each of these countries, there is a chairperson of the friends circle. This person is responsible for gathering a certain minimum number of donors for its friends circle. Each of these donors pledges a gift for five years in a row to join the friends circle, and the chairperson gives double the amount of the donors. Key persons to attract donors can also be local representatives of the home country.

Some arts organisations decide to join efforts and to raise funds together in a specific country by setting up a joint friends circle there. A common denominator, such as a common country of origin, seems to be required to make this into a success. The potential donors of arts organisations from one country are likely to overlap, as often there are a limited number of individuals who have a strong bond with a specific country, are wealthy enough to engage in philanthropy and have an interest in the arts. The collaboration allows the arts organisations to gather additional funds from these potential foreign donors, while sharing the overhead costs. This can make a collaboration in international fundraising into an efficient effort. Mutual trust between the organisations, however, is required.

7.3.4.3 Global friends circles at the home organisation

Only a few arts organisations that raise funds abroad do not select specific countries, but instead target foreign donors in general. This approach is used by highly specialised arts organisations and superstar arts organisations with an international stature. Instead of establishing friends circles in specific countries, these arts organisations have friends circles at the home organisation. Arts organisations 10, 13, 28 and 34 have friends circles specifically targeting international donors. Arts organisations 16, 17, 18 and 21 do not have separate circles targeting international donors. In these organisations, the international donors join the circles that are also available for domestic donors.

Arts organisation 16 is small and is one of these highly specialised arts organisations. It specialises in visual art from a specific region and era. In its international fundraising, arts organisation 16 aims at people interested in this specific type of art who are spread across the world. Enthusiasts – who are often art collectors – find arts organisation 16, and vice versa, through the mutual love for this specific fine art and their relationship is based on this joint interest. The majority of the art collectors got to know arts organisation 16 by word of mouth or via its website. The donors are usually people who have been collecting for a long time and actively use the website of arts organisation 16 to gain knowledge and then reach out to the organisation to get in touch with curators.

Among superstar arts organisations there are also a few examples of organisations that target international donors in general. Superstar arts organisation 36 targets international donors in general, as it has admirers in all corners of the world. It targets the wealthiest supporters among those admirers, instead of a specific country. Superstar arts organisation 28 also targets international donors in general. It uses the visitor database to approach those wealthy foreign visitors. The arts organisation sends out personalised invitations once a year to those who bought tickets in a high-price section and with a foreign address to join its international friends circle. Every year, there are two or three visitors who join this circle, which requires a significant level of giving.

One strategy the fundraisers of highly-specialised arts organisations use to recruit foreign donors is strategic networking. They search for opportunities in the networks of people that surround them. The fundraisers rely on the artistic staff of the arts organisation, who have a (international) network of people who share their passion for art. Fundraiser 21, for example, got in touch with curators from around the world through the artistic director of his organisation. These curators opened their network to him, so he could raise funds among those interested in the type of art exhibited by arts organisation 21. This resulted in an international group of patrons.

Another strategy used is the advertisement of the international friends during events abroad. Arts organisation 10 used the loan of one of its superstar artworks to several foreign arts organisations as an occasion to arrange fundraising events abroad. With these fundraising events, it aimed at advertising its circle for international donors. A variation on this strategy is that of arts organisation 36. It specifically targets people with a connection to a certain region where it develops programmes. It invites these people to join friends circles surrounding these regions at their home organisation. The Middle East is one of these regions. Collectors of art from the Middle East (who may be resident in the home country of arts organisation 36, but also foreign benefactors) are joined in a friends circle at arts organisation 36. Together, they acquire artworks for the museum and support programming and exhibitions that involve art

from the Middle East. Following the success of the Middle East support group, arts organisation 36 is now starting a Latin American support group.

Connections with private collectors across the world are of high importance for highly specialised fine arts organisations. First of all, because the collectors give works and loans. Second, because the arts organisations can exchange knowledge with them. Third, because collectors might be potential donors. The exchange of knowledge and raising support abroad go hand in hand for arts organisations. Therefore, arts organisations that target international potential donors in general also use the exchange of knowledge to attract donors. Private collectors are important not only as beneficiaries, but also as a network to gain knowledge for arts organisations. Director 16 visits international art fairs, together with a curator, so that they can approach art collectors and art traders and reach them through the knowledge and interest on this specific topic. Arts organisation 32 gets in touch with art collectors who collect in its area of expertise when it organises international loan exhibitions. Following these exhibitions, art organisation 32 builds a relationship and the art collectors then become instrumental in negotiating loans for the arts organisation and helping find funders for exhibitions. Arts organisation 22 also has foreign donors who have similar collections as arts organisation 22, and also know the curators because of their shared interest. The same holds for arts organisation 36. It has a group of international collectors who are very interested in the art world and want to learn at the same time. The curators of arts organisation 36 provide this group with presentations on art, even including information on what to buy. When there is an important art fair in town, contributors to the arts organisation get a guided tour with the curator of the arts organisation. The employees, during these visits, share their expertise on collecting art. Fundraiser 36 says: *“And when they are here at the [...] art fair they walk around the fair with a curator. So they have an opportunity, you know, for a very educated eye. So that is part of the reason why they [contribute to the arts organisation].”*

7.3.5 Concluding remarks

International fundraising among individuals is usually done by the fundraiser of the arts organisation who is also responsible for domestic fundraising among individuals. Only a few arts organisations are large enough to have a specialised department with people focussing only on international fundraising. It can take a while before an arts organisation turns its wish to raise funds abroad into action. Usually, the increasing need of funds and the lack of other funding is the reason to transform the wish into actual international fundraising. However, when other sources of income are available that require less fundraising effort, these are preferred. International fundraising is mostly considered an additional source of funding or an alternative source of funding in case the regular income of an arts organisation decreases.

The ways in which arts organisations start raising funds abroad vary largely. Some use a top-down approach, starting by selecting a country in which they will attract donors. Others start from a grassroots approach, facilitating a passionate donor abroad to create a group of foreign donors. The majority of arts organisations start raising funds in one country and potentially add a few countries to the selection across time. However, highly specialised arts organisations and superstar arts organisations attract an international crowd and some of them do not focus on a specific country but rather on international benefactors in general.

7.4 Best practices and challenges in international fundraising

Raising funds abroad does not come without challenges. It requires knowledge of tax law, time investment, financial investments and visibility abroad. Language barriers and cultural barriers have to be overcome. Furthermore, arts organisations who raise funds abroad have to compete with local arts organisations in the countries where they are trying to raise funds. These challenges are discussed in this section and so are the best practices in international fundraising. Arts organisations 10, 13, 16, 20, 21, 22, 27, 28, 30, 32, 34 and 36 receive regular income from foreign benefactors. Arts organisation 7 sees that the contribution from its foreign friends organisations is increasing and it expects that this source of income will further increase in the upcoming years. How these organisations successfully attract this regular income from abroad is elaborated on in this section. The organisations that report success in cross-border fundraising all have strong cases for support, a network of relationships in the country and manage to engage these people in their activities. Furthermore, they have access to local experts and ambassadors in the country where they raise funds.

7.4.1 Cross-border fundraising requires investments

To successfully raise funds, money and time have to be invested (Heilbrun & Gray, 2001, p. 265). This holds for both domestic as well as for cross-border fundraising. To turn incidental cross-border donations into a reliable source of income, an investment of time and money is required. These investments need to be taken into account in order to determine whether cross-border fundraising is a profitable exercise. Fundraiser 22B stresses that raising funds abroad requires a large investment, of which one should be aware to ensure it pays off.

International fundraising requires a time investment. Thus, first of all, arts organisations have to invest in their human resources. Development departments in the arts organisations in this research consisted of a varying number of employees, anywhere from zero to ninety. For those with no or few employees, it can be difficult to find the human resources and time to invest in cross-border fundraising. Arts organisation 23, for example, does not proactively raise funds abroad as it does not have the human resources to do so. The director says that he would need someone who could work on it full time so that the current staff can focus on their own tasks. Arts organisation 26 made an effort to raise funds in the US and hired an expert coach for advice. The actual fundraising, however, had to be done by arts organisation 26. This required 1 FTE, but no additional personnel were hired for this task. In the end, the attempt of arts organisation 26 to raise funds in the US failed as it did not have the human capacity to follow up on the guidance they received. The ability of the fundraisers of arts organisation 10 to build strong networks abroad is limited by the variety of countries they raise funds in and the capacity of the organisation, as they are the two sole employees raising funds internationally. International fundraising is restricted to a limited number of countries for fundraiser 8 and 34 due to limited staff, although there might be more countries where there is potential for successful fundraising. Director 4 chooses to focus on increasing the reputation of arts organisation 4 in order to indirectly attract more funds, instead of focussing on (international) fundraising, as this requires more human resources, which the organisation does not have.

To compensate for the lack of human resources, some arts organisations resort to volunteers. Fundraiser 7 stresses that, the success of international fundraising is highly dependent

on the efforts, energy, time and network of local volunteers, as the organisation has too little capacity to be active in all the different countries, and there are not enough funds to hire a professional company to raise funds abroad. Arts organisation 30 also partially relies on unpaid labour; it works with interns. A downside of working with volunteers is that fundraising is not their main priority, as they have jobs, education and other obligations that are more important. Second, they need more guidance, as the needs of the arts organisation are not always obvious to them.

Organisations that raise funds abroad must weigh the benefit against the time investment. The entire arts organisation 16 runs on 3.3 FTE. The director says that things like updating the registration at the UK intermediary organisation costs half a day, which is a considerable amount of time considering the size of their organisation, and it only has two donors in the UK.

International fundraising benefits from well-trained and skilled people. The American friends of arts organisation 30 is run by three employees, two of which are located in the home country of arts organisation 30 and one in the US. The US fundraiser mentions that it is difficult for the organisation to find the right staffing, as working for the American friends organisation requires a specific set of skills and knowledge. Fundraiser 27 says, *"They have to have an understanding of fundraising, but they also have to have a cultural understanding of [the home country] to know the city, to know the museum. That is challenging."* Fundraiser 20A also addresses the issue that staff for international fundraising is difficult to find. She says that she and her colleagues were not experienced in international fundraising when it was set up. Despite this, they were the best option for the organisation, as their English was good and they knew the organisation very well. For fundraiser 35, who heads the development department, it was challenging to find the right person to manage the American friends organisation. Initially, she had someone with little experience whose responsibility it was, amongst others, to manage the American friends organisation from the home country. But then it took too much of her time. This, in combination with other factors made it so that the organisation was not beneficial enough. Therefore, fundraiser 35 decided to hire someone more senior who costs more, but could lead the American friends of arts organisation 35 in little time and would make it more beneficial.

Preferably, the professional staff does not go at the costs of the budget of the mother organisation. It either earns its own costs or is totally financially independent. Arts organisation 24, for example, found a few American donors willing to finance the salary of fundraiser 24. The donors guaranteed her salary for three years for her to develop fundraising in the US.

International fundraising not only requires time from those responsible for it; it has to be supported by the entire organisation. When international fundraising is established, it can be difficult for those who are responsible for international fundraising to get the attention of their colleagues in other branches of the organisation that they need to successfully raise funds. Fundraiser 30 makes the point that it is difficult for fundraisers at foreign friends organisations to get the attention of employees at the home organisation. The foreign friends organisation is dependent on the input of the home organisation. But for the employees at the home organisation, the foreign friends organisation is not the main priority. Fundraiser 30: *"They are very busy [...] and sometimes it is hard for them to be responsive. And the American friends [organisation] is not always their priority, because they have a lot to do on their own, as far as their jobs. So we are not always the first thing on their list."* Fundraiser 24 states: *"[...] Having a friends organisation for the mother organisation often entails 'out of sight, out of mind'."*

Those responsible for raising funds abroad, however, are highly dependent on the resources they receive from the mother organisation to raise funds, such as brochures, websites, software for visitor and donor databases, but also content from the home organisation. Fundraiser 22A explains that in order to raise funds in the US, she needs projects that appeal to Americans. The colleagues at the home organisation do not always understand this, as they feel all their projects are worthwhile. For the American donors, however, projects have to relate to them in order to be interesting to support. The kinds of projects fundraiser 22A is looking for help make the visitor experience better for English speakers, like translating catalogues in English, etc.

International fundraising costs time in the sense that employees spend time on it, but it also costs time before this pays off. Engaging in relationships with potential donors and establishing networks of supporters is a time-consuming process. Establishing mutual trust requires time. In a domestic situation, this is already the case. In the cross-border situation, this challenge is even more pronounced as it requires a repetitive presence in the location of the potential donor. A general rule in cross-border fundraising seems to be that it takes at least five years to establish a fruitful international support group. Most arts organisations cannot afford to have their employees travel frequently to a foreign (intercontinental) location and, therefore, the arts organisation only visits a foreign location from time to time, which requires more time to establish a strong relationship with a donor. According to arts organisation 6, also referring to the consent among its peer museums, raising funds abroad requires physical presence in the foreign country in order to organise events to present and sell the organisation. Building a relationship proves to require more patience in some countries than in others. Building a relationship in Japan, for example, requires an above average time investment. The fundraiser at arts organisation 13 explained that the Japanese citizens with whom she established a relationship started contributing after three to five years.

Although it is well known that fundraising requires an investment, fundraisers still face incomprehension from their directors and/or board members. The directors and board members of arts organisations need to understand that the investments in cross-border fundraising do not have an immediate return; it can take a while before it pays off. For fundraisers 8 and 13, this is sometimes challenging, as the directors of the arts organisation expect an immediate increase in international donors. Fundraiser 20A also mentions that the board members of arts organisation 20 do not always understand how difficult it is to establish oneself abroad. Arts organisation 20 is well established in its home country and has a long tradition. It, however, took time to establish the brand name in the home country. When starting in a new country, the fundraisers of arts organisation 20 have to establish the organisation's brand name. The board members tend to forget how challenging this is, however, and how much time this costs. The fundraiser of arts organisation 20 sums this up nicely: "*As an organisation you do not have time to deal with something that does not have an immediate return.*"

7.4.2 Constructing a strong case for support

To successfully raise funds abroad, an arts organisation needs to have a strong case on which to raise funds. To create such a strong case for support, arts organisations have to show that their organisation performs at the highest artistic level. They have to draw attention to their extraordinary quality. The case for support can be further strengthened by activities abroad that draw attention to the arts organisation. Arts organisation 7, for example, is a top notch artistic organisation which has long-term relationships with the countries where it raises funds.

Arts organisation 7 performs on a regular basis in these countries. Due to these regular visits, it has a loyal support base abroad.

By engaging local artists and audiences in the exhibitions and performances abroad, the case for support can be strengthened further. Workshops, drinks and other events in the country where one wants to raise funds help boost donations. This was the experience of arts organisations 8, 16 and 34. Arts organisation 34 explains that there is a strong interaction between exhibitions abroad, media exposure, number of visitors and donations from abroad. An exhibition abroad requires marketing and branding. This results in an increase in media attention, which on its turn leads to an increase in visitors. Furthermore, an activity abroad is an opportunity to organise a membership event, which leads to more contributions. Therefore, an increase in cross-border fundraising usually goes hand-in-hand with activities abroad, an increase in the number of visitors and media exposure. In Korea, arts organisation 34, saw an increase in the number of visitors, media exposure and corporate, individual and government support.

To maintain cross-border donations for the long run, it is important that the case for support gets regular new stimulus abroad. Just a one-off exhibition abroad is not enough. It requires continuous activities and new projects. Furthermore, a single activity is perceived as a superficial and short-lived justification. Philanthropy advisor 2 stresses: *“And I also think that actually if you are really going to justify your philanthropy internationally with big donors, it can’t just be to take a production somewhere, or because you tour internationally, because that is actually principally transactional.”* To go beyond a transactional act, philanthropy advisor 2 pleads for a more fundamental contribution to the art form: a unique activity that contributes to the artistic practice and development of future artists worldwide. According to philanthropy advisor 2, it would ideally involve in-depth knowledge sharing. And indeed, this approach is effective, as the practice of arts organisation 7 shows. Arts organisation 7 is very aware that justification and clarification is necessary on its international fundraising. It uses the funds it gathers through international fundraising for its core activities in that country. Furthermore, it organises fringe activities around its main activities abroad, such as master classes and talent programmes in which it aims at talent development in foreign countries.

A substantive relationship with a country can also provide a justification to engage in cross-border fundraising. The content of arts organisation 26 has a strong connection with the US and its immigration history. This creates a relationship between the arts organisation and the US. The European roots of many Americans are interesting stories content-wise for arts organisation 26. When these Americans are also willing to make a financial contribution, this is an additional benefit. Arts organisation 32 has a similar approach. When it has an exhibition on a specific topic that involves a certain country, city, or culture, it will try to find an ambassador in that region to help them raise funds there.

Philanthropy advisors 5 and 6 illustrate a situation where the efforts of an organisation raising funds in the US when it celebrated its 75th anniversary was unsuccessful. Not having a specific case for support, their own ‘product’ as they called it, and instead collecting funds for a broader, less specific goal like ‘[home country] art and culture’ proved to be challenging. This example illustrates that not all arts organisations have a strong case for support.

7.4.3 Conditions to deploy activities abroad

A few more issues have to be outlined concerning activities abroad. Activities abroad put a high pressure on the resources of arts organisations. For fine arts organisations, it can be

difficult to provide content for exhibitions abroad, despite the fact that the collection of many arts organisations is larger than their display capacity and thus many artworks are stored in warehouses. Their superstar artworks are such attractions of audiences that they cannot send them abroad. It would deprive the home location from a part of its core content. An opportunity in this regard is a renovation. Arts organisations 8, 10 and 29 sent their superstar artworks abroad when their home location was closed due to renovations.

Performances abroad also put high pressure on performing arts organisations, as it is time-consuming for artists and the support staff. It goes at the cost of performances at the home location. In the annual report of arts organisation 9 it reads: “*The possibilities to go on tour for [arts organisation 9] are relatively limited due to the commitment to perform at the main hall in the home theatre.*” Fundraiser 15 further explained that fifty people join on a performance abroad: technicians, people from the costume department, artistic staff and of course the dancers. Besides, she mentions that it is challenging to schedule performances abroad. According to fundraiser 15, developing activities abroad on an annual basis, therefore, is difficult.

Not all countries are suitable for arts organisations to develop activities in. If safety is at risk, or if there is little interest in the topic in which the arts organisation is active, there are less opportunities to develop activities in that country. Subsequently, there is most likely no reason to raise funds in that country. Director 4, for example, received an offer to organise activities in a South American country with a bad reputation when it comes to safety. She, therefore, perceived it as irresponsible to travel there with art worth EUR 15 million. Other arts organisations refrain from developing activities in certain countries because the working conditions for artists or the housing conditions for their artwork are not good enough. A lack of specialised climate control, security systems and other facilities stand in the way of activities in these countries.

7.4.4 Foreign contacts and networks abroad

The interviews showed that contacts in the country where the arts organisation wants to raise funds are crucial, especially in the starting phase. The contacts can provide the fundraisers with information on the local culture of giving. This helps the fundraisers decide on a strategy to raise funds in that specific country. Fans of the arts organisation can provide this information, as happened in the case of arts organisations 7 and 20. Also, ambassadors and consuls were mentioned in the interviews as key contacts who provide this information. Several arts organisations were, for example, advised by an ambassador to set up a joint foreign friends organisation instead of each organisation raising funds alone.

Fundraiser 7 perceives these initial contacts as very important for any international fundraising effort. Finding the right contact persons abroad is also a strategic choice, dependent on which community the international fundraising targets. Fundraisers have to decide whether they make contact with a local person, or with an expat or diaspora. Furthermore, they have to decide whether they want to add a political layer, such as an embassy, to the foreign friends organisation. Local supporters of the arts organisation can often introduce the fundraiser to the right people who are also interested in their cause. Some of the arts organisations that did not have local contacts with great expertise in philanthropy hired local experts. This was necessary for them to obtain the right tone of voice and to start building a network.

Ambassadors, consuls and other representatives of the home country of the arts organisation, such as cultural institutes, play a special role. For several of the interviewees who now successfully raise funds abroad, they were of great importance to start and expand the network of the arts organisation abroad. They serve as advisors, guides to the foreign country and hosts for events, as was explained in section 7.3.3.

Visits by foreign presidents and members of foreign royal families are used by arts organisations as opportunities to increase attention for the arts organisation. Furthermore, the arts organisations seem to use these occasions to signal their prestige. Images of Barack Obama, former president of the US, in front of the *Night Watch* by Rembrandt in the Rijksmuseum in Amsterdam appeared on the front page of *The New York Times*²³⁴.

Having prominent persons on the foreign friends organisation also increases prestige. Arts organisation 7, for example, honours its prominent members at its foreign friends organisation as special guests during events. Patron 2 also appreciates encounters with prominent persons. This is clear from the way she describes an event that was attended by the Dutch former queen, which Patron 2 also attended with a foreign friends organisation she supports. She says: “*Well, we were not introduced to each other, but we were in the same room. That of course was impressive.*” Also, if arts organisations are included in official state visits and/or trade missions, this increases the visibility of the arts organisation abroad.

7.4.5 Maintaining cross-border relationships

Once a relationship is established with foreign supporters and gifts are secured, it remains important for arts organisations to maintain the cross-border relationships. Many arts organisations underestimate this.

An important tool in maintaining relationships with donors is offering counter benefits. Arts organisation 11, for example, together with its foreign friends circles, organises a large yearly event for its international donors. The location rotates between the locations where the foreign friends circles are located. Organising counter-benefits in the country of the donor can be expensive, though. Arts organisation 15 explains that organising private performances for the UK donors is a costly affair, as dancers and supporting staff have to travel and be accommodated in London.

Having contacts abroad who function as ambassadors for the arts organisation can help the arts organisation maintain the relationship with the foreign benefactor. The arts organisation, together with its foreign contacts, can organise exclusive events for the foreign benefactors. These events can serve as counter-benefits, but are also important in terms of community building and nurturing relationships. Arts organisation 7, for example, organised a reception at the house of the ambassador in the UK, followed by a performance. Among foreign friends circles, group trips are also popular. They help the arts organisation to create a bond among their foreign benefactors. Arts organisation 22, for example, takes its American friends to a large art fair in the US. Among American donors, such trips are popular, as they “*just really love the opportunity to travel with people who are interested in similar things*” says fundraiser 22A.

²³⁴ 2014, March 25, President Obama spoke Monday at the Rijksmuseum in Amsterdam in front of the Rembrandt painting “The Night Watch”. *The New York Times*: 1.

Another way to increase the bond between the arts organisation and its foreign benefactors is to engage foreign benefactors in the activities of the arts organisation. Arts organisation 7 engages its foreign friends organisations in its talent development. One of the aims of the foreign friends of arts organisation 7 is to recruit talented musicians in their home country to audition at arts organisation 7. It has occurred, that when ‘their’ candidate was selected to join arts organisation 7, the foreign friends organisation financed the candidate.

Arts organisation 11 experienced with its friends circle in Hong Kong that it is difficult to maintain relationships with donors far away. First of all, it expected that its friends in Hong Kong – who are mainly expats – would inform arts organisation 11 when they would be in the home country, so that it could offer them exclusive counter-benefits. This, however, did not happen. Donors typically do not claim their counter benefits; it has to be offered to them. Second, arts organisation 11 was also relying on its volunteer chairperson of the Hong Kong friends circle. As he faced challenges in the private sphere, he could not devote time to the friends circle of arts organisation 11. This made some members of the friends circle dissatisfied. Fundraiser 7 underlines that before starting to raise funds abroad, arts organisations should take into account that it takes a lot of effort to maintain the relationships.

7.4.6 Cross-country differences in philanthropy

The next section discusses the culture of giving, which is a (partial) explanation of why the US is popular place among foreign arts organisations to raise funds. It is well documented by Handy and Wiepking (2015a) and Salamon and Anheier (1997) that philanthropy and the charitable sector differs across countries. Arts organisations tend to look at the countries where there is a considerable amount of philanthropy when they want to raise funds abroad. Those countries with a well-known generous gift culture, like the US, are popular countries among arts organisations who wish to raise funds abroad. Several arts organisations, such as 7 and 15, explicitly mention the culture of giving in the US as a reason to select the US as a country in which to proactively raise funds. Countries where there is little information on the local gift culture – fundraiser 8 mentions Belgium, France, Italy – are less popular among arts organisations that have the desire to raise funds abroad. I suspect that this has to do with the higher information costs for these countries.

With differences in philanthropy come differences in fundraising. In some countries, fundraising is more advanced than in others (Breeze & Scaife, 2015). This also leads to differences in returns on fundraising investments. The donations that arts organisation 22 receives from its American friends organisation far exceed the amount it raises domestically. Arts organisation 8 tried to raise funds in Japan through a crowdfunding platform. This, however, failed miserably, perhaps because it did not adjust its fundraising strategy to the Japanese philanthropic culture.

To successfully raise funds abroad, fundraisers have to acquaint themselves with the philanthropic culture in the country in which they want to raise funds. This allows them to tailor their approach to international fundraising to the philanthropic culture. Fundraiser 7 explains that *“There was a time that we thought that we had a model that we could somewhat copy. Forget it. Every country is different. Every culture is different. Even every city is different. You have to deal with an entirely different playing field in New York than in Chicago.”* And he later continues: *“I cannot tell you in five minutes what the blueprint is, but I can tell you that if you put all these variable in line, you will score differently in every country and that you will have to find a new focus and new leads in every country.”* Fundraiser 34B explains that the

customisation of an approach does not just depend on the local context, but also on the connection the organisation has with the country: “Each country, each strategy is very customised to the country as well. And customised with the connection. It is definitely not a one-size-fits-all approach. I was very aware of our own identity in that country.” Arts organisations 6, 10 and 16 hired fundraising experts to help them adapt to the foreign philanthropic culture.

Many arts organisations, however, underestimate the effort it takes to adjust the fundraising strategy to raise funds abroad in order to deal with the strong competition. Fundraiser 22A nicely summarises this: “Because sometimes I think institutions are unrealistic. They think we are the most important organisation in the world and I need to go and see the richest person in America and they are going to see me. You have to get in line with all these charities that are already trying to see this person. So you really have to do it the American way if you are setting up an American friends group. You really have to understand the tradition of philanthropy, how it works, the importance of relationships and stewardship, recognition and you have to kind of put aside the attitude or the traditions of your own country.” The comparison of the organisation of fundraising across nations shows that it is important to start fundraising abroad with cultural sensitivity (Breeze & Scaife, 2015, p. 587). For arts organisation 22, this was reason to establish an office abroad with local employees. Fundraiser 22 explains:

“[The board of arts organisation 22] was very serious about the organisation and they knew they had to hire a professional staff to run it. They couldn’t run it from [resident location]. Their staff was not trained in the American style of philanthropy, which is quite different from philanthropy in [resident location] and they did not just want a part-time person. They were very serious about what they wanted to achieve in America, because it is such a major museum, the financial needs are huge. So that is why they decided that their office should be opened [in the US]. And we fund our own budget. We do not receive any money from the [mother organisation]. So the rent, the staff salaries, legal and accountant fees, membership benefits, such as trips and things like that, are all funded by our office. So we are independent financially.”

7.4.7 Competition among arts organisations

Arts organisations compete with each other for resources. When it comes to individual donors, competition for donors can be fierce. One of the board members of US arts organisation 28 comes from Europe. He suggested that arts organisation 28 would go after the European supporters of a European performing arts organisation, since the European performing arts organisation was also raising funds among Americans.

Local and foreign arts organisations compete for the same donors. The chief executive of the American Ballet Theater commented on its international fundraising “it was born of a desire to do what the European [performing arts] companies were doing to us” (Catton, 2014). Fundraiser 19 explains that wherever you raise funds, there is always a limited group of persons who donate and it does not take long before fundraisers know this group of people. Those within this limited group of donors with a love for a specific topic often support multiple organisations active on the topic of their interest. Fundraiser 28 clarifies that fundraisers of American friends organisations look at the lists of American arts organisations and try to get in touch with someone on this list to help them put together their US friends circle, which is what happened with one of the board members and major donor of arts organisation 28. She was approached by a foreign arts organisation to join the board of its American friends

of organisation. The board member perceived the competition for arts organisation 28 as limited, since the foreign arts organisation was asking for a USD 5,000 contribution from its friends, whereas arts organisation 28 was asking for much more than this amount. Fundraiser 28, however, did perceive this as competition – even as unequal competition to be more precise – as the foreign arts organisation was offering its friends exclusive counter benefits for USD 5,000, which arts organisation 28 could only offer to its major donors. The competition increases pressure on fundraising departments and counter-benefits and creates a race to the bottom to attract donors.

Fundraiser 30, however, thinks that local arts organisations have a comparative advantage over foreign arts organisations: “[...] *the people involved in our organisation, they are people who are [...] involved in a lot of other arts organisations, because they love art. And many of those institutions are in their own city. And [giving to these organisations] also bring along cachet in the local society.*” Therefore, he feels that the American friends organisation he works for has a disadvantageous position in comparison to the local arts organisations. Fundraiser 20A also feels that her organisation has a disadvantageous position, as the cultural heritage her arts organisation represents cannot travel abroad. Therefore, arts organisation 20 cannot offer counter-benefits similar to local cultural heritage organisations.

There is also a strong competition among foreign friends organisations. Fundraiser 24 explains that competition is tough in the US. She says: “*Just looking at the fundraising market here, [...] I don't even know how many American friends organisations you have in the US, but it is a lot. [...] And I mean, of course we don't have many [American friends organisations] from [home country], because we are the only active one from [home country], you could say that in the [home country]-American network we don't have so much competition, but then looking at the big American network, that is really where the money is. And [home country] is a small country right? So [...] there is a lot of competition. And then looking at all other causes and the activity level over here. [It is difficult to ensure] that people notice us in this market situation where there [are] 700 events every evening and half of them are about art. And being surrounded by other causes and 501(c)(3)s is a huge thing and it is a completely different thing than back home.*” Fundraiser 24 is not the only person to observe this. Other fundraisers, like fundraiser 22A and articles in the media, also stress this (Catton, 2014; Fabrikant, 2016). To be aware of – and perhaps also avoid – competition with local arts organisations, fundraiser 7 always checks what the local arts sector looks like and whether it has an arts organisation of similar size, appearance and artistic quality as arts organisation 7 before starting to raise funds abroad.

The prevalence of charity donations, the level of wealth among those who donate and the share of GDP that is given to charity influence how much effort is required to raise funds. This is also referred to as the ‘maturity of the donor pool’ (Breeze & Scaife, 2015, p. 591). Countries with a mature donor pool are easier to raise funds in than countries where a culture of giving has to be developed. This might explain why some arts organisations tend to turn towards countries where it is more common to give before the arts organisations cultivate private donations in their own country. The limited willingness to give among domestic citizens is reason for some arts organisations to start raising funds abroad, in countries where they expect it to be easier. Fundraiser 22A said: “[...] *we had an exhibition on Swiss art, so we thought, maybe... It was not an easy topic for French donors, so we thought that maybe we could get support from the Swiss.*”

Criticism also arises when arts organisations raise funds abroad because they feel foreigners are more willing to contribute than their domestic audiences. This image arises in the media: European arts organisations start raising funds in America because they believe that *'America is a goldmine for philanthropy, with a rich elite keen to give away money to prestigious art institutions'* (Huber, 2007). Philanthropy advisor 2 also stresses that it is not the substantive relationship, but witnessing philanthropy abroad that encourages fundraisers to raise funds in the US: *"A lot of these cultural organisations are just [with a dramatic voice] 'Oh, it is really difficult for us to raise money here, but people give in London, can't we just go to London and raise money?' No seriously. And actually, I think it is insulting to the donors in those markets, just to think, 'Oh, it is difficult here, so we'll go there. Or we'll go to New York.' You have to do it within your own community first, before you can go elsewhere'.* She links this to the 'easy' money arts organisations used to receive from the government. She says: *"It is laziness. It is because they do not want to do the heavy lifting. They want it to be easy. But you see, for the last ... how many years? It has been easy. The government gives them a check and they spend it."* The US can be considered one of the countries with a more mature donor pool. This makes the US popular among foreign arts organisations. The popularity of the US among foreign charitable organisations, however, results in a high level of competition for donors: *"Many 'friends' groups were built on the belief that America is a goldmine for philanthropy, with a rich elite keen to give away money to prestigious art institutions. But the club of big-scale philanthropists is still relatively small, and it is difficult to assess how many institutions it can support"* (Catton, 2014). Despite a mature donor pool, fundraising opportunities might be decreased by a saturation of the market for charitable organisations.

7.4.8 Fluctuating exchange rates

When raising funds abroad, arts organisations also come across more practical issues. For arts organisations that raise funds in countries where other currencies are used, this can be problematic as exchange rates might fluctuate. If a certain donation is required to join a specific friends circle, the arts organisation has to be aware of donors who wish to pay in a different currency. Arts organisation 16, for example, asked their friends to contribute EUR 1,000 or USD 1,000. This stemmed from a time when a dollar and a euro had approximately the same value. When the euro dropped, however, EUR 1,000 equalled approximately USD 700, leading to large differences in contributions among their European and American donors who are in the same friends circle, whereas it is important in fundraising to keep them on an equal level. Arts organisation 16 soon changed this by asking their friends to contribute a value equal to EUR 1,000.

Fluctuations in exchange rates are even bigger challenges if a donor pledges a gift spread across several years. Arts organisation 11 asks its domestic donors to contribute a certain amount spread across five years. For their domestic donors, this has additional tax benefits and it stimulates a more sustainable relationship. For its foreign donors, however, arts organisation 11 has to take fluctuations in exchange rates into account and, therefore, asks them to contribute the same amount all at once that domestic donors contribute in five years, which might make the threshold to join the support group of the organisation higher. Arts organisation 13 had a donor who contributed to a specific project. They agreed on the amount in euros. The donor, however, made his contribution in dollars, which turned out to be problematic as the dollar depreciated. The fundraiser, therefore, had to get in touch with the donor, as he did not live up to their agreement – although it was a gift – and they could not finance the project

with the gift he did make. Before entering into a gift agreement, the arts organisation and the donor have to agree on the value of the gift.

Arts organisation 30 went one step further in its precautions to solve the problem of fluctuations in the euro to dollar exchange rate. It asks its US friends to make its grants in euros and thus shift the risk of fluctuations in the exchange rate to their US friends organisation. This, however, is not a common practice among other US friends organisations. It is more common that the fundraising organisation pledges in the currency of the donor and rounds it up by 5% in order to cover any fluctuations in exchange rates, to ensure they have the amount they need to cover the expenses for the project for which they were fundraising.

That fluctuations in exchange rates have a serious impact on international donors is illustrated by patron 2. For patron 2, a further drop of the euro or an increase in the donation asked by US arts organisation 28 would force her to stop her contribution to their international friends circle, as it would become too costly.

7.4.9 Language barriers

In cross-border situations, differences in language are often present. When an organisation wants to raise funds abroad it is important that the fundraiser is familiar with the language of the country in which it wants to raise funds, or can communicate well in a commonly known language such as English. Speaking multiple languages as a fundraiser is, therefore, perceived as a great asset. Fundraiser 20A was sent to explore fundraising potential for arts organisation 20 in Germany, as she speaks German. Fundraiser 20B was chosen to take care of the international fundraising of arts organisation 20 as she has a strong command of English. Fundraiser 35 explains that a colleague usually takes care of international fundraising, as her English is better than that of fundraiser 35. If language barriers can be removed, this is perceived as an advantage. For the American friends of arts organisation 30, it is helpful that they have their own staff, located near the mother organisation, who are fluent in English. These employees can host American and English-speaking friends.

Director 29, who was raised bilingual, is among the few interviewees who recognises that one should not underestimate the language barriers regarding cross-border situations. He states that because of the specifics of a language, one has to be careful when using a foreign language, especially if it concerns legal aspects. Among tax advisors, the view that language presents a challenge in cross-border situations is far more widespread. Seven out of ten tax advisors brought up language as a relevant topic when dealing with cross-border donations. Several tax advisors worry about the conceptual differences in legal language. Their main concern, however, is that a significant number of documents must be translated if a foreign charity wants to get recognised as a PBO by the tax authorities. This translation costs a lot of time and money and is perceived by some tax advisors as a useless expenses. Furthermore, tax advisors mention the lack of information in a common language, such as English, to be a barrier.

7.4.10 Concluding remarks

International fundraising is not a straightforward task. Arts organisations need to have a strong case for support, which consists of high quality art that is of interest to foreign donors. Professional staff members can make a difference in international fundraising. They can coordinate and manage international fundraising activities. Furthermore, having contacts abroad and extensive discussions about the opportunities for international fundraising with these

contacts is important for exploring the culture of giving and fundraising practices abroad. Ambassadors and other country representatives can play an important role here. These people are also of importance when maintaining the relationships with foreign benefactors. Finally, every country requires a different approach. Arts organisations should be aware that they have to tailor their strategy to the local fundraising culture if they wish to be successful in international fundraising in the long run.

Arts organisations face several challenges when they engage in international fundraising. It can be challenging to develop an attractive case for support that also justifies international fundraising. Furthermore, raising funds abroad requires a significant investment, which is not always understood by directors and board members, as the investment in international fundraising does not have an immediate return on investment. When these challenges are overcome, there are still the language barriers and challenges with exchange rates to deal with. Once the cross-border relationship has led to a cross-border donation, the relationship has to be maintained to obtain future gifts. Finally, arts organisations that raise funds abroad have to compete with local arts organisations, as well as with each other, for the same pool of donors, which is quite limited according to some.

7.5 Conclusion

The majority of arts organisations do not raise funds abroad. Despite inactivity in raising funds abroad, arts organisations still might receive spontaneous cross-border gifts. Some organisations, do not proactively engage in raising funds internationally. Other arts organisations wish to raise funds abroad, but it is not a priority for them and, therefore, they do not actively invest money and time. International fundraising, however, requires a large investment and commitment to transform cross-border donations into a steady stream of income.

To raise funds abroad, arts organisations use different strategies. Some arts organisations embrace the initiatives by foreign donors. Others select specific countries on which they focus when raising funds abroad. The arts organisations that use this strategy organise activities for their donors in these countries and create friends circles there. A third strategy that is mainly used by superstar arts organisations and highly-specialised arts organisations is to raise funds abroad without focussing on a specific country. Instead, a circle for international friends is created at the home organisation.

Once the strategy is determined, the arts organisation needs to determine an approach, formulate a case for support and start expanding its network abroad. To do so, skilled fundraisers are helpful. This can be problematic, as it is difficult to attract well-trained employees. First of all, there is a high demand for well-educated and skilled fundraisers in general. Second, international fundraising requires additional language skills and international experience. Volunteers and representatives of the home country of the arts organisation in the country where it wants to raise funds can be of great help in supporting fundraisers, as the fundraiser needs to gather thorough knowledge of the local culture of giving. Furthermore, the fundraiser has to be aware of local networks with art collectors, expatriates and diaspora. Besides practical issues, such as translation of advertisement materials, gift levels – taking into account the exchange rates – have to be set. This all costs money and manpower. The investment, however, will not immediately have a return, as it requires time to build relationships. Patience, thus, is required. And then when the first international donations are secured, the challenge remains to keep the foreign circle alive and keep the foreign donors connected with the organisation.

If international fundraising is done well, this can pay off in the long run. Not only through financial contributions, international fundraising can also create international support and attention for the arts organisation. It can be beneficial for an arts organisation to start raising funds abroad at an early stage. The interviews show that too often arts organisations only start raising funds abroad when there is an urgent need of alternative sources of income and until that moment do not cultivate opportunities that arise. This results in missed opportunities and *ad hoc* cross-border fundraising, which might be less effective.

8

Assessment framework Evaluation criteria from the perspective of arts organisations

8.1 Introduction

The previous chapters explored cross-border fundraising by arts organisations. It showed that it is important for arts organisations to be able to facilitate foreign benefactors with a tax incentive. The tax incentive does not motivate donors to give, but for some donors it does make it more attractive to give. Without the tax incentive, it is more expensive for donors to give. Given the fact that giving is price-elastic, foreign arts organisations would have a comparative disadvantage compared to domestic arts organisations if the tax incentive does not apply.

Now the question is how arts organisations can best facilitate their foreign benefactors with a tax benefit. Chapter 4 discussed the existing solutions through which arts organisations can enable their foreign benefactors to give with a tax benefit. Now it must be determined which of these solutions works best from the perspective of arts organisations.

To capture the perspective of arts organisations, I distil factors that, according to directors and fundraisers of arts organisations, have to be taken into account when choosing a solution. I identified these factors in the interviews with these persons. The factors, or criteria, determine which characteristics a solution must have to be optimal from the perspective of arts organisations. The factors discussed are interrelated. For the purpose of creating an assessment framework, I grouped the factors into one prerequisite and six overarching factors. One factor might, however, be related to, or have close ties with another factor. How factors are grouped and how these interrelate is demonstrated in figure 8.

Factors that define whether or not a solution is optimal came forward in the discussion and comparison of solutions that enable tax efficient cross-border giving. As Chapter 6 explained, information is lacking on the available solutions to overcome the tax barriers for cross-border charitable giving. Most commonly-known solutions are the foreign friends organisation and the intermediary charity. Therefore, these are overrepresented in the discussion of the factors taken into account. The factors addressed are not limited to the solution familiar to the interviewee and also apply to other solutions. These are general factors that apply to all solutions.

In this chapter, I transform the factors into an assessment framework and I answer the fifth research question: “*What criteria does a solution to tax-efficient cross-border giving have to meet to be optimal from the perspective of arts organisations?*” From the interviews, it became clear that the factors can be summarised in a balance, where some factors weigh heavier than others. In the following paragraphs, the factors are discussed in order of their relative weight. The relative weight is not an exact measure or strict hierarchy, but more an indication of the importance of a factor, depending on the aim of the arts organisation.

Together, the factors form an assessment framework. In Chapter 9 I apply the assessment framework to the existing solutions to determine which is optimal from the perspective of arts organisations.

8.2 Prerequisite for solution: Effective in providing a tax benefit

The instrument has to be effective in providing a tax benefit on a cross-border donation, otherwise it is not a solution to the tax barriers on cross-border charitable giving. A solution is effective when it enables donors to obtain a tax incentive on cross-border gifts (Hemels, 2014, p. 145). This is the core purpose of the solution and therefore the first assessment criterion I mention.

Prerequisite: The solution has to be effective in the donor's country of residence.

The effectiveness of a solution is closely related to the cost efficiency of obtaining access to a solution and the scope of a solution. I further elaborate on this in sections 8.3 and 8.6, respectively. Fundraiser 18 underlines that it is important for donors that the tax benefit is guaranteed, regardless of the solution used:

"I think it is important for our members [i.e. donors] that we can guarantee them that they can deduct [the gift] from their taxes. The system, ok, that is not as important. But they have to be able to count on [the tax benefit]."

The effectiveness of a solution is partially determined by the tax legislation in the donor's country of residence. If there is no tax incentive available for gifts to arts organisations in the donor's country, the donor cannot obtain a tax benefit on the donation, as explained in section 5.1. Besides, if the tax provision on charitable giving in the donor's country includes geographical limitations on how the gift is spent, this restricts the effectiveness of the solution. Geographical restrictions apply, for example, in the closed jurisdictions I have described in section 5.2. For interviewees, these restrictions complicate things as funds must be spent within the geographical limitations set by the donor's country of residence, whereas they might not otherwise have made these expenses. Interviewees prefer to be able to spend the funds where they are required based on the needs of the organisation rather than based on the requirements of the tax legislation in the donor's country.

Finally, for a solution to be effective, the donation as well as the recipient must both meet the requirements to qualify for a tax benefit on a donation in the country where the donor is resident for tax purposes. Interviewees are aware that they need to comply with legislation and they want to do this in a correct way. This sometimes even results in overcompliance, as was explained in section 6.2.3. Interviewees, however, perceive legal compliance as a heavy burden. Therefore, they appreciate it if a third party provides the solution and explains which requirements have to be met to comply with legislation. If the third party also takes care of (part of) the compliance with tax legislation, this is much appreciated. Fundraisers 10A and 10B, for example, chose to work with an intermediary charity for fundraising in the US, because the intermediary charity then conforms to the US laws and regulations.

8.3 Cost efficiency

Fundraiser 8 explains how he weighs the size of the gift against the costs of a solution:

“It is simply weighing what we receive now against the costs [of facilitating the foreign benefactor with a tax incentive]. And if I have expenses, will I still reap the benefits in the future? So this differs by case. But the lower the amount [of the gift], the less willing you are to take action altogether.”

This quote is exemplary for other interviewees. They weigh the size of the gift against the transaction costs for the solution. The larger the size of the gift an arts organisation receives, the more interviewees are willing to do to help their foreign benefactors obtain a tax benefit on their gift. The majority of interviewees explicitly mention the financial benefit of cross-border donations for their organisation and the costs involved as factors to take into account when they decide whether – and how – to help their foreign donors obtain a tax benefit on the donation to the arts organisation. Together, the financial benefit and the transaction costs determine the cost efficiency of a solution in a specific cross-border situation.

8.3.1 Financial benefit

The interviewees take the following three factors into account when determining the size of the financial benefit: 1) the size of the gift(s) received from benefactors in a foreign country, 2) the continuity of gift-giving and 3) the size of the support base in a foreign country to estimate whether a continuous stream of gifts could develop in the course of the near future and whether there is potential for substantive gain in a foreign country.

8.3.1.1 Size of the gift

Interviewees take the size of the gift they receive into account in deciding whether to accommodate foreign benefactors with a tax benefit. For director 23, for example, the size of the donation matters in deciding whether he wants to engage in a solution that might involve litigation or not. He sees a turning point at about EUR 50,000. For this amount, he would be willing to take the risk of taking a case before the ECJ. He says: *“Then indeed the threshold is reached where you indeed have to take bigger steps.”* Director 23 would not do so for EUR 5,000 or 10,000. In case of donations under EUR 10,000, most interviewees do not want to invest a significant amount of time or money in facilitating their donor with a tax benefit. In these cases, they tend to go for an easy and clear solution which consumes little time.

For some solutions, the threshold of the total size of the donations received from a country lies above EUR 50,000. Fundraiser 8 mentions that it is only worthwhile to set up a foreign friends organisation if there is the potential of at least EUR 100,000 per year: *“Look, before establishing a foreign friends organisation you must at least have the impression that there is the potential for 100,000 per year.”* Fundraiser 8, hereby, also postulates a certain level of continuity in the flow of gifts.

8.3.1.2 Continuity of the gift

The continuity of a gift is another element that interviewees take into account. Interviewees take into account whether it concerns a one-time gift, whether the donors are likely to give again in the future or whether gifts from that country will reoccur in the near future.

Director 29 says:

“If it would really concern a one-off very large amount, then still I would choose the construction [of the intermediary charity]. If it would turn out that it is something of which you think that in the upcoming six to seven years there will be a continuous stream, then I think it could pay off to move to a special, custommade construction [a foreign friends organisation].”

The preparedness to engage in a more complex solution in case there is a higher degree of continuity in the gifts received from one country, as director 29 describes, is in line with the other research material. If there is continuity in the gifts received from a foreign country, interviewees are willing to invest more time and money in a solution to facilitate their foreign benefactors with a tax incentive than when it concerns a one-off gift. The continuity in the donations coming from one country proves to be as important for the interviewees as the size of the gift. The more certainty there is that a gift is continuous, the more arts organisations are willing to do to ensure that their foreign donors can give with a tax benefit.

Still, as the interviewees of arts organisations 14 and 16 also mentioned, it has to concern a continuous stream of substantial gifts to motivate interviewees to search for a durable solution. This requires a considerable investment of time and money. Fundraiser 12 describes the trade-off as follows:

“And, say, if you have a one-off gift, how do you proceed? Is that worth [setting up a foreign friends organisation]? Or is it better to find another solution? It also has to do with what the odds are that [future gifts can be expected], what revenue do I expect and what does it require in return? What effort, what time investment? That's the trade-off. [...] If you receive a few small-sized one-time gifts (...) that's mainly it [the trade-off]. If someone wants to give repeatedly, then you search for a structural solution. But if it concerns one-time things and you need to lock yourself in a grid which is geared to a continuous flow, then you have to consider whether this is the best system or whether you can maybe find a better temporary solution and in case something more continuous appears, then find a long-term solution.”

The interviewees are rather unanimous about the continuity required. There is, however, a difference in *ex ante* perspectives. Fundraiser 15 underlines the commonly held view that there first must be a significant stream of money before she wants to invest in a more long-term solution such as a foreign friends organisation: *“In that case, it is very important for us that first the money flow starts. And then later on we can still decide whether we want to do that. But not first establish an entity and then see what happens.”* This quote, however, does not apply to all arts organisations in this research. There are several arts organisations that invested in a durable solution before a significant flow of donations started. These arts organisations expect that providing a durable solution is a first step to building a continuous stream of donations from a foreign country. They all hold the presumption that there is a significant support base and sufficient wealth in the country they target for fundraising purposes.

8.3.1.3 Size of the foreign support base

For interviewees, the size of the support base in a foreign country – together with the average wealth in that country – is an indication of the potential future flow of gifts. The size of the support base is explicitly mentioned by interviewees as a consideration if they decide whether, and how, to facilitate their foreign donors with a tax benefit. It influences whether arts organisations are willing to invest time and money in a structural solution to tax-efficient cross-border giving. To invest in such a structural, or durable, solution, the support base has to be of a considerable size, meaning approximately 10 or more substantial donors.

Interviewees often brought forward that the limited group of supporters they had in a country was reason for them not to invest in a solution that would allow their foreign donors to receive a tax benefit. If the support base consists of a limited group of people, the arts organisations prefer to work with a flexible solution that does not require maintenance. Fund-raiser 20A thinks along these lines:

“F20A: And also, I guess in each country you do get these people who are really into [arts organisation 20]. Wealthy people, who have visited the charity, or were invited at events at the charities’ [locations]. But it is a matter of a few people in every country. So I think in France, they had someone, just one person, who wanted to set up the charity, who wanted to donate. But in this case, you know, I would privilege the individual donor strategy. Just get them to donate. And cultivate a one-on-one relationship and then see if something else can come out of it. Because, [...] it could be the case that there is peer pressure and this person donates and then their friends also donate. And then in five years you have six people who are really into your work and they know everything and they do come regularly to [home country of arts organisation 20] and maybe then you have a base to build upon, but to start from scratch, just because somebody tells you they want to donate money...”

R: That’s too little.

F20A: I think it is too little. Yes, I would rather go with [an intermediary charity]. [...] It is true that you lose money on commissions, but I don’t think, I think it is more important to cultivate a little pool of donors than insuring that there is a machine ready to process one thousand donations from English taxpayers, because that is not going to be the case in the near future.”

Fundraiser 6 mentions that there are some Portuguese people who are fond of arts organisation 6. She however, wonders whether there is currently enough wealth in Portugal to create a stream of gifts that is large enough to justify arts organisation 6’s investment in a solution that allows Portuguese donors to contribute with a tax incentive. In this respect, it is interesting to see that many of the arts organisations in this research that raise funds abroad focus on urban areas with flourishing economies and an international orientation, like Brussels, Hong Kong, London, New York, Paris and Tokyo. They largely neglect the areas outside of these cities.

The larger the foreign support base, the larger the potential amount of donations an arts organisation can expect from abroad. The size of the foreign support base, thus, has a positive effect on the investment an arts organisation wants to make to facilitate foreign donors with a tax incentive.

Fundraiser 7 addresses the size of the support base in considering which solution to use to facilitate foreign benefactors with a tax incentive: *“It is also the case that in some countries there might be people who want to make a donation, but you do not immediately have the volume to start a club there.”* If the support base in a country is not large enough to create a group of supporters or friends, he prefers a flexible solution over a more durable one. Director 16 also considers the support base for arts organisation 16 as too little to engage in a solution to facilitate Venezuelan donors with a tax benefit, despite the fact that it has received an annual gift over the past three years from a couple in Venezuela. When I asked whether the arts organisation knows whether these donors use a tax incentive on their gift, director 16 says: *“We have never really looked into this. It is so incidental. There is no group of collectors there in which we want to invest.”*

The question is what size the support base should have to be substantial enough to invest in a durable solution for tax-efficient cross-border giving. For a limited group of donors, a hand full or fewer, arts organisations show to prefer a solution that requires a limited investment of time. Currently, this usually means they opt for an intermediary charity. For more laborious solutions, a larger support base is required. In the context of a foreign friends organisation, for example, fundraiser 18 specified ‘a considerable size’ as a minimum of 25 persons who each give at least EUR 4,000, which totals EUR 100,000. This is analogous to what has been said concerning the potential annual gift flow of EUR 100,000 coming from a country to justify setting up a foreign friends organisation. Setting up a foreign friends organisation thus requires approximately 25 supporters in a country. Fundraiser 36 further adds that it matters how many people actually take advantage of the tax incentive. There proves to be a difference between setting up a foreign friends circle – which does not necessarily include a solution to tax-efficient cross-border giving and a formal foreign friends organisation, which does include a solution to tax-efficient cross-border giving. Fundraiser 20A sees six people as a starting base for a foreign friends circle (not necessarily a foreign friends organisation). And fundraiser 21 had eight people that he used as a starting point to set up the international friends circle of arts organisation 21.

8.3.2 Transaction costs

The costs to get access to a solution is another factor that proved to be relevant for interviewees when deciding which solution to choose. The costs involved to get to a transaction are also known as the transaction costs (Williamson, 2007) and are discussed in this section. If transaction costs are high, the solution might be inefficient, despite its effectiveness (Hemels, 2015, p. 145). Interviewees weigh the costs of obtaining access to a solution against the benefits of a solution. Furthermore, they compare the transaction costs of different solutions. Fundraiser 22, for example, balances the costs of setting up a foreign friends organisation against the income derived from international fundraising in the relevant country: *“So before any institution starts doing that, you really need to know how much, well, what the amount of giving you get per year so that you know whether it is worth it.”* Then she balances the costs of an intermediary charity against the administrative work one has to do for a foreign friends organisation: *“But I think the fee is reasonable, knowing what type of crazy paperwork... I mean, you have to prove to the American IRS that you are, that all is... I mean, French fiscal institutions as well as American ones do not kid around with tax benefits. It is a lot of paperwork.”*

The transaction costs to get access to a solution stem from different activities that require financial investments, such as fees, labour costs, costs to hire expertise and other expenses. The more these transactions cost, the less attractive a solution becomes.

8.3.2.1 Fees

To obtain access to a solution, sometimes a payment has to be made. This can be a fixed sum, a percentage of each gift received or a combination of the two. Since these fees are usually known in advance and interviewees can weigh them against the benefit of the gift, most interviewees do not perceive the fees as a hurdle. Usually, the fees are paid by the arts organisation. Indirectly, however, they are deducted from the gifts received. Arts organisation 21 and 35 are the only exceptions in this research, who ask their donors to add the fee for the solution to their gift. They do so as their domestic and foreign benefactors are in one circle and they want them to give the same net amount. Fundraiser 21 says: “*So I said, we would like to go this way [use an intermediary charity]. And this was for most donors a very new experience. And they really appreciated it. Although we charged the 5% that the [intermediary charity] takes in addition to the amount that they give.*”

Interviewees usually do not discuss the fees they pay to get access to a solution with their donors. Fundraiser 10A remarks that donors prefer that their donation is not spent on fees for overhead costs. Those arts organisations that do communicate about the fee with their donors, like fundraiser 7, usually explain that the fee for the third party is less than what it would cost if they had to organise the solution themselves, without a third party. This is also the reason why, on average, interviewees find 2-5% of the gift reasonable as a fee for intermediary charities. Furthermore, if in exchange for the fee, part of the administrative burden is mitigated, arts organisations are very willing to pay this fee.

“R: So for these intermediary [charities], they also charge a fee, do you think that is reasonable, or, would that be something you are willing to pay? [...]

F22B: Of course, no, it makes sense. If you know the alternative, which is having American friends, and you see, I mean it is a lot of work. So I mean, [...] a lot of people feel frustrated by the fee, that is why they want to create their own 'societe des amis', their own American friends, British friends or any type of friends, just because they want to avoid that fee. But then you have to be aware that having friends has costs.”

If a fixed fee is involved in getting access to a solution, interviewees balance this gift against the financial benefit that is obtained. Fundraiser 13, for example, thinks the current fee she pays to obtain access to a solution is rather high in comparison to the gifts she receives from abroad: “*But we pay a fee. But I think that for the gifts we currently receive, currently it is not very profitable. [...] In comparison to the gifts that are currently made, I think it is relatively high.*”

Arts organisations also weigh the costs of one solution against other solutions. If they find a solution where they do not have to pay a fee and other costs are covered by third parties, they prefer the cheaper solution. As fundraiser 25 responds to the question regarding whether it would be interesting for her to involve a third party:

F25: I think I would be concerned about the percentage issue. For us, it works, we don't currently have to pay anything for the American friends organisation to operate. The costs of the administration comes out of the American friends itself. So I am not sure that it would be beneficial to us to lose a percentage of each gift. Rather than have a retainer, I believe this is how it works currently.”

8.3.2.2 Labour costs

The time invested by employees is another transaction cost taken into account by arts organisations. Fundraiser 22B – whose organisation has an American friends organisation – warns other organisations that are just starting to raise funds in the US to be aware of the time investment it requires to set up an American friends organisation.

“It is a huge amount of paperwork, you have framework agreements, you have grant agreements, grant reporting and it is a lot of work. [...] It is really a lot of administrative work. You need to write thank you letters, grant reports, grant agreements, grant request letters. You need to organise board meetings, you need to organise visits. I mean, it is a lot of work. It is a full-time job. So [...] you really need to be aware of that.”

A large part of the labour costs is related to the administrative requirements. The higher the administrative requirements of a solution, the more time and money the solution consumes and, thus, the more expensive it is for an arts organisation.

Fundraiser 7 demonstrates that arts organisations are critical about the administrative requirements and evaluate them over time. After using their American friends organisation for approximately 20 years, the organisation decided to give it up and instead use an intermediary charity because it is less of an administrative burden:

“So that used to work well. But there is also a very big administrative burden. And in the meantime, there are new ways of having an American friends fund. [...] Every year, the board there hired a qualified professional developer, fundraiser and office manager. And every year, there are annual reports [requested] and that is what all those foundations have [to comply with]. [...] But the [board of the] American friends felt that it is such a big administrative burden for them – also very expensive for them and actually also requiring a lot of their time – which they would rather invest in meeting other people, that they decided that nowadays this can be done in a much more convenient way by shaping it differently.

Similarly, when deciding how to facilitate their American donors with a tax benefit, arts organisations 10 and 15 deliberately decided to use an intermediary charity instead of establishing an American friends organisation. Fundraiser 10B says:

“And that was a very deliberate choice, that we ourselves do not have that charitable status, that we did not apply for the [501(c)(3)] status. Because, you would then need a board and you need to administer there and [have] an office. Well, those costs are just too high compared to [an intermediary charity]. And it only costs us a minimal fee, as they are a non-profit making organisation. So comparatively, this is the most advantageous thing to do.”

Fundraiser 10A adds: *“And the entire administration is taken care of”*, demonstrating that it saves them from doing the administrative work.

Also for arts organisations who have their own foreign friends organisation, streamlining the administration is an important consideration. Arts organisation 8 has its own foreign friends organisation in the US with a 501(c)(3) status. One of the board members functions as a postal address. Another board member, the chairman, used to do the administration of the entity. This, however, required too much time: “[...] it was a half-time job for our chairman”. Therefore, the board decided to outsource the administration of the American friends organisation to a third party. One specific contact person at this third party does the administration, he registers donors, takes care of the correspondence with American donors and processes payments. Interestingly, for other foreign charitable organisations, this third party serves as an intermediary charity. The American friends of arts organisation 8, however, decided to maintain its own 501(c)(3) status. For this organisation outsourcing the administration was mainly a step forward in efficiency. Most likely the economies of scale play a role here, as the third party takes care of the administration related to the 501(c)(3) status for multiple organisations and the marginal costs are limited, whereas if arts organisation 8 had to take care of the administration, it would have to gather information on the requirements it has to meet and, therefore, has high sunk costs.

Aside from an administrative pressure, six organisations explicitly mention that they want as little bureaucracy as possible. For them it is a way to keep the time investment and thus the costs of a solution low and its profitability high.

During the discussion of solutions other than the friends of organisation, the administrative burden was also brought forward by interviewees. During the discussion of the fundamental freedoms in the TFEU as a solution with fundraiser 5, for example, she was reminded of her experience with the EU as a grant-making organisation and the high administrative burden this imposed on her organisation:

“Well, the European Union, we occasionally make a grant request there. But that is only worthwhile if the amount is above EUR 100,000. Because you nearly need to hire somebody only to do something with the European Union. So I would be hesitant to do that, because it is a very bureaucratic organisation.”

Despite the fact that her association of the fundamental freedoms in the EU and the EU as a grant-making organisation might not be very appropriate, still, the criteria she uses in her deliberation are clear and valid: bureaucracy is something she would like to stay away from, because it requires too much manpower.

So in a variety of considerations regarding different types of solutions, arts organisations took the level of administration into account. They favoured solutions with less administrative requirements as they cost less time investment.

Not just the administrative requirements, but also other time-consuming activities related to solutions to tax-efficient giving are addressed by interviewees. The head of development at arts organisation 5 refers to the time devoted by employees to the solution:

“Having a friends of organisation is... it just costs a lot of time and it is a lot of work. And then you would have to sit somewhere with an entire team. Such enthusiasm does not exist for a festival.”

Fundraiser 35 nicely elaborates on this by explaining that the organisation's foreign friends organisations in themselves are profitable, but that considering the time her employees invest in collaborating with the board members of the foreign friends organisations, they are no longer as profitable as she would like. Therefore, she searches for ways to streamline the process of collaboration in order to invest less time in facilitating foreign donors with a tax incentive and make international fundraising more profitable.

Solutions that entail structures with separate legal entities, such as foreign friends organisations, also require the necessary labour. The separate legal entities are affiliated with the arts organisation. During the interviews, it came forward that if not managed properly, the relative independence of the legal entities can become a threat, as the following illustration by fundraiser 20A shows:

“But the US friends were mainly wealthy people, so they managed the organisation as they wanted. But in addition to this, they were also very costly to the [mother] organisation, because whenever they would come to [home country arts organisation] they would expect these rewards. [...] They would always give these benefits to donors and these would always consist [of] a super expensive trip to the [one of the locations of the arts organisation] and then visiting exclusive properties and (...) and this was way too expensive in terms of time and in terms of money for the [mother] organisation.”

This occurrence can be explained in terms of the principal agent theory (Jensen & Meckling, 1976). The arts organisation is the ‘principal’ and the legal entity that facilitates the tax benefit functions as the ‘agent’. The agent is a separate legal entity and, therefore, the arts organisation does not have full control over the agent. Furthermore, the agent has a power advantage over the arts organisation, as it can facilitate the donor with a tax benefit. This allows the agent to perform in its own self-interest. In the example above, the agent – the American friends organisation – organised exclusive trips to the arts organisation – the principal – paid by donations that the American friends organisation received, but were intended for the arts organisation. The arts organisation did not gain from the donations, nor from the exclusive trips. Instead, it costed them time and money. In order to avoid the agent acting in its own self-interest, it is important for the principal to manage its relationship with the agent.

Despite the agent providing its services to aid the arts organisation, it is difficult for the arts organisation to fully control the agent, which is also illustrated by the following quote of fundraiser 8 about a foreign friends organisation:

“I have heard some dramatic stories, of somebody who was running it for another museum and let the [charitable] status expire. That really happens. Or he sends a very high bill. So it is not something that comes naturally. But if you find the right people and invest time, yes, then it can pay off. And that is of course the aim.”

To mitigate the relative independence of the agent, the arts organisation has to invest in its relationship with the agent. Managing the relationship with the agent requires commitment from the principal. Sometimes this commitment consists of time investment, but it might also require fundraising expertise, coordination and/or substantive activities. What type of commitment is required differs depending on the type of agent involved in a solution.

If it concerns a large separate legal entity abroad, with a board, an office and several employees, more effort is required from the employees of the principal organisation to manage the entity abroad than when it concerns a legal entity abroad with only a board.

8.3.2.3 External advice

Costs for external advice are addressed frequently by interviewees. About the option to register her arts organisation at the tax authorities abroad, fundraiser 5 says: *“It seems very complicated to me and we do not have this in-house knowledge. So then we would have to hire somebody for this.”* Hereby, she already writes off the registration at the tax authorities abroad as a solution, because it would require her to hire tax advisors. Director 16 adds another layer to hiring external expertise: *“We work with too many foreign countries. So for every country, you would have to hire such a tax lawyer.”* For director 29, the costs of tax advice are also reason not to opt for one of the legal solutions: *“I would choose the intermediary. I certainly would not go register [as a charity at the tax authorities abroad]. And a tax treaty. That is expertise of which we do not even have a beginning of an idea. It will cost me ten times more [than the gift] before a tax advisor has figured this out.”*

It is noteworthy that these remarks were made *ex ante*, in response to the vignette. However, a few fundraisers also mentioned it in the semi-structured part of the interview. Amongst others, fundraiser 36 explains her considerations on why she decided not to set up a ‘friends’ organisation in a Latin American country:

“Because we looked at it when we were doing a Latin American exhibition in Latin America. And it was so bureaucratically difficult. And so expensive. And we would have to hire a lawyer. [And it would be so costly] that the gifts would not have meant anything, because we would have already spent so much of the money, just getting the [tax status].”

For some solutions, the financial investment goes ahead of the financial benefit. Fundraiser 20A says about the UK friends organisation: *“At the moment I think it is just eating money. [...] It could be an investment in terms of, in the long run. But at the moment it is just eating money. You should check with them. This is my impression.”* Once there is access to a solution, there might still be external advice costs involved. Some solutions require expenses to comply with legislation. Interestingly, interviewees at arts organisations do not explicitly mention the costs involved in maintaining a solution. Implicitly, however, they address elements of compliance costs separately and thus they do seem to be aware of the maintenance costs. Tax experts and philanthropy advisors do mention the costs of maintaining a solution explicitly. Director 29, in a rather blunt manner, sums up some of these costs: *“Anchoring means that you need a legal entity there [in the foreign country]. You need advice on how to handle the fiscal issues. You need an auditor. So I mean, maintenance in itself is already [a burden].”* Again, expert fiscal advice might be required, but also accountant costs and other administrative costs can be involved.

The higher the initial expenses to gain access to a solution and the higher the costs for a solution to facilitate a tax benefit on an additional gift – the marginal costs – the less attractive a solution is.

8.3.2.4 Other expenses and reoccurrence of expenses

Some solutions have requirements that result in costs other than fees, labour costs or costs

involved in external advice. Here, one has to think of solutions that require an arts organisation to have a local office in the country where it wants to raise funds. The office has to be furnished and communication equipment has to be present. This all involves costs. As fundraiser 30 says:

"[...] my office is a space that is donated to the organisation by our chairman, who has a whole floor of a building in midtown [metropolitan area]. And he owns a whole suite with offices. And one of the offices he donates, you know. And we are fortunate for that. Our phones, our internet, computers, printers, air-conditioning, I have two cubicles for interns, I have [home country arts organisation] interns that come and work here as part of their studies. So that is a help. And that is ideal. If you are writing about [economically] healthy, when it comes to brick-and-mortar and where you are physically located for these international offices, when you have board members that are able to donate space, it is that much more money that we don't have to raise for administrative costs that we can give to the museum."

Other costs one can think of are costs involved in hiring lawyers when litigation is required due to a lack of legal certainty of a solution. The travelling costs of the staff of the home organisation are also other transaction costs. Fundraisers, for example, frequently mention the airfares for their annual or bi-annual journeys to countries where their arts organisation is raising funds.

Furthermore, it matters how often transaction costs reoccur. If they reoccur for every gift, this is different than when transaction costs are made once and can then allow for a tax benefit for multiple donations.

8.3.3 Concluding remarks

The larger the financial benefit of a gift, the more willing arts organisations are to facilitate the donor with a tax benefit. In weighing what solution to use, arts organisations take the size of the gift into account, the continuity of gifts coming from that country, and the future potential of gifts, based on the size of the support base in a country and the presence of wealthy individuals. The more reliable the continuity of gifts coming from a foreign country and the larger the potential future financial benefit, the greater the willingness of interviewees to make an effort to obtain access to a durable solution.

Solutions to facilitate a foreign benefactor with a tax incentive also imply transaction costs. As mentioned, these can be fees due, but also labour costs, costs involved in external advice and other expenses. A large part of the transaction costs stem from the administrative requirements that have to be met. The lower the administrative requirements, the lower the transaction costs. The lower the transaction costs, the more optimal a solution is.

Most interviewees, however, weigh the transaction costs against the financial benefit, resulting in a certain degree of cost efficiency. In summary, the larger the financial benefit of a gift and the smaller the costs involved, the higher the cost efficiency of a solution. A solution that scores higher on cost efficiency is more attractive for arts organisations. This leads to the first factor to take into account when assessing a solution:

Factor 1: *The higher the cost efficiency of a solution, the more optimal a solution is.*

8.4 Legal certainty solution

In section 8.2 I explained that the effectiveness in overcoming the tax barrier to cross-border charitable giving is a prerequisite for a solution. This, however, is not sufficient for arts organisations. The solution also has to provide legal certainty, both on its outcome and on the procedure of obtaining access to the solution. Director 23 is firm when it comes to legal certainty: *“For Christ’s sake, how can you bring somebody in and tell them that an element of their gift is that they might have to go into a lengthy legal procedure?”* For him, as for other interviewees, legal certainty is so important, that it is one of the core factors.

The legal certainty of a solution relates to the fundamental principle of legal certainty. Adam Smith stated about legal certainty in relation to taxation: “The tax which each individual is bound to pay ought to be certain, and not arbitrary” (1776, p. 639). He regarded legal uncertainty as a great threat as it limits an individual’s freedom to plan his future. Legal philosophers have included this notion in what they call the ‘internal morality of law’ (Fuller, 1977), which consists of eight conditions:

1. Rules must exist;
2. The rules must be publicised;
3. Retroactive laws should be avoided or should not be abused;
4. The rules must be easily understandable by all;
5. Rules must not be contradictory;
6. The rules must not require that people act in a way beyond their abilities and capacities;
7. The rules must not be changed frequently such that it is impossible for people to use them to regulate their conduct;
8. There must be congruence between the rule as publicised and the way it is applied to substantive cases.

Much more has been said about legal certainty in the literature. As I derive the criteria of legal certainty from the interviews with employees of arts organisations in order to capture their perspective, I do not further elaborate on the extensive literature. Instead, I have focussed on the interviews and added the aspects of legal certainty found in literature that match the view of arts organisations.

Not being able to plan the future is inefficient and costly. In this sense, legal uncertainty could be considered a cost in the trade-off for arts organisations when choosing a solution to facilitate foreign benefactors with a tax benefit. Interviewees tend to avoid legal uncertainty. There is one exception, however, which occurs when major donors explicitly want to use a legal uncertain solution. Under these circumstances, arts organisations are willing to apply a solution with a certain level of legal uncertainty. In general, however, the legal certainty a solution provides is very important for arts organisations. In the next sections, I first explore the reasons why arts organisations value the legal certainty of a solution highly before further addressing the requirement of legal certainty.

8.4.1 Why is legal certainty important?

Legal certainty is highly valued as it prevents arbitrary interference by the government in the lives of those subject to the law. This allows individuals to plan their future (Gribnau, 2013, pp. 53-54). Herein lies the core reason why interviewees value the legal certainty a solution for tax efficient cross-border giving provides. The legal certainty of a solution is important because if there is legal certainty on the effectiveness of a solution, there is certainty on the cost of a

gift. It thus allows donors to plan their gift. If the cost of the gift is lower due to a tax incentive, this might be an argument fundraisers can use to persuade foreign benefactors to give more.

Furthermore, interviewees highly value the legal certainty of a solution, as legal uncertainty might complicate their relationship with the donor. The relationship with the donor is most important and arts organisations are not willing to put that at stake. Therefore, the solution has to be donor-friendly; legal uncertainty is not perceived as donor-friendly, which I further elaborate on in section 8.5. As fundraiser 21 says when he refers to the dependence on the local tax authorities in the donor's country: *"I did not want our donors to feel uncomfortable."*

Finally, interviewees highly value the legal certainty of a solution, as they want to prevent any inconvenient situation with the tax authorities. Interviewees perceive tax issues for which they have to deal with the tax authorities as complicated and non-transparent. They are troubled by the time and money disputes with tax authorities will cost them. This relates to the transaction costs. Besides, if arts organisations are suspected of tax fraud, this damages their trustworthiness and image. This would have a disastrous effect on fundraising and overall operation of the arts organisation.

8.4.2 Legal certainty procedure

Legal certainty requires stability, promulgation, non-retroactivity and clarity of legislation (Gribnau, 2013, pp. 53-54). All four of these factors make it easier for fundraisers to plan how to facilitate their foreign benefactors with a tax benefit. When it comes to some solutions for tax efficient cross-border charitable giving, however, a lot is still uncertain, making it difficult to plan ahead for both donors and PBOs. In some EU Member States, for example, there is a lack of information on the existence of procedures of claiming tax benefits on cross-border donations. Fundraiser 20A expresses the discontent other interviewees also felt concerning the legal certainty when trying to facilitate their foreign benefactors with a tax benefit:

"We had a lot of issues with lawyers and solicitors over here, because they do not really know how it works when it comes to international organisations. It is still very, very uncertain in terms of procedures, in terms of outcome."

It is important for arts organisations to know in advance what they have to do to get access to a solution. Interviewees explained that they want to know up front what steps they have to take to get access to a solution and how much time this approximately takes. Furthermore, interviewees want to know in advance which requirements the arts organisation has to meet to get access to a solution. Clear and transparent procedures are, therefore, favoured by the interviewees.

Interviewees find it convenient if there is another party that ensures that all the requirements are met. As fundraiser 10B states: *"Well, you really do not want to get into trouble with the US tax authorities. That is really complicated."* In other words: legal certainty is required concerning the procedure that leads to the solution.

Interviewees prove to be concerned with compliance to legislation and regulations when it comes to using a solution. They want to be fully compliant in order to maximise legal certainty. Furthermore, they do not want to damage the image of their organisation. The trustworthiness of the arts organisation is very important in relationships with donors.

For this reason, fundraiser 25 has doubt when even discussing a compliant solution, which she associates with tax avoidance schemes. Her response is as follows: “[the solution] sounds quite suspicious, like trying to twist the law a little. [...] It is a harder sale, possibly, to the donor.” Interviewees do not want to put the reputation of their organisation at risk just to facilitate a foreign benefactor with a tax benefit. It also works the other way around. Director 16 sees it as a sign of credibility for her organisation if she meets the requirements to obtain access to a solution and is allowed to facilitate their foreign benefactors with a tax incentive.

8.4.3 Legal certainty outcome

Once there is access to a solution, the arts organisations want to know up front that the solution guarantees a tax benefit before a donor pledges a gift. Again, this has to do with the wish of donors and their beneficiaries to plan ahead. Fundraisers perceive uncertainty on the legal outcome as a potential source of frustration for both the donor and themselves.

The interviewees do not want uncertainty on the applicability of the tax incentives, as they do not want to burden their donors. As fundraiser 21 explains with an example:

“When I started, I had a huge discussion with our [legal counsel]. We have [legal counsel] in the team and he takes care of the budget. He had a discussion with a tax lawyer and he said that with the recent decisions in European Law it should be possible to give a [home country] tax receipt in France. But on the other hand, they were just two or three cases and they went to the European Court [of Justice] and so on and so on. I think that was in 2010. And I didn't want our donors to struggle with their tax advisors or attorneys to make their tax receipt work. So I chose to work with [intermediary charity].”

Finally, the interviewees want to be certain about the applicability of the tax incentive, as it can influence the size of the gift. Besides, they are reluctant to engage in solutions that might engage litigation, as that would bring about additional costs. The legal certainty arts organisations require is related to the concept of regime uncertainty, which was developed by Higgs (1997). It basically says that people refrain from investments – here the investment of time and money required to obtain access to a solution – as long as the rules of the game are uncertain.

8.4.4 Reliability of partners

Related to the legal certainty on the outcome of a solution is the reliability of parties with whom collaboration takes place to solve the barrier to cross-border charitable giving. Interviewees stress they want to work with a reliable party to facilitate their foreign donors with a tax benefit, as for arts organisations, not only is the tax benefit for the donor at stake, but also the donation and the relationship with the donor. Fundraiser 12 says:

“As receiving party you, of course, want to work with a reliable partner. So you don't want to form an alliance for something like that [to facilitate foreign donors with a tax incentive] with an organisation who has problems with its money flow and does not transfer the gift. [...] That should actually be guaranteed if you want to invest in it in such a way. I think that is foremost important.”

Fundraiser 25 holds the concern that the partners might not pass on the gift as well. Fundraiser 7 adds to the reliability of the partner that it needs to have an impeccable reputation and that he wants to be sure that organisations with whom he collaborates still exist in 20 years.

Other fundraisers, like fundraisers 3, 14 and 16, also address that it is important to know beforehand that their partner is reliable. They want to ensure in advance that donations are not lost to the partners. Interviewees try to safeguard the reliability of their partners by only working with parties they are familiar with. Either they already know the partner organisation through other activities – for example because the partner organisation is active in the field of arts and culture – or they know through their network that the partner organisation is a reliable party to work with to solve the tax barrier in cross-border situations. The familiarity with the partner organisation makes them more trustworthy *ex ante*.

Arts organisations collaborate with other parties so that foreign donors can obtain a tax benefit on their gift. Besides the tax benefit for the donor, the donation and the relationship with the donor are at stake for the arts organisation when they work with partners. The way a partner handles a donor, therefore, is important. It is frequently mentioned in the interviews that donors are the relationships of the arts organisations, not of the partners. It seems that interviewees are afraid that the partners might damage their relationships with the foreign donors, or even take over their relationships with donors. The interviewees, therefore, want partners that treat the donors correctly. Partners should not claim the ownership of the relationships with donors and have to be careful with donors' data and communication with donors. This also relates to the donor-friendliness of a solution, which is further elaborated on in section 8.5.

A few fundraisers (fundraiser 10A and 10B and 20A) have the impression that donors prefer to give directly to the arts organisation, without the involvement of third parties, as giving directly would suggest that the arts organisation is approved by the tax authorities in the donor's home country and this increases the trustworthiness of the arts organisation. Later on, however, they nuance this claim. Fundraiser 20A says that it might be more practical to use a third party to ensure foreign donors with a tax benefit in some situations and that this can be explained and justified for the donors. After claiming that donors prefer to give to arts organisations directly, without interference of a third party, fundraisers 10A and 10B nuance this claim when they explain they never received any questions from their donors while collaborating with a third party to facilitate the donors with a tax benefit. Other interviewees do not have the impression that donors prefer to make a direct donation, as donors are often familiar with the third parties involved. Director 16 even mentions a foreign donor who inquired whether arts organisation 16 worked with a foreign partner before making a gift.

8.4.5 Donor's preferences: An exception to legal certainty requirements

Director 23 is opposed to litigation to obtain access to a solution. He, like other interviewees, makes a caveat. He does not want to engage in litigation unless:

“[the donation] would concern a huge sum and a risk that the [donor] knowingly and willingly wants to take. But the idea that you deliberately [...] do something that might take 10 years, to me seems the worst thinkable advice. Because you will have uncertainty for 10 years, both the person and the institution without any guarantee on the outcome. So that seems the most stupid thing you can do. But perhaps there are very specific circumstances in which it does make sense (...)”

If it concerns a considerable gift and if it is the explicit desire of the benefactor, then director 23 is willing to engage in a solution that involves legal uncertainty. Other interviewees came up with similar caveats to those of director 23. Fundraiser 3, for example, says she would choose for a rapid solution, “*but if it concerns a considerable gift and the beneficiary would like you to delve in depth, because he does not want that [fast] construction, or [...] you know, it has all the factors you take into account. But I can imagine if [the gift] is worthwhile [...].*” With these caveats interviewees demonstrate that donors have a powerful position. Arts organisations often depend on donors and other funders to guarantee the organisation’s existence. The funders can therefore impose certain terms and conditions upon the arts organisations. The arts organisations’ dependence on external funders makes external control over arts organisations not only possible, but almost inevitable (Pfeffer & Salancik, 1978, p. 43).

8.4.6 Concluding remarks

In conclusion, the legal certainty of the procedure to obtain access to a solution as well as the legal certainty regarding the outcome of the solution proved to be important for interviewees. Interviewees are eager to comply with legislation, as they want to avoid discussions with the tax authorities. This is good for legal certainty. Furthermore, arts organisations want their partners to be reliable. The second factor to take into account when evaluating the existing solution from the perspective of arts organisations, therefore, is:

Factor 2: The optimality of a solution increases if there is legal certainty on how to obtain access to a solution and if there is legal certainty on the outcome.

An exception, however, exists. On the explicit request of major donors, interviewees are willing to overthrow their strong desire of a solution providing legal certainty. If it is the explicit desire of the donor, and the donation is substantial, interviewees are willing to engage in solutions of which the legal outcome is less certain.

8.5 Donor-friendliness of a solution

Fundraising is all about relationships. Most interviewees are very aware of the relationships with their donors, and they want to nurture these relations. A solution that allows a donor to make a tax-efficient cross-border donation should not have a negative influence on the relationship between the arts organisation and its donor. Besides, a solution has to be user-friendly for the donor – *donor-friendly*.

Because of the importance of relationships in fundraising, arts organisations want to remain the owners of their relationships with their donors. Even if a third party joins so that the donor can obtain a tax incentive, the arts organisation still wants to maintain full control over the relationships. Interviewees do not mind a third party being part of the transaction, as long as the third party does not interfere in the relationship with the donor and is flexible as regards the wishes of the donor. Fundraiser 7, for example, is concerned with the anonymity of donors. He wants the solution to allow the donor to give anonymously.

Interviewees like it if the solution allows them to nurture the relationship with their donor. It is an additional benefit if the solution is more than just a vehicle that allows for a tax break. If the solution allows the employees of the arts organisation to further their personal

relationships with donors, this is considered an advantage. Director 6, for example, prefers a solution that is ‘*more personal*’.

Besides, the solution has to be easy for donors. It has to be simple for them and should not make it more difficult to give. If there is work to be done to facilitate the donors with a tax benefit, this work has to be on the side of the arts organisations, according to the majority of the interviewees. Fundraiser 12 says:

“I think that for the person who gives, it should raise as little barriers as possible. [...] that it causes some work for the [recipient] behind the scenes, that is one thing, but you can specialise in it so that it happens as cleverly as possible. But for the person who gives it should be as simple as possible. You have to be able to give an amount under the most advantageous circumstances without too much effort.”

Fundraisers 10A and 10B agree that the donor should be bothered as little as possible with the solution to allow them a tax benefit. Interviewees also refer to legal uncertainty, as explained in section 8.4, as donor-unfriendly and a threat to charitable giving. Director 16 says: *“You do not impose upon a benefactor to go to the European Court of Justice. Why would he then make a donation?”*

Furthermore, for a solution to be donor-friendly, it has to be quickly accessible, especially for arts organisations that receive a one-off gift from a foreign benefactor. In a case where an arts organisation receives a gift, there is no time to gain all the information, as this would go at the cost of the donation. Decisions on which solutions to use are made under time pressure and there is no time to obtain all the information. Solutions that are quickly accessible are preferred in order to serve the donors well. Fundraiser 3 illustrates:

“You cannot afford to [research solutions]. Because if a donor comes up to you and says, ‘I want to give you something’, he cannot wait a year until you’ve finally done your comparative study. So in that respect it is nice to know from your peers that it functions well and that they work well with your patrons [...] I would opt for a fast solution.”

In conclusion, relationship management is very important in fundraising. Arts organisations do not want a solution to interfere with the relationships with their donors, nor do they want to use time consuming solutions or complex solutions, as this would raise barriers for their donors to give.

Factor 3: A solution has to be donor-friendly in that it

A) does not interfere in the relationship between the arts organisation and the donor;

B) is simple for the donor; C) is fast.

8.6 Scope of solution

In Chapter 7 it was explained that international fundraising is an additional source of income and not a primary source of income for the majority of arts organisations. Arts organisations that raise funds abroad also raise funds in their home countries. An arts organisation that receives gifts from foreign benefactors has to comply with legislation in their home country as well as in the country of the donor if they want to facilitate a tax benefit for the donor.

This holds for arts organisations that proactively engage in international fundraising, as well as for arts organisations that receive an incidental gift from a donor resident abroad for tax purposes.

Compliance with the legislation and regulations of multiple countries is costly and, in certain situations, practically impossible. If countries impose different requirements, this increases the number of requirements arts organisations have to comply with and the costs for facilitating a tax benefit to foreign donors. A high number of requirements impose a burden on arts organisations. If countries apply conflicting requirements, it is impossible for arts organisations to meet requirements in both countries. This was what the fundraisers of arts organisation 20 were faced with, as fundraiser 20C explains:

“Well, basically we tried twice and we were rejected twice by the HMRC, because of one article [in our articles of association], which is the last article. It said that in case of dissolution, the assets of [arts organisation 20] would be distributed to a similar organisation. [...] And this is exactly what [home country] law says. So our articles of association reflect [home country] law, but for English law this isn’t enough. Because they wanted to make sure that the assets would go to, to a charity according to the UK law.”

The conflicting requirements in the UK and the home country of arts organisation 20 prohibits them from relying on certain solutions to overcome the tax barrier on cross-border giving and still being able to allow domestic donors to obtain a tax incentive on their gift. For solutions to be optimal for arts organisations, the solution has to allow tax-efficient cross-border giving and must not influence domestic tax-efficient giving. For arts organisations that have foreign benefactors in one specific country, it suffices if the solution overcomes the tax barrier on cross-border giving with the donor’s country of residence and does not prohibit domestic tax-efficient giving.

Other arts organisations, however, have benefactors spread across several countries. For these organisations it is helpful if one solution allows them to overcome the tax barrier with multiple countries. Otherwise, arts organisations that raise funds in multiple foreign countries have to comply with legislation in multiple host countries to provide their foreign donors with a tax benefit. This consumes time and resources and, therefore, imposes a heavy burden on arts organisations. As director 16 says: *“We work with too many foreign countries. So you would need to hire a tax lawyer in every country. [...] If you work with one foreign country, then perhaps it is a different story. Only French, British, then maybe it is a different story.”* For this reason, she perceives registering at the tax authorities as too laborious: *“No, but this is also too cumbersome, because you would have to do it in six or seven foreign countries. So that is not an option either.”* For arts organisation 17, it also holds that a solution should enable them to deal with multiple countries at once:

“Arts organisation 17 is active in all countries of the Council of Europe, not just the EU, therefore it would be a big organisational challenge for us to establish a ‘friends of..’ organisation in the individual countries. We have so called ‘country representations’ in about 16 countries whose role is to facilitate our work in the given country content-wise. Only a few country representations are active in the field of membership fee collection and fundraising.”

To conclude, a solution that overcomes the tax barrier with multiple countries at once is preferred for arts organisations that have donors spread across several countries. For arts organisations that focus on one foreign country, however, this is less relevant.

Factor 4: *The solution must not negatively influence domestic tax-efficient giving and must at least allow for tax-efficient cross-border giving with one foreign country, although a solution for multiple countries is preferred.*

8.7 Know-how international fundraising and tax law

Deciding which solution is optimal also depends on certain characteristics of the arts organisation. First, the professionalisation of fundraising differs among arts organisations. Also, the know-how and experience in international fundraising varies among arts organisations. Third, the legal and tax knowledge varies across arts organisations. The differences in this knowledge influence which solution is optimal for arts organisations.

During the interviews, it showed that the country of residence of an arts organisation has a large influence on the advancement of fundraising at an arts organisation, as was also demonstrated by the typology of fundraising regimes around the globe by Breeze and Scaife (2015). The interviewed US arts organisations showed to have far more developed fundraising departments than the UK and Dutch arts organisations. The latter, on their turn, had better developed fundraising departments than the Belgian arts organisations. Also, the size of the organisation in terms of the number of employees, visitor number and/or annual budget is often positively related to the level of professionalisation in terms of the presence and size of a fundraising department. Arts organisation 14 is a small organisation and does not have a fundraiser on its staff, whereas arts organisation 32 is a superstar arts organisation with a development department of approximately 90 fundraising professionals.

In section 7.2 I demonstrated that not all arts organisations proactively raise funds abroad, but that many of them do receive spontaneous gifts from abroad. Those that receive spontaneous cross-border gifts do not want to invest a lot of time or money in facilitating their foreign benefactors with a tax benefit, simply because they have other priorities. Director 14, for example, stresses that her organisation's first priority is to set up domestic fundraising before engaging in a time consuming procedure like setting up a friends circle abroad. Director 29 and fundraiser 3 had the same argument, that they first have to set up domestic fundraising. In terms of fundraising, these arts organisations have a low level of professionalisation. They do not have the human resources to even explore the options to raise funds abroad, let alone to actually make an effort to raise funds abroad. A solution for small and young arts organisations with a low level of professionalisation in fundraising, like arts organisation 14, should be easily accessible and should have little administrative requirements and few maintenance costs.

Fundraiser 20A recommends that organisations that are not advanced in international fundraising to use an intermediary organisation instead of setting up a charitable entity abroad:

"I still think it is a very good way to proceed if you have very few donors. And you can't really figure out how the entire organisation is going to work in that country. Because setting up a charity is not it. Because you need a board, you need to

organise events, you need to do something. So once the name is there you can't leave it dormant. [...] And then yeah, sometimes things don't work [out as] you have seen in your research. Maybe you have got something wrong or people react in a different way or maybe you are not presenting yourself in the right way. And it doesn't work out."

Arts organisations with a higher level of professionalisation have the opportunity to explore the options to raise funds abroad. Arts organisation 24, for example, had the possibility to send its experienced fundraiser abroad to set up a foreign friends group. Before doing that, fundraiser 24 took the time to thoroughly investigate the opportunities of raising funds in the US:

"But I came here [...] three years before we started the project, for a period of four months. It [...] was kind of a four-month leave from the museum. But really I had an internship at [arts organisation 34] and I, we searched the potential of starting up an American friends organisation here. I had a focus group in New York and I had a focus group in Minneapolis and I had a focus group of Americans living in [home country] and via those I got the impression that growing an American friends organisation had potential. I [...] gave the results to the board and I said I think we should, I mean, if we want to have an American friends organisation we need to have some activity and to grow it and [otherwise] we have to close it down again."

This demonstrates that fundraiser 24 was well prepared to engage in international fundraising and choosing a solution. Other arts organisations, such as arts organisation 20, also investigated international fundraising in certain countries before actually starting to raise funds abroad.

It is helpful for arts organisations to have knowledge on the different fundraising traditions and cultures of giving in the countries where they want to raise funds, as these differ in each country (Wiepking & Handy, 2015a). The interviews showed that the awareness of these differences varied from interviewee to interviewee and is mainly dependent on the interest of individual employees of arts organisations in international philanthropy. Experience in international fundraising, of course, also increases the know-how on international fundraising. The relationship between the size of the organisation and the know-how concerning international fundraising are not necessarily related. The director of the small arts organisation 14 demonstrates that her organisation has the know-how to raise funds internationally, whereas the fundraiser of large arts organisation 25 demonstrates far less know-how on international fundraising. The more knowledge available on international philanthropy, the better fundraisers can estimate the benefit of raising funds abroad. This can help them make a well-informed decision on the extent to which an investment in a solution pays off. As organisations with little know-how on international fundraising cannot estimate the financial benefit of international fundraising, and do not have the knowledge on how to attract foreign benefactors, it is best for them to keep the investment as low as possible.

Finally, the available legal and tax know-how at an arts organisation is relevant. The less this knowledge is available, the more external expertise has to be hired. For arts organisations that have little in-house legal and tax know-how, a solution is preferred that does not require (in-depth) knowledge of these aspects of international philanthropy.

In conclusion, the higher the level of professionalisation of fundraising, the more

experience in international fundraising and the more advanced the know-how on international philanthropy within an arts organisation, the better informed decisions arts organisations can make regarding a solution to facilitate foreign benefactors with a tax benefit. The higher the level of this knowledge, the more likely the success is of international fundraising and thus the more likely it is that arts organisations will be willing to invest in a solution. Knowledge on international fundraising, cultures of giving and the relating tax law are often lacking. This makes it difficult for arts organisations to determine what the benefits will be of raising funds abroad and thus to what threshold it pays off to invest in a solution that facilitates its foreign benefactors with a tax benefit. For these organisations, it is best to choose a solution that requires little investment. This leads to the fifth factor to determine which solution is optimal from the perspective of the arts organisation.

Factor 5: *The higher the level of professionalisation of fundraising, experience and knowledge of international fundraising and its taxation, the more likely an arts organisation is willing to apply resources to a solution.*

8.8 Non-financial benefit

Aside from a financial benefit, arts organisations can gain in other ways by having foreign donors. The foreign support base provides a starting point to develop the network of the arts organisation abroad. It provides opportunities to create a strong foreign support base, to strengthen relationships with foreign artists, arts organisations and governmental or corporate funders of the arts. Furthermore, the foreign donors constitute an audience for activities of the arts organisation in the donor's home country.

8.8.1 Expanding the support base

Foreign benefactors can create an occasion to form a friends circle abroad, thereby creating a vehicle to help generate more attention for the arts organisation. The friends circle abroad does not necessarily have to be institutionalised, but it is a benefit if there is an organisational structure that gives some sort of formalisation to the friends circle. This formalisation is inherent to some of the solutions to tax-efficient cross-border giving.

This can attract more donors, but also a broader support base of fans and audience. Persons interested in the arts organisation bond with each other and introduce new persons to its activities. In this way, the international support base is broadened.

A strong support base abroad has its benefits. Some arts organisations benefit from their help in achieving substantive goals. One of the aims of arts organisation 7 is to attract artistic talent and guide them to become professionals. Fundraiser 7 explains that the foreign support base of arts organisation 7 helps scout new artistic talent. He stresses that for his organisation the substance of the artistic endeavour is more important than fundraising. For arts organisation 26 the substantive benefits of international relations are also more important than the financial benefits. Director 26 says:

“With you I speak about donors in the sense of giving money. But for our type of museum, we do not work from a very precious art collection, not even a historic collection. Instead, we valorise family collections. Because we focus on the stories of people. [...] So for us donors are actually those that give us their story. That has a high value for them.”

Having a friends circle with at least an informal status can also work as a stimulus for donors to contribute to the arts organisation and to keep foreign donors connected to its cause. Fundraiser 15 underlines that it is important to introduce foreign donors to each other, as it is easier to manage them as a group than as individual relationships. Donors might want more than to just send financial support to a foreign arts organisation. As fundraiser 22B underlines:

“I think that [it] really depends on what you want to do. If you really just want a tax break and that is it, and you just want to use a hub that will give you the tax break, then, you know, of course you can just go through any institution that will give you the tax break. But a lot of our donors don't just want that. They want to be a part of an organisation that supports [arts organisation 22]. And they want to be part of a programme. I mean, they want the life around [it]. [...] They don't just have a big machine in front of them that gives them paperwork, etc. They have lovely human beings who answer their questions, they receive newsletters, and are, you know, they have a real relationship.”

Many donors have the desire to identify themselves with the arts organisation. Often, they want to engage with the organisation. For the arts organisation, it is important to embrace this, as this strengthens the relationship with the donor. Through this relationship, donors become more than just financial contributors and at the same time their loyalty to the organisation increases.

8.8.2 Activities abroad

If a solution provides a high level of institutionalisation of the foreign support base, it also has the potential to aid in employing substantive activities. For example, if the solution requires a local office and staff abroad to facilitate the local donors with a tax benefit, it then has the resources to organise activities and an audience for whom to organise them. In these circumstances it might be interesting to use the solution to employ activities abroad. Arts organisation 24, for example, organises travelling exhibitions in the country where it raises funds. Initially, the idea was to have one exhibition in the country where it wanted to raise funds in order to brand the arts organisation in that country and to kickstart international fundraising. Once the exhibition was arranged for, fundraiser 24 thought it would be a waste to just show the exhibition once and decided to organise more exhibitions as it contributed to the goal of the mother organisation. She says:

“The reasoning was that it should go here for one exhibition, but then having it here, we started thinking about could we do more? I really wanted it to cross the [country where they raise funds], going from east to west. So I started contacting all the galleries here and the museums, you know big museums. And again because I am here and because the contact and the action is quick and direct I succeeded in getting an exhibition agreement with art gallery [name] in [city in foreign country] and a fine arts museum in [another city]. So the exhibition will travel from east to west during next year. And yeah, so it is really all that we wanted but didn't really think was possible.”

8.8.3 Concluding remarks

Not only the financial benefit, but also the substantive benefit of international fundraising plays a role when deciding which solution to use. If a solution provides a certain level of institutionalisation, this creates the potential to increase the support base abroad and to expand the substantive activities abroad, this is perceived as a positive point by arts organisations who have the capacity to expand.

Factor 6: The larger the substantive benefit the arts organisation pursues and can achieve by investing in cross-border relations, the more the arts organisations are willing to invest in a solution.

8.9 The factors applied: Different contexts lead to different outcomes

The organisational characteristics, resources available to the arts organisation and the legislation in the countries involved in the cross-border situation shape the context in which arts organisations have to decide how to facilitate their foreign benefactors with a tax benefit. Because of the contextual factors, there is no single solution that is optimal for all purposes. Furthermore, the wishes of donors and the aims arts organisations want to achieve with international fundraising influence which solution is optimal from the arts organisation's perspective. This results in different optimal solutions in different contexts. The following comparison, which I derived from the interviews, illustrates how the context can change the considerations concerning transaction costs.

Many interviewees, such as fundraisers 10A and 10B and director 23, perceive the fee of the intermediary charity they use as reasonable in comparison to the costs of setting up a foreign friends organisation. Arts organisation 7 even decided to give up its American friends of organisation as a tax incentive on a cross-border gift can be facilitated in a way which is more cost-effective for this organisation. Fundraiser 6 also likes to keep costs low. She, however, chose a friends organisation to raise funds in the US. For arts organisation 6, this is also the cheaper option, as the American friends organisation is run by a volunteer who takes care of the entire entity and, therefore, it hardly costs arts organisation 6 any time or money. On top of that, the volunteer occasionally also contributes to arts organisation 6 with cash donations. Fundraiser 25 also perceives the foreign friends organisation as a cheaper alternative in comparison to having an intermediary charity. In her case, the costs of the American friends organisation are borne by the friends themselves and are therefore 'invisible' costs to fundraiser 25. This demonstrates that in different contexts, the factor 'transaction costs' of a solution plays out differently. Depending on the circumstances, the other factors can also lead to different optimal results. Finally, it has been noted that major donors can have a powerful position and can make fundraisers put aside all their considerations just to please the donor.

8.10 Conclusion

As explained in Chapter 6, arts organisations are currently restricted in their selection of a solution to facilitate their foreign benefactors with a tax incentive. This is caused by their limited knowledge of the different solutions. Furthermore, they heavily rely on experiences

by others, resulting in peers following each other. This may prevent them from making a well-informed and balanced decision.

From the interviews, it becomes clear that arts organisations know what they are looking for in a solution. The factors they bring forward are all valid criteria to include in the assessment framework. There is one prerequisite and six factors that clearly come forward in the interviews:

- *Prerequisite: Effectiveness.* The solution has to be effective in the donor's country of residence.
- *Factor 1: Cost efficiency.* The higher the cost efficiency of a solution, the more optimal a solution is.
- *Factor 2: Legal certainty provided by the solution.* The optimality of a solution increases if there is legal certainty on how to obtain access to a solution and if there is legal certainty on the outcome.
- *Factor 3: Donor-friendliness of the solution.* A solution has to be donor-friendly, in that it A) does not interfere with the relationship between the arts organisation and the donor; B) it is simple for the donor; C) it is fast.
- *Factor 4: Scope of the solution.* The solution must not negatively influence domestic tax-efficient giving and must at least allow for tax-efficient cross-border giving with one foreign country, although a solution for multiple countries is preferred.
- *Factor 5: Know-how on international fundraising.* The higher the level of professionalisation of fundraising, experience and knowledge of international fundraising and its taxation, the higher the likelihood that an arts organisation is willing to apply resources to a solution.
- *Factor 6: Possibilities to gain non-financial benefits.* The larger the substantive benefit the arts organisation pursues and can achieve by investing in cross-border relations, the more the arts organisations are willing to invest in a solution.

Which solution is optimal from the perspective of the arts organisation depends on the context. It is always a cost-benefit analysis on characteristics of the solution and contextual factors. Fundraiser 12 nicely summarises the cost-benefit analysis as follows:

"It also has to do with the size of the possibility, what revenue do I expect and what does it require in return? What effort, what time investment? That's the trade-off."

9. Assessment of the existing solutions

9.1 Introduction

In the previous chapters, the five sub-questions of this research (see section 1.3) were answered. The information provided in these chapters are all building blocks that lead to the answer to the main research question: *How can the existing solutions for tax-efficient international philanthropy be used optimally by arts organisations?* In this chapter the information of previous chapters is combined, bringing the research a step closer to answering the main research question. The existing solutions to tax efficient cross-border giving (Chapter 4) are evaluated based on the assessment framework that I derived from interviews with fundraisers and directors of arts organisations (Chapter 8). In the next four sections I evaluate the solutions for tax-efficient cross-border giving that can be found in legislation. In the last four sections of this chapter I evaluate the solutions that came into being through the initiative of private parties and the strategic use of legislation.

9.2 Assessment unilateral solutions

Countries can unilaterally open their tax incentives to donations made to foreign charities (see section 4.1). In this section, I assess how this solution is perceived by arts organisations by applying the assessment framework to the unilateral solution.

9.2.1 Effectiveness

In principle, the unilateral solution can enable donors to obtain a tax incentive on a cross-border donation. To be effective, the geographical scope of the tax provision in the donor's home country has to include the PBO's country of residence. If the PBO's country of residence is not included in the scope of the tax provision, this solution is not effective.

The closed jurisdictions I described in section 5.2 all limit the tax benefits on charitable donations to the own country. Therefore, in these countries donors cannot rely on the unilateral solution. In open tax jurisdictions, the unilateral solution is effective as long as the home country of the PBO is included in the scope of the tax provision on tax benefits for charitable gifts. In restrictive tax jurisdictions and in relatively open tax jurisdictions, the unilateral solution might be present, but the requirements that the foreign PBO must meet to qualify for gifts with a tax benefit may stand in the way of obtaining a tax benefit on a cross-border situation. This can make it cumbersome in practice, in this context, to obtain a tax benefit on a cross-border donation by relying on a unilateral solution.

9.2.2 Cost efficiency

Unilateral solutions are shaped in various ways. The different variations of unilateral solutions all have their own requirements and varying types of control over PBOs. This results in varying costs. Therefore, no rule of thumb can be identified to measure which level of financial benefit makes it worthwhile for arts organisations to use a unilateral solution. Instead, some general comments can be made concerning the use of different types of control under unilateral solutions in relation to the financial benefit.

Indeed, the arts organisation first has to determine whether home country control, host country control or both are exercised in the donor's jurisdiction. Arts organisations typically do not have in-house legal knowledge, especially not on a foreign jurisdiction, as was demonstrated in section 6.2.3. Therefore, legal and tax advisors must be hired. This implies costs for the arts organisations.

A unilateral solution that relies on home country control can be a very interesting solution. Under home country control, the arts organisation has only to meet the PBO requirements in its own country and thus no additional costs have to be made to meet additional/other requirements. Therefore, it might be interesting for arts organisations to use a unilateral solution that relies on home country control for low levels of giving, especially when a certain degree of continuity of (lower level) gifts is expected. Also for incidental major gifts it might be interesting to use a unilateral solution that relies on home country control.

In many countries, however, host country control is exercised rather than home country control. Meeting the requirements in a foreign country often implies making additional costs. First, the requirements should be assessed, which requires a time investment from the employees of the arts organisation or the expense of hiring external expertise. Second, these requirements have to be complied with. This often causes additional administrative and other work. Especially administrative requirements are costly in terms of man hours. The more requirements and the more restrictive these requirements, the more difficult – and thus the more expensive – it becomes to obtain a PBO status abroad due to the labour costs involved. Because of the costs of this additional work, transaction costs are higher compared to a unilateral solution that employs home country control. To compensate for the higher transaction costs of gaining access to a unilateral solution that uses host country control, a substantial financial benefit has to be achieved.

Also, both home country control and host country control can be exercised in order for a foreign charity to obtain PBO status. Just like a charity that aims at raising funds in its home country and in a country that employs host country control, this requires compliance with two sets of regulations and requirements, which makes this a cumbersome and costly exercise.

Regardless of whether host country control, home country control or both are used, the durability of the PBO status might differ across countries. In most countries the PBO has to live up to the requirements and conditions, but as long as it meets the requirements, it maintains its PBO status. In some countries, however, the recognition of a foreign entity as a qualifying PBO is definite. In France, for example, the charitable status is only valid for three years and after that period the organisation has to apply again.²³⁵ This can result in considerable costs, as the application has to be prepared and countries might ask for a fee to register as a PBO.

²³⁵ FR: Direction Générale des finances publiques, *Bulletin Officiel des Finances Publiques-Impôts*, BOI-ENR-DMTG-10-20-20-20150624, 24/06/2015.

Nonetheless, the unilateral solution does not require collaboration with a separate legal entity. This is considered an advantage of the unilateral solution for three reasons. First, the arts organisation is not dependent on an agent and thus has full control and no agent fee has to be paid. Second, no separate legal entity is required and overhead costs can thus be kept relatively low. Third, if there is no limit to the durability of the PBO status, requesting this status once is enough and sunk costs are limited. Therefore, under these circumstances, the unilateral solution can be an attractive solution if there is enough financial benefit to cover the initial costs. Besides, there has to be a continuous flow of donations coming from that country, as some annual costs might occur related to the control of the PBO. The PBO might, for example, have to provide the annual report to the tax authorities. Yet, once the arts organisation is recognised as a PBO, no additional costs have to be made for an additional gift in the same year.

9.2.3 Legal certainty

As countries are free to design their provisions on tax incentives for charitable gifts, there are many variations to the unilateral solution. Information costs are, therefore, high for arts organisations to obtain knowledge on the requirements they have to meet. Moreover, it is not always clear which requirements a foreign organisation has to meet to qualify for tax benefits in a foreign country, as was also addressed in section 4.1.3. If the procedure is unknown, or if procedures are not transparent, uncertainty remains. Even if the procedure is known, it is not always clear how the procedure will be applied in practice. This is undesirable from the perspective of arts organisations, as this might lead to costly and time-consuming legal procedures.

Arts organisation 20 tried to register as a charity in the UK twice, but failed both times because, amongst other reasons, it was not entirely clear how strict the tax authorities would apply requirements. The rejection letter stated:

“1. The objects stated at article [number] – “its sole purpose (is) the education and instruction of the public in the defence of the environmental and instruction of the public in the defence of the environment and artistic and monumental heritage.” There is mention of the public here and hence we can imply public benefit, however, “the defence of the environment and artistic and monumental heritage” is too wide a purpose to be charitable in English law. Objects expressed in the Charities Act 2006 are “the advancement of the arts, culture and heritage” and “the advancement of environmental protection or improvement”.

2. The dissolution clause at article [number] allows the remaining assets on dissolution to be applied or distributed non-charitably – “the Foundations assets shall be donated ... to another body or bodies ... with objectives of public utility”. The term “public utility” is too indefinite for restricting the application or distribution to charitable purposes.”

Based on these two arguments, the HMRC concluded that arts organisation 20 does not qualify as a charity for UK tax purposes. This caused frustration among the fundraisers at arts organisation 20, since time and resources spent during the application process were wasted. Thus, the more transparent and clear the procedure in a country is, the more desirable the unilateral solution is from the perspective of arts organisations.

One way to create legal certainty for the arts organisations is to use home country control to supervise the PBOs. Arts organisations typically know which requirements they have to meet to qualify as a PBO in their home country. Still when host country control or a combination of host and home country control are used, legal certainty can also be obtained, as long as the procedure and requirements to obtain the PBO status are transparent and well communicated.

Arts organisations also highly value the legal certainty of the outcome of a solution. As was illustrated in section 8.4.3, arts organisations gather a lot of information from their peers. For them, this is an important source of information on the approach of government officials when deciding on a PBO status. Having access to first-hand experience on obtaining a tax benefit in a cross-border situation based on a unilateral solution is very valuable for arts organisations. Furthermore, formal recognition of an arts organisation abroad as a PBO provides *ex ante* certainty that an organisation is eligible to receive gifts with a tax benefit. Therefore, unilateral solutions that formally grant the PBO status are preferred over unilateral solutions that only provide clarity about the PBO status *ex post*. When tax authorities do not recognise PBOs in advance, there is more uncertainty concerning the outcome of the unilateral solution.

9.2.4 Donor friendliness

A unilateral solution does not require a third party to step in between the donor and the PBO. The relationship between the donor and the PBO is not interrupted, which is an advantage of the unilateral solution in comparison to solutions that require collaboration with a third party. An additional advantage is that the unilateral solution is relatively simple for the donor. He or she can follow the same procedures as when donating to a domestic charity.

If no PBO recognition has to be obtained up front, the solution is immediately available, thus making it a fast solution. However, in this situation there is only legal certainty *ex post*, which is not desirable, as was explained in section 9.2.3. Furthermore, under these circumstances, the burden of proof is often on the donor. Arts organisations, however, do not want to burden their donors with work. If recognition as a PBO is required before the donation is made, the unilateral solution might not be a fast solution because obtaining PBO status can be a lengthy and time-consuming process.

9.2.5 Scope

The unilateral solution is a solution for donors from only one country. If an arts organisation receives gifts from one foreign country, the scope of the unilateral solution is sufficient. However, when an arts organisation raises funds in multiple countries, the scope of the unilateral solution may be too limited, especially if it relies on host country control. Arts organisations that have donors spread across countries would have to meet the requirements in each separate country. The downside of the unilateral solution for PBOs that want to raise funds in multiple countries was also brought forward by Heidenbauer et al. (2013).

In the case of a unilateral solution with home country control, only one set of rules has to be met. This is very convenient for the arts organisation as it means that conflicting requirements cannot arise. In case of host country control, conflict can arise. If this is the case, the unilateral solution might not be suitable for organisations that want to raise funds both in the home and the host country. Even if requirements are not conflicting, but just different, this already requires the input of additional resources or using existing resources differently in order to compensate for the effort that has to be made to meet the additional requirements.

9.2.6 Know-how on international fundraising and tax law

If a unilateral solution is based on home country control, little additional effort is required from organisations that are recognised as PBO organisations in their country of residence. If the organisation wants to raise funds in the home country and wants to provide its domestic donors with a tax benefit, it has to make the effort to get recognised as a PBO anyway. Therefore, a unilateral solution based on home country control is also feasible for organisations with a low level of tax knowledge.

In a case where the unilateral solution is based on host country control or both home and host country control, some effort is required from arts organisations to meet the requirements for PBOs in the country of the donor. Information has to be gathered on the tax legislation in the donor's country of residence. Next, the arts organisation has to live up to the requirements for PBOs in that country. This requires a certain level of tax knowledge. However, in principle, this can be organised by hiring external expertise to obtain the PBO status abroad. No additional entities are needed, so the solution can be managed with relative ease by employees of the home organisation. In that sense, the burden on the human resources of the arts organisation is limited and thus a low level of professionalisation suffices.

9.2.7 Possibilities to gain non-financial benefits

Since the arts organisation has full control over its relationships with donors in the foreign country, without having to set up a separate entity or worry about interference from a third party, this solution is suitable to establish relationships with new donors. Besides, the unilateral solution is a relatively flexible solution with regards to employing activities other than fundraising. The PBO status in the foreign country might allow the arts organisation to rely on other tax benefits in CIT and inheritance tax. This makes it easier to organise activities and gain non-financial benefits.

The drawback of things being arranged from the home organisation is that the physical distance is not overcome by this solution. No legal entity, office, or board is required in the country of the donor. This allows for low costs and a lot of flexibility, but at the same time does not facilitate proximity to activities or donors in the country. Still, arts organisations could take the initiative to set up a local counterpart or office. For organisations that might want to develop substantial activities abroad, it might be beneficial to have such a local counterpart or office, as this also provides proximity to the activities and the support base. In this regard, the unilateral solution is flexible and it is up to the arts organisation to engage in activities that allow them to gain non-financial benefits if that is their aim.

9.2.8 Concluding remarks

The unilateral solution is only available in a limited number of countries and, therefore, does not provide a solution to the tax barriers on cross-border giving in the majority of countries. When it is available, however, the version of the unilateral solution that relies on home country control in the country of residence of the arts organisation is preferred from a transaction cost perspective. Under these circumstances, only one set of requirements has to be met, which requires limited know-how on international tax law and limited expenses. Therefore, under these circumstances, the unilateral solution might already be interesting for low levels of giving, especially if there is a continuous stream of gifts coming from that one particular country. Furthermore, if home country control is applied, international fundraising does not stand in the way of fundraising in the home country of the arts organisation.

The version of the unilateral solution that relies on host country control, or both host and home country control, is less preferred from a transaction cost approach. It requires meeting multiple sets of requirements which implies higher costs and the necessity of more know-how. Besides, the multiple sets of requirements that have to be met when raising funds in multiple countries might be conflicting. This can make it difficult – or even impossible – to raise funds in multiple countries.

I have some general remarks concerning the unilateral solution, regardless of the type of control it employs. If the arts organisation can get recognised as a PBO *ex ante*, legal certainty can be obtained up front, which is beneficial from the perspective of arts organisations. Furthermore, it saves the donor from having to provide the proof that the arts organisation qualifies as a PBO in order to claim the tax benefit. With regards to donor-friendliness, it is also worthwhile mentioning that the solution allows for a direct relationship between the PBO and the donor. A limitation of the unilateral solution is that it only overcomes the tax barrier with one country. For arts organisations that raise funds in multiple countries, therefore, this solution might not be most efficient as it would require the arts organisation to comply with multiple sets of requirements. Finally, a local office or a local board is not required when relying on a unilateral solution. It is not inherent to the unilateral solution that non-financial benefits can be gained. On the other hand, it does not stand in the way of activities other than just raising funds in the foreign country. In fact, the PBO status in the foreign country might also allow the arts organisation to obtain tax benefits in other fields of tax law.

9.3 Assessment of bilateral solutions: Tax treaties

In this section I apply the assessment framework to tax treaties, as a form of bilateral solutions. In section 4.2, tax treaties were described and reflected upon.

9.3.1 Effectiveness

Tax treaties can be an effective tool for overcoming tax barriers to cross-border charitable giving. The provision on charitable donations, however, is rare in international tax treaties. It is not included in the model tax convention of the OECD or the UN. Therefore, it is only effective in a limited number of cross-border situations.

Even when such a provision is included in the tax treaty, the applicability of the tax incentive might be restricted by limitations in the wording of the provision, of which four limitations were discussed in Chapter 4. First, the tax benefit might only be applicable to source income, as is the case in the Canada-US tax treaty, the Israel-US tax treaty and the Mexico-US tax treaty.²³⁶ This limits, or even removes, the effectiveness of the tax treaties for individual donors who have limited or no foreign source income.

Second, the tax benefit can be limited to a maximum percentage of taxable income. In many countries, the tax benefit is already limited to a maximum percentage of taxable income, but additional limitations can be included in tax treaties. Such an additional limitation is included in the Israel-US tax treaty.²³⁷ This reduces the effectiveness of the tax treaty to the

²³⁶ Canada-United States Income and Capital Tax Treaty (1980 as amended through 2007), art. 21, para. 6-7; Israel-United States Income Tax Treaty (1975), art. 15A; and Mexico-United States Income Tax Treaty (1992 as amended through 2002), art. 22, para. 2.

²³⁷ Israel-United States Income Tax Treaty (1975), art. 15A.

percentage agreed upon in the treaty. The absolute tax benefit when relying on a tax treaty might therefore be less than in a domestic situation.

Third, the provision can be limited by the assignment of power to control PBOs to both contracting states. If these countries use different requirements, a significant administrative burden rests upon the PBO. Furthermore, if the requirements are conflicting, this makes it impossible for the organisation to meet the requirements in both countries and thus the tax treaty is no longer effective.

Finally, the tax treaty might require equivalence or comparability of national law concerning PBOs. If an equivalent of the charity definition is provided, the tax treaty is effective. However, if this is not agreed upon, legal uncertainty arises and in the worst case, the national legislation concerning PBOs may not be regarded as equivalent and then the tax treaty is not effective in lifting the tax barrier from cross-border charitable giving. Depending on the countries involved in the cross-border situation and the wording of the tax provision on charitable donations, the tax treaty might thus be an effective, partly effective, or not effective tool for obtaining a tax benefit on cross-border donations.

9.3.2 Cost efficiency

Relying on a tax treaty to operate as a vehicle to facilitate a tax benefit on a cross-border donation does not involve a fee. Furthermore, it involves a minimal time investment by the employees of the arts organisation and no administrative burden, as the donor has to invoke the tax treaty. The only transaction costs that might be in place when relying on a tax treaty are the costs for tax advice. Still, these costs are a barrier for some interviewees. For director 29, for example, the costs of hiring a foreign tax lawyer makes the tax treaty an undesirable solution. He says: “[...] *tax treaties [...] we don't have a clue of that expertise. Before I have a tax advisor to sort this all out, it will cost me ten times more than [using an intermediary organisation].*”

Relying on a tax treaty will likely require tax advice for the first cross-border donations, as the facts of individual donors usually vary. Therefore, advice costs can add up. However, once the arts organisation has more experience with the specific tax treaty and different cases involved, the costs for tax advice are likely to decrease, as arts organisations gain insight into the functioning of the tax treaty. In the case of reoccurring gifts from a country with which the arts organisation's home country has concluded a tax treaty, it might pay off to hire a tax advisor for the first initial gifts from that country.

The financial benefit required for the tax treaty to be an interesting solution is rather low, as it does not require a large investment to gain access to the treaty. The only costs that might have to be made are those of the tax advisor abroad. As long as the gift is larger than the tax advisor's fee (or if the donor covers these costs), no large or reoccurring gifts are required for the tax treaty to be an interesting tool to consider.

9.3.3 Legal certainty

To invoke a tax treaty, the donor usually has to determine whether a tax treaty applies to his or her situation. The tax authorities then take into account the tax treaty in place. Thus, there is legal certainty as regards access to the solution.

The legal certainty concerning the outcome of the tax treaty as a vehicle to obtaining a tax incentive on a cross-border donation is similar to a domestic situation. The requirements that have to be met can be found in domestic tax law in relation to the tax treaty.

Usually, the tax treaty has accompanying documents that further clarify the interpretation of the tax treaty, such as the Exchange of Notes and the Technical Explanation. If the donation meets the requirements stipulated in the national tax legislation in coherence with the tax treaty, there is certainty that the tax benefit can be obtained. If the donation does not meet these requirements or if this is debatable, the tax benefit might be rejected, similar to a domestic situation.

9.3.4 Donor-friendliness

The tax treaty meets most the requirements for a donor-friendly solution. It is a direct solution, without the involvement of a third party and thus the tax treaty does not interfere in the relationship between the arts organisation and the donor. The tax treaty, however, is not necessarily a simple solution, as the donor has to determine whether a tax treaty is applicable, which can be a cumbersome procedure. Finally, when a tax treaty is available, it is a fast solution, as it is immediately accessible.

9.3.5 Scope

The scope of tax treaties is limited, as it only provides a solution between the two contracting states. Director 16, therefore, rightly remarks that relying on tax treaties would require her organisation to rely on multiple different tax treaties, as her organisation is active in six or seven countries.

For an organisation that raises funds in one foreign country with which its country of residence has a tax treaty that includes a provision on charitable gifts, the tax treaty might be sufficient. This, however, also depends on how the tax treaty arranges control over the PBOs. A tax treaty that relies on host country control, where the foreign arts organisation meets the PBO requirements, allows the donor to obtain a tax incentive on its cross-border donation. If the requirements in the home country of the arts organisation are different from those in the host country, the arts organisation would have to meet two sets of requirements if it also wants to raise funds in the home country. If the requirements in the home country and the host country are conflicting, the organisation would not be able to have PBO status in both countries, making it more difficult to raise funds in both countries. Besides, if requirements are conflicting and the organisation would choose to meet the requirements in the donor's country, it would not be able to rely on other tax benefits related to the PBO status in its country of residence, like exemption or reduced tax rates in CIT, gift and/or inheritance tax. Anyhow, in principle, the scope of a tax treaty is limited to one foreign country.

The scope of the tax treaty can be expanded, though, if combined with another solution. A Canadian donor of arts organisation 10 benefitted from such a construction. She made her donation with a tax benefit by relying on the US-Canada tax treaty while donating her gift to an intermediary organisation in the US. The US intermediary organisation transferred the gift to arts organisation 10, which is resident in a third country. This demonstrates that having access to a tax treaty that allows for a tax benefit on a cross-border donation with one country might provide for a solution with a broader scope, as is demonstrated in Figure 9A.

This, however, only applies in a case where the tax treaty gives access to a country with which the arts organisation has a solution initiated by a private party in place. If there is no private initiative – and thus no entity that can undertake action to transfer the donation – the tax treaty does not give access to a solution with a broader scope, as is depicted in Figure 9B.

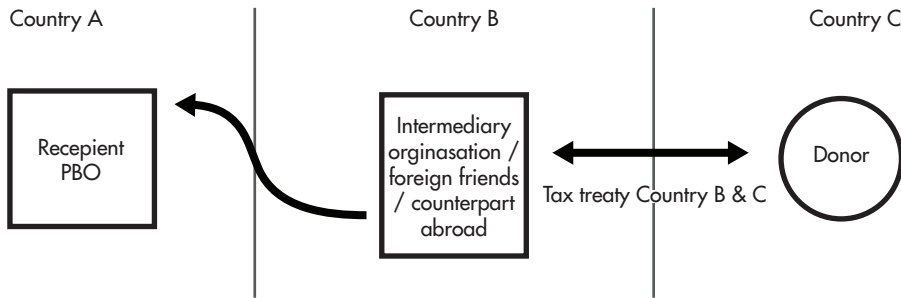


Figure 9A - Scenario 1

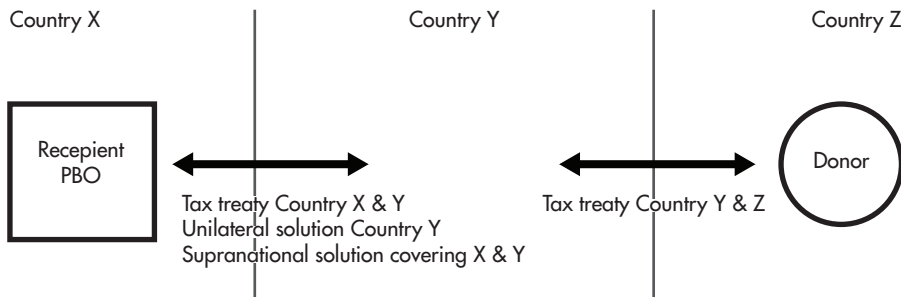


Figure 9B - Scenario 2

A construction involving multiple solutions, however, is rather complex. Therefore, a solution that provides tax benefits in multiple cross-border situations is preferred for organisations that raise funds in multiple countries.

9.3.6 Know-how on international fundraising

The necessary know-how to rely on a tax treaty requires knowledge on the functioning of tax treaties and knowledge of the tax legislation in the donor's country. The fundraisers and directors at arts organisations demonstrate little of this knowledge and therefore have to rely on tax experts, which can be an in-house lawyer, as well as external tax advisors. However, once this information is obtained, it might be used again to facilitate donors from that particular country with a tax benefit based on the tax treaty. Caution is required, though, as each separate case has to be assessed again. Using a tax treaty to facilitate a foreign benefactor with a tax incentive, furthermore, requires some investment in terms of time and knowledge. Thus, a certain level of professionalisation and know-how on international fundraising is required.

9.3.7 Possibilities to gain non-financial benefits

The tax treaty does not provide opportunities to establish a support base or initiate activities abroad. Therefore, no substantive benefits can be obtained through the tax treaty.

9.3.8 Concluding remarks

A provision on charitable donations is rare in bilateral tax treaties. When such a provision is included in a tax treaty it can be an interesting tool to consider, as it provides legal certainty, is

quite donor-friendly, requires limited knowledge on international fundraising and the transaction costs to obtain access to the solution are limited to the costs involved in tax advice. Especially for gifts coming from one foreign country, this is an interesting solution to consider.

The exact wording of the tax provision on charitable donations, however, can stand in the way of the effectiveness of the tax treaty, or of fundraising in the home country of the organisation. Furthermore, the scope of tax treaties is limited to the contracting states, and therefore for organisations that raise funds in multiple countries, the tax treaty does not provide a solution for these different cross-border situations.

9.4 Assessment of supranational solutions: EU law

In section 4.3.1 I explored EU law as a supranational solution to overcoming the tax barriers to cross-border charitable giving. In this section I evaluate EU law as a solution to facilitate foreign donors with a tax benefit from the perspective of arts organisations.

9.4.1 Effectiveness

EU law is, in principle, effective in all EU Member States. Donors resident in EU Member States can rely on the four fundamental freedoms as a solution to tax-efficient cross-border charitable giving. The *Persche* case²³⁸ demonstrated that it can be an effective solution to obtain a tax benefit on a cross-border donation in the EU. Still, single countries might try to limit the effectiveness of EU law.

EU countries are free to decide if and under what conditions they want to provide tax incentives on gifts. By including conditions that limit the tax incentives to causes that, for example, benefit the culture of the EU country concerned, it does not discriminate according to EU law, but it can still restrict gifts that do not benefit the own nation. In Germany one of the conditions for a gift to qualify is that the PBOs activities must be deemed able to contribute to the Federal Republic of Germany's international reputation.²³⁹ In practice, however, the tax authorities seem not to have applied this requirement.

Some countries apply a very strict and literal comparability test. This might make it extremely difficult in practice to obtain equivalence to a domestic PBO. The in-house lawyer of arts organisation 18 is aware of the possibilities that the TFEU offers with regards to the tax benefits for cross-border donations. She, however, reckons that the procedures to get recognised as a PBO in another EU Member State are so stringent that it is practically impossible. She remarks that the case the arts organisations have to make is rather complex and includes extensive administrative reports.

Furthermore, if a PBO wants to raise funds in multiple EU Member States, discrepancies between requirements might prohibit EU law from being effective in all these cross-border situations. It largely depends on the type of control the supervisory authorities exercise over the foreign PBO. The predominant procedure in EU Member States to obtain equivalence to a domestic PBO relies on host country control. For arts organisations that want to raise funds in multiple countries, the host country control is burdensome, as they would have to comply with the legislation of all these countries. If they do not manage to meet the requirements in all countries, it is impossible for donors from different countries to receive the applicable tax incentive in their tax jurisdiction when they contribute to one and the same foreign charity.

238 C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

239 DE: Anwendungserlass zur Abgabenordnung no. 7 of s. 51 Fiscal Code.

9.4.2 Cost efficiency

EU law does not require payment of a fee to gain access to the solution, but often other costs are involved to obtain equivalence to a domestic PBO.

To be considered equivalent to a domestic PBO, arts organisations need to gain insight into the comparability test in the EU Member State where their donor is located. To obtain this knowledge and make a valid comparability claim, legal advice is often necessary (Von Hippel, 2014, p. 37). Fundraiser 8, like other fundraisers, perceives this as an obstacle. Director 16 adds: *“We work with too many foreign countries. So for every country you would need to hire such a tax advisor.”* Besides, in order to claim equivalence, documents might have to be translated. If official translations are required, the costs involved are significant. In countries where renewal of the PBO status is required after a certain time period, the costs are reoccurring.

Furthermore, legal assistance might be necessary if the EU Member State does not grant equivalence of the PBO to a domestic PBO. In that case, litigation is required, perhaps all the way up to the ECJ. This can involve significant costs. This risk is especially palpable in the EU Member States where tax law still discriminates against foreign PBOs, namely Croatia, Portugal, Romania and Spain.²⁴⁰ Tax advisor 4 mentions that she does not often see people decide to litigate: *“I did not witness people being willing to engage in far-reaching litigation in practice. It often also depends on the amount at stake whether it is worthwhile. [...] People do not litigate if the gain is limited, unless it is a matter of principle.”* Tax advisor 5 recognises that some people are very firm in their principles.

In case the costs to obtain equivalence to a PBO in the country of the donor exceed the benefits of the donation, the solution is not cost efficient. Furthermore, the potential litigation costs have to be taken into account. As litigation costs can easily add up, the donation has to be significant. Director 23 would only pursue this avenue if the size of the gift exceeds EUR 50,000.

9.4.3 Legal certainty

EU law does not provide certainty concerning the procedure to obtain access to the solution. First of all, it is not clear what the comparability test entails in all EU Member States. Second, when it is clear what the comparability test entails, the procedures vary among Member States. Even within one tax jurisdiction, individual officials at the tax authorities may apply varying benchmarks. However, being an organisation with a well-known reputation increases chances of recognition (Von Hippel, 2014, p. 37). Third, the approach to determine equivalence varies among EU countries, which each result in different levels of legal certainty. There are EU countries that employ a case-by-case decision on whether a donation to a certain foreign entity is eligible for a tax benefit. In other countries, a general decision is made on whether a foreign PBO can obtain a tax privileged status. In the latter case, there is greater legal certainty that regarding whether a donation will or will not be granted a tax benefit. If the decision on tax privileged PBOs is made by decentralised tax authorities, there is less legal certainty, as the PBO will need to obtain tax privileged status at every single tax authority in a country. Tax advisor 9 notes that in France, she still perceives discrimination when contributing to a foreign charity: *“If a French donor gives to a French PBO, he receives a confirmation that [the tax*

²⁴⁰ European Foundation Centre (internal document) *Overview of Member States' compliance with the ECJ non-discrimination principle according to the latest available information on the applicable national laws*, March 2016.

benefit will apply], and that is really based on perceived trust. And in principle, that donation is then totally safe. If he donates to a foreign PBO, [no confirmation is received]. So he has a higher risk that the tax authorities will ask questions about the tax benefit he claimed.”

EU law does provide legal certainty on the outcome, as the ECJ has consistently ruled that PBOs resident in an EU member state shall not be discriminated against. To obtain this legal certainty, arts organisations and their donors must be willing to go to the ECJ to enforce the non-discrimination principle. Fundraiser 21 is one of the few interviewees at an arts organisation who considered the fundamental freedoms in the EU as a solution. For him, the lack of legal certainty on the application of the tax incentive was a reason not to rely on the non-discrimination principle: *“with [...] the recent decisions in European Law it must be possible to give a German tax receipt in France. But on the other hand, [it] was just two or three cases and they went to the European Court [of Justice]. [...] And I did not want our donors to struggle with their tax advisors or attorneys to make their tax receipt work. So I chose to work with [an intermediary charity].”*

The discussion of the solutions based on the vignette shows that relying on the fundamental freedoms and running the risk of having to litigate at the ECJ is a serious obstacle for many arts organisations. For example, fundraiser 15 says:

“F15: I think I find [the four fundamental freedoms in the EU] really very difficult. I think one should stay away from it, for both parties. It can get very frustrating.

R: Difficult in what sense? [...]

F15: Yes, I think the legal expertise. And indeed that the benefactor has to take the risk to compel his rights in front of a judge. So you want to do something good and then you all of a sudden have to go to a court somewhere. I think that is a choice none of the parties, neither the receiving organisation, nor the benefactor, would want to make. I guess. Unless it becomes a very fundamental story for someone. But then it is a choice of the benefactor, but I myself would never [...].”

9.4.4 Donor friendliness

Every EU Member State has a different manner of defining equivalence of a foreign PBO. The length of these procedures and the complexity vary across Member States. The general impression is that in the majority of the EU Member States, these procedures are time consuming and complex. It might take several months before clarity is provided regarding whether a PBO is equivalent to a domestic PBO. In case equivalence is denied, legal procedures might follow. These procedures might take years and can be demanding for the donor. These procedures can disturb the relationship between the donor and the arts organisation. This is one of the reasons director 29 would not want to engage in such a solution. Patron 2 confirms that she does not perceive this solution as donor-friendly. She explains that she is not willing to take any risk when it comes to obtaining tax incentives on cross-border donations: *“I want as little hassle with the tax authorities as possible. I want to lay low as much as possible. I do not want to stand out from the crowd. It is not worth it.”*

9.4.5 Scope

The scope of EU law as a solution to obtaining a tax benefit on a cross-border donation covers cross-border situations in all 28 EU Member States. To successfully rely on EU law, the comparability test has to be met to prove that the recipient PBO is equivalent to a domestic PBO

in the EU Member State where the donor is resident for tax purposes. Therefore, if a PBO has donors in all 28 EU Member States, it has to do the comparability test in all 28 Member States. If the requirements imposed by two or more of the EU Member States are conflicting, EU law is no longer an effective solution in all cross-border situations within the EU. This limits the scope of the solution.

Furthermore, EU law has the potential to also cover cross-border situations with third countries. This, however, only seems to apply in a case where an EU Member State implemented its charitable provision after 31 December 1993.²⁴¹ Besides, there has to be an agreement on the exchange of information between the EU Member State and the third country. These limitations highly restrict the scope of EU law as a solution to cross-border situations with a third country.

9.4.6 Know-how on international fundraising

The four fundamental freedoms in the TFEU are mostly unknown as a solution to overcoming the tax barriers to cross-border charitable giving. None of the interviewed employees of arts organisations were familiar with this solution. Exceptions were the legal counsels of arts organisation 18 and 21. The legal counsel of arts organisation 21 informed fundraiser 21 on the possibilities of EU law to obtain a tax benefit on a cross-border donation. The four fundamental freedoms in the TFEU have to become more well-known among PBOs and their donors, in order to serve as a solution for cross-border charitable giving.

Even if arts organisations would be familiar with this solution, they would still need legal assistance, as expertise with EU law and foreign legislation is required for this solution and the majority of the arts organisations do not have staff with this expertise. Once the necessary information is obtained, the arts organisation would need to ensure it complies with the foreign legislation. This might require some effort from the employees of the arts organisation. Furthermore, hiring a tax advisor for a one off advice might not suffice if the case is taken to court. In that case a tax advisor would have to be hired for a longer period of time.

9.4.7 Possibilities to gain non-financial benefits

EU law as a solution to tax-efficient cross-border giving does not require physical presence by representatives of the arts organisation in all the EU Member States where it wants to facilitate donors with a tax incentive. Therefore, no characteristics are inherent to EU law that create a support base or have the potential to develop substantive benefits in the foreign country. However, EU law does not interfere in the development of activities abroad either. It should even allow PBOs with activities in other EU Member States to have the same tax treatment as domestic PBOs, also in CIT, gift and inheritance tax, and other fields of taxation.

9.4.8 Concluding remarks

EU law has the potential to overcome the tax barrier on charitable giving within the EU and in cross-border situations with some third countries. The practical implementation, however, prohibits this solution from being optimal from the perspective of arts organisations.

²⁴¹ In the case of Bulgaria, Estonia and Hungary after 31 December 1999 and for Croatia after 31 December 2002.

The discrepancies among requirements in single EU countries limit the potential effectiveness and scope of EU law as a solution to obtain a tax benefit on a cross-border donation within the EU. Furthermore, the limitations on the free movement of capital in third country scenarios limit the scope of EU law as a solution to overcoming tax barriers to cross-border giving.

The costs involved in legal advice, translation costs and time investment make EU law a solution that is not cost-efficient. Reliance on EU law is only worthwhile for very large donations. The fact that potential litigation may be necessary to obtain legal certainty makes EU law even less attractive from the perspective of arts organisations. This might disturb their relationship with donors, which is something all organisations are very opposed to, and it is time consuming and also brings about significant costs.

Tax advisor 9 also perceives EU law as an unsatisfactory solution. She summarises it as follows: *“The sad thing with these kinds of situations is that discussions [with the tax authorities] can always appear. And these discussions can become complicated in that you are forced to go to court. And then it can take years before somebody is proved to be right. So that is not optimal. It costs a lot of money. It costs a lot of negative energy. It costs a lot of time from the PBO and its donor. And that is unfortunate for the charity.”*

9.5 Assessment of supranational solutions: The Proposal for a Council Regulation on the Statute for a European Foundation

The Proposal for the Fundatio Europaea was outlined in section 4.3.2 as an example of a supranational solution. Although the Proposal has been withdrawn, it is still interesting to see how it would have been perceived by arts organisations, as it demonstrates an alternative supranational solution in comparison to EU law. Therefore, in this section I assess how the FE would have been perceived by arts organisations by applying the assessment framework to the initial FE proposal.

9.5.1 Effectiveness

The FE had the potential to be an effective solution for organisations with FE status to overcome the tax barriers to cross-border charitable giving within the EU. To obtain the FE status, several requirements had to be met. One of the requirements that would have potentially hindered obtaining the FE status is that organisations had to be active in at least two EU Member States. Not every organisation, however, is active in two EU Member States and the FE did not specify whether fundraising was considered an activity. Furthermore, the FE was required to have assets equivalent to EUR 25,000.²⁴² This potentially limited the ability of PBOs with insufficient assets to obtain FE status. The organisation also had to pursue specific public benefit purposes. Art and culture were included in the list of public benefit purposes, so for arts organisations, this would not have been problematic.

After the removal of the tax provisions from the FE Proposal in fall 2013, it lost its

242 COM(2012) 35 final, 2012/0022(APP).

effectiveness.²⁴³ With the withdrawal of the Proposal in March 2015,²⁴⁴ the FE will not be put into practice.

9.5.2 Cost efficiency

The Proposal did not address potential fees involved in registering as an FE and did not exclude them either. It is possible that some registering organisations would have asked an (administrative) fee to register as an FE, but this is mere speculation.

Once an organisation would have been registered as an FE, there would most likely not be costs involved in gaining access to the solution. Therefore, once the FE was established, there would not have been a minimum financial benefit at which an FE would have been an efficient solution to cross-border charitable giving. There was no specified period after which the FE registration would have to be renewed and thus this would not have given rise to additional transaction costs.

As interviewees at only one organisation had vaguely heard about the FE, it is unlikely that fundraisers and/or directors at arts organisations would have had the legal expertise to register as an FE. Arts organisations that would have wanted to register as an FE would have needed expert legal advice. If no in-house legal advisor would have been available, an external legal advisor would have to have been hired. This would have brought forward expenses for external advice.

For arts organisations that only incidentally receive small cross-border donations from donors in other EU Member States, registering as an FE would probably not have weighed very heavily against the financial benefit, due to the costs of external advice. As soon as these small donations would have surpassed the costs of external advice, it could have been beneficial to register as an FE.

9.5.3 Legal certainty

There was room for further clarification of the process to register as an FE, as Breen (2013) and Hemels (2012) also noted. It was, for example, not entirely clear whether the registry of the FEs had to be done by an independent organisation, or whether the tax authorities could have held the registry of the FEs. Also with regards to the supervisory oversight, the FE Proposal could have been clearer in explicating when a matter would fall under the terms of the FE directive or the national law.

Once an organisation would have been registered as an FE, there would have been legal certainty for donors that they could rely on the same tax benefits as they would if they had contributed to a PBO in their home country. Tax advisor 6 highlights this as an advantage of the FE: “[...] *also for the donors it would be easy. They know that if they give to an entity with the FE status that it is deductible.*”

9.5.4 Donor-friendliness

The FE status would have been donor-friendly. It would have allowed the donor to directly contribute to a foreign charity with the FE status without interference from a third party.

243 Council of the European Union, Press Release 6653/14, 3295th Council meeting, 20 and 21 February 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/141115.pdf. Accessed 14 June 2017.

244 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.080.01.0017.01.ENG. Accessed 14 June 2017.

As the tax authorities would have had to treat this donation as equal to a donation to a domestic PBO, it would have been simple for the donor to include it in his or her tax declaration and claim the tax benefit. Furthermore, FE status immediately made the PBO in another EU Member State eligible for a tax benefit. Therefore, it would have provided fast accessibility for the donor.

9.5.5 Scope

The FE would have covered all EU Member States and would have thus allowed PBOs active in multiple European Member States to allow their donors across Europe to donate with a tax benefit by using one single solution. Since an organisation with FE status would have had to have been treated equally to domestic PBOs in all EU Member States, it would have been sufficient for the organisation to be registered as an FE. It would not have to meet PBO requirements in all 28 EU Member States and the PBO would not risk its PBO status in its home country by trying to meet PBO requirements in another country to facilitate a foreign donor with a tax benefit. This would have been an advantage of the FE. It would have made it much easier for pan-European organisations. Fundraiser 7 expresses his excitement for a single solution such as the FE that would recognise his organisation as eligible for tax privileges across the EU: *“And the day that happens [...] that would make my work a lot easier. We are a very European [arts organisation]. We perform a lot throughout Europe, we know a lot of Europeans.”*

For organisations that have donors in countries outside the EU, or that are not active in the EU, the FE would not provide a solution to facilitate these donors with a tax incentive.

9.5.6 Know-how on international fundraising

If the FE would have been put into practice, it most likely would have required arts organisations to hire some assistance from legal experts to get registered as an FE. Once the organisation would have been registered as an FE, little expertise on international taxation on fundraising would be required, as the FE status would have been sufficient to facilitate donors in different EU Member States with a tax benefit on their donation. Also, it would have required little time to maintain the FE status. Only the annual auditing requirements would have to be met, for which annual assistance would have been required from an auditing expert, as the FE statute proposes specific reporting and auditing mechanisms (Breen, 2013). These auditing requirements, however, are a common requirement that PBOs have to meet, so this would probably not impose an additional burden on the arts organisation in comparison to registering as a normal PBO instead of an FE. Thus, once the FE would have been established, no high level of professionalisation or know-how would be required from the arts organisation.

9.5.7 Possibilities to gain non-financial benefits

No characteristics are inherent to the FE that create a support base. However, the FE would not have stood in the way of employing activities abroad either.

From a tax perspective, it would have equated activities of FEs abroad to activities by PBOs in the specific foreign EU Member State. The FE would not only have facilitated tax benefits on donations from donors in other EU Member States, but it would have also regulated the equal treatment of FEs concerning CIT and other taxes to domestic PBOs. Therefore, if an organisation that would have been registered as an FE would undertake activities in another EU Member State, these would have been treated the same as activities by domestic

PBOs. In EU Member States where PBOs can count on tax privileges, these would have also applied to FEs. Therefore, the FE would have made it easier to undertake activities in other EU Member States.

9.5.8 Concluding remarks

Applying the assessment framework to the FE demonstrates that from the perspective of arts organisations, the FE would have had the potential to become a well-regarded solution to facilitate foreign benefactors with a tax incentive. If the FE would have been implemented, it would have been effective in cross-border situations within the EU. The broad scope of the FE – covering all EU Member States while only having to meet the requirements in one country – would have made it an attractive solution from the perspective of arts organisations. Although it might have taken some effort and money to get registered as an FE, once registered, it would provide donors with legal certainty concerning the application of a tax benefit on their donation. Furthermore, it would have been a donor-friendly solution, as it would have been fast, direct and simple for the donor.

For small arts organisations with less assets than EUR 25,000, for organisations without activities in the EU and for arts organisations that receive small donations from donors in other EU Member States not exceeding the costs of legal and auditing costs, the FE would not have been a worthwhile solution.

9.6 Assessment of legal entities abroad with charitable activities

The legal entity abroad that uses charitable activities as a vehicle to obtain a tax benefit on a cross-border donation is a form of a private initiative to facilitate foreign benefactors with a tax incentive, as was outlined in section 4.4. In this section I assess how this solution is perceived by arts organisations.

9.6.1 Effectiveness

The entity abroad has charitable activities and is recognised as a PBO organisation. Therefore, in countries where the tax authorities look at the initial recipient, the legal entity abroad with charitable activities is an effective solution. If the tax authorities do not look through the entity and it is not regarded as a mere conduit, a tax benefit can be obtained on the donation. Arts organisation 31 used this solution to facilitate a benefactor who wanted to contribute to one of its foreign benefactors and obtain a tax benefit. Fundraiser 31 elaborates: *“The examples that are coming to my mind are [...] that someone is a [home country organisation] person who wants to support a project being managed by one of the other [foreign] offices, so they give their gift that is intended for the other office, but they want the tax benefits of the [home country organisation]. They give to us [arts organisation 31]. We transfer the money [to the foreign office]. But let me think if the reverse has happened. I think it probably has. Yeah.”*

In countries where the tax authorities do look at the actual spending of the donation or do not allow tax incentives on donations that are spent abroad, the legal entity with charitable activities is not an effective solution. This, for example, used to be the case in Australia and some other closed tax jurisdictions, on which I elaborated in section 5.1.

9.6.2 Cost efficiency

Transaction costs of setting up a foreign legal entity with charitable activities are high. Like any domestic arts organisation that wants to be eligible to receive charitable donations, a legal entity has to be created that qualifies as a PBO. To achieve this, legal and tax advice might have to be hired. To maintain the legal entity and its PBO status, annual auditing is usually required, also bringing forward the necessary expenses. Furthermore, to employ charitable activities, significant costs for projects, staff and infrastructure have to be made. In order to cover all these costs, additional funds have to be raised.

Arts organisation 31 has several legal entities with charitable activities abroad. The sizes of these organisations vary. Fundraiser 31 describes the foreign counterparts of her organisation and its fundraising efforts as follows:

“[legal entity in country A] is actually an example where there is an actual office and a professional staff. And they have a director of that group and then two people focus on fundraising there. One on major gifts and the other one, [on the] membership programme [which they have], but there, [the major donors and members] are all giving to that location. To that operation. [...] And [legal entity in country A] office is just, I think they have six staff in that office, which is bigger than the other [legal entities]. And in the other cases, in many cases there might not be an actual office, or there may be a local board but not an executive director with a staff. [In country B] they have been sort of changing in recent years. In [country B] there is now, I think we now do have an office and there is a board and there is a woman who is kind of [...] there are probably a couple of staffs there. There is a new office in the works in [country C], which did not exist before, even though we had a person who was our designated, you know, staff person, there wasn't a full-fledged office and a board and all that stuff. So it is starting to [grow] a little bit, whereas the model in countries with sort of a smaller presence for [arts organisation 31], it is like there is one person who is our representative and basically serves as a connector.”

Setting up and maintaining such a legal entity with charitable activities thus involves significant costs. It is, therefore, not a cost-efficient solution if its main purpose is to facilitate foreign benefactors with a tax incentive.

However, if a legal entity with charitable activities is in place in the donor's country anyway, limited additional transaction costs are required to provide a donor of a foreign affiliated arts organisation with a tax benefit. This also depends on internal procedures on the settlement of costs, though. The donor can simply make a domestic donation and include the gift in his tax declaration. The legal entity with charitable activities transfers the funds to its counterpart abroad. For the legal entity with charitable activities, however, it does make fundraising somewhat less streamlined, as fundraiser 31 explains:

“It is a little more convoluted. It is just, you know, it adds a layer of bureaucracy into handling the gift. It makes it [more complex] if there are all these special situations. We had a donor a year ago, [...] they wanted their gift to go to [country B]. So now a year later, we are looking at soliciting everyone who gave this year and last year. But we know that her only interest is in supporting that one project in [country B]. [...] It is not really a renewable donor for our organisation, for the main part of our

organisation. She just wanted to do that one gift to that project in [country B]. So [fundraising] is not streamlined.”

To compensate for the extra work that is caused by this, the arts organisation might charge a fee. Arts organisation 31, for example, does retain a percentage of the gift if a donor wishes to contribute through one counterpart to the other. However, if it concerns a donation to a project in which both counterparts participate, no percentage is retained.

9.6.3 Legal certainty

A legal entity with charitable activities provides legal certainty with regards to the process of obtaining access to the solution. The legal entity has to qualify as a PBO in its home country and thus has to meet the domestic PBO requirements, which can be found in domestic legislation.

Once the legal entity has PBO status and the legislation in the donor’s country allows donations to be spent abroad, there is legal certainty that the donation will be granted a tax benefit. So also with regards to the outcome of the solution, the legal entity abroad with charitable activities provides legal certainty.

9.6.4 Donor-friendliness

If a counterpart is available in the country where the donor resides, this is a simple and fast solution. The charity in the home country of the donor might interfere in the relationship with its foreign counterpart, though. This is a concern of fundraiser 36. She suggests that by fundraising in countries where arts organisation 36 has other legal entities with charitable activities, her organisation might become a competitor to the own counterpart: *“My first reaction to it would be that we don’t want in any way to undercut our colleagues. Because if they [the donors] give to the [counterpart in country A], they have access to the [counterpart in country C]. So there is no incentive. [...] And based on our conversation I am going to really look into it. It would apply to major gifts, large, large gifts. Where giving it through [country B] would help them to get a tax break. On the smaller donations I would not want to undercut [the foreign entities].”*

It is known from PBOs in other sectors that if the missions of the affiliates are not perfectly aligned, this can also create tensions between the organisations (Aldashev & Verdier, 2009). The same might apply to arts organisations that consist of multiple legal entities with charitable activities.

9.6.5 Scope

The scope of the legal entity abroad with charitable activities as a solution to tax efficient cross-border giving depends on the number of countries where counterparts are located. If the arts organisation has a legal entity abroad, the scope is limited to cross-border situations with that one specific country. However, if it has multiple legal entities abroad, then the scope of the solution covers cross-border situations between all the countries where legal entities are located. Arts organisation 31, for example, has counterparts in five countries. Thus, in principle, for arts organisation 31, these counterparts can provide a solution to overcome the tax barrier on cross-border donations between all five countries.

9.6.6 Know-how on international fundraising

From the interviewed organisations, only four organisations have legal entities in multiple countries. For the majority of arts organisations establishing a legal entity abroad with charitable activities is not an option. To establish a legal entity abroad requires organisations to have content shared abroad. Museums, for example, have to have access to an art collection they can exhibit in order to have enough content to decorate multiple locations. This can be their own art collection, or they can enter into agreements with third parties who provide a collection to which the museum attaches its brand, or loan agreements can be arranged. For arts organisation 13 – a museum – their own collection does not suffice to open a second legal entity. Its strategic plan states: ‘Making the museum’s collection accessible also includes the presentation of works abroad. Because of the limited size of its collection, [arts organisation 13] cannot open a museum in another country.’ Furthermore, the foreign entity has to be managed, requiring a high level of professionalisation.

Similar to any other solution, legal knowledge is required for the entity abroad with charitable activities to obtain and maintain PBO status. Finally, knowledge has to be available to run the legal entity abroad and its activities.

The interviewees of arts organisations who have legal entities with charitable activities abroad do not all look at these different locations as potential tools to facilitate foreign benefactors with a tax benefit. Fundraiser 36 says: “*Well actually, it [legal entity with charitable activities abroad] is one of the things that are very interesting because I didn’t realise that there was such a tax break in both [country A] and [country B].*”

9.6.7 Possibilities to gain non-financial benefits

A benefit of having a legal entity abroad with charitable activities is that that entity can also contribute to the goals of the organisation. The entity abroad provides for additional activities. Through these activities, it can also service and actively approach a larger audience. This, on its turn, can lead to an extended support base for the arts organisation as a whole. Furthermore, the activities abroad provide a base for international collaboration, also with third parties. The substantive benefit can, therefore, be considerable.

9.6.8 Concluding remarks

A legal entity with charitable activities is an effective solution in countries that allow donations to be spent abroad and it provides legal certainty. Furthermore, there can be substantial gains for the arts organisation in having a counterpart abroad when it comes to pursuing its goal, extending its support base and networking among peers.

Disadvantages are, however, that having an entity abroad with charitable activities requires vast financial investments. Therefore, it does not pay off to establish such an entity solely to provide foreign donors with a tax benefit. Even if an entity is available, the additional transaction costs for the entity abroad and the potential competition for donors between the counterparts have to be taken into account.

9.7 Assessment of foreign friends organisations

In section 4.4 I discussed the foreign friends organisation, a legal entity with fundraising purposes as a vehicle to facilitate foreign benefactors with a tax benefit. In this section, I apply the assessment framework to this vehicle to determine whether it is optimal from the perspective of arts organisations.

9.7.1 Effectiveness

The foreign friends organisation can be effective in facilitating foreign benefactors with a solution to donate to the arts organisation and receive a tax benefit. Since the foreign friends organisation has PBO status in the country of the donor, the donor obtains a tax benefit. The foreign friends organisation transfers the donation to the arts organisation.

If a legal entity that raises funds for a foreign PBO can qualify as an eligible PBO to receive donations with a tax benefit, the foreign friends organisation is an effective tool. This might not be the case in countries that fall under the category of closed jurisdictions, as described in section 5.2. Australia, for example, did not allow tax incentives on donations that were spent abroad.²⁴⁵ Domestic legislation in the country of the donor, therefore, has to be checked, also to determine which requirements are applicable to the foreign friends organisation. The requirements vary from having annual audit reporting to having scrutiny over the spending of the donation. If all applicable requirements are met, the donation qualifies for a tax benefit.

Several interviewees mention that for them, one of the reasons – or even the core reason – to establish a foreign friends organisation was that it allowed their foreign benefactors to benefit from a tax incentive on their gift. For arts organisation 22 this was one of the reasons to set up a foreign friends organisation in the US. Fundraiser 22B says:

“And definitely the reason why [the US friends organisation was established], was the strong will of our former president director to create [the American friends of arts organisation 22], because we do have a lot of American visitors and a lot of interest from American visitors in the museum. So the original idea was to create a relationship between the two countries and [create a relationship with] the American visitors, but also [for them to] give. As you were saying, a tax-deductible way for American donors to make a donation to [arts organisation 22], via the [the American friends of arts organisation 22] and [...] be able to make a tax-deductible gift to the museum. Well, not to the museum, but to [the American friends of arts organisation 22] and they give it back to us [arts organisation 22].”

Fundraiser 36 also explicitly and extensively mentions the tax benefits that can be obtained when contributing through their foreign friends organisation, in this case in the UK. She explains in detail what donors have to do to benefit from the gift aid scheme. For these organisations, the fact that a foreign friends organisation can facilitate a tax benefit on a cross-border donation is of great importance.

245 AU: Income Tax Assessment Act 1997 Sub-Division 30B.

9.7.2 Cost efficiency

Establishing a legal entity abroad for fundraising purposes implies significant costs. To meet the local legislation and become eligible to receive gifts with a tax benefit, the foreign friends organisation has to meet the requirements in its country of residence. Legal and tax advice is required to gain insight into the requirements that have to be met while setting up the entity. This brings about costs for hiring tax and legal advisors. Besides, the requirements might also bring about annual reoccurring costs, for example to meet the annual audit reporting requirements. These requirements might be perceived as a heavy burden on some arts organisations. Fundraiser 15 has experience with setting up such a foreign friends organisation, and in her opinion, the burden of the applicable requirements to obtain charitable status were quite severe. Therefore, if she would have to do it again, she would choose for a 'more loose form' as she calls it; a different form where less strict requirements have to be met, such as an intermediary organisation. For arts organisation 7, the strict requirements that have to be met in the US to maintain the 501(c)(3) status and related financial and time investments were reason to give up this status, after almost 20 years, and instead use an intermediary organisation instead. Fundraiser 7 says: "*The [board of the] American Friends had the view that it was such a big administrative burden, it was so pricey and actually it also costed them so much of their time, which they would rather invest in meeting other people, that they decided that nowadays this can be arranged in a much easier and different way.*"

Furthermore, a board has to be recruited for the foreign friends organisation. The relationship with the people on the board has to be maintained by the arts organisation and people have to be found who are willing to run the entity, either voluntarily or paid. A paid staff brings about considerable costs. Volunteers, on the other hand, often need close guidance.

The entity has to be managed, which is time-consuming for the home organisation. For fundraiser 1, like other fundraisers such as fundraiser 18A and 18B, this is one of the reasons not to opt for a friends organisation. Fundraiser 1 explains: "*[the foreign friends organisation] namely requires a lot of maintenance. I know how much investment is required to get a meeting with the board, and to mobilise them, to find them altogether. That demands quite a lot of time.*"

Because of the high transaction costs in establishing and maintaining a foreign friends organisation, arts organisations are only interested in setting up such an entity if there is sufficient financial benefit to be gained in a country. For a limited donation of a few thousand euros, most fundraisers would not set up a foreign friends organisation. Fundraiser 1, for example, thinks that if, in the future, her organisation receives more cross-border gifts, it might become worthwhile for them to set up a foreign friends organisation. However, according to her, a significant financial benefit is required: "*You do not do that for EUR 5,000.*"

According to the interviewees, the significant financial benefit that makes it worthwhile to set up a foreign friends organisation is ideally at least EUR 100,000 per year. EUR 50,000 per year would be the bare minimum amount required to set up and/or maintain a foreign friends organisation. Fundraiser 18, for example, comes up with EUR 100,000 when she clarifies the 'considerable size' required to establish a foreign friends organisation. She specifies that it is at least 25 persons who each give a minimum amount of EUR 4,000. Fundraiser 8 also thinks that setting up a foreign friends organisation is really worthwhile if there is the potential of EUR 100,000 per year, although for EUR 50,000 it could also be done.

Besides, the stream of donations coming from one country has to be continuous to make setting up a foreign friends organisation worthwhile. Having a continuous stream of donations also entails having a significant support base in the country where the arts

organisation wants to set up a foreign friends organisation. For fundraiser 19, the fact that her organisation has a large support base in one European country is reason to have a foreign friends organisation in that country.

Not every arts organisation has a large enough support base in a country abroad to set up a foreign friends organisation. Fundraiser 5 explains that for her organisation, it would not be beneficial to set up a foreign friends organisation as it does not have a large enough support base to cover the costs of having to employ people to run the foreign friends organisation. The same holds for arts organisation 18.

F18A: "It is true that [arts organisation 18] has shown itself over the last few years abroad with exhibitions we produce and export. Why not [establish a foreign friends organisation]? From a certain point in time it has to be feasible. But then the notoriety of [arts organisation 18] has to find its place abroad."

R: "So a serious support base?"

F18A: "I think it is a brilliant idea, but we are not there yet. We are the largest cultural institution in [home country], but it all is relative of course. So it is a good idea, but I don't know if we should start with it today."

In summary, a large and continuous financial benefit has to be guaranteed to make a foreign friends organisation a cost-efficient vehicle to allow foreign donors to benefit from a tax incentive.

9.7.3 Legal certainty

If the legislation in the country of the donor allows tax benefits on donations to a foreign friends organisation, the solution provides a degree of legal certainty that is equal to donating to a domestic arts organisation. So there is legal certainty on the outcome of using a foreign friends organisation as a solution to obtain a tax benefit on a cross-border donations. Concerning the process of obtaining access to the solution, the solution also provides legal certainty; in most countries the national legislation explains in detail which requirements have to be met to be eligible for a tax benefit.

9.7.4 Donor-friendliness

The foreign friends organisation is simple for the donor. It allows him or her to give to a domestic entity with PBO status and therefore claiming the tax benefit is easy. In this regard, the foreign friends organisation is donor-friendly.

It is also a fast solution in that once the arts organisation has such a friends organisation abroad, it can continuously offer a solution to obtain a tax benefit for donors. For the arts organisation, however, it might take a while before it receives the gifts from the foreign friends organisation. Especially if measures have to be taken into account to ensure that the foreign friends organisation does not function as a mere conduit, it might take a while before the foreign friends organisation can transfer the donation to the home organisation. This timing issue might be a burden for arts organisations when the donation is paid in a different currency than the currency of the home country of the arts organisation, which I elaborate on in section 7.4.8. That it might take a while for a foreign friends organisation before it transfers the donation to the arts organisation, however, does not affect the workability of the solution for the donor.

A donor-friendly solution must not interfere in the relationship between the donor and the arts organisation. A foreign friends organisation is a separate legal entity and therefore it creates an extra step between the arts organisation and the donor. Whether this extra step implies an interference in the relationship depends on how the foreign friends organisation is run and managed. The closer the foreign friends organisation collaborates with the arts organisation, the less risk there is that the relationship between the donor and the arts organisation is disturbed. Arts organisations with larger foreign friends organisations have dedicated staff – either at the arts organisation, the foreign friends organisation or both – to ensure good collaboration between the two organisations.

A best practice in managing a foreign friends organisation is described by arts organisation 7. The relationship between the arts organisation and its foreign friends organisations is managed on different organisational levels. The highest level of the arts organisation is represented in the board of the foreign friends organisation by the general director of arts organisation 7. He serves these boards – of course – from within the boundaries set out by codes of good governance and legal limitations. His presence on the board allows a direct line between the arts organisation and its foreign friends organisations. For the arts organisation, this is a way to deepen the relationship with the foreign friends organisation. On the other hand, it allows the foreign friends to have direct access to the cause for which they raise funds, to obtain content, gather information and to know what the needs of the arts organisation are. The general director attends board meetings of its foreign friends organisations once a year. The other board meetings are attended by fundraiser 7, as his main responsibility is to ensure that the friends organisations flourish. At a lower level, he has people on his team who are responsible for the management of the operational relationship with the foreign friends organisation.

Fundraisers 7, 8, 15, 19, 22, 30 and 35, the fundraisers of arts organisation 20 and director 16 are well aware of the independence of foreign friends organisations and the risks involved. In the worst-case scenario, the board of the foreign friends organisation may develop its own plans to spend the donations received and this might severely damage the relationship between the donor and the arts organisation. It might even damage the reputation of the arts organisation.

9.7.5 Scope

The scope of a foreign friends organisation is limited. It only provides for a solution for tax-efficient cross-border giving from the country where the foreign friends organisation is located. Only in combination with other solutions, such as a tax treaty, does a single foreign friends organisation have the potential to serve donors in more countries. If arts organisations want to facilitate donors from multiple countries with this solution, the arts organisation would have to establish foreign friends of organisations in all of these countries.

9.7.6 Know-how on international fundraising

Setting up a foreign friends organisation requires a lot of know-how. First of all, just to set up a foreign friends organisation requires legal knowledge. This does not necessarily have to be in-house knowledge. It can also be hired externally.

Second, a board is needed for the foreign friends organisation. The board members, as a minimum, have to meet their legal obligations. Ideally, they also actively contribute to the fundraising efforts of the foreign friends organisation. This requires the director and staff from

the arts organisation to find people with interest in the organisation, time, and willingness to help the organisation abroad. On the board of the American friends of arts organisation 24, there are eleven board members. Fundraiser 24 points out what the eleven different board members all contribute to the American friends organisation: *“Our board, some are from back home and that is kind of the support from the mother institution. And then one person pays my salary for three years. So it is contributions. And then one person, the new chairman, is really filling in hours, in terms of helping with making and creating a new strategy, looking towards the next 5 to 10 years. [...] And then it is a network [that the board members provide].”* Having the right people to steer the foreign friends organisation is of great importance. Director 23 supports this claim. He adds that: *“without the right people to pull the organisation, it is not a realistic option.”* These board members all have to be managed by the arts organisation. This requires a high level of professionalisation from the arts organisation in terms of relationship management and capacity of the organisation. In the majority of cases, paid or volunteer staff is needed to run the organisation and to ensure the alignment between the arts organisation and its foreign friends entity. Arts organisation 22, for example, has one person on its staff whose full time occupation is to ensure the collaboration with foreign beneficiaries and mainly the US friends of arts organisation 22. The US friends of arts organisation 22 on their turn have two employees who actively raise funds for in the US. Arts organisation 30 does not have dedicated staff to deal with its US friends organisation, but the US friends organisation has employees located both in the US and in the home country of arts organisation 30. This implies having two offices as a foreign friends organisation, which again brings about high exploitation costs. The staff at these two offices together ensure the alignment of the US friends with arts organisation 30.

Third, the right people are needed to run the foreign friends organisation. These people have to be familiar with the gift culture in the foreign country. Besides, they need to have – or be capable of setting up – a network among whom they can raise funds for the arts organisation. Not just any staff can take up such a role, as fundraiser 35 explains:

“So last year we really [...] looked at the efficiency of the structure and the rentability – could I say that? [...] Exactly, the return on investment. And to be honest, it was quite a low return on investment, because it costs a lot of time. And there are several board members, and it is a discussion with each of them. It is a lot of work to manage the activity. So the question is, is it really worthwhile for us? Now, because we have a new chairman who takes, or who has a good leadership, it is easier and more independent. And the discussion we had at the beginning of our conversation about that, I try to let them, to be very independent and to take us less time to manage the activity. But to really create a link, a different link between them and between us, I recruited a new person in the team. A more senior person than the previous one, in order to create a stimulus [...].”

Of course, some board members might also be very dedicated and willing to invest time to run the foreign friends organisation, as is the case for arts organisations 6 and 25. Fundraisers 6 and 25 do not invest time or money in their foreign friends organisation, as this is all covered by the board members, and the organisation currently does not have the desire to further grow it. In their situation, however, it suffices that there are also significant risks to such a laid back approach on the part of the arts organisation, of which fundraisers 6 and 25 did not seem very aware. It makes the foreign friends organisation very dependent on a small

group of people, which makes it vulnerable. An interviewee from another arts organisation reported that he heard stories where the PBO status of the foreign friends organisation expired, without the arts organisation knowing it, because the board no longer took care of the organisation. Furthermore, if there is not enough alignment between the arts organisation and its foreign friends organisation, there is the risk that the foreign friends organisation develops its own ideas on how donations should be spent. Fundraiser 20A reports that when she started her job at arts organisation 20, the American friends of the organisation were living a separate life, without taking into account the interests of arts organisation 20. Their US friends organisation was way too independent and too single-minded about what it wanted to do with the money.

All kinds of variations to the management structures of foreign friends organisations are possible, but it shows that active management of the foreign friends of organisation by the arts organisation is necessary to make the foreign entity flourish. These efforts to manage foreign friends organisations prove to be fruitful, but might not be feasible for organisations with a lower level of professionalisation or fewer human resources. Exactly for these reasons, fundraiser 8 prefers an intermediary charity over a friends organisation. The friends organisation requires him to travel once or twice a year. Furthermore, he then has to manage the people in the friends organisation. For director 14, a foreign friends organisation is not feasible because of the maturity and size of her museum: *“I think we are too small for a [foreign friends organisation]. [...] And also too young. I think we should first firmly establish ourselves in our own country before we go abroad. But I can imagine that [a foreign friends organisation] in Germany might be worthwhile in the future.”*

9.7.7 Possibilities to gain non-financial benefits

A foreign friends organisation asks for a large investment. However, it can also bring a lot of non-financial benefits as it institutionalises the foreign support base. Fundraiser 26 illustrates:

“Experience teaches us that you have to invest a lot [in a foreign friends organisation]. But if you succeed, alongside the financial advantages it could have, there are also other [benefits]. [With a foreign friends organisation] you formalise your international network, things you would otherwise not have, things that can come in handy for a museum or for another cultural organisation. We now send newsletters to our contacts in the US. But if you have a formal friends organisation, you invest in the friends organisation, while now you have to invest [in each single contact in the US] yourself, you have to invest in things from the administration to the foreign contacts.”

Fundraiser 35 has similar experiences: *“Because the US is quite far from here [...] it is not only a financial aspect or a tax aspect. It also creates a dynamism. It creates a community. But it costs a lot of time, and a lot of money too.”*

The financial benefit is not the only reason for arts organisations to set up a foreign friends organisation. Arts organisation 25 opened an office in New York in 1999 to strengthen the links with the North and South American art communities. Alongside strengthening the link with these communities, the American friends organisation has raised over USD 100 million since 1999.

In summary, a foreign friends organisation is not just a vehicle to raise money. It is a way

to create a support base abroad, a way to maintain relationships with other arts organisations and other parties in the country abroad. These relationships might give rise to new collaborations, exhibition or performance opportunities.

9.7.8 Concluding remarks

Having a foreign friends organisation abroad proves to be more than an effective tool to facilitate a foreign benefactor with a tax benefit on a cross-border donation. It can really be an extension of the home organisation in that it is a vehicle that makes it easier to maintain relationships with foreign benefactors as well as other foreign parties.

The other side of the coin, however, is that having foreign friends organisations requires a large investment of resources. Personnel are required to run the foreign friends organisation, and even if there are very helpful volunteers running the organisation, the home organisation still has to manage its relationship with the foreign friends organisation.

The following quote of fundraiser 7 nicely summarises both sides of the coin:

“Are there opportunities for us? Yes. Does that apply for every arts organisation? No. Because if you represent a [concert] hall here in [home city], then you have little to do in Madrid or New York. Maybe by coincidence there is a Dutch person who loves the building and who by coincidence moved [abroad], but that is an incident. The nice thing about our orchestra is that from our 135-140 concerts a year, we perform on average 35-40 times abroad on the big stages at the important festivals, where we return yearly or with a certain regularity. And that causes you of course to have an audience there, that you start building relationships there. Raising funds is building relationships. And if you are in [location of major performing arts festival] and perform two nights every year at the largest festival in the most beautiful hall in [location of major performing arts festival], in a city where also traditionally a lot of [home country] people are or live and also corporate interests are present back and forth [between the location abroad and the home country]. Then, from my perspective, I check whether there is an opportunity there. Well, there was an opportunity, so seven years ago we started. But the success is dependent on the people who are willing to voluntarily make an effort for you [as an arts organisation]. Because as a small arts organisation, eventually we are a relatively small organisation, you cannot just open an office in [location of major performing arts festival], that is not affordable. So you need to rely on volunteers, who are also willing to invest a large amount of time, who have a lot of energy, have an important network and courage and can activate this. These are all preconditions. And even then, I can tell you, then we once thought we had a model we could copy a bit [in other countries]. Forget it. Every country is different. And every culture is different, even every city is different. Whether you are in New York or in Chicago, it means you deal with a whole different playing field. Paris is totally different than Brussels [...].”

9.8 Assessment of intermediary charities

The intermediary charity was described and reflected upon in section 4.5. In this section, I apply the assessment framework to this solution to overcome the tax obstacles to cross-border charitable giving.

9.8.1 Effectiveness

Using an intermediary solution to obtain a tax benefit on a cross-border donation can be an effective solution. The tax authorities have to regard the donation as a donation to the intermediary charity for the solution to be effective. It is not effective if the tax authorities in the donor's country look through the intermediary and regard the gift as being made to the final foreign recipient. Furthermore, the legislation in the donor's country has to allow the intermediary charity to spend its income abroad. If this is not allowed, the intermediary charity cannot grant the donation to the intended foreign charity and thus it is not an effective solution to tax-efficient cross-border charitable giving.

Intermediary charities initiated by donors prove to be effective and frequently used. Fundraisers 20B and 20C say about their German donors: *"They are all foundations. Or they are in foundations and they are sort of the ones who decide."* Arts organisation 10 also receives gifts from a German family. This family, however, has its own charitable foundation in the country of arts organisation 10, through which they make their charitable donation. Why this family established a charitable foundation outside their home country is unknown. It is, however, something that happens more frequently. Arts organisation 35 also receives support from a person who lives in the UK, but gives through a PBO he established in the home country of arts organisation 35. Fundraiser 35 gives the following potential explanation for this donor to give via the foundation:

F35: *"So he pays through his foundation in [home country of arts organisation], which is already a [deductible contribution]."*

R: *"So he already received a tax deduction [in home country of arts organisation], right?"*

F35: *"Exactly, because it is a foundation and when he put the money in the foundation he got the benefit."*

R: *"And this person, he lives in London, but he has a [home country of arts organisation] background? Why does he live in London but has a [home country of arts organisation] foundation?"*

F35: *"Because he is [nationality of home country of arts organisation]."*

Donors, thus, also set up their own charitable organisations to, amongst other reasons, obtain a tax benefit on a cross-border donation.

9.8.2 Cost efficiency

The costs to use an intermediary organisation depends on the type of intermediary organisation. If the donor sets up a charitable entity through which he gives to foreign PBOs, or if he establishes a designated fund at an existing PBO, the donor will usually take up the costs for this entity and thus there are no costs for the arts organisation, or the costs are negligible. Also, if the arts organisation has a PBO in the donor's country in his network, the costs of using this PBO as an intermediary charity are likely to be limited.

When a charitable organisation in the country of the donor provides the service of functioning as an intermediary organisation, often a fee is charged for this service. The fees vary, but usually consist of a percentage of the gift, sometimes combined with a fixed starting fee when the first donation is received and capped at a certain maximum fee. The percentage fee can vary between 0.5% and 5%, depending on the size of the gift. Most of the interviewed arts organisations deduct this fee from the gift they receive, like arts organisations 3 and 12.

Only a few, such as arts organisation 21, ask the donor to pay the fee. Fundraiser 21 says: “[And] they agreed. So we explained it. We said we would like to offer you the opportunity to give the money via [intermediary organisation] and to pay to [intermediary charity] and then we hope you will understand that we would like to ask you to add this amount of the 5%. So please give us USD 1,050 etc. So that [arts organisation 21] receives the same amount that German members would give.” Like arts organisation 21, there are a few other arts organisations that have joint circles for both domestic and foreign benefactors. Only arts organisations with joint domestic and foreign circles ask donors to pay the fee of the intermediary charity.

Most fundraisers perceive the height of the fee as reasonable. Director 16 says: “[the costs] are very well in proportion to what we would otherwise pay. It really concerns very reasonable amounts.” Fundraiser 10A explains: “It is a very deliberate choice not to apply for PBO status, the 501(c)(3) status, in the US. Because then you need to have a board, and you have to take care of the administration, and you need an office. These costs are just too high in comparison to [intermediary charity]. And [the intermediary charity] costs us a minimum fee, as they are not for profit. So in comparison, [the intermediary charity] is cheapest.” Arts organisation 26 opts for the intermediary charity, as it only receive cross-border donations on a small scale. So does arts organisation 29. Director 29 gives an example of EUR 5,000. If taxes would be levied on this amount, only a portion of this gift would end up at the arts organisation. The fee for the intermediary organisation is relatively limited in comparison with the taxes.

Only fundraiser 25 has her doubts about the fee: “I think I would be concerned about the percentage issue. [...] We don't currently have to pay anything for the American friends organisation to operate. The costs of the administration comes out of the American friends itself. So I am not sure that it would be beneficial to us to lose a percentage of each gift. Rather than have a retainer, [which] is how I believe it works currently.” For the majority of arts organisations, however, the costs of the foreign friends organisation have to be taken care of by the arts organisation. For these organisations, using an intermediary charity is less costly.

To keep costs as low as possible, fundraisers do tend to ask donors who give annually to make their contribution for several years at once, as the percentage fee decreases when the gift is larger. Fundraisers 5 and 11 – whose organisations both have friends circles with incentives for donors to engage for multiple years – ask donors who engage in these multiple year programmes to make the donation at once.

Charitable organisations that offer the service of an intermediary charity often require organisations that want to use this service to hand over specific documents, such as annual reports, articles of association and policy plans, so that the intermediary organisation can supervise that the final recipient organisation meets the necessary requirements. This requires a time investment from the arts organisations. However, this requires less time investment than setting up its own charitable entity.

Other costs when relying on an intermediary charity are limited. Usually no legal advice is necessary, as the intermediary charity has the necessary in-house knowledge. Nor are official translations of documents necessary. Transnational Giving Europe, for example, asks for information in the original language along with a translation into English, but an English translation is not required if the original language is Dutch, French, German, Greek, Italian, Portuguese or Spanish, nor does it have to be an official translation. Furthermore, little compliance costs are required.

Once the total amount of gifts received exceed the one-off costs, the intermediary charity is an interesting solution to consider. Already from low levels of giving it provides a beneficial solution to facilitate foreign benefactors with a gift.

9.8.3 Legal certainty

The intermediary charity provides legal certainty for the donor to obtain a tax benefit on his cross-border gift. For the donor, the gift is a donation to a domestic PBO and thus the same legal certainty is achieved as with a domestic donation.

To ensure legal certainty now as well as in the future, fundraisers demonstrate that they want to work with charities with which they are familiar if they have to choose a charity that provides the service of an intermediary charity. Familiarity with the organisation, for them, provides a sense of certainty. Furthermore, fundraiser 7 mentions that he also wants to have the impression that the intermediary charity will still exist after several decades.

9.8.4 Donor-friendliness

If the donor decides to set up an intermediary charity, he can do this under his own conditions, as long as it meets the legal requirements. Therefore, it is a donor-friendly solution.

Intermediary charities that offer their services are a simple solution for the donor. The donor can contribute to the intermediary charity in his or her home country and file that receipt in the tax declaration. Furthermore, it is a solution that is immediately available, since the intermediary charity already has a PBO status. Therefore, the intermediary charity is a fast solution to obtaining a tax incentive for the donor. For the arts organisation, it might take longer to obtain the donation, as it has to wait until the intermediary charity transfers the donation. Some intermediary charities require the arts organisation to first write a grant application before they approve the transfer of the donation. It is, thus, a slower solution for the arts organisation to obtain the donation. Nevertheless, this does not decrease the donor-friendliness of the solution.

Using an intermediary charity does put a third party between the donor and the recipient PBO. The additional party can potentially cause a disruption in the relationship between the donor and the arts organisation. It is, however, in the interest of the intermediary charity to not disturb the relationship between the donor and the beneficiary, as this would damage its own reputation.

Fundraisers, furthermore, demonstrate some concern regarding the details of the donor being in the hands of a third party. They are afraid that intermediary charities, who serve multiple other charities as well, will claim ownership of the contact details of the donors and approach them for other causes as well. Fundraiser 7 mentions that he wants to make agreements on the ownership of the donor data. On the other hand, he much appreciates it if intermediary charities activate their network for his cause. This can be considered somewhat contradictory, but since it would damage the reputation of the charity that offers the intermediary service, it would be very irrational for them not to handle the contact details of the arts organisation with care.

9.8.5 Scope

Charitable organisations established by donors allow donors to contribute to PBOs in all countries abroad. Therefore, this type of intermediary charity has a broad scope from the perspective of donors. From the perspective of the arts organisation, it only facilitates one donor

in one country to give with a tax benefit. The same holds for intermediary charities that offer their services. Arts organisations would have to deal with different intermediary charities in all the countries where they have donors. From the perspective of arts organisations, the scope of intermediary charities is, thus, limited.

However, as explained in section 4.5, there are also networks of intermediary charities that collaborate. These networks cover a minimum of three countries – such as Israel Gives, which covers donations from the UK and the US to Israel²⁴⁶ – but can add up to a few dozen countries. Transnational Giving Europe, for example, now stretches across 19 countries.²⁴⁷ The arts organisation still has to deal with multiple intermediary charities, but since the intermediary charities within this network all use the same standards and procedures, this simplifies it for arts organisations to deal with all these intermediary charities.

9.8.6 Know-how on international fundraising

The intermediary charity is a solution that is known among all interviewees at arts organisations. Most of them also have experience in working with an intermediary charity. The knowledge barrier, therefore, seems to be low to gain access to this solution. Partially, this is due to advertisement and information provided by intermediary charities. Some intermediary charities organise study trips, for which they invite fundraisers to come and visit them and learn how, in their home country, funds are raised. At the same time, the fundraiser becomes aware of and familiar with the intermediary charity.

The intermediary charity takes care of all the regulatory requirements that are imposed on charitable gifts by the donor's home country. Therefore, using an intermediary charity requires little know-how of the legislation in the donor's country by the arts organisation.

Furthermore, the intermediary charity ensures that it meets the legal and administrative requirements imposed by legislation on the PBO. Therefore, little knowledge on legislation, but also little time investment is required from the staff of the arts organisation. In principle, the arts organisation does not even have to be formally incorporated. For start-up organisations and grassroots organisations this is, therefore, also an interesting solution. This, however, does not provide a *carte blanche* for the arts organisation. Intermediary charities do not want to risk their PBO status and will impose certain requirements upon their beneficiaries.

The fact that the intermediary charity takes care of the legal and administrative requirements related to PBOs is highly appreciated by the majority of the interviewees. This makes it an easy and simple solution for arts organisations to facilitate their foreign benefactors with a tax incentive. For them, this is worth the fee they pay.

9.8.7 Possibilities to gain non-financial benefits

The intermediary charity provides few possibilities to create substantive benefit for the arts organisation. It does not require a physical presence of representatives of the arts organisation in the country of the donor. Therefore, no characteristics are inherent to the intermediary charity that create a support base or have the potential to develop substantive benefits in the foreign country.

246 <http://www.israelgives.org>. Accessed 14 June 2017.

247 <http://www.transnationalgiving.eu/en/article/2016/07/14/tge-extends-once-again/9/>. Accessed 14 June 2017.

Nonetheless, the collaboration with a foreign PBO, which is inherent to using an intermediary charity, might have a substantive benefit. If the intermediary charity is willing to open (part of) its network to the arts organisation, this might be an opportunity for the arts organisation to extend its network in the country of the intermediary charity.

9.8.8 Concluding remarks

The intermediary charity is an effective solution in countries that allow charities to spend their funds abroad. It is also a cost-effective solution. Fundraisers perceive the fee they pay as being reasonable, especially when they consider the work that the intermediary charity takes care of – mainly referring to compliance with legislation and administration requirements.

For the donor – despite a third party being involved – the solution is a fast and easily accessible solution. The donor follows the same procedure to obtain a tax benefit as when the final recipient is a domestic PBO. Consequently, the same level of legal certainty is provided as on a domestic donation.

The scope of the intermediary charity is limited to one country. However, when intermediary charities in different countries use the same procedures and standards, this makes it easy for arts organisations to deal with. Since the intermediary charity takes care of all the legal requirements, the arts organisation requires hardly any know-how of foreign legislation and no legal advice is required. It actually shows that the intermediary charity is a well-known solution. And for many fundraisers, knowing the potential of an intermediary charity is enough to be prepared for donations coming from abroad. The substantive benefit of the intermediary charity, however, is limited.

9.9 Conclusion: Solutions compared

Every solution to obtaining a tax benefit on a cross-border donations has its advantages and disadvantages from the perspective of arts organisations. Depending on the countries involved, the type of arts organisation involved and the amount and frequency of philanthropic contributions, different solutions can be preferred for each situation. In the following sections I summarise these pros and cons. I conclude with a comparison table of the solutions.

9.9.1 Summary of the solutions

Unilateral solution

The unilateral solution can be an effective solution to obtain a tax benefit on a cross-border donation. The scope of the tax provision in the donor's country does have to include the PBO's country of residence. The unilateral solution can also be a cost-efficient solution. This, however, largely depends on the way the unilateral solution is shaped. If the unilateral solution relies on home country control, little additional effort is required from the arts organisation to obtain the PBO status. Especially if the PBO status is valid for an indefinite period of time, it can be very cost-efficient for arts organisations to invest once to obtain this status and then maintain it. When the unilateral solution relies on host country control or a combination of host and home country control, it becomes more difficult and thus costlier to obtain the PBO status in the foreign country. Also, if the PBO status is only valid for a defined period of time, it might be a less attractive solution, unless the financial benefits of the donations exceed the compliance costs. The unilateral solution can provide legal certainty but, again,

it depends. If the procedure to qualify as a PBO for a foreign organisation is clear and the application of the requirements by the tax authorities is known, there is legal certainty. This, however, is not necessarily the case. Sometimes the requirements and procedure are unclear, non-transparent and no previous practices are available. This challenges the legal certainty of the unilateral solution. If the unilateral solution relies on recognition as a PBO up front, the solution is donor-friendly. The arts organisation, however, does have to ensure that it is recognised as a PBO before a foreign beneficiary wants to give, as the process of obtaining PBO status might take some time. The unilateral solution only covers cross-border situations with one other country. Therefore, its scope is limited to one country. Besides, the type of control over the PBO and potential conflicting requirements in the home and host country matter. If the unilateral solution relies on host country control, or a combination of both home and host country control, and requirements are conflicting, this might stand in the way of providing donors in both the home country and the host country with a tax benefit, further limiting the scope of the unilateral solution. Depending on the type of control the unilateral solution employs, the solution requires some know-how on international fundraising and foreign tax law. If knowledge is required, it can easily be hired by the organisation. The unilateral solution does not have the potential to gain non-financial benefits, but it also does not interfere with employing substantive activities abroad either.

Bilateral solutions: Tax treaties

A similarity between bilateral and unilateral solutions is that the wording of the tax treaty and the domestic legislation, respectively, and the type of control it is based on proves to have a large impact on the effectiveness and the scope of the solution. Although only a few examples of tax treaties are available that include a provision on charitable contributions, in principle, the tax treaty can be an effective solution. The wording of the tax treaty, however, can impose limitations on the size and the applicability of the tax benefit. The scope of the tax treaty is limited to one foreign country; however, if host or a combination of home and host country control is exercised and there are conflicting requirements that have to be met in the other contracting state, this might further limit the scope of the solution. If this is not the case and the tax treaty can be combined with a solution based on a private initiative, the scope can be extended to multiple countries. Knowledge on the functioning of tax treaties and the tax legislation in the donor's country is required. The costs of relying on a tax treaty are limited to costs involved in tax advice by a tax lawyer in the donor's country of residence. Therefore, if the costs of hiring tax advice are exceeded by the size of the (expected) gift(s), it is a cost-efficient solution. As the tax treaty refers back to domestic legislation and the interpretation as explained in accompanying documents, there is legal certainty on how to obtain access to the tax treaty and its outcome. Furthermore, it is a fast and simple solution for the donor and it does not interfere in the relationship between the donor and the arts organisation. This makes the tax treaty a donor-friendly solution. The tax treaty, however, does not provide opportunities to gain non-financial benefits.

EU Law

EU law, as an example of a supranational solution, can also be effective in solving the tax barrier to cross-border charitable giving. As many EU countries rely on host country control, this makes it burdensome for arts organisations that want to raise funds in multiple EU countries to meet the requirements in all these countries. EU law can also be a cost-efficient solution.

If the donor has to litigate to obtain its tax benefit, costs for legal assistance arise and add up fast, making it inefficient from a transaction costs perspective. The litigation that might be required to enforce EU law also has a negative effect on the legal certainty that is provided by EU law. Furthermore, EU law does not provide legal certainty concerning the procedure to obtain access to the solution. The legal uncertainty also has a negative effect on the donor-friendliness of the solution, as it makes EU law a slow and complex solution. Besides, the risk of litigation might have a negative impact on the relationship between the donor and the beneficiary. An advantage of EU law as a solution to overcome the tax barrier to cross-border giving is that it covers all EU Member States. Since every Member State can impose its own conditions on qualifying organisations and there is no standard equivalence test, it requires a lot of effort for arts organisations to take advantage of this broad scope. If there would be a certain degree of standardisation, arts organisations could benefit from the broad scope of EU law. This solution requires rather specific know-how. It requires expertise on EU law and national legislation on PBOs. When litigation is required, tax specialists have to be involved. EU law does not have characteristics that encourage obtaining non-financial benefits, but it does not interfere with it either.

The Proposal for a Council Regulation on the Statute for a European Foundation

The assessment of the initial FE proposal as a solution to overcome the tax barrier to cross-border charitable giving shows that the initial proposal did have the potential to be an effective solution for PBOs that were able to obtain the FE status. Regarding cost efficiency, the donations coming from other EU Member States would have had to exceed the costs of legal advice and the potential fee that might have been involved in registering as an FE. Once FE status was obtained, this would have provided legal certainty on the outcome for the donor. To also provide legal certainty concerning the procedure to obtain this status, the proposal would have had to develop further. The FE would also have been a donor-friendly solution. Since it allowed arts organisations to receive gifts with a tax incentive from all 28 EU Member States, while complying with only one set of requirements, it would also have had a wide scope. It would have required some know-how to register the PBO as an FE. Therefore, legal advice would have to be hired. However, once the FE status would be obtained, little additional know-how would be required. No characteristics were inherent to the FE proposal that would have made it easier to obtain non-financial benefits, but the FE did not hinder it either.

Legal entity with charitable activities

Establishing a legal entity abroad with charitable activities is costly, but can be an effective solution to facilitating a tax benefit on a cross-border donation. For it to be effective, the tax authorities have to allow donations to be spent abroad and it should not look past the legal entity abroad to the final recipient of the gift. This solution provides legal certainty concerning its outcome and procedure. It is also a fast and simple solution; however, regarding its donor-friendliness, there is the threat that undesired competition arises between the arts organisation and its legal entity with charitable activities abroad. The scope of this solution depends on the number of legal entities with charitable activities abroad. Having a legal entity abroad with charitable activities requires a lot of knowledge from arts organisations, as well as human resources. The other side of the coin is that it provides substantial benefits. The entity abroad can help contribute to the goal of the arts organisation. By doing so, opportunities also arise to extend the support base and strengthen relations with potential collaboration partners.

Foreign friends organisation

The foreign friends organisation is an effective solution in countries where PBOs are allowed to spend their donation abroad. It is a relatively costly solution though, as the foreign friends organisation has to meet the requirements in the country of the donor. This requires legal advice and maintenance of the entity. Furthermore, a board is required. Even if the board fulfils its task voluntarily, the arts organisation has to manage the relationship with the board, which can be time-consuming, and thus costly. A large and continuous financial benefit has to be guaranteed to make a foreign friends organisation a cost-efficient vehicle to allow foreign donors a tax incentive. The foreign friends organisation is a fast and simple solution for the donor. In these respects, it is donor-friendly. However, the extra entity involved does cause a potential disturbance in the relationship between the arts organisation and the donor. To prevent this risk from materialising, the arts organisation has to nurture the relationship with the foreign friends organisation. Furthermore, know-how is required on the legal requirements that the foreign friends organisation has to fulfil and staff is required with strong networking skills and knowledge of the local fundraising tradition and gift culture. The scope of the foreign friends organisation is limited. It only provides a solution to cross-border charitable giving from the country where it is located. The advantage of having a foreign friends organisation, however, is that it can provide significant non-financial benefits. It can stimulate the strengthening of the support base abroad, expand the network among peers and these connections might lead to new activities.

Intermediary charity

The intermediary charity is an effective solution to facilitate donors abroad with a tax incentive on their gift, but only if the tax authorities perceive the intermediary charity as the recipient of the gift and the donor's country allows the intermediary charity to spend its funds abroad. Depending on the type of intermediary charity, costs might be involved. The donor might cover these costs, but even if the arts organisation has to pay the fee, the majority of the interviewees do not mind. They perceive the fees charged as reasonable. Since the fee usually is a percentage of the donation, the solution is already cost-efficient from low levels of giving. The intermediary charity provides for legal certainty on both the procedure and its outcome. Furthermore, it is a donor-friendly solution, as it is fast and simple for the donor and it is in the intermediary's own interest not to disturb the relationship between the donor and the arts organisation. Intermediary charities, in principle, only cover the cross-border situation with one foreign country. However, by creating networks of intermediary charities, multiple cross-border situations can be serviced. Hardly any legal know-how is required to use the intermediary charity, which is unique for the solutions outlined. No high level of professionalisation is necessary, nor is know-how required on foreign fundraising traditions and cultures of giving.

9.9.2 The solutions compared

To determine which solution is optimal from the perspective of arts organisations, the solutions have to be compared. In this section, the scores of the solutions on the different factors are compared. The comparison does not lead to one optimal solution, as nuances in different forms of the solutions, differences in context and differences in the preferences of arts organisations have to be taken into account. The differences within the form of a single solution result in different assessments of variations to one single solution. Furthermore, what

is optimal from the perspective of an arts organisation also differs depending on each organisation's characteristics and the type of international fundraising it engages in. Therefore, there is not one solution that is optimal for all arts organisations and all cross-border situations. The comparison of the solutions, however, does provide a rough insight into which solution is preferred under certain circumstances.

Currently, all solutions – except for the FE Proposal, as it currently does not exist – can in principle be effective to facilitate a foreign donor with a tax benefit. The actual effectiveness, however, depends on the specific cross-border situation. The private solutions – the legal entity abroad, foreign friends organisation and intermediary charity – are effective in most cross-border situations, except for cross-border situations where the donor's country is a closed tax jurisdiction where it is not allowed to spend donations abroad. Furthermore, these solutions are not effective in countries that look past the initial domestic recipient organisation to the final recipient of the gift. Whether the legal solutions are effective in a specific cross-border situation depends on the exact wording in the relevant legislation. The unilateral solution is an effective tool in open tax jurisdictions, but not in other jurisdictions. The tax treaty is effective in cross-border situations where the countries involved have concluded a tax treaty with a provision on cross-border charitable giving. There are only a few tax treaties with such a provision and even if it is available, the wording of the provision highly limits its effectiveness. EU law is an effective solution in EU member states where passing the comparability test is practically feasible, either because the donor country requirements do not refer to specific domestic legal concepts and regulations or because the comparability test leaves a certain degree of flexibility in the interpretation of the domestic regulations.

When comparing solutions based on their cost efficiency, the bilateral solution and the intermediary charity score best. Depending on how the unilateral solution and the comparability test of EU law are shaped in specific countries, these solutions might also be cost-efficient. However, this really depends on the requirements that the organisation has to meet to be considered an eligible PBO and/or to be considered equivalent to a domestic PBO. Establishing a foreign friends organisation is rather costly. Some arts organisations, however, have third parties who cover these costs for them. Establishing a legal entity abroad with charitable activities is, in general, not a cost-efficient solution.

The tax treaty and the solutions initiated by private parties all provide legal certainty. The legal certainty provided by the unilateral solution depends on how this solution is shaped. EU law does provide legal certainty, however, litigation might be required to obtain this legal certainty, making it an undesirable solution from the perspective of arts organisations.

The intermediary charity, unilateral solution and bilateral solution score highest on donor-friendliness. The foreign friends organisation and the legal entity abroad score lower on donor-friendliness, as the additional party involved might cause damage to the relationship between the donor and the arts organisation. The intermediary charity is also an additional party, however, it is also in the best interest of the intermediary charity that it does not damage the relationship between the arts organisation and the donor, as this would risk its own role. EU law scores lowest on donor-friendliness, as in certain EU member states, the donor has to be prepared to litigate. In EU member states that have removed discriminatory elements from their tax provisions regarding cross-border charitable giving and do not impose practical barriers, the solution might actually be donor-friendly.

The scope of the unilateral and bilateral solution is limited to one foreign country. Furthermore, if these solutions are based on host country control and there are conflicting

requirements in the host country and the home country, it might not be possible to facilitate donors in both the home country and the host country with a tax benefit. The legal entity abroad, the foreign friends organisation and the intermediary charity in principle also only provide a solution for one foreign country. Here, however, the issue with the type of control does not arise. EU law has a broad scope. Still, however, the arts organisation would have to meet the requirements in all 28 EU member states and some of these requirements might be conflicting, limiting the scope of EU law. The FE proposal would have scored highest in terms of scope if it had not been withdrawn and had been put into practice.

The comparison of the solutions, based on the amount of know-how required, shows that all legal solutions, plus establishing an entity abroad for charitable activities and the foreign friends organisation all require a considerable amount of tax and legal know-how. Establishing an entity abroad with charitable activities and establishing a foreign friends organisation require know-how on fundraising in the specific country in addition to the legal and tax know-how. Furthermore, the latter two solutions require a high level of professionalisation. The intermediary charity is the sole solution that does not require a highly professionalised organisation, nor does it require legal and tax know-how. Instead, it provides this information. Therefore, the intermediary charity scores best on this factor.

The legal entity abroad with charitable activities and the foreign friends organisation provide elements that are supportive of obtaining substantive benefits, such as extending the support base and employing activities. The other solutions do not provide these elements, but none of the solutions interfere in obtaining non-financial benefits either. For organisations that do not solely want to raise funds abroad, but also aim at strengthening a foreign support base and developing activities abroad, the legal entity abroad and the foreign friends organisation are interesting solutions, but only if the arts organisation is willing to make considerable costs to achieve this, as these two solutions are also the most costly.

Overall, the intermediary charity scores best on all seven factors of the assessment framework. Therefore, this is the most optimal solution for arts organisations that want a solution which is effective and cost-efficient, provides legal certainty, is donor-friendly, requires little know-how and whose scope enables the arts organisation to facilitate donors in multiple countries with a tax benefit. Solely on the non-financial benefits factor, the intermediary charity scores low, but it does not prevent an arts organisation from employing activities abroad either. For arts organisations that aim at obtaining substantive non-financial benefits, it might be worthwhile to consider another option. In specific contexts, one of the other solutions might also be worth consideration. If a bilateral tax treaty is available and its wording does not limit its effectiveness, this is also an interesting solution to consider. The same applies to the unilateral solution and EU law in countries where there is clarity on which requirements a foreign PBO has to meet. In countries where this is not clear, these solutions are not worth consideration from the perspective of arts organisations. The legal entity abroad and the foreign friends organisation are interesting for arts organisations that also want to gain non-financial benefits abroad, or if they have possibilities through which they can decrease the costs for having such an entity. Table 3 summarises the solutions and how they score on the assessment framework.

	Effectiveness	Cost efficiency	Legal certainty	Donor-friendliness	Scope	Know-how	Non-financial benefit
Unilateral solution	+/- + If foreign country is included in geographical scope of tax provision.	+/- Depends on how unilateral solution is shaped.	+/- Depends on how unilateral solution is shaped.	+ In case of up front recognition as a PBO.	- One country. -- if conflicting home & host country.	+/- Know-how on tax law is required, but this can easily be hired.	o No local presence necessary, but it is possible.
Tax treaties	+/- Effective, but wording provision might limit effectiveness.	+/- Costs for tax advice.	+ Legal certainty procedure & outcome.	+ Fast, simple & does not interfere in relation donor & charity.	- One country. -- if conflicting home & host country.	+/- Know-how on tax law is required, but this can easily be hired.	- There are no substantive benefits to using a tax treaty.
EU law	+/- But can be complicated by strict and literal comparability tests.	+/- Can be cost-efficient, as long as litigation is not required.	- Legal certainty, but litigation required.	- Time consuming, complex and might involve litigation.	+/- Requires compliance with 28 different sets of requirements.	- Specialised know-how on (EU) tax law is required.	- There are no substantive benefits to relying on EU law.
European Foundation (with-drawn)	+/- Initial proposal had the potential to be effective.	+/- Donations would have had to exceed costs legal advice and potential fee.	+/- Certainty concerning outcome, not concerning procedure.	+ Fast and clear.	+ Covers all 28 EU Member States.	+ Know-how required to obtain FE status, but this could be hired.	o No local presence necessary, but it is possible.
Legal entity abroad	+ If eligibility initial recipient is considered & PBO is allowed to spend funds abroad.	- Very costly.	+ Legal certainty procedure & outcome.	+/- Risk of competition between entity and AO.	- One country, but can be established in multiple countries.	- Legal & fundraising know-how & substance required.	+ The entity can contribute to the goals of the arts organisation.
Foreign friends organisation	+ If eligibility initial recipient is considered and PBO is allowed to spend funds abroad.	- Management foreign entity & legal advice are costly.	+ Legal certainty procedure & outcome.	+/- Fast and simple, but potential risk of damage relation.	- One country, but can be established in multiple countries.	- Legal & fundraising know-how required as well as good collaboration.	+ Strengthen network and provide opportunities for activities.
Inter-medialy charity	+ If eligibility initial recipient is considered & PBO is allowed to spend funds abroad.	+ A fee might be due, but this is perceived as reasonable.	+ Legal certainty procedure & outcome.	+ Fast and simple for donor.	+/- Intermediary charity networks can be extensive, simplifying the work of charity.	+ The intermediary charity provides the necessary know-how.	- There are no substantive benefits to using an intermediary charity.

Table 3

10. The use of intermediary charities: Are donors willing to pay for their services?²⁴⁸

10.1 Introduction

The results in section 9.9.2 show the importance of intermediary charities for arts organisations and their benefactors. Intermediary charities score highest in the assessment of solutions from the perspective of arts organisations in comparison to the other solutions. This result, however, takes the perspective of arts organisations and does not take the benefactor's view into account. Therefore, several questions remain regarding the optimal solution to obtain a tax incentive from the perspective of benefactors. Do benefactors have a common preference for one of the solutions discussed? And if so, why? Also, specific questions regarding the use of intermediary charities remain. How do donors, for example, perceive giving to the charity through a third party? An eye-catching aspect of intermediary charities as a means of obtaining a tax benefit on a cross-border gift is the direct cost related to the gift. Usually a percentage fee of each donation is asked by the intermediary charity as a reimbursement for their service. The majority of arts organisations perceive this as a reasonable fee, as discussed in section 9.8. Often, though, the arts organisations account for the fee and do not discuss it with the donor. They, therefore, do not know what their donors think of this fee. But the fee is paid from the donation made by the benefactor, either directly or indirectly. What do donors think of this fee? Are donors willing to pay for the services of intermediary charities? Perhaps donors do not require the tax benefit and therefore the fee is an unnecessary cost on which donors actually do not want their donation spent.

And what if donors do not mind paying for the intermediary charity? Is it the tax incentive that makes them willing to pay for the intermediary charity? Or other services the intermediary charity provides? In the chapters until now the emphasis was on the intermediary charity as a facilitator for the transfer of international donations with a tax benefit. But as discussed in section 4.5, intermediary charities serve multiple purposes. They match potential donors with charities that meet their preferences. Intermediary charities take care of the administrative tasks related to the donation. They give advice to both donors and recipients on effective spending. They introduce charities to would-be donors in their network.

248 The core section of this chapter is mostly based on the paper co-authored by Christoph Engel and Sigrig Hemels "Insuring Your Donation: An Experiment", 2017. Full reference: Buijze, R., Engel, C. and Hemels, S.J.C. (2017). Insuring Your Donation: An Experiment. *Journal of Empirical Legal Studies*, 44 (4). I would like to thank my co-authors and gratefully acknowledge Dominik Grafenhofer and Franziska Tausch for their helpful comments on an earlier version of the paper and Lars Freund for his programming of the experiment in the software zTree. I would also like to gratefully acknowledge the Erasmus School of Law Board of Research who granted this project with a Frontier Research Grant and the Max Planck Institute for Research on Collective Goods for funding this research project.

They supervise whether donations are well spent. Maybe the donors are willing to pay for the intermediary charity because of one of these roles rather than the tax benefit? Which of the services of intermediary charities do donors value most?

To start answering some of these questions, this chapter takes a closer look at the use of intermediary charities from the perspective of the benefactor. To do so, two interviews with patrons are discussed as well as a lab experiment in which the willingness to pay for the services of intermediary charities is measured.

10.1.1 Interviews with two patrons

Among the interviewees for this research, there were two Dutch patrons who each give significant amounts to several arts organisations. Patron 1 gives to several domestic arts organisations, all located in her city of residence. Furthermore, she supports a performing artist and is a member of a friends circle of a foreign arts organisation. Like many patrons (Ostrower, 1997), patron 1 does not only support the organisations with financial support, she also shares her knowledge and professional experience with them through her (unremunerated) serving on boards of these organisations. Currently, she gives strategic advice to cultural organisations on their communication and fundraising strategies. These activities stem from her own experience as a patron to the arts, which she remains up to today. Because of her experience both as a patron, a board member and a fundraiser, she has great knowledge on the practice of fundraising, while at the same time she can take the varying perspectives into account and has a sensitive eye for the motives of her fellow patrons. Therefore, she proved to be a valuable source of information for this research. Patron 2 also gives to several arts organisations. She gives significant amounts to several local arts organisations, but she does not focus solely on local arts organisations. She also gives to foreign arts organisations. Patron 2 displays a high level of international orientation, as is characteristic for international philanthropists. She got introduced to foreign art through her husband's business. He had an international company, with counterparts in various countries in Europe and the US. She would sometimes join him on business trips. Because the US office became the main office of her husband's company, they bought a house there. Through the house in the US, patron 2 got introduced to a US arts organisation, which she then started to support and has supported ever since. Patron 2 makes significant donations to arts organisations abroad involved in opera, as she is very passionate about opera. She enjoys traveling to see performances abroad. Furthermore, she herself collects fine art.

Both donors file their domestic donations in their tax declaration, in order to obtain a tax relief. Patron 2 explains that without the tax benefit, she would give less. The tax benefit makes her give more. Patron 2, however, does not use a tax benefit on all the donations she gives to foreign arts organisations although she most likely could benefit from a tax deduction, as she lives in a country with an open tax jurisdiction. She explains that she was not aware of this possibility. There is one cross-border donation, though, for which she made use of an intermediary charity to obtain a tax benefit. For patron 1, the donation to the foreign arts organisation is limited and therefore she does not ask for a tax benefit on this donation.

Like all other interviews conducted for this research, the interviews were semi-structured interviews, which were recorded, transcribed and analysed with Atlas TI. For further details on the interview procedure I refer to section 3.3. Since this thesis is written from the perspective of arts organisations, patrons did not belong to the core group of interviewees and only two interviews with patrons were conducted. Therefore, the findings from these

interviews are included solely as illustration rather than to derive generalisable conclusions from the interviews. They, however, do give valuable qualitative information, especially in relation to the lab experiment that was conducted to determine whether donors are willing to pay for the services of intermediary charities.

10.1.2 Experiment on willingness to pay for the services of intermediary charities

The lab experiment specifically focusses on two out of all the services provided by intermediary charities: A) relieving the donor of the risk of not obtaining the expected tax privilege (tax risk) and B) mitigating the risk of the donation not reaching its intended goal (efficacy risk). The tax privilege has been discussed extensively throughout this research. The efficacy is concerned with the donation reaching its intended goal. The extensive literature review by Bekkers and Wiepking (2011a) shows that the efficacy of a gift is one of the driving forces behind charitable giving. The efficacy of a donation is of importance both in a domestic as well as in a cross-border situation. In a cross-border situation, however, it is likely that it is more difficult for the donor to supervise the efficacy of his donation in a situation where safeguards such as binding contracts are more difficult to enforce and thus less reliable.

The intermediary charity mitigates the risk that the donation is not spent on the intended purpose and that the donor does not receive a tax incentive on its donation. To put it in different words: The intermediary charity ensures that the efficacy risk and the tax risk do not materialise. The mechanism at work is that of an indirect insurance.²⁴⁹ This works as follows. By agreeing to receive a donation for a foreign charity, the intermediary charity puts its own reputation and tax-exempt status at stake. Without an indisputable reputation, the intermediary charity loses its legitimacy. Rumours that funds have not been spent properly can ruin the reputation of the intermediary charity and the intermediary charity will cease to receive money for the charity in question, but also for any cause the intermediary aims to promote. Intermediary charities are therefore very keen to provide good supervision over the charities for which they receive donations. Therefore, before agreeing to receive a gift for a foreign charity, the intermediary charity will check whether the foreign charity is trustworthy. Based on this information, it will decide whether it wants to receive a contribution for a specific foreign charity. The intermediary charity will always retain discretionary power to refuse receiving a gift for a foreign organisation.

The intermediary charity will require basic information from the charity, on its charitable mission, administration, activities, funding sources, governance and leadership. Often a copy of the tax status, the articles of association and annual report of the organisation are required, together with the substantive programme of the organisation. Based on this information the intermediary charity determines whether the foreign organisation is equivalent to a charity in the home country and whether it is in line with its own charitable purpose and guidelines. Furthermore, the intermediary charity can require the recipient charity to account for the spending of the donation in evaluation reports.

²⁴⁹ In the paper *Insuring Your Donation: An Experiment* we also conducted supplementary treatments that mimic a direct insurance, A) in which the donor gets his money back if the donation fails to reach its intended goal and B) where there are indicators that signal whether the donation reached its intended goal, but there is no full certainty. As the intermediary charity is not a direct insurance, the findings of the supplementary treatments are not included in this chapter.

In summary, the intermediary charity puts its own PBO status and reputation at risk, for the cross-border donation concerned as well as for future activities. The intermediary charity will do everything to prevent a mishap, as its own operation is at stake. The brand name of the charity, thus, serves as a hostage for the insurance that protects against both risks. In exchange for containing the risks, the arts organisation pays a fee for the service of the intermediary charity. This gives rise to two questions: 1) How willing are donors to pay to contain the risk that their generosity fails to reach its intended effect, or that they do not receive a tax benefit, or both, and 2) To which degree does the availability, and the actual purchase, of such insurance increase the probability of donations?

Intermediary charities perform their tasks for a variety of charities. Arts organisations are only one group of charities among the many charities that use the services of intermediary charities. In the lab experiment, participants could allocate part of their endowment to a charity that supports orphans around the world with basic needs. In order to measure the willingness to pay for insurance against the tax risk and against the efficacy risk, these two specific functions of intermediary charities had to be separated from the other functions of intermediary charities. Since intermediary charities serve multiple purposes in practice, it was not possible to measure donors' willingness to pay for insurance against the tax risk and against the efficacy risk in a field experiment. Therefore, a lab experiment was conducted in which 244 students participated.

The lab experiment consisted of six treatments and a baseline. In the *Effectiveness* treatments, the participants were faced with a 20% chance that their donation would not reach its intended goal and instead would be spent on a board dinner. In the *Tax* treatments, the participants were faced with a 20% chance that their donation would not be rewarded with a tax incentive. In the *Tax & Effectiveness* treatments, the participants were faced with a 10% risk that both the tax risk and the efficacy risk would materialise. For each of these treatments there were two versions: one in which the participant had the choice to obtain insurance and one without insurance. In the *Baseline*, none of the risks were presented, nor was insurance introduced.

	efficacy risk	tax risk	insurance option
Baseline	No	No	(No)
Effectiveness	Yes 20%	No	No
Effectiveness Insurance	Yes 20%	No	Yes €0 to €1.25
Tax	No	Yes 20%	No
Tax Insurance	No	Yes 20%	Yes €0 to €1.25
Effectiveness + Tax	Yes 10%	Yes 10%	No
Effectiveness + Tax Insurance	Yes 10%	Yes 10%	Yes €0 to €1.25

Table 4

The experiment consisted of three parts. In the first part, the main experiment, participants received EUR 5.00 and could decide to keep this endowment or to donate half of it to the charity. In case the participant decided to donate, the participant received a reimbursement of EUR 1.25. In the *Baseline*, this was the entire first part of the treatment. In the *Effectiveness* treatments, the 20% uncertainty on the effectiveness of the insurance was introduced. In the *Tax* treatments, the 20% uncertainty on the reimbursement was introduced.

In the *Tax & Effectiveness* treatments there was 10% uncertainty whether the donation would be effective and 10% uncertainty whether the participant would receive the reimbursement if he decided to donate. This was part one in one version of each of these treatments. In the other version, the participants had the opportunity to buy insurance. If they wanted to buy insurance, they had to state what they were willing to pay as a premium, with a maximum premium of EUR 1.25. In part two – the first post-experimental test – the first part is repeated. This time, instead of asking what the participants were willing to pay for insurance in case they decided to donate, they were asked what percentage of certainty they require that the donation reached its intended goal and/or that the donation was rewarded with a reimbursement. In part three – the second post experimental text – the participant received an endowment of EUR 2.50. They could invest this endowment into a lottery. If they decided to invest their endowment, there was an 80% chance that their endowment was doubled and a 20% chance that they lost their entire endowment. Participants in the lab experiment were randomly assigned to one of these seven treatments (Buijze, Engel & Hemels, 2017).

10.2 Influence of tax and efficacy risk on donations

Now what effect does the certainty of the efficacy of a donation have on donation rates? And what is the effect of uncertainty of the tax incentive on donation rates?

In the lab experiment, we compared the donation rate in the *Baseline*, where no uncertainty is present, with the donation rates where there is uncertainty on the efficacy and/or the tax incentive. In the baseline, we found that 73.3% of all participants decided to donate EUR 2.50 to the charity. If there was a 20% chance that the donation did not reach its intended goal, the donation rate was only 39.3%. If both a 10% tax risk and a 10% efficacy risk were present, the donation rate was 37.5%. Whereas, if there was a 20% chance that the donation did not receive the tax incentive, but the efficacy was not at stake, the donation rate remained rather high at 60.7% and there was no significant difference with the baseline. We can thus conclude that if the efficacy of a donation is at risk, donors will contribute less, whereas if a 50% tax benefit of the size of the gift is at risk, this does not keep people from giving (Buijze, Engel & Hemels, 2017).

The results of the lab experiment are in line with the findings in the interviews with fundraisers. Interviewees signalled that their donors contribute to their arts organisations because they value the cause of the organisation. The tax incentive is important for some of the donors; however, it is never the core reason to contribute to the arts organisation. Instead, the tax incentive is something fundraisers believe makes their donors give more, or helps to persuade donors to give.

10.3 Willingness to pay for intermediary charities

When the option to insure was introduced in the *Tax* treatment, *Effectiveness* treatment and *Tax & Effectiveness* treatment, participants showed to be willing to buy these insurances, as the figures below show. Based on these figures, we can conclude that there is a substantial willingness to pay for insurance against the risk that there is no tax incentive, that the donation does not reach its intended goal or both. The willingness to pay does not differ between these risks.

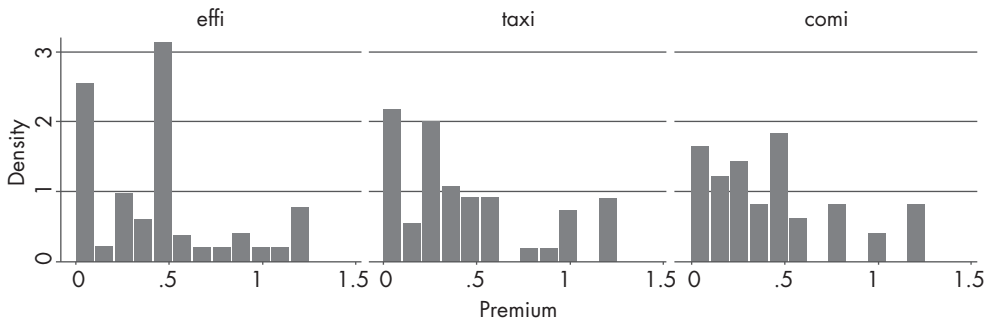


Figure 10 - Willingness to pay for insurance

effi: *Effectiveness Insurance* treatment; taxi: *Tax Insurance* treatment;
comi: *Effectiveness & Tax Insurance* treatment

The insurance options increase the donation rates in comparison to the treatments without insurance. When insurance was available, no significant difference was found between the *Tax* treatment, the *Effectiveness* treatment and the *Tax & Effectiveness* treatment in comparison to the baseline, as is also visualised in the figure below. The insurance in the *Tax & Effectiveness* treatment even slightly increases the willingness to donate in comparison to the *Baseline*.

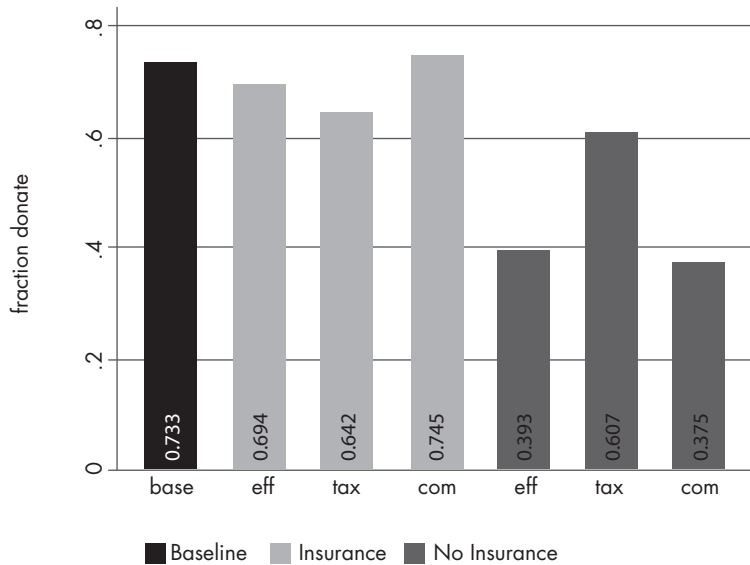


Figure 11 - Treatment effect on donation rates

base: *Baseline*; eff: *risk that donation is used to finance board dinner*; tax: *risk that donor does not receive subsidy of EUR 1.25*; com: *both risks combined (but with half the probability each)*

In the lab experiment, the insurance premium did not keep participants from giving. The same holds for the interviewed patrons. Even though the fee required by the intermediary charity decreases the amount of the gift that can be spent on the charitable purpose and thus makes the donation less effective, this was not an obstacle for the interviewed patrons. They preferred the intermediary charity over the other solutions to obtain a tax incentive, even though there is a direct fee related to the gift. When I ask patron 2 what she thinks of the fee, she says “Well, yes, I don’t mind that the [intermediary charity] also earns something on [the cross-border donation]. That is also a charity. Then I just have to give a bit more.” When I ask her why she then has to give a bit more, she explains that this is her own reasoning, that the final recipient should receive the amount she intended to give.

When patron 1 engages in the perspective of the recipient charity she says the following about the fee asked by intermediary charities: “These are costs, but you can deduct them anyway. But you know what I do believe? It costs money anyway. And this is uncluttered.” In fact, she thinks it is reasonable and she does not understand why governments, foundations and arts organisations are reluctant to be transparent about these kinds of overhead costs. Other studies, however, have shown that donors give substantially more if they can be sure that their donation is not used for any overhead costs, but is directly used for the ultimate recipient (Gneezy, Keenan & Gneezy, 2014). This makes it understandable that other parties are reluctant in being transparent about their overhead costs. When asked whether patron 1 still prefers the intermediary charity over the other solutions to obtain a tax incentive, even though part of her own donation would be spent on the fee, she answers:

“Yes, because I do not want the hassle. I know there is overhead. In the cultural sector people are always very irritable about it. In business life we think it is very normal to have overhead costs. The government joins them [the cultural sector] in this. Governments, foundations [...] I, by coincidence, just talked to [the CEO of a large Dutch cultural foundation]. I told her: ‘now stop this’. If you do not have people and you do not [...]. It has to be in proportion. Otherwise nothing gets done. So I think it is fine [to have overhead costs]. Look, if the service is not ok, another [competitor] will join, that is the free market. But I think that an institution [intermediary charity] that has proven to do well, and who also does it thoroughly... And I notice that people in the United States and in the United Kingdom have trust in it, that it happens this way. Well, and then I think it is fine. It seems fine to me.”

When asking patron 1 what she thinks of the fact that the fee of intermediary charities is usually paid by the final recipient charity, she does not immediately respond. Later on, however, she returns to the question and says:

“I was briefly thinking whether [the intended charity] discuss with [the donor] that there are costs attached to this kind of solutions. I am wondering whether, because what I hear from the fundraisers that I spoke to until now is that when a gift is made through the King Baudouin Foundation United States, that the fee is actually paid by the [final recipient charity] and that often this is not discussed with the donors. That the donors actually implicitly are aware, but that ultimately, the fee is paid by the receiving charity and thus the fee is actually deducted from the donation.

But there are always some costs deducted from the gift. [...] One way or the other, somebody has got to do it. And if you use another solution... I don't know whether you know what a tax advisor costs?"

This quote shows that the costs are not a problem for patron 1. Who she believes should pay the fee of the intermediary charity, the donor or the final recipient, is not addressed explicitly by the donor. It, therefore, remains unclear whether she is willing to pay the fee in addition to her gift or whether the organisation should deduct the fee from her gift.

Whether the intermediary charity is preferred by patron 1 because of its supervision on the efficacy of the donation, because of the tax benefit it ensures, or because of both remains an open question that is not clarified in this interview. Patron 2, however, is clear that she would use the intermediary charity, despite having to pay a fee, just because it facilitates a tax benefit: *"If it concerns such amounts [EUR 10,000], then I think you should just [use the intermediary charity]. And then you get a tax benefit. And before you would also give and then you would not have a tax benefit. So just be happy that you can make the donation via the intermediary charity."*

10.4 Willingness to pay for tax incentive, efficacy of the donation or both?

During the interviews with patrons, the different solutions to obtain a tax incentive for charitable giving in cross-border situations were discussed. The intermediary charity holds the preference of patron 1.

"I find the structure with the intermediary [charity] like the King Baudouin Foundation and other foundations most pleasant. Because it relieves both the receiving party as well as the bestowing party from a lot of work and because they are so reliable, you know [the donation] will eventually end up well. Because it is up to the organisations to accept accountability and to present the annual report and to show that the money you gave for [a specific cause] is indeed also spent on it." (Patron 1)

Her response illustrates that she perceives the intermediary charity as the preferred solution, not just for the tax incentive it facilitates, but also because of three other reasons. First of all, because it relieves both parties from an administrative burden. As discussed in section 4.5, the intermediary charity ensures that the requirements for an eligible recipient charity set out by the tax authorities are met. Furthermore, it provides the donor with the necessary information to take the donation into account in its income tax declaration. The second reason why the patron perceives the intermediary charity as the preferred solution to obtain a tax incentive is because the intermediary charity is a reliable solution. Intermediary charities are often (related to) foundations that have existed for several decades and therefore, are established organisations. Furthermore, the intermediary charities are located in the donor's country and thus the donor has a better oversight of the charity. Finally, because the intermediary charity ensures that the donation will reach its intended goal. Based on the lab experiment, the efficacy of the donation also proves to be of great importance.

When the *Effectiveness* treatment with insurance is compared to the same treatment without insurance, we find a significant increase in donations. The same holds for the *Tax &*

Effectiveness treatment, both with and without insurance. Here we also witness a significant increase in donations. The contrary holds for the *Tax* treatment. There was no significant effect found when comparing the treatment with and without insurance. In the experiment, we thus found that the insurance increases the willingness to donate in case the efficacy of the donation is at risk (Buijze, Engel & Hemels, 2017)

This finding was further confirmed by the conditional giving figures in the treatments with insurance. In the insurance treatment, the participants had the option to make an unconditional donation, or to only donate if the risks were contained through the insurance. In the *Effectiveness* treatment 48.97% were only willing to donate if the risk was contained through the insurance. For the *Effectiveness & Tax* treatment, as much as 59.57% of the participants who decided to donate made their donation conditional on the insurance containing both risks. In the *Tax* treatment, this rate was much lower. Only 28.30% of the donors in that treatment made a conditional gift. Participants are thus much less willing to neglect the efficacy risk, whereas they are more willing to neglect the tax risk.

One would expect that this difference between the tax treatment and the two treatments where the efficacy of the donation is at risk is also present in the willingness to buy insurance. As discussed in section 10.3, this is not the case. Participants are willing to pay for insurance, regardless of the treatment. This demonstrates that the tax incentive is worth paying for according to the participants, but if the tax incentive is at risk, this is not a reason to deter giving, as is the case with the efficacy risk.

10.5 Conclusions

Arts organisations have a preference for intermediary charities as a solution to facilitate their foreign donors with a tax incentive. Whether the intermediary charity is also the preferred solution for donors remains uncertain. The interviews with two patrons, however, show that for them the intermediary charity is the preferred solution to use when making a cross-border charitable donation. The fee charged by intermediary charities is not perceived as an obstacle. They are aware that any of the discussed solutions would imply costs for the arts organisation.

In fact, the responses of patron 1 give rise to the idea that it is not just the tax incentive that make her prefer the intermediary charity over the other solutions when making a cross-border donation. The relief of the administrative burden, the reliability of the intermediary charity, the trust she has in the intermediary charity and the insurance of the efficacy of the donation are reasons for her to prefer this solution to obtain a tax incentive over the other solutions. It might be that these other reasons are equally or even more important motivations to use the intermediary charity when engaging in cross-border donating.

Results from the lab experiment also demonstrate that the donation not reaching its intended goal is more important than the donor not receiving a tax incentive. In the lab experiment, the services of the intermediary charity are interpreted as insurances against the risk of not obtaining a tax incentive and the risk of donations not reaching their intended goal. The other aspects of the intermediary charity's services, such as performing administrative tasks as well as specific characteristics of the intermediary charity, such as reliability and trust in the intermediary charity, are not taken into account.

The experiment demonstrates that donors are willing to pay for insurance against both the tax risk and the efficacy risk. They do not mind the fee of the intermediary charity and are even willing to give up part of their own income for the insurance. The main question in this

chapter, 'Are donors willing to pay for the services of intermediary charities?' can thus be answered affirmatively. For the arts organisations that do not discuss the fee of the intermediary charities with their donors, it might be wise to change their strategy because the donor might actually be willing to cover the costs of the intermediary charity.

Without the availability of insurance, fewer participants gave to charity if the efficacy of the donation was at risk. If the tax incentive was at risk and there was no option to buy insurance, the participants giving was not deterred, however. Based on this, we can conclude that the insurance for the tax risk serves a distributive purpose and the insurance for the efficacy risk serves a social purpose (Buijze, Engel & Hemels, 2017).

These outcomes support the hypothesis that donors do not prefer intermediary charities over other solutions because of the manner in which they enable obtaining a tax incentive in cross-border situations. Instead, the safeguard it provides for the efficacy of the contribution seems to be the decisive factor in why donors prefer an intermediary charity over other solutions. This could be explained by the existing theoretical insights that one of the motives to give to charity is because of the desire to make a difference to a specific cause. The lab experiment, however, does not address the other solutions for obtaining a tax incentive on a cross-border donation, nor does it take the other characteristics of intermediary charities into account. Further research is therefore necessary to answer the questions stated in the introduction of this chapter.

11

● Conclusion: The optimal solution for tax-efficient international philanthropy for the arts

11.1 Overview of the research

This dissertation explores international philanthropy for the arts and evaluates the existing solutions for obtaining a tax benefit when engaging in international philanthropy. An interdisciplinary approach is used, combining legal doctrinal research with empirical research. More specifically, the core of this research consists of hermeneutical legal research, combined with qualitative case studies.

A review is made of the existing literature on individual philanthropy for the arts, government support for the arts, tax incentives for charitable giving and cross-border charitable giving for the arts (Chapter 2). The literature review reveals that, although a significant strand of literature is available on the first three topics, literature on the latter is underrepresented. Therefore, a first effort is made to map international philanthropy for the arts.

The existing solutions to facilitate donors with a tax incentive on a cross-border gift are outlined and reflected upon in Chapter 4. Both governments and private parties can take the initiative for solutions that allow donors to obtain a tax benefit on a cross-border donation. Which solutions can be used in a specific cross-border situation depends on the jurisdiction where the donor is resident for tax purposes. The domestic legislation as well as the bilateral and supranational agreements to which a donor has access determine which solutions might provide a donor with a tax benefit on a cross-border donation. In Chapter 5, comparative tax law is applied to categorise tax regimes into four different ideal types based on their openness with regards to the application of tax incentives for cross-border donations. The ideal types are: open tax jurisdictions, relatively open tax jurisdictions, restrictive tax jurisdictions and closed tax jurisdictions. The underlying methodology, and that of other chapters, is elaborated on in Chapter 3.

Information derived from document analysis and interviews was used to explore international philanthropy and fundraising for the arts (Chapters 6 and 7). Annual reports of arts organisations, their websites and coverage on cross-border donations in the media were analysed. Interviews were conducted with fundraisers and directors of arts organisations, tax advisors, philanthropy experts and a few donors. The qualitative analysis of these interviews and documents provide insight into the importance of international donors for arts organisations and how arts organisations try to attract these persons. Furthermore, the role that tax incentives fulfil for international donors and their beneficiaries was outlined.

After international philanthropy for the arts was mapped, the solutions through which a foreign donor can obtain a tax benefit were evaluated from the perspective of arts organisations (Chapter 9). The assessment framework through which these solutions are evaluated is based on the criteria derived from the interviews with fundraisers and directors of arts

organisations (Chapter 8). After evaluating each single solution based on the assessment framework, the outcomes were compared to find the optimal solution in context from the perspective of arts organisations. This comparison reveals that, for many arts organisations, the intermediary charity is an optimal solution. Based on this core outcome of the research, an additional quantitative analysis was done on the willingness to pay for intermediary charities (Chapter 10).

11.2 Discussion of the findings

The central question that this research aims to answer is: *How can the existing solutions for tax-efficient international philanthropy be used optimally by arts organisations?* To answer the central question, five research questions were proposed in the introduction:

1. *Which objectives are at stake for governments and how can they be achieved through tax policy for cross-border charitable giving?*
2. *What are the main approaches countries use to gain 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. *What criteria does a solution for tax-efficient cross-border giving have to meet to be optimal from the perspective of arts organisations?*

Throughout the research these five questions were answered. An overview of the answers is provided in the next five sections. The answers are building blocks that form the answer to the main research question.

11.2.1 The objectives at stake for governments

Several objectives are at stake when governments decide to grant, or not grant, tax incentives on donations that leave the country.

- *Drainage of tax revenue to other countries* - Granting tax incentives on donations to foreign charitable organisations reduces tax revenue for the donor's home country. Besides, it does not directly benefit the domestic public. This can be an argument to refrain from applying tax incentives on cross-border charitable gifts. It can, however, be debated whether the responsibility of the government ends at the territorial borders of the country. Some countries have close social, economic, cultural and diplomatic ties. Therefore, there might be an interest to support each other's charitable organisations.
- *Global objectives* - There are charitable causes of which it can be argued that their objectives transcend national borders. They contribute to the global public good (Barrett, 2007). Governments might want to support these organisations – despite being located abroad – as the own country also benefits from the transnational objectives these organisations pursue. In international conventions, the concept of global public good is applied to heritage, referring to the 'common heritage of mankind'.²⁵⁰ A similar line of reasoning can be applied to the arts (Klamer, 2002, pp. 468-470; 2004). According to these arguments, people benefit

250 UNESCO, Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague 14 May 1954 http://portal.unesco.org/en/ev.php-URL_ID=13637&URL_DO=DO_TOPIC&URL_SECTION=201.html.

from art and culture in other countries and all countries have a responsibility towards each other's cultural property (Buranich, 1988-1989, p. 159; Merryman, 1983, p. 759).

- *Lack of fiscal control* - It is more difficult for tax authorities to supervise a charitable organisation that is located abroad. A lack of fiscal control over a charitable organisation could lead to donations being made to ineligible organisations with the benefit of a tax incentive (Hemels & Stevens, 2012; Hemels, 2015; Koele, 2007). This increases the risk of abusive structuring and tax evasion. If countries trust each other's tax authorities, this would not be a problem. Home country control, possibly in combination with host country control, could then ensure that the foreign recipient organisation is a deserving charitable organisation. Relying on home country control, even if only partially, requires a common understanding of the concept of 'public benefit'. A lack of such a common understanding can make countries refrain from granting tax incentives on cross-border donations (Bater, 2004; Koele, 2007, pp. 8-9). Although the exact definition of 'public benefit' differs, there is a clear overlap in the understanding of the concept by countries (Drache, 2004). Cultural heritage, for example, is perceived as contributing to the public benefit in many countries.
- *Plurality of choices in the provision of public goods* - An argument in favour of the application of tax incentives to cross-border charitable gifts is derived from the political philosophy of pluralism. In this view, society benefits from the application of private assets to the public good and society benefits from a plurality of choices in the provision of public goods. Therefore, the plural powers that provide international society with public benefit should not be hindered by taxes (Koele, 2007). Furthermore, removing the tax barriers from cross-border charitable giving creates a healthy competition between domestic and foreign charitable organisations.

These objectives at stake are discussed more elaborately in section 2.9. Whether the objectives related to international relations, transnational benefits or international competition weigh heavier, or the drainage of tax revenue and the fiscal control over foreign organisations, depends on the political conviction of the ruling government in a country. If the first objectives weigh heavier, there are reasons to open the tax provision on incentives for charitable gifts to foreign charitable organisations. If the latter weigh heavier, the application of tax incentives could be limited to gifts to domestic charitable organisations. This results in different approaches of countries towards tax incentives for cross-border philanthropy, which is discussed in the next section.

11.2.2 The main approaches of countries towards tax incentives for cross-border philanthropy

The different objectives governments pursue result in different approaches towards the application of tax incentives on cross-border donations. I have categorised these different approaches of countries into four ideal types. These ideal types serve as benchmarks to determine where countries are located in the spectrum of approaches towards the application of tax incentives on cross-border gifts.

First, there are countries that provide a tax incentive on domestic charitable donations, but do not allow for a tax incentive in cross-border situations. The tax provision does not leave room for contributions to a foreign charity, nor are there bilateral or supranational agreements in these countries that allow for a tax incentive on a cross-border donation. I label these countries *closed tax jurisdictions*. This approach would match governments that are afraid to lose fiscal control over the charities they support with a tax incentive and for governments

that want to keep tax revenue in the own country. A second ideal type are the *restrictive tax jurisdictions*. Donors residing in these countries can obtain a tax benefit on a donation to charitable organisations located in a limited range of foreign countries, based on bilateral or supranational agreements. I set a limit at ten countries. Furthermore, countries that have agreements with more countries, but where it is practically close to impossible to obtain a tax benefit on a cross-border donation, fall within this category. *Relatively open tax jurisdictions* form the third ideal type. This ideal type encompasses those tax jurisdictions that allow for tax incentives on cross-border donations, but mainly based on tax treaties, supranational agreements and through local intermediary charities. The fourth ideal type are the *open tax jurisdictions*. Countries falling within this ideal type allow for tax incentives on cross-border donations based on domestic tax regulations. These countries do not discriminate between foreign and domestic charitable organisations. Therefore, this ideal type is well suitable for governments that want to support a plurality of choices in the provision of public goods and who wish to encourage the philanthropic sector in and outside the borders of their country.

Falling outside these four ideal types are countries that do not provide a tax incentive for individual charitable gifts in personal income tax at all. As there is no tax incentive available in the domestic situation, no tax incentive is granted on cross-border gifts either.

11.2.3 The current state of international philanthropy for the arts

There is a lack of representative quantitative data on cross-border charitable giving to the arts. The incidental data from intermediary charities, however, demonstrates that cross-border philanthropy for the arts does exist and might even be increasing (see section 2.7). The case studies of arts organisations, furthermore, show that cross-border gifts are received by arts organisations from a variety of European countries, Bermuda, Hong Kong, India, Mexico, Montenegro, Peru, Russia, Turkey, the United Arab Emirates and the US.

The persons who make these gifts to foreign arts organisations are often persons involved in higher professions who are affluent enough to give away part of their assets. The high integration of the arts into the lives of domestic donors (Ostrower, 1997, p. 92) is also present among cross-border donors. Art dealers, art collectors and persons who are so passionate about the arts that they travel to see their favourite performances are among the people who give across borders. Also, persons who live (part-time) outside of their country of origin are well represented among those who give to arts organisations abroad. They are expats, migrants and persons with a second home abroad. For them, contributing to a foreign arts organisation offers a connection with their country of origin. It also fulfils a social role, as donating to a foreign arts organisation brings them in touch with others from their country of origin. The motivations of international philanthropists that came forward during interviews are to a large extent comparable to those who give to domestic charitable organisations, as identified by Bekkers & Wiepking (2011a). Most donors that give across borders seem to contribute to multiple charitable organisations, both in and outside the arts. Alongside a foreign arts organisation, the donor usually also supports domestic arts organisations. Typically, the supported arts organisations all focus on the same specific discipline or subtopic within the arts.

More organisations want to raise funds abroad than actually proactively raise funds abroad. For these organisations, fundraising abroad is not a priority. Still, they receive spontaneous cross-border donations, despite not making an effort to raise funds abroad. The interviews even provide some indications of an increasing number of cross-border donations.

The arts organisations that do raise funds abroad proactively started this effort because they needed an alternative or additional source of funding. Among those arts organisations, roughly three strategies can be identified according to which they raise funds abroad: a) they embrace grassroots initiatives by foreign donors; b) they create friends circles in specific countries with which they have a special connection; or c) they attract foreign potential donors with a specific interest in the art produced and presented at the arts organisation. Among the arts organisations studied, the income from foreign donations varies from EUR 5,000 to EUR 1,000,000 a year, depending on the efforts made.

Arts organisations that proactively engage in international fundraising also advertise the tax benefits for foreign donors. Among fundraisers there seems to be the consensus that if possible, donors want to give with a tax benefit, although the tax benefit is not the main motivation for donors to give. Anecdotal evidence indicates that among US donors, the tax benefit is a prerequisite to giving.

In contrast to tax incentives for domestic donations, fundraisers seem to have little knowledge of tax incentives for cross-border donations. Also, the awareness of solutions to facilitate tax efficient cross-border giving is limited. The majority of the interviewees are familiar with intermediary charities and foreign friends organisations, but other solutions are unknown among the majority of fundraisers. The tax benefits advertised by arts organisations among their potential foreign benefactors are also limited to these two solutions. Since fundraisers usually do not have a formal legal training, it is logical that they lack this knowledge. However, in the wider arts organisation this knowledge is usually not present either. Only a few arts organisations have in-house legal counsel who can provide the fundraisers with the necessary information on tax incentives for cross-border gifts. Therefore, the majority of arts organisations rely on external expertise for these cases. They hire a tax lawyer, consult tax experts in their network or even approach peer arts organisations for advice.

Besides the tax issues involved in cross-border fundraising, arts organisations are also faced with other challenges when trying to raise funds abroad. International fundraising requires a strong case for support, which covers high quality arts and is appealing to foreign donors. To successfully raise funds abroad, skilled and professional staff members are required and the arts organisations need to make significant investments before the efforts pay off. Once relationships are established, the fundraisers have to deal with language barriers and practical issues, such as exchange rates. If actual donations are received from abroad, the fundraisers have to maintain relationships with the foreign benefactors, which requires more effort than maintaining relations with domestic donors because of the physical distance. In addition, arts organisations have to compete with local arts organisations when raising funds abroad.

11.2.4 Public and private solutions for tax-efficient cross-border philanthropy

Donors to a foreign arts organisation can obtain a tax benefit under certain circumstances, based on both public solutions, as well as solutions initiated by private parties.

The tax legislation in the country where the donor is resident might not limit the application of a tax incentive to donations within the own country and might have opened the tax incentives for charitable giving to donations to charitable organisations located abroad. I refer to this solution as a unilateral solution: a solution for tax-efficient cross-border giving where the home country of the donor gives a tax incentive on donations to foreign charitable organisations. The geographical scope of the tax incentive for charitable giving in Luxembourg, for

example, includes other EU Member States and Member States of the European Free Trade Association.²⁵¹

Furthermore, the country where the donor resides for tax purposes might have bilaterally agreed to allow for a tax benefit on donations to charitable organisations located in the contracting state. Barbados, for example, has concluded tax treaties with Mauritius, Mexico, the Netherlands and the Seychelles, in which it agrees to grant tax incentives on cross-border donations to these countries.

Also, supranationally, countries can agree to grant tax incentives on donations to charitable organisations located in the other countries. The four freedoms in the TFEU provide such a supranational solution.²⁵² Based on the enforcement of the four fundamental freedoms, the ECJ has ruled that tax incentives for charitable contributions available in one of the EU Member States should also apply in comparable cross-border situations within the EU.²⁵³ The European Foundation Statute also had the potential to provide a supranational solution for tax-efficient cross-border giving, but was withdrawn in 2015.²⁵⁴

Arts organisations and their donors can also take the initiative to facilitate a cross-border donation with a tax benefit. These initiatives are what I refer to as ‘private solutions’, as they are initiated by private parties. The arts organisation can establish counterparts abroad. These are legal entities with their own charitable status and charitable activities. Furthermore, arts organisations can set up foreign friends organisations, also with their own charitable status, but mainly established for fundraising purposes. Via these organisations with charitable status abroad, donors in the respective countries can donate with a tax benefit. The foreign legal entity or foreign friends organisation then spends the funds on the arts organisation.

A final solution to obtain a tax incentive on a cross-border donation is to make strategic use of another charitable organisation. This can be a charitable organisation established by the donor, or an intermediary charity that provides the service of channelling funds to foreign charitable organisations. Also in these cases, the donor contributes to a domestic organisation with charitable status – either established by him or herself or an already existing charitable organisation. Since the donation is made to a domestic charitable organisation, the donor obtains a tax benefit. The charitable organisation then transfers these funds to the intended foreign charity.

11.2.5 The criteria a solution has to meet according to arts organisations

To choose a solution to facilitate their foreign benefactors with a tax incentive, arts organisations use certain criteria. Based on the interviews with employees of arts organisations, an assessment framework was constructed, consisting of six criteria and a prerequisite, which foregoes the criteria.

- *Prerequisite:* The solution needs to have the ability to provide for a tax benefit in the specific cross-border situation.
- *Factor 1: The solution needs to be cost efficient.* Some solutions do have the ability to facilitate a tax incentive on a cross-border donation, but are rather expensive and therefore inefficient from an economic perspective. Whether a solution is cost-efficient depends on

251 LU: art. 112 LIR.

252 Treaty on the Functioning of the European Union (TFEU) and EU Treaty (as amended through 2007).

253 C-318/07, *Hein Persche v. Finanzamt Lüdenscheid* (2009).

254 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2015.080.01.0017.01.ENG. Accessed 14 August 2015.

the transaction costs of the solution in relation to the (potential) financial benefit that the arts organisation obtains. This potential financial benefit depends on the size of the gift, but also on the continuity of (future) gifts coming from the country and the size of the foreign support base. The transaction costs consist of fees to obtain access to the solution, labour costs and costs for external advice.

- *Factor 2: The solution needs to provide legal certainty.* Once access is obtained to a solution, there has to be legal certainty concerning the application of the tax incentive on the donation. Arts organisations prove to be unwilling to run the risk of litigation in order for a foreign donor to obtain a tax benefit. Besides legal certainty on the outcome, arts organisations also require legal certainty concerning the procedure to obtain access to a solution. Also, when collaborating with other organisations, arts organisations want to be absolutely sure that they can rely on a positive outcome. Therefore, they want to work with reliable partners. Solely based on the explicit request of a donor, the arts organisations interviewed are willing to let go of this criterion.
- *Factor 3: The solution needs to be donor-friendly.* The solution should not interfere in the relationship between the donor and the arts organisation, as this might go at the cost of future donations. Therefore, arts organisations want to maintain full control over the relationship with the donor – even if there is a collaboration with a third party to facilitate the tax benefit. Furthermore, the solution has to be simple and quickly accessible for the donor. Any work should be on the side of the arts organisation.
- *Factor 4: The wider the scope of the solution, the better.* Some solutions can provide a solution for cross-border situations with multiple countries. The broader the geographical scope of a solution, the more interesting a solution is from the perspective of an arts organisation.
- *Factor 5: Know-how required to use the solution.* The more expertise required on the tax incentives involved in cross-border donations, the less attractive a solution is.
- *Factor 6: The non-financial benefits a solution might provide.* Some solutions only facilitate the tax benefit on the cross-border donation. Other solutions, however, also have the potential to contribute to the aims of the arts organisations in other ways. A solution can, for example, have characteristics that are of help when trying to expand the support base abroad, or make it easier to set up activities abroad. In this way, the solution can contribute to the broader objectives of the arts organisation.

These criteria came forward in interviews with fundraisers and directors of arts organisations. Depending on the specific cross-border situation, the resources available to the arts organisation and the objectives it pursues, a different solution might be optimal from the perspective of an arts organisation. Furthermore, when applying the seven criteria to the existing solutions, the context of the arts organisation and the specific cross-border donation has to be taken into account.

11.2.6 Main finding: The optimal existing solution for tax-efficient international philanthropy from the perspective of arts organisations

The accumulated answers to the five research questions provide an answer to the main research question: *How can the existing solutions for tax-efficient international philanthropy be used optimally by arts organisations?*

The exploration in Chapters 6 and 7 demonstrated that there are large differences between arts organisations when it comes to international philanthropy. Some arts organisations actively invest and engage in cross-border fundraising. They have the necessary expertise to

successfully realise a significant amount of income from foreign benefactors, whereas others are overwhelmed when they receive a gift from abroad. These differences among arts organisations, as well as differences in context – such as the country from which a cross-border donation is received – influence which solution is optimal from the perspective of arts organisations. Therefore, there is no single solution that is best for all arts organisations.

The assessment of the solutions to tax-efficient cross-border giving from the perspective of arts organisations, however, reveals that intermediary charities score highest on the seven criteria. The intermediary charity is an effective and cost-efficient solution, it provides legal certainty, is donor-friendly and requires little know-how. For these reasons, in general, the intermediary charity is an interesting solution for arts organisations to rely on when facilitating a foreign benefactor with a tax benefit. Especially for those organisations that do not receive a regular stream of gifts from a foreign country, the intermediary charity is a good solution. The fee that intermediary charities charge is perceived as reasonable by arts organisations. In fact, the lab experiment in Chapter 10 demonstrates that donors are willing to pay to ensure they receive a tax benefit. It might thus be worthwhile for arts organisations to ask their donors to cover the fee. The only factor where the intermediary charity does not score well is on the non-financial benefits it can provide. For arts organisations that do not have the objective of broadening their international appearance and support base, this will most likely not be problematic. At the same time, the intermediary charities do not stand in the way of arts organisations that do want to develop activities abroad to obtain non-financial benefits.

For arts organisations that have the objective to proactively engage in international fundraising, it is worthwhile to consider unilateral solutions and supranational agreements – especially if the arts organisation aims to attract donations from specific countries that belong to the relatively open and open tax jurisdictions. Depending on the procedures to obtain access to these solutions and the specific type of control that is exercised over the foreign arts organisation, these might be effective, cost-efficient and donor-friendly solutions that provide legal certainty. The scope of these solutions is limited, though. If an arts organisation focusses on a limited number of countries, this is not problematic. Acquiring expertise and familiarising oneself with these solutions might require an investment. This will pay off for arts organisations that receive a continuous flow of gifts from the specific countries, as the solution can be used over and over again.

Arts organisations that want to raise funds in countries that belong to the closed or restrictive jurisdictions can usually best rely on one of the private solutions. In these jurisdictions, the unilateral solution, bilateral solution and EU law will not be effective, or will produce legal uncertainty, making them unattractive solutions from the perspective of arts organisations. In most cross-border situations, no tax treaty with a provision on charitable giving will be available. Even if it is available, the effectiveness of the tax treaty is usually limited by the wording of the treaty. With few exceptions, the tax treaty is not an optimal solution for cross-border donations from the perspective of arts organisations.

For arts organisations that aim not only at raising funds abroad, but also want to obtain substantive non-financial benefits, it might be worthwhile to consider establishing a foreign friends organisation. This solution allows the expansion of the support base. In specific contexts, for example for arts organisations that receive a continuous stream of donations from the specific country and for arts organisations with low costs of having a foreign friends organisation abroad, this option can also be of interest. A legal entity abroad with charitable activities also contributes to the core objectives of the arts organisation abroad.

The legal entity abroad with charitable activities, however, goes far beyond the objective to facilitate cross-border giving with a tax benefit.

11.3 Implications and recommendations for practice and theory

This research makes specific contributions to both research and practice. As such, the research can be of interest for scholars, as well as donors, those responsible for fundraising at arts organisations (and other charitable organisations), tax lawyers, philanthropy advisors and policy makers. The implications the research has for these stakeholders are outlined in the following sections.

11.3.1 Implications for theory

This dissertation offers an overview, reflection and evaluation of the different solutions to obtain a tax incentive on a cross-border gift. Furthermore, the approaches countries hold towards these solutions are mapped. By doing so, insight is provided into the interaction between domestic law, international law and private initiatives that make strategic use of the existing legislation. For tax law scholars, this insight can help them to understand the powers at play in an international setting. These insights can also be applied to other tax law measures in an international setting.

The literature review unveiled the gap in literature when it comes to cross-border philanthropy for the arts. In later chapters, the research offers an initial exploration of the phenomenon of international philanthropy, which adds to the existing theories on philanthropy and fundraising, by researching the phenomenon in an international context. The description of the current state of international philanthropy for the arts (Chapters 6 and 7) can serve as a first anchor point from which hypothesis can be derived for further research on the topic.

The methodology used in this research also adds to theory. Throughout this research, legal doctrinal research and methods of social science are combined. The combination of these methodologies provides an innovative approach towards the interdisciplinary topic of tax incentives on cross-border donations and adds to the existing scientific knowledge on this topic. The methods used can also be of interest for other fields of research, where law and social sciences intertwine. Research suggests that there is a demand for such interdisciplinary methodologies (Elbers, 2016). The comparative tax law methodology, in which I categorise tax jurisdictions into ideal types, can be of interest for other scholars who want to engage in comparative tax law.²⁵⁵

11.3.2 Implications for practice

The practical outcomes of this research mainly benefit arts organisations, international philanthropists, their philanthropy advisors and the tax advisors of both arts organisations and donors.

Fundraisers of arts organisations can use the insights provided by the literature review (Chapter 2) and the exploration of international philanthropy for the arts (Chapters 6 and 7). These sources can bring them inspiration and benefit their strategy for international fund-

²⁵⁵ For a detailed discussion of the methodology, also see: Buijze, R. (2016b). The Categorisation of Tax Jurisdictions in Comparative Tax Law Research. *Erasmus Law Review*, (4), 189-198..

raising. Based on the main groups of people who give across borders and their motivations, fundraisers can define their target groups and determine how to approach these persons. The three identified dominant strategies for international fundraising can help arts organisations decide how to develop their international fundraising practice.

Foremost, the insights that this research provides can fill the lack of knowledge among employees of arts organisations on the available solutions to facilitate a foreign benefactor with a tax benefit. The overview of existing solutions provides the necessary information. The assessment of the solutions and the respective criteria help arts organisations make a well-informed decision. The assessment of the solutions can also help donors and philanthropy advisors make a well-informed decision when trying to obtain a tax benefit on a cross-border gift.

For tax advisors, the assessment of the solutions provides an equally interesting source of information. The interviews with fundraisers and tax advisors reveal that usually tax advisors are well aware of the different solutions to tax-efficient cross-border charitable giving. Often the approach they take to solve a case, however, is a legal approach. Although a solution might overcome a legal barrier, the fundraisers at arts organisations explain that they prefer a more holistic approach for the advice to be of practical use. This research takes the perspective of arts organisations and thus tax advisors can derive the elements that are relevant for the arts organisations and other PBOs from this research and incorporate it in their advice. By taking the perspective of arts organisations into account in their tax advice, the collaboration between arts organisations and tax advisors will become more streamlined and satisfactory for the arts organisations. The services of tax advisors will be valued higher by arts organisations. For branch organisations, such as the European Foundation Centre, who aim at easing the international tax treatment of PBOs, the perspective of PBOs provided in this research is of importance. It can serve as a benchmark based on which instruments can be designed that allow for tax incentives on cross-border philanthropy, both from a legal point of view and a practical point of view.

11.3.3 Recommendations for policy

The research maps the objectives that are at stake for governments when granting a tax incentive on a donation that leaves the country (section 2.9). This overview can help politicians take a standpoint in the discussion on whether or not to apply a tax incentive in cross-border charitable giving. Policy makers, on their turn, can benefit from the four ideal types when determining which tax measure suits them best with the standpoint of their ruling politician. The ideal types demonstrate the measures individual countries can take to limit or open their tax incentives to cross-border donations.

Countries that do not want to facilitate cross-border donations with a tax incentive must use the ideal type of the closed tax jurisdiction as a benchmark. These countries should not engage in agreements with one or multiple countries regarding the application of tax incentives on cross-border donations. Furthermore, in their domestic legislation, these countries should not allow for tax incentives on donations that are eventually spent abroad, even if the donation is initially made to a domestic charity. In many countries, charities are allowed to receive gifts with a tax benefit and spend them abroad. From the perspective of countries that do not want donations with a tax benefit to leave the country, this can be considered a loophole. If tax regulations restrict tax incentives to donations that are spent domestically, it becomes difficult – if not impossible – to obtain a tax incentive on a cross-border donation.

Countries that have the opposite objective and want to facilitate donations to foreign charitable organisations with a tax benefit can use the ideal type of the open tax jurisdictions as a benchmark for their tax policy. They can remove the geographical restriction from their tax provision. However, these countries must be aware of the practical feasibility. It is not sufficient to ensure that the wording of the tax provision is non-discriminatory against foreign charitable organisations. It also has to be practically feasible to obtain a tax incentive on a cross-border donation. Therefore, the fiscal supervision over the charity from this point of view preferably relies on home country control.

If a solution for tax-efficient cross-border charitable giving is sought in a supranational agreement, it is important that the wording as well as the practical implementation of the tax provisions are non-discriminatory for a foreign charity to be treated equal to a domestic charity. Simply removing the residency requirement from the tax provision is not enough. Clarity should be provided concerning the procedure through which a charity can obtain PBO status. It would be beneficial if certainty up front could be granted on the eligibility of a foreign charity to receive gifts with a tax benefit. This could, for example, be done by registration of the foreign charity in the country of the donor, or by recognition as a PBO in advance. It would be beneficial for cross-border charitable giving if the requirements a foreign charity has to meet to qualify as an equivalent charity would be uniform across all states that subscribe to the supranational agreement. Arts organisations would definitely be interested in such a solution, as the following quote of fundraiser 7 illustrates:

“The tax incentive is not the primary motive for people to give. But if it is possible, then people of course like to benefit from it. And, for example, through Transnational Giving Europe you can benefit from these tax incentives without having to set up your own entity. [...] Or hope that one day there will be EU legislation that states: If you give to a European PBO, then this is deductible in the EU country where you are resident for tax purposes. That would be the ultimate solution. [...] That would make my work so much easier.”

11.4 Agenda for future research

Following the findings and insights presented in this research, several avenues for future research present themselves. The new areas of research build upon the work conducted in this dissertation and fill the gaps that have been revealed in this dissertation.

The discussion of the solutions to obtain a tax incentive on a cross-border donation in Chapter 4 was limited to the existing solutions. The assessment framework (Chapter 8) and application of this framework to the existing solutions to tax-efficient cross-border charitable giving (Chapter 9) reveals that each solution has certain drawbacks. An alternative solution – whether it is a new solution or a variation on an existing solution – that takes into account the criteria of the arts organisation could be developed to overcome these drawbacks. The assessment framework could serve as a starting point to develop a solution that is optimal from the perspective of the PBO sector.

This research focusses on qualitative analysis of international philanthropy for the arts (Chapters 6 and 7). It explored the efforts made by arts organisations to raise funds abroad. This revealed that a large number of arts organisations have ambitions to raise funds abroad, but do not actually proactively raise funds abroad. Still, they receive incidental gifts from abroad.

It will be interesting to see whether the arts organisations that are currently setting up and expanding domestic philanthropy will, in the future, redeem their ambition and start raising funds abroad.

Furthermore, why donors give across borders is touched upon, based on information derived from interviews with those who work with persons who give across borders, be it fundraisers, philanthropy advisors or tax advisors. Whether the motivations of donors to give across borders as perceived by these interviewees are in line with the motives of donors remains underexplored. The interviews with two donors were a first step in this direction. Further research, however, among a larger group of donors who give across borders would provide more thorough insight.

Qualitative research is just one side of the coin and efforts to research international philanthropy through quantitative analysis would give additional insights. The size and frequency of international philanthropy is not measured by this research, as no data could be obtained. Neither are the donation flows measured from one country to the other. An interesting future avenue of research would be to research international philanthropy for the arts through quantitative research. Therefore, I would like to encourage intermediary organisations and arts organisations to create databases on the cross-border gifts they receive. This data could answer the following questions, amongst others: 1) How much do individuals give to foreign arts organisations annually? 2) How large is the budgetary impact of these donations? 3) Which type of arts organisation receives the highest amount of donations from abroad? 3) How are the flows of cross-border donations spread across the world? It would be interesting to relate the answer to this latter question to the tax legislation in place, to see whether more cross-border donations are made by donors in open tax jurisdictions (as defined in Chapter 5) compared to those in closed tax jurisdictions. This would give an indication on the influence of tax incentives on cross-border donations. Furthermore, it would provide policy makers with the necessary information to determine whether it makes sense from a budgetary perspective to negotiate on reciprocity of the application of tax incentives on cross-border donations.

As this agenda for future research suggests, there is still plenty of work to be done. Still, this research has demonstrated that international philanthropy for the arts exists and that it can pay off for arts organisations to invest in international fundraising and facilitate foreign benefactors with a tax incentive.

The introduction of this dissertation started with the example of a UK-based businessman who collected Dutch and Flemish seventeenth-century art and wanted to give these artworks to a museum. Considering the theme of the collection, the artworks would have fit well at arts organisations that focus on Dutch and Flemish seventeenth-century art, which are mainly located in the Netherlands and Belgium. UK museums, however, had the benefit of being able to facilitate the businessman with a tax benefit. If Belgian and Dutch museums would have been able to facilitate UK benefactors with a tax benefit, this would have made them equal competitors with the UK-based museums and they would have had a better chance at obtaining the artworks. After all, fundraising starts at home, but does not end there.

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Summary

Introduction

Individual donations to public benefit organisations (PBOs) are supported by tax incentives in 87% of high-income countries (Quick et al., 2014). When donations cross borders, tax incentives do not always apply, causing a barrier to cross-border charitable giving. Several solutions exist that have the capacity to overcome this barrier and allow the donor to obtain a tax benefit on its cross-border donation. Still, for arts organisations it is difficult to find the right solution to facilitate their foreign donors with a tax incentive, since information costs are high. Therefore, this research evaluates the solutions from the perspective of arts organisations in order to identify best practices in context. The main research question is: *How can the current existing solutions for tax-efficient international charitable giving be used optimally by arts organisations?* This question is answered through a combination of legal doctrinal research and qualitative empirical research. The approaches countries hold towards the application of tax incentives on cross-border donations and the solutions to overcome the tax barriers to cross-border giving are analysed through legal doctrinal research. The perspective of arts organisations and the practice of international fundraising is captured via qualitative case studies.

The solutions that can overcome the tax barrier to cross-border charitable giving can be both public and private. Public solutions, including legislation, treaties and case law that allow for a tax incentive on a charitable donation across borders. A single country can allow for a tax incentive on donations across borders in its domestic tax legislation. This is a unilateral solution. Bilateral solutions are agreements between two countries, such as tax treaties, in which the two countries agree to grant a tax benefit on donations from one contracting state to the other. I refer to agreements among multiple countries as supranational solutions. The TFEU, in which the four fundamental freedoms are embedded, is such a supranational agreement that enables donors resident in one EU Member State to obtain a tax benefit on a charitable donation to a PBO in another EU Member State. The proposal for a European Foundation also had the potential to overcome the tax barrier to cross-border charitable giving on a supranational level, had it not been withdrawn.

Solutions based on private initiatives circumvent the cross-border situation and make strategic use of the existing legislation. A private initiative is establishing a legal entity abroad with PBO status through which donors can give. Arts organisations can set up such a legal entity abroad mainly for fundraising purposes – a foreign friends organisation. If the arts organisation wishes to pursue more activities in the country abroad, it can also set up a foreign counterpart of the arts organisations, through which foreign donors can donate with a tax benefit. Donors in the country where these entities are established can make a domestic donation with a tax benefit to these entities. The entity then transfers the money to the arts organisation abroad. Donors can also take the initiative to establish a PBO organisation in their home country. By donating to this organisation, the donor can obtain a tax benefit. The PBO can then transfer the funds to a foreign entity. Another solution is to make use of an intermediary charity. These are PBOs that facilitate the international transfer of funds. The donor donates to the intermediary charity in his home country and can therefore benefit from the tax incentive. The intermediary charity transfers the donation to the PBO abroad.

Which solution is best suited to enable international giving with the benefits of tax incentives is dependent on the tax legislation in the donor's country and which private and public solutions this jurisdiction allows access to. Some countries provide for tax incentives on donations to foreign PBOs, whereas other countries only provide for tax incentives on donations to domestic PBOs. In order to grasp the different approaches countries hold in their tax legislation and to go beyond the analysis of a limited number of countries, I have classified tax jurisdictions into four ideal types that summarise the spectrum of different approaches governments hold. Distinctions between the ideal types are based on the level in which they allow for tax incentives on cross-border philanthropy.

The first ideal type is the closed tax jurisdiction. In these countries a tax incentive exists to stimulate charitable gifts in the domestic situation, but a tax incentive is not granted in the cross-border situation and there is (close to) no access to the solutions described above. Examples of such countries are Australia, Hungary and Japan. Some solutions are accessible in the second category, the restrictive tax jurisdiction. Donors resident for tax purposes in these countries can obtain a tax benefit on a cross-border donation to a limited number of countries (less than ten) through tax treaties or supranational agreements. However, it is practically cumbersome to obtain such a tax benefit. Belgium, Spain, the UK and the US belong to this ideal type. The third type, the relatively open tax jurisdiction, is more moderate. France and Germany are examples of this ideal type. In these countries donors can obtain a tax incentive on cross-border donations to more than ten countries, mainly based on supranational agreements, tax treaties and private solutions. Countries that belong to the fourth ideal type, the open tax jurisdiction, do not discriminate between domestic and cross-border donations to at least 20 other countries. Examples are Barbados, the Netherlands and Luxembourg.

Exploring international fundraising and the optimal solution to tax-efficient international philanthropy

To determine the optimal solution to tax efficient philanthropy in a specific cross-border situation from the perspective of arts organisations, this research combines legal doctrinal research with qualitative empirical research. The qualitative research took place among arts organisations. Thirty six case studies were made, consisting of document analysis of annual reports, websites and media coverage of arts organisations and semi-structured interviews with the person(s) responsible for international fundraising at the arts organisations. The organisations are selected through purposive sampling, so organisations that have experience with the different solutions as well as donations from countries that belong to different ideal types are included. In addition, semi-structured interviews were conducted with experts in the field, such as tax advisors, philanthropy advisors and two donors.

The exploration of international philanthropy for the arts based on the document analysis and interviews gives insight into the practice of international fundraising. Most arts organisations are not actively involved in international fundraising. It is not a priority for them and they lack the human resources to do so. Still, some receive spontaneous cross-border gifts. A reason for arts organisations to start international fundraising is because they are faced with a decrease in domestic income, for example due to subsidy cuts or an economic downturn. Another reason to start raising funds abroad is because they have ambitious plans for which the domestic funding is not sufficient. In exceptional cases, a donor stimulates an arts organisation to raise

funds abroad by requiring the arts organisation to match his gift with foreign funded money. Arts organisations that engage in international fundraising usually use one of the following three strategies. A first strategy is to embrace grassroots initiatives by foreign donors. The arts organisation provides the donors who wish to start a friends circle for the organisation with the necessary input. The foreign supporters themselves create a circle through which they contribute to the arts organisation. This requires little work from the arts organisation. However, there is the risk that the aim of the foreign friends is different from that of the arts organisation, which can cause tension. A second strategy for an arts organisation is to set up a foreign friends organisation in one or a few specific countries. The arts organisation has to attract donors, provide them with activities and take care of the necessary administration in the foreign country. A third strategy, used mainly by superstar arts organisations and highly specialised arts organisations, is to target international donors in general and set up global friends circles at the home organisation.

Persons who give to foreign arts organisations are often older than fifty, successful, wealthy individuals who have a high level of involvement in the arts (either as a professional or out of interest) and who reside or have resided abroad, e.g. expatriates or immigrants. Typically, these persons give to multiple causes, both domestic and abroad, but with a focus on a specific discipline or type of art. Fundraisers have the impression that these donors do like to benefit from a tax incentive on their cross-border gift if it is available. This creates a challenge for fundraisers at arts organisations, as they demonstrate little knowledge on tax incentives for cross-border donations. They are aware of intermediary organisations and foreign friends organisations as solutions to facilitate their foreign benefactors with a tax incentive. The majority of the interviewees, however, is unaware of the other solutions to overcome the tax barriers to cross-border giving. Consequently, fundraisers are unable to make a well-informed decision on how to facilitate their foreign benefactors with a tax incentive on their donation. To overcome this issue, this research evaluates the existing solutions from the perspective of arts organisations.

Assessment of existing solutions

In order to grasp the perspective of arts organisations, interviews with directors and fundraisers of arts organisations were used as a starting point to evaluate the existing solutions. From these interviews factors were distilled based on which fundraisers decide which solution to use to facilitate their foreign benefactors with a tax benefit. These factors were transformed into the following assessment framework, consisting of a prerequisite and six factors to determine which solution is optimal from the perspective of arts organisations.

- *Prerequisite: Effectiveness.* The solution has to be effective in the donor's country of residence
- *Factor 1: Cost efficiency.* The higher the cost efficiency of a solution, the more optimal a solution is.
- *Factor 2: Legal certainty provided by the solution.* The optimality of a solution increases if there is legal certainty on how to obtain access to a solution and if there is legal certainty on the outcome.
- *Factor 3: Donor-friendliness of the solution.* A solution has to be donor-friendly, in that it A) does not interfere in the relationship between the arts organisation and the donor; B) it is simple for the donor; C) it is fast.

- *Factor 4: Scope of the solution.* The solution must not negatively influence domestic tax-efficient giving and must at least allow for tax-efficient cross-border giving with one foreign country, although a solution for multiple countries is preferred.
- *Factor 5: Know-how on international fundraising.* The higher the level of professionalisation of fundraising, experience and knowledge of international fundraising and its taxation, the higher the likeliness an arts organisation is willing to apply resources to a solution.
- *Factor 6: Possibilities to gain non-financial benefits.* The larger the substantive benefit the arts organisation pursues and can achieve by investing in cross-border relations, the more the arts organisations are willing to invest in a solution.

This assessment framework was applied to the existing public and private solutions that enable tax-efficient cross-border charitable giving: the unilateral solution, tax treaties, supranational agreements, a legal entity with charitable activities abroad, a foreign friends organisation and the use of an intermediary charity. The findings are summarised in the following table.

Whether the unilateral solution and supranational agreement are optimal or not largely depends on the specific requirements and procedures involved in these solutions, which is a drawback. For arts organisations that proactively engage in international fundraising in specific open or relatively open tax jurisdictions, it can pay off to investigate the unilateral solutions and supranational agreements in place. Depending on the procedures to gain access to these solutions and the type of control exercised over foreign PBOs, these solutions might be effective, cost-efficient and donor-friendly. Arts organisations that want to raise funds in countries that belong to the closed or restrictive jurisdictions can usually best rely on one of the private solutions, as public solutions will not be effective in these countries, or produce legal uncertainty. Establishing a foreign friends organisations might be worthwhile for arts organisations that want to obtain non-financial benefits.

The tax treaty is rarely an optimal solution, as the exact wording of the tax treaty highly limits its effectiveness. The same holds for the legal entity abroad with charitable activities, as this solution goes far beyond the objective of facilitating a tax incentive on a cross-border gift.

The assessment of the existing solutions revealed that the intermediary charity is the optimal solution in many contexts. It is effective, there is legal certainty on the manner in which one can obtain access to the intermediary charity and its outcome, little know-how is required and it is a donor-friendly solution. Its scope is limited, but the uniform way of working used by networks of intermediary charities eases the process of obtaining access to an intermediary charity in multiple countries. The intermediary charity does not provide for opportunities to obtain non-financial benefits, but it does not hinder international activities of arts organizations either. A fee is due when using an intermediary charity; however, this fee is perceived as reasonable by arts organisations. In fact, the results of an experiment show that donors are in fact willing to pay such a fee to ensure they receive a tax benefit. The largest advantage of the intermediary charity over the other solutions is that it provides legal certainty and requires only limited research and transaction costs, which only occur when a donation is received.

	Effectiveness	Cost efficiency	Legal certainty	Donor-friendliness	Scope	Know-how	Non-financial benefit
Unilateral solution	+/- + If foreign country is included in geographical scope of tax provision.	+/- Depends on how unilateral solution is shaped.	+/- Depends on how unilateral solution is shaped.	+ In case of up front recognition as a PBO.	- One country. -- if conflicting home & host country.	+/- Know-how on tax law is required, but this can easily be hired.	o No local presence necessary, but it is possible.
Tax treaties	+/- Effective, but wording provision might limit effectiveness.	+/- Costs for tax advice.	+ Legal certainty procedure & outcome.	+ Fast, simple & does not interfere in relation donor & charity.	- One country. -- if conflicting home & host country.	+/- Know-how on tax law is required, but this can easily be hired.	- There are no substantive benefits to using a tax treaty.
EU law	+/- But can be complicated by strict and literal comparability tests.	+/- Can be cost-efficient, as long as litigation is not required.	- Legal certainty, but litigation required.	- Time consuming, complex and might involve litigation.	+/- Requires compliance with 28 different sets of requirements.	- Specialised know-how on (EU) tax law is required.	- There are no substantive benefits to relying on EU law.
European Foundation (with-drawn)	+/- Initial proposal had the potential to be effective.	+/- Donations would have had to exceed costs legal advice and potential fee.	+/- Certainty concerning outcome, not concerning procedure.	+ Fast and clear.	+ Covers all 28 EU Member States.	+ Know-how required to obtain FE status, but this could be hired.	o No local presence necessary, but it is possible.
Legal entity abroad	+ If eligibility initial recipient is considered & PBO is allowed to spend funds abroad.	- Very costly.	+ Legal certainty procedure & outcome.	+/- Risk of competition between entity and AO.	- One country, but can be established in multiple countries.	- Legal & fundraising know-how & substance required.	+ The entity can contribute to the goals of the arts organisation.
Foreign friends organisation	+ If eligibility initial recipient is considered and PBO is allowed to spend funds abroad.	- Management foreign entity & legal advice are costly.	+ Legal certainty procedure & outcome.	+/- Fast and simple, but potential risk of damage relation.	- One country, but can be established in multiple countries.	- Legal & fundraising know-how required as well as good collaboration.	+ Strengthen network and provide opportunities for activities.
Intermediary charity	+ If eligibility initial recipient is considered & PBO is allowed to spend funds abroad.	+ A fee might be due, but this is perceived as reasonable.	+ Legal certainty procedure & outcome.	+ Fast and simple for donor.	+/- Intermediary charity networks can be extensive, simplifying the work of charity.	+ The intermediary charity provides the necessary know-how.	- There are no substantive benefits to using an intermediary charity.

Conclusion

Arts organisations can often facilitate their foreign benefactors with a tax benefit by using one of the public or private solutions. This research shows which solution is optimal in a specific cross-border situation from the perspective of arts organisations. With this research, fundraisers can make a well-informed decision on which solution to choose.

The categorisation of tax jurisdictions into ideal types offers policy makers guidelines on how to develop legislation and policy that is in line with the opinion concerning the taxation of cross-border philanthropy of their governments. Furthermore, this research makes a first effort to explore international fundraising. Further research – amongst which is quantitative research – is necessary, though, to get a better understanding of international philanthropy and its taxation.

Samenvatting

Inleiding

Schenken aan goede doelen worden in 87% van de hoge-inkomenslanden gestimuleerd met een belastingvoordeel in de inkomstenbelasting (Quick et al., 2014). In grensoverschrijdende situaties is zo'n belastingvoordeel niet vanzelfsprekend. Dit veroorzaakt een fiscale barrière op grensoverschrijdende filantropie. Er zijn verschillende oplossingen die het voor donateurs toch mogelijk maken om belastingvoordeel te behalen op hun grensoverschrijdende schenking. Doordat de informatiekosten hoog zijn, is het echter moeilijk voor culturele instellingen om de juiste oplossing te kiezen waarmee zij hun begunstigers van fiscaal voordeel kunnen voorzien. Daarom evalueert dit onderzoek vanuit het perspectief van culturele instellingen de oplossingen die het mogelijk maken om met fiscaal voordeel over de grens te geven. De centrale onderzoeksvraag luidt: *Hoe kunnen de bestaande oplossingen om internationaal fiscaal vriendelijk te geven optimaal gebruikt worden door culturele instellingen?* Juridisch doctrinair onderzoek en kwalitatief empirisch onderzoek worden gecombineerd om deze vraag te beantwoorden. Het juridisch doctrinair onderzoek dient om de bestaande oplossingen waarmee internationaal fiscaal vriendelijk gegeven kan worden in kaart te brengen. Daarnaast wordt het ingezet om de verschillende benaderingen van overheden ten aanzien van fiscaal voordeel op grensoverschrijdende giften te analyseren. Kwalitatieve case studies worden gebruikt om het perspectief van culturele instellingen en de werking van internationale fondsenwerving in beeld te brengen.

Er zijn zowel publieke als private initiatieven die grensoverschrijdend geven met fiscaal voordeel mogelijk kunnen maken. Wetgeving, belastingverdragen en jurisprudentie zijn vormen van publieke oplossingen. Individuele landen kunnen de belastingvoordelen op schenkingen openstellen voor schenkingen aan buitenlandse goede doelen in hun nationale wetgeving. Dit is een unilaterale oplossing. Een bilaterale oplossing is een overeenkomst tussen twee landen. Een voorbeeld hiervan is een belastingverdrag, waarin de verdragslanden afspreken dat zij belastingvoordeel geven op schenkingen aan goede doelen in het andere verdragsland. Overeenkomsten tussen meerdere landen zijn supranationale oplossingen. Het verdrag inzake de werking van de Europese Unie, waarin de vier fundamentele vrijheden zijn opgenomen, is zo'n supranationale overeenkomst die het voor begunstigers gevestigd in een EU lidstaat mogelijk maakt fiscaal voordeel te verkrijgen op een schenking aan een goed doel in een andere EU lidstaat. Ook het voorstel voor een verordening van de Raad betreffende het statuut van de Europese Stichting had de potentie om de fiscale barrière op grensoverschrijdend schenken aan goede doelen binnen de EU op te lossen. Dit voorstel is echter ingetrokken.

Private initiatieven kunnen worden ingezet om een grensoverschrijdende situatie te voorkomen en zo strategisch gebruik te maken van de bestaande wetgeving. Een privaat initiatief van culturele instellingen om het voor hun begunstigers mogelijk te maken fiscaal gefaciliteerd te geven, is de oprichting van een juridische entiteit met goede doelen status in het land van de schenker, via welke hij/zij kan geven aan de beoogde culturele instelling. Culturele instellingen kunnen een dergelijke juridische entiteit oprichten voor fondsenwervingsdoelinden - de zogenaamde buitenlandse vriendenvereniging. Als de culturele instelling meer activiteiten wenst te ontplooiën in het buitenland, kan het een volledige organisatie opzetten in het betreffende land. Begunstigers in dat land kunnen in beide gevallen met fiscaal voor-

deel schenken aan de culturele instelling. Begunstigers doen hun bijdrage aan de entiteit in het eigen land en krijgen zodoende belastingvoordeel op hun binnenlandse gift. De entiteit in het land van de begunstiger maakt de bijdrage over aan de beoogde buitenlandse culturele instelling. Ook begunstigers kunnen het initiatief nemen om een entiteit met goede doelenstatus op te richten. Door te schenken aan deze organisatie krijgt de schenker een belastingvoordeel. Het goede doel maakt de bijdrage over aan het buitenlands goed doel. Een andere oplossing is om gebruik te maken van een zogenaamd 'intermediair goed doel'. Dit zijn goede doelen die het faciliteren van internationale schenkingen als dienst aanbieden. De begunstiger schenkt aan het intermediaire goede doel in het eigen land en kan zodoende gebruik maken van een belastingvoordeel. Het intermediaire goede doel maakt de bijdrage over aan het beoogde buitenlandse goede doel.

Welke oplossing het meest passend is om internationaal te geven met belastingvoordeel hangt af van de belastingwetgeving in het land van de begunstiger en welke private en publieke oplossingen aanwezig zijn in het desbetreffende land. Sommige landen geven belastingvoordeel op schenkingen aan buitenlandse goede doelen, terwijl andere landen alleen belastingvoordeel geven op schenkingen aan goede doelen in het eigen land. Om de verschillende benaderingen van landen in kaart te brengen en om uitspraken te kunnen doen over meerdere landen, heb ik de verschillende belastingjurisdicties opgedeeld in vier ideaaltypen die het spectrum aan verschillende benaderingen samenvatten. De verschillen tussen de ideaaltypen zijn gelegen in de mate waarin landen fiscaal voordeel op grensoverschrijdende donaties toestaan. Het eerste ideaaltype is de gesloten belastingjurisdictie. In deze landen is er een fiscaal voordeel voor schenkingen aan goede doelen in het binnenland, maar dit is (nagenoeg) niet van toepassing op schenken aan buitenlandse goede doelen. Voorbeelden van dergelijke landen zijn Australië, Hongarije en Japan. In beperkende belastingjurisdicties, het tweede ideaaltype, kunnen schenkers fiscaal voordeel behalen op schenkingen aan goede doelen in een beperkt aantal buitenlanden (minder dan tien), via belastingverdragen en supranationale overeenkomsten. In de praktijk blijkt het echter zeer moeilijk om in deze beperkende belastingjurisdicties fiscaal voordeel te krijgen op een schenking aan een goed doel in het buitenland. België, Spanje, het Verenigd Koninkrijk en de Verenigde Staten van Amerika behoren tot dit ideaal type. Het derde ideaal type is de relatief open belastingjurisdictie, waar Frankrijk en Duitsland voorbeelden van zijn. In deze landen kunnen schenkers een fiscaal voordeel behalen op grensoverschrijdende schenkingen aan goede doelen in meer dan tien landen. Dit kan met name op basis van supranationale overeenkomsten, belastingverdragen en private oplossingen. Landen die behoren tot het vierde ideaaltype, de open belastingjurisdictie, discrimineren niet tussen binnenlandse en grensoverschrijdende schenkingen naar ten minste twintig andere landen. Voorbeelden zijn Barbados, Nederland en Luxemburg.

Een verkenning van internationale fondsenwerving en de optimale oplossing voor fiscaal gefaciliteerd grensoverschrijdend geven

Om te bepalen welke oplossing vanuit het perspectief van culturele instellingen optimaal is om fiscaal gefaciliteerd te geven in een specifieke grensoverschrijdende combineert dit onderzoek juridisch doctrinair onderzoek met kwalitatief empirisch onderzoek. Het kwalitatieve onderzoek vond plaats onder culturele instellingen. 36 case studies zijn gemaakt, bestaande uit document analyses van jaarrapporten, websites en media berichten over deze culturele instellingen. Daarnaast werden semigestructureerde interviews gehouden met medewerkers verantwoordelijk voor internationale fondsenwerving binnen deze culturele instellingen. De culturele instellingen zijn geselecteerd op basis van doelgerichte sampling, zodat organisaties die ervaring hebben met de verschillende oplossingen en met grensoverschrijdende schenkingen uit landen behorende tot alle vier de ideaaltypen aan bod komen in het onderzoek. In aanvulling hierop zijn semigestructureerde interviews afgenomen met experts in het veld, waaronder belastingadviseurs, filantropie-adviseurs en twee begunstigers.

De verkenning van internationale filantropie op basis van deze documentanalyses en interviews verschaft inzicht in de praktijk van de internationale fondsenwerving. Het merendeel van de culturele instellingen doet niet aan actieve internationale fondsenwerving. Het heeft voor hen geen prioriteit en ze beschikken niet over voldoende personeel. Toch ontvangt een aantal van deze organisaties spontane giften uit het buitenland. Culturele instellingen gaan actief in het buitenland fondsen werven omdat zij hun inkomen uit het binnenland zien dalen, bijvoorbeeld vanwege subsidieverlagingen en economische neergang, en omdat ze ambitieuze plannen hebben waarvoor de binnenlandse financiering niet toereikend is. In uitzonderlijke gevallen is het een begunstiger die de culturele instelling stimuleert om in het buitenland fondsen te werven, door te eisen dat de culturele instelling zijn schenking matcht met middelen uit het buitenland.

Culturele instellingen die fondsen werven in het buitenland, gebruiken doorgaans een van de drie volgende strategieën. Een eerste strategie is om grassroots initiatieven van buitenlandse begunstigers te omarmen. De culturele instelling voorziet de buitenlandse begunstigers die een vriendenkring willen oprichten van de nodige input. De buitenlandse begunstigers zetten de vriendenkring zelf op. Dit vereist weinig werk van de culturele instelling, maar er is het risico dat het doel van de buitenlandse steungroep anders is dan die van de culturele instelling. Dit kan spanning veroorzaken. Een tweede strategie die culturele instellingen gebruiken is het oprichten van een buitenlandse vriendenvereniging in één of enkele specifieke landen. De culturele instelling trekt begunstigers aan, organiseert activiteiten voor hen en neemt de noodzakelijke administratieve lasten in het specifieke buitenland voor haar rekening. Een derde strategie die met name superstar culturele instellingen en sterk gespecialiseerde culturele instellingen gebruiken is het aanspreken van internationale begunstigers in het algemeen door een internationale vriendencirkel in te richten bij de culturele instelling zelf.

Uit het empirisch onderzoek komt ook naar voren dat mensen die aan culturele instellingen in het buitenland geven doorgaans ouder dan vijftig jaar succesvol, welvarend en nauw betrokken bij kunst en cultuur (als professional of uit interesse) in een ander land dan hun land van origine wonen of hebben gewoond. Het zijn bijvoorbeeld expats of immigranten. Doorgaans geven deze mensen aan verschillende goede doelen, zowel in het binnen- als in

het buitenland. Ze richten zich hierbij vaak op een specifieke kunstdiscipline of kunststroming. Fondsenwerfers hebben de indruk dat deze begunstigers, indien mogelijk, graag gebruik willen maken van fiscaal voordeel op hun schenking aan het buitenland. Dit zorgt voor een uitdaging voor fondsenwerfers, aangezien zij weinig kennis op het gebied van fiscale faciliteiten in internationale situaties lijken te hebben. Ze zijn bekend met het intermediaire goede doel en de buitenlandse vriendenvereniging als oplossingen om hun buitenlandse begunstigers van een fiscale faciliteit te voorzien. Het merendeel van de geïnterviewden is echter niet bekend met de andere oplossingen waarmee de fiscale barrières op internationale filantropie ook overwonnen kunnen worden. Hierdoor zijn fondsenwerfers niet in staat een weloverwogen en goed geïnformeerde beslissing te nemen over hoe ze hun buitenlandse begunstigers van een fiscale faciliteit kunnen voorzien. Om dit te verhelpen evalueert dit onderzoek de bestaande oplossingen vanuit het perspectief van de culturele instellingen.

Toetsing van de bestaande oplossingen

Om een helder beeld te krijgen van het perspectief van de culturele instellingen zijn interviews afgenomen met directeuren en fondsenwerfers van culturele instellingen. Uit deze interviews zijn factoren gedistilleerd die volgens fondsenwerfers van belang zijn voor een oplossing om belastingvoordeel op grensoverschrijdende giften mogelijk te maken. Deze factoren zijn omgevormd tot het volgende toetsingskader, bestaande uit een voorwaarde en zes factoren op basis waarvan culturele instellingen bepalen welke oplossing optimaal is.

- *Voorwaarde: Effectiviteit.* De oplossing moet effectief zijn in het woonland van de begunstiger.
- *Factor 1: Kostenefficiëntie.* Hoe hoger de kostenefficiëntie van een oplossing, hoe optimaler een oplossing is.
- *Factor 2: Geboden rechtszekerheid.* Hoe groter de rechtszekerheid betreffende de manier waarop toegang verkregen kan worden tot een oplossing en de uitkomst van een oplossing, des te optimaler is een oplossing.
- *Factor 3: Donateur-vriendelijkheid van een oplossing.* Een oplossing dient donateur-vriendelijk te zijn, in dat het A) de relatie tussen de culturele instelling en de begunstiger niet verstoort; B) het eenvoudig is voor de begunstiger; C) het weinig tijd kost.
- *Factor 4: Reikwijdte van de oplossing.* De oplossing mag niet nadelig zijn voor de fiscale faciliteit bij binnenlandse schenkingen en moet minimaal fiscaal voordeel bieden voor schenkingen uit een ander land, hoewel de voorkeur uitgaat naar een oplossing voor meerdere landen.
- *Factor 5: Kennis van internationale fondsenwerving.* Hoe professioneler de fondsenwerving en hoe groter de ervaring en kennis van internationale fondsenwerving en de bijbehorende fiscale effecten, hoe meer middelen een culturele instelling beschikbaar wil maken om een oplossing toe te passen.
- *Factor 6: Mogelijkheden om niet financiële voordelen te verwerven.* Des te meer inhoudelijke voordelen een culturele instelling nastreeft en kan bereiken door te investeren in internationale relaties, des te meer de culturele instelling wil investeren in een oplossing.

Dit toetsingskader is toegepast op de bestaande publieke en private oplossingen die fiscaal gefaciliteerd grensoverschrijdend schenken mogelijk maken: de unilaterale oplossing, belastingverdragen, supranationale overeenkomsten, de buitenlandse entiteit met charitatieve activiteiten, de buitenlandse vriendenvereniging en het intermediair goede doel. De bevindingen zijn opgesomd in de volgende tabel.

	Effectiviteit	Kostenefficiëntie	Rechtszekerheid	Donateur vriendelijkheid	Rijkwiedte	Kennis	Niet financiële voordelen
Unilaterale oplossing	+/- + Als het land van de begunstiger is opgenomen in de reikwijdte van de belastingbepaling.	+/- Hangt af van de wijze waarop de unilaterale oplossing is vormgegeven.	+/- Hangt af van de manier waarop de unilaterale oplossing is vormgegeven.	+	- Één land. -- als eisen woonland begunstiger & land goed doel conflicterend zijn.	+/- Kennis van het belastingrecht is noodzakelijk, maar kan eenvoudig worden ingehoord.	o Geen lokale aanwezigheid vereist, maar staat het niet in de weg.
Belasting verdragen	+/- Effectief, maar exacte bewoording kan effectiviteit bepaling in de weg staan.	+/- Kosten voor fiscaal advies.	+	+	-	+/-	-
EU recht	+/- kan ingewikkeld zijn vanwege strenge vereisten aan vergelijkbaarheid.	+/- Kan kostenefficiënt zijn, zolang procederen niet nodig is.	-	-	+/-	-	-
Europese Stichting (ingetrokken)	+/- Initiële voorstel had de potentie effectief te zijn.	+/- Schenkeningen hadden hoger moeten zijn dan de kosten voor juridisch advies en de mogelijke fee.	+/- Zekerheid betreffende de uitkomst, niet betreffende de procedure.	+	+	+	o
Juridische entiteit in het buitenland	+	-	+	+/-	-	-	+
Buitenlandse vriendenvereniging	+	-	+	+/-	-	-	+
Intermediair goed doel	+	+	+	+	+/-	+	-

Een nadeel van de unilaterale oplossing en de supranationale overeenkomst is dat de mate waarin zij optimaal zijn grotendeels afhangt van de manier waarop specifieke vereisten en procedures zijn vormgegeven. Voor culturele instellingen die actief fondsen werven in een bepaalde open of relatief open belastingjurisdictie kan het interessant zijn om na te gaan of er een unilaterale oplossing of een supranationale overeenkomst van toepassing is. Afhankelijk van de procedure om toegang te krijgen tot deze oplossing en het type controle dat wordt uitgeoefend over het buitenlandse goede doel kunnen deze oplossingen effectief, kosten efficiënt en donateurvriendelijk zijn. Culturele instellingen die fondsen willen werven in landen die behoren tot de beperkende en restrictieve belastingjurisdicties, kunnen doorgaans het beste gebruik maken van private oplossingen, aangezien publieke oplossingen hier niet effectief zullen zijn of de procedures om toegang te krijgen omgeven zijn met juridische onzekerheid. Een buitenlandse vriendenvereniging oprichten kan zinvol zijn voor culturele instellingen die naast extra inkomsten ook niet financiële voordelen willen behalen.

Belastingverdragen zijn zelden een optimale oplossing, aangezien de bewoording van de verdragen de effectiviteit vaak sterk beperkt wordt. Ook de juridische entiteit met activiteiten in het buitenland is zelden optimaal als oplossing, aangezien deze verder gaat dan de doelstelling om fiscaal voordeel te behalen op een grensoverschrijdende gift.

De toetsing van de bestaande oplossingen laat zien dat het intermediaire goede doel de optimale oplossing is in veel situaties. Het is effectief, biedt rechtszekerheid, er is weinig kennis vereist en het is een donateurvriendelijke oplossing. De reikwijdte van het intermediaire goede doel is beperkt, maar de uniforme manier waarop gewerkt wordt binnen netwerken van intermediaire goede doelen zorgt ervoor dat het proces van toegang krijgen tot de oplossing wordt vereenvoudigd. Het intermediaire goede doel heeft geen eigenschappen die het mogelijk maken om niet financiële voordelen te behalen, maar het staat het ook niet in de weg. De culturele instellingen vinden de fee die gevraagd wordt door intermediaire goede doelen redelijk. De uitkomsten van een experiment laten zelfs zien dat donateurs bereid zijn deze fee voor hun rekening te nemen indien het hun fiscaal voordeel veilig stelt. Het grootste voordeel van het intermediaire goede doel in vergelijking met andere oplossingen is dat het juridische zekerheid biedt en slechts beperkte onderzoeks- en transactiekosten met zich brengt en dat deze kosten enkel in rekening worden gebracht wanneer een schenking wordt ontvangen.

Conclusie

In veel grensoverschrijdende situaties kunnen culturele instellingen hun buitenlandse begunstigers voorzien van fiscaal voordeel door gebruik te maken van een van de private of publieke oplossingen. Dit onderzoek laat zien welke oplossing culturele instellingen het beste kunnen gebruiken om hun buitenlandse begunstigers -afhankelijk van het land waar de begunstiger belastingplichtig is - te voorzien van een fiscale faciliteit. Zo kunnen fondsenwerfers een goed geïnformeerde beslissing nemen wanneer zij een oplossing kiezen. Voor beleidsmakers biedt de categorisatie van de landen in ideaaltypen aanknopingspunten om het in hun land heersende standpunt ten aanzien van fiscaal voordeel op grensoverschrijdende schenkingen te vertalen naar passend beleid en wetgeving. Daarnaast brengt dit onderzoek de huidige stand van zaken ten aanzien van internationale filantropie in kaart. Om meer inzicht te krijgen in grensoverschrijdende filantropie is aanvullend onderzoek wenselijk, bijvoorbeeld onderzoek naar de kwantitatieve data achter internationale filantropie.

Appendix 1: Interview guide arts organisations

(After information about the interview procedure, anonymity of the interviews and room for questions)

1. Personal details

- What is your function and what are your responsibilities within the arts organisation?
- What is the structure of your department/the larger organisation?

2. Sources of income

- What are the main sources of income for the organisation?
- What is the importance of private donations and how do you attract them?
- What are the motivations of donors to give to your organisation?
- How important are tax incentives?

3. Raising funds from abroad

- What is your opinion on raising funds abroad?
- What is your experience with international fundraising and in which countries?
- What is the size of the annual donations you receive from abroad?
- What are the motivations of foreign donors to give to your organisation?
- How do you characterise the foreign donors: M/F; age; occupation; involvement in the arts?
- How was the process of attracting foreign donations?
- How important are tax incentives for foreign donors?
- Where do you gather information on tax incentives for cross-border donations?
- What would make it easier for you to attract foreign donations?
- Can you distinguish any trends over time when it comes to cross-border donations?

4. Cross-border private donations

- Could you tell me about the last few private donations you received from abroad?
Where did they come from? What sum was involved?
Did the donor use a tax incentive?
- Which solution was used to obtain a tax benefit?
- How did the donation and obtaining a tax benefit proceed?
- Were there any differences in the procedure, depending on the different donor's countries?

5. Solutions to tax effective cross-border charitable giving

- Which solutions do you know that can facilitate a tax benefit on a cross-border gift?
- With which solutions do you have experience?
- Based on which criteria did you choose to use this solution?
- Do you communicate with the donor about the solution?
- Are you willing to pay for the services of intermediary charities?

(For interviewees who are not familiar with (some of) the solutions: see vignette)

6. Concluding the interview

(Inquiring for relevant documents, asking whether they know other arts organisations who receive gifts from abroad, thanking the interviewee)

Appendix 2: Overview of interviewees

Experts

	Location	Interviewee
	NL	Tax expert 1
	NL	Tax expert 2
	NL	Tax expert 3
	NL	Tax expert 4
	NL	Accountant 1
	NL	Tax expert 5
	NL	Tax expert 6
	NL	Tax expert 7
	NL	Tax expert 8
	NL	Tax expert 9
	NL	Tax expert 10
	NL	Philanthropy advisor 1
	NL/UK	Philanthropy advisor 2
	NL	Philanthropy advisor 3
	BE	Philanthropy advisor 4
	NL	Philanthropy advisor 5
	NL	Philanthropy advisor 6
	US	Philanthropy advisor 7
	NL	Expert 1
	NL	Expert 2
	NL	Expert 3
	NL	Expert 4
	BE	Expert 5

Patrons

	Location	Interviewee
	NL	Patron 1
	NL	Patron 2

Arts organisations

#	Location	Interviewee	Discipline	Type	Size	FFO*	EA**
1	NL	Fundraiser 1	Cultural heritage	Fixed location	Medium		
2	NL	Fundraiser 2	Performing art	Company	Small		
3	NL	Fundraiser 3	Fine arts	Fixed location	Medium		
4	NL	Director 4	Fine arts	Fixed location	Small		
5	NL	Fundraiser 5	Performing art	Festival	Medium		
6	NL	Director 6	Cultural heritage	Fixed location	Medium	V	
6	NL	Fundraiser 6	Cultural heritage	Fixed location	Medium	V	
7	NL	Fundraiser 7	Performing art	Company	Major	V	
8	NL	Fundraiser 8	Fine arts	Fixed location	Medium	V	
9	NL	Fundraiser 9	Performing art	Company	Superstar		
10	NL	Fundraiser 10A	Fine arts	Fixed location	Superstar		
10	NL	Fundraiser 10B	Fine arts	Fixed location	Superstar		
11	NL	Fundraiser 11	Cultural heritage	Fixed location	Small		
12	NL	Fundraiser 12	Performing art	Company	Medium		
13	NL	Fundraiser 13	Fine arts	Fixed location	Superstar		
14	NL	Director 14	Fine arts	Fixed location	Small		
15	NL	Fundraiser 15	Performing art	Company	Medium	V	
16	NL	Director 16	Fine arts	Network organisation	Small		
17	NL	Director 17	Cultural heritage	Network organisation	Small		
18	BE	Fundraiser 18A	Fine arts	Fixed location	Major		
18	BE	Fundraiser 18B	Fine arts	Fixed location	Major		
18	BE	In-house lawyer 18	Fine arts	Fixed location	Major		
19	CH	Fundraiser 19	Fine arts	Fixed location	Small	V	
20	IT	Fundraiser 20A	Cultural heritage	Network organisation	Major	V	
20	IT	Fundraiser 20B	Cultural heritage	Network organisation	Major	V	
20	IT	Fundraiser 20C	Cultural heritage	Network organisation	Major	V	
21	DE	Fundraiser 21	Fine arts	Festival	Major		
22	FR	Fundraiser 22A	Fine arts	Fixed location	Superstar	V	
22	FR	Fundraiser 22B	Fine arts	Fixed location	Superstar	V	
23	BE	Director 23	Fine arts	Fixed location	Medium		
24	DK	fundraiser 24	Fine arts	Fixed location	Medium	V	
25	UK	fundraiser 25	Fine arts	Fixed location	Superstar	V	
26	BE	Director 26	Cultural heritage	Fixed location	Small		
27	AT	Fundraiser 27	Performing art	Festival	Superstar	V	
28	US	Fundraiser 28	Performing art	Fixed location	Superstar		
29	BE	Director 29	Fine arts	Fixed location	Small		
30	FR	Fundraiser 30	Fine arts	Fixed location	Major	V	
31	US	Fundraiser 31	Cultural heritage	Network organisation	Medium		V
32	US	Fundraiser 32A	Fine arts	Fixed location	Superstar		
32	US	Fundraiser 32B	Fine arts	Fixed location	Superstar		
32	US	In-house lawyer 32	Fine arts	Fixed location	Superstar		
33	US	Fundraiser 33	Fine arts	Fixed location	Medium		
33	US	Inhouse accountant 33	Fine arts	Fixed location	Medium		
34	US	Fundraiser 34A	Fine arts	Fixed location	Superstar		
34	US	Fundraiser 34B	Fine arts	Fixed location	Superstar		
35	FR	Fundraiser 35	Performing art	Festival	Major		
36	US	Fundraiser 36	Fine arts	Fixed location	Superstar		V

* Foreign friends organisation

**Legal entity abroad with charitable activities

Appendix 3: Vignette

The following situation occurs:

You receive an e-mail from a potential benefactor who would like to give EUR 5,000 to your organisation. The condition, however, is that he can take the gift into account when filing his tax return, in order to get a tax benefit. The benefactor resides and pays taxes abroad.

You consult your tax advisor and he informs you that you have the following options:

a) You can set up a friends circle for your charity in the country where the benefactor pays his taxes. This support organisation has to apply for a public benefit status in the country of the benefactor, so that he can enjoy the tax benefit.

To achieve this, the foreign friends circle should be an independent legal entity, with its own board who decides on the spending of the gift. The foreign friends circle also needs its own postal address (this cannot be a PO Box) and a contact person in the country where it is established. Furthermore, an annual report has to be made, including the financial results of the foreign friends circle. Obviously, there are various costs attached to this process of setting up a foreign friends circle.

b) You can register your organisation as a charity with the tax authorities in the country where your benefactor pays its taxes. For your organisation to register at the foreign tax authorities, it has to meet the requirements in the benefactor's country. You have to consult a tax advisor in the benefactor's country to check whether your charity meets the requirements. To register you must fill out several forms with the core data of your organisation. In addition, your organisation's articles of association have to be translated into English. Obviously, there are also various costs attached to this process of registering at foreign tax authorities.

c) You can use a tax treaty, provided that your organisation meets the charity requirements in your benefactor's country. You have to consult a tax advisor in the benefactor's country to check whether your charity meets the requirements.

d) You can advise your foreign benefactor to appeal to the fundamental freedoms and non-discrimination principle in the European Union, provided that your organisation meets the requirements of a charitable organisation in the benefactor's country. You have to consult a tax advisor in the benefactor's country to check whether your charity meets the requirements. Your benefactor might run the risk that he has to go to court to get his rights. Possibly, the case has to be brought to the European Court of Justice, which is time consuming and costly.

e) You can turn to an intermediary charity in the benefactor's country to accept the donation on behalf of your organisation. To receive the gift, you have to submit a concise project application at the intermediary charity, after which they transfer the money to your organisation. You pay a fee of 5% of the gift for gifts up to EUR 50,000. When the gift is larger than EUR 50,000, you pay a 1% fee. The fee shall in no case be more than EUR 6,500.

What would you do?

Portfolio

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List of publications

Academic publications

- Buijze, R., C. Engel & S.J.C. Hemels (2017). Insuring Your Donation: an Experiment. *Journal of Empirical Legal Studies*, 14 (4).
- Buijze, R. (2017). Tax Incentives Crossing Borders. Considering the example of tax incentives for charitable giving. In S.J.C. Hemels & K. Goto (Eds.), *Tax Incentives for the Creative Industries (Creative Economy)* (pp. 85-103). Singapore: Springer, 85 - 103
- Buijze, R. (2017). *Charitable Fundraising for the Arts in an Era of Globalization: International Tax Barriers for Arts Organizations*, (PhD Thesis).
- Buijze, R. (2016). The Categorisation of Tax Jurisdictions in Comparative Tax Law Research. *Erasmus Law Review*, (4), 189-198.
- Buijze, R. (2016). Approaches towards the Application of Tax Incentives for Cross-Border Philanthropy. *Intertax*, 44 (1), 14-28.

Professional publications

- Buijze, R. (2017). Schenk aan een erfgoedinstelling (en doe uw voordeel). *Faro: Tijdschrift over cultureel erfgoed*, 10 (2), 30-35.
- Buijze, R. *VOoruit met de Kunst! Stand van zaken ten aanzien van kunst- en cultuur-educatie in het voortgezet onderwijs in Delft*. Delft: De VAK.

Grants

2017 Gilles Hondius Foundation

Grant to organize the seminar Tax incentives for the Creative Industries at Erasmus University Rotterdam.

2017 Erasmus Trustfonds

Grant to organize the seminar Tax incentives for the Creative Industries at Erasmus University Rotterdam.

2014 Association of Cultural Economics International

Grant to present at the 18th Conference on Cultural Economics International in Montreal, Canada.

2014 Erasmus Trustfonds

Grant to present at the 18th Conference on Cultural Economics International in Montreal, Canada.

2014 Erasmus Frontier Research, granted by the Erasmus School of Law Board of Research

Grant to conduct an interdisciplinary research combining Tax Law and Behavioral Economics in a lab experiment on the willingness to insure charitable donations. Together with Prof. dr. S.J.C. Hemels and Prof. dr. C. Engel.

2014 European Fiscal Studies, the Netherlands

Grant to present at the conference of the Arts Philanthropy Network at the Copenhagen Business School, Denmark.

2014 Tuborgfondet, Denmark

Grant to present at the mini conference of the Arts Philanthropy Network in Copenhagen, Denmark.

Conferences and academic meetings during the PhD project

- Buijze, R. (2017). Strategies in International Fundraising for the Arts. Conference of the European Research Network On Philanthropy. Copenhagen Business School, Copenhagen, Denmark (2017, July 13).
- Buijze, R. (2017). Assessing solutions to give across borders with a tax benefit. Day of Arts Philanthropy, Utrecht University, Utrecht (2017, January 19).
- Buijze, R., Engel, C., Hemels, S.J.C., (2016). Insuring your donation: an experiment. 11th Annual Conference on Empirical Legal Studies, Duke Law School, Durham, US (2016, November 19).
- Buijze, R. (2016). Assessment of solutions for tax efficient cross-border giving from the perspective of arts organizations. Departmental Research Meeting Arts and Culture Studies, Verhalenhuis Belvedere, Rotterdam (2016, October 31).
- Buijze, R. & Engel, C. (2016). Insuring your Donation. Seminar Experiments at the Crossroads of Law and Economics, Tinbergen Institute, Rotterdam, (2016, July 08).
- Buijze, R. (2015). Overcoming tax barriers to cross-border charitable fundraising for the arts. Hilversum, Cultural Economics Seminar (2015, January 29).
- Buijze, R. (2015). Approaches towards the application of tax incentives for cross-border philanthropy. Conference of the European Research Network On Philanthropy, ESSEC Business School, Paris, France (2015, July 9).
- Buijze, R. (2015). Tax barriers to cross-border charitable fundraising for the arts. Lunch Lecture Erasmus Graduate School of Law, Rotterdam (2015, February 25).
- Buijze, R. (2015). Charitable Fundraising for the Arts in the Era of Globalization: International Tax Barriers for Arts Organizations. Nieuwjaarsreceptie Erasmus School of Law: Rotterdam (2015, januari 14).
- Buijze, R. & Hemels, S.J.C. (2014) Cross border charitable giving: tax barriers and how to overcome those barriers. International Research Network of Arts Philanthropy Mini-Conference, Copenhagen Business School, the CBS Center for Civil Society Studies, Copenhagen, Denmark (2014, October 24).
- Buijze, R. (2014) Tax incentives as a measure to support the arts in a globalizing world. International Conference on Cultural Policy Research, Hildesheim, Germany (2014, September 10).
- Buijze, R. (2014). Young Researcher's Workshop. International Conference of the Association of Cultural Economics International, Université du Québec à Montréal, Montreal, Canada (2014, July 24).
- Buijze, R. (2014). Tax incentives as a measure to support the arts in a globalizing world. International Conference of the Association of Cultural Economics International, Université du Québec à Montréal, Montreal, Canada (2014, July 25 - 2014, July 27).
- Buijze, R. (2014). Charitable Fundraising for the Arts in the Era of Globalization. European Association of Tax Law Professors Conference: Istanbul, Turkey (2014, May 29 - 2014, May 31).
- Buijze, R. & Engel, C (2014). Insuring your Donation. Max Planck Institute for Research on Collective Goods, Seminar Bonn, Germany, (2014, May 05).
- Buijze, R. (2014). Charitable Fundraising for the Arts in the Era of Globalization. Lunch Lecture Erasmus School of Law, Rotterdam, (2014, April 09).

Courses taught during the PhD project

Fiscaal Confrontatievak

MA course Tax Law, 2013/2014, 2014/2015, 2015/2016 tutorial groups and guest lecture.

Research Workshop Cultural Management

BA course Cultural Studies, 2014, guest lecture.

Supervision BA theses Tax Law

In 2014 and 2016.

Courses followed during the PhD project

Erasmus Graduate School of Law, Educational Programme 2012/2013

- Academic Writing in English (5 ects)
- Research Lab (10 ects)
- Collaboration with your Supervisor (0 ects)
- Introduction to Legal Methods (5 ects)
- Reflection on Social Science Research (5 ects)
- Writing Clinic 1 (2,5 ects)
- Writing Clinic 2 (2,5 ects)
- Gift-, Inheritance, Property tax & estate planning (9 ects)
- Seminar Cultural Economics (1 ects)

Other courses 2013-2017

- Module basisdidactiek – Risbo, Erasmus University Rotterdam (May – June 2017).
- ATLAS.ti for beginners – Evers Research & Training (May 2015).
- Doctoral Meeting for Students of International Tax Law - International Bureau of Fiscal Documentation, Amsterdam (2014, May 21-22).
- International Summer School on Value of Culture: on the Relationship between Economics, Culture and the Arts - CREARE (August 2013).
- International Tax Law (5 ects) – Master course Erasmus School of Law, Erasmus University Rotterdam (2013/2014).

Qualifications

2012-2013	Erasmus University Rotterdam <i>Erasmus Graduate School of Law</i>
2009 – 2010	Erasmus University Rotterdam <i>MA Cultural Economics & Cultural Entrepreneurship.</i>
2010	Chinese University of Hong Kong <i>Exchange program</i>
2007 – 2009	Erasmus University Rotterdam <i>BA Cultural Studies</i>
2003 – 2007	Fontys Academy of Fine Arts and Design, Tilburg <i>BA in fine arts teaching</i>

Professional experience

(Only relevant history is included)

- May – June 2017 Flemish Art Collection, Ghent –
International Fundraising Consultant
- Oct. 2012 – present Department of Tax Law, Erasmus University Rotterdam -
PhD Candidate / Researcher
- Dec. 2010 – Oct. 2012 B&D Funding, Rotterdam -
Fundraising consultant for arts organizations
- Aug. 2008 – Jan. 2009 De VAK, centre for the Arts, Delft - Policy Research

Extracurricular activities

(Only most relevant activities are included)

- 2017 Seminar Tax Incentives for the Creative Industries, Erasmus University
Rotterdam - Organizer together with Prof. S.J.C. Hemels and Dr. D. Molenaar
- 2017 – present Center for Global Generosity - Research Associate
- 2016 - present Transnational Giving Europe & European Foundation Centre -
Member advisory committee on EU philanthropy
- 2013 – present Museum Boijmans van Beuningen - Member Boijmans Genootschap
- 2013 – 2014 PILAR, PHD in Law Association Rotterdam - Chairperson

Outreach activities

(Only most relevant activities are included)

- 12 October 2017 Tax Facilities for the Creative Industry. Seminar organization and
presentation. Erasmus University Rotterdam.
- 20 October 2016 Presentation on International Fundraising as complementary source
of income. Flemish Art Collection and Cabinet of Flemish minister of
Culture, Gent, Belgium.
- 26-28 August 2016 Reporter and panel member in the plenary closing session Next
Generation on Philanthropy – 27th European Foundation Centre
Annual General Assembly & Conference, Amsterdam.
- 14 April 2016 Practical challenges for charities when trying to facilitate their foreign
donors with a tax benefit in personal income tax. Contribution at the
roundtable on taxation of cross-border philanthropy in Europe -
Advisory Committee EFC/TGE cross-border philanthropy.
Brussels, Belgium.
- 7 November 2013 Cross-border charitable giving. Presentation for the development
department of Museum Boijmans van Beuningen and members of the
Boijmans Genootschap.
Museum Boijmans Van Beuningen, Rotterdam.

Curriculum Vitae



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Renate Buijze (1986) holds a Master's degree in Cultural Economics and Cultural Entrepreneurship from Erasmus University Rotterdam. During her Master's programme, she also studied half a year at the Chinese University of Hong Kong. She obtained Bachelor's degrees in Cultural Studies from Erasmus University Rotterdam and in Fine Arts Teaching from Fontys Academy of Fine Arts and Design in Tilburg.

During her studies, Renate gained her first experience as a researcher. For *De VAK, centre for the arts*, she conducted qualitative research on the collaboration between secondary schools and arts organisations in the municipality of Delft. After graduating, she worked as a fundraising consultant for arts organisations at B&D Funding. In line with her ambition to gain more in-depth knowledge on philanthropy for the arts, Renate successfully applied for the position of PhD Candidate for the theme 'Charitable fundraising in the era of globalisation: International aspects of tax incentives for the public benefit' under supervision of Professor Sigrid Hemels, of which this dissertation is the outcome. Renate has published various articles in international peer-reviewed journals, professional journals and book chapters on the same topic. During her PhD trajectory, Renate also worked on an experimental economics research project on insuring charitable donations, together with Professor Christoph Engel (Max Planck Institute for Research on Collective Goods, Bonn) and Professor Sigrid Hemels. She taught graduate students in Tax Law about social science methods in the course *Fiscaal Confrontatievak* in the academic years of 2013/2014 to 2015/2016 and was thesis supervisor of undergraduate students in tax law. Furthermore, she gave guest lectures on fiscal facilities for the arts, amongst others in the Bachelor in Cultural Studies and in 2013/2014 she served as a chairperson for the PhD in Law Association Rotterdam. Renate is a research associate at the Center for Global Generosity.

Alongside her work in academia, Renate remained connected with practice, amongst others through a consultancy assignment for the Flemish Art Collection and as a member of the advisory committee on taxation of philanthropy in the EU of Transnational Giving Europe and European Foundation Centre and as a member of the *Boijmans Genootschap*, a committee that advises Museum Boijmans van Beuningen on legal and fundraising matters.