

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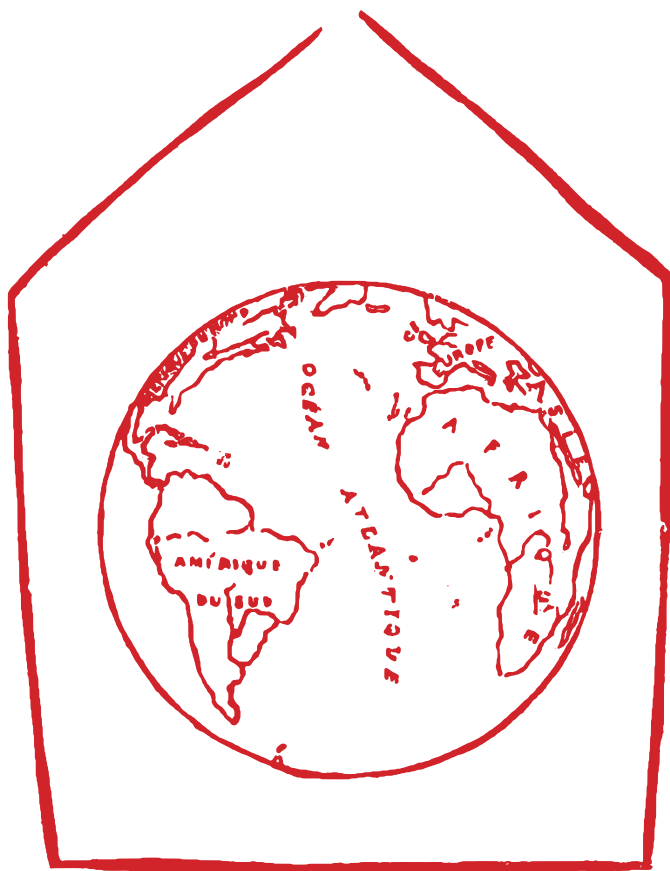
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*Quaevis terra patria.
[Any land at all is my home]*

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CASA para el Mundo

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

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 likelihood 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 organisation 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 organisations 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.	+	- 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.	+	+	- 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.	+	+	+	o
				Fast and clear.	Covers all 28 EU Member States.	Know-how required to obtain FE status, but this could be hired.	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-mediary 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 fondsenwervingsdoeleinden - 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 buitenlandse landen (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 combinatie 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. Fondsenwervers 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 fondsenwervers, 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 fondsenwervers 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 fondsenwervers van culturele instellingen. Uit deze interviews zijn factoren gedistilleerd die volgens fondsenwervers 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	Rijkswide	Kennis	Niet financiële voordelen
Unilat-erale 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 ingehuurd.	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.	+	+	- Één land. -- als eisen woonland begunstiger & land goed doel conflicterend zijn.	+/- Kennis van het belastingrecht is noodzakelijk, maar kan eenvoudig worden ingehuurd.	- Geen additionele voordelen te behalen.
EU recht	+/- kan ingewikkeld zijn vanwege strenge vereisten aan vergelijkbaarheid.	+/- Kan kostenefficiënt zijn, zolang procederen niet nodig is.	-	-	+/- Vergt naleving van 28 verschillende wetgevingen.	- Gespecialiseerde kennis van het (EU) belastingrecht is noodzakelijk.	- Geen additionele voordelen te behalen.
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 Geen lokale aanwezigheid vereist, maar staat het niet in de weg.
Juridische entiteit in het buitenland	+	-	+	+/-	-	-	+
	Als initiële ontvanger in aanmerking komt voor fiscaal voordeel en het goede doel de bijdrage mag uitgeven in het buitenland.	Kostbaar.	Zekerheid betreffende de uitkomst en procedure.	Risico dat er competitie ontstaat tussen binnenlandse en buitenlandse culturele instelling.	Dekt slechts één land, maar kan opgericht worden in meerdere landen.	Juridische kennis, kennis over fondsenwerving en inhoudelijke kennis vereist.	De entiteit kan bijdragen aan de doelstellingen van de culturele instelling.
Buitenlandse vriendenvereniging	+	-	+	+/-	-	-	+
	Als initiële ontvanger in aanmerking komt voor fiscaal voordeel en het goede doel de bijdrage mag uitgeven in het buitenland.	Management buitenlandse entiteit & juridisch advies zijn kostbaar.	Zekerheid betreffende de uitkomst en procedure.	Snel en eenvoudig, maar er is het risico dat de relatie tussen de culturele instelling en de begunstiger beschadigd wordt.	Dekt slechts één land, maar kan opgericht worden in meerdere landen.	Juridische kennis, kennis over fondsenwerving en goede samenwerking zijn vereist.	Versterkt netwerk en biedt mogelijkheden voor internationale activiteiten.
Intermediair goed doel	+	+	+	+	+/-	+	-
	Als initiële ontvanger in aanmerking komt voor fiscaal voordeel en het goede doel de bijdrage mag uitgeven in het buitenland.	Een fee kan verschuldigd zijn, maar dit wordt als redelijk ervaren.	Zekerheid betreffende de uitkomst en procedure.	Snel en eenvoudig voor de begunstiger.	De netwerken van intermediaire goede doelen kunnen uitgebreid zijn, wat het werk van de culturele instelling vereenvoudigt.	Het intermediaire goede doel voorziet in de nodige kennis.	Geen inhoudelijke voordelen te behalen.

Portfolio

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- 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 erts)
- Research Lab (10 erts)
- Collaboration with your Supervisor (0 erts)
- Introduction to Legal Methods (5 erts)
- Reflection on Social Science Research (5 erts)
- Writing Clinic 1 (2,5 erts)
- Writing Clinic 2 (2,5 erts)
- Gift-, Inheritance, Property tax & estate planning (9 erts)
- Seminar Cultural Economics (1 erts)

Other courses 2013-2017

- Module basisdidaktiek – 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 erts) – 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.