Approaches towards the application of tax incentives for cross-border philanthropy

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Abstract
Most governments of high income countries stimulate domestic philanthropy. For philanthropy crossing borders, however, governments are less consentient. These varying standpoints are reflected in the tax legislation of countries. In many of the countries concerned, donations to domestic charitable causes are rewarded with a tax incentive. When a donation crosses borders, however, the tax incentive does not always apply.

This article examines the different approaches governments hold towards the application of tax incentives in cross-border situations and the underlying rationales. Through the analysis of the relevant tax sources, tax jurisdictions are classified into four common models that summarise the spectrum of different approaches governments hold. They vary from jurisdictions that support cross-border donations with a tax incentive to governments that restrict tax incentives to donations within the country and two models that represent the more moderate approaches between these extremes.

Key words: philanthropy, cross-border, tax incentives

1. Introduction

Philanthropy is increasingly becoming a cross-border phenomenon, where benefactors contribute to foreign causes and charities aim at raising donations outside their country of residence. In most high income countries charitable gifts in the domestic situation are stimulated with a tax incentive. In a cross-border situation this is not so self-evident and approaches of governments vary largely.

Until recently, the application of a tax incentive on a cross-border donation was not under discussion. Governments granted tax incentives to donations to support charities in the country. Cross-border donations were not common, so no issue either. Due to internationalization cross-border transactions increased, including philanthropy. This put the application of tax incentives to cross-border donations onto the political agenda. Governments are required to take a standpoint on this matter. Some governments want tax benefits to be spend within their own territory. Other governments are willing to stimulate donations to foreign charitable causes. Despite the growing attention for cross-border philanthropy, an overall global picture of how different governments deal with the tax issues involved is lacking.

This article examines the different approaches governments hold towards the application of tax incentives to cross-border donations. What are the four dominant approaches? And which arguments underlie the decision to apply a tax incentive to a cross-border gift? I try to answer these questions by analysing and comparing the relevant tax sources. These can be found in domestic tax law, tax treaties and multilateral agreements.

The comparison of the tax jurisdictions is limited to the application of tax incentives to charitable donations in personal income tax and consequently the article is limited to charitable donations by individuals. The tax incentives can take different forms: a deduction from taxable income, a credit on tax due, a percentage designation scheme for taxpayers and variations to the incentives summed up. The tax incentive always concerns the tax incentive applicable in the country where the donor is resident for tax purposes. When using the concept of charity, or charitable organization, it implies an organization that qualifies under the relevant tax legislation as an organization that contributes to the public benefit and therefore is eligible to receive donations that qualify for a tax benefit.

Through inductive reasoning, the array of countries is reduced to models that represent the four main approaches towards the application of tax incentives to cross-border charitable giving. The

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focus lies on high income countries, as defined by the World Bank,[2] since the percentage of high income countries that offer incentives to individual donors is substantially higher than amongst low income countries, respectively 87% and 44% (Quick, Kruse, & Pickering, 2014, p. 35). Furthermore, philanthropic potential is larger in high income countries.

The article addresses the arguments underlying the different approaches to the application of tax incentives in cross-border situations, after a background section on tax incentives and cross-border philanthropy. This section goes back and forward between existing research on tax incentives for international philanthropy and the measures that can be used to apply or restrict tax incentives for cross-border philanthropy, in order to provide a comprehensive overview. Finally, a legal comparison is made between the approaches of several countries. Based on this comparison the different approaches are reduced to four models, which provide for a rough distinction between countries.

2. Background - Tax incentives for cross-border philanthropy

Tax incentives are a widespread tool to achieve policy objectives by stimulating private initiatives. Philanthropy is one of the sectors where tax incentives are frequently applied and scholars have elaborated on the different forms these tax incentives can take (Heidenbauer, 2011; Irish & Simon, 2004). The different manners in which countries apply tax incentives to stimulate philanthropy have been compared. The report by Quick, Kruse et al. (2014, p. 35), however, is among the first to provide a close to complete overview of the different tax incentives for charitable donations used by the United Nations (UN) Member States. The overview of laws shows that amongst the 177 countries analyzed the majority of 66% offer a tax incentive for giving by individual donors.[3] When concentrating on high income countries, the level is even 87%, whereas this is only 44% in low income countries (Quick et al., 2014, p. 35). As said, this is one of the reasons this article focuses on high income countries. Although the report gives a great overview of the common legal practices around the world, the report, however, is limited to the domestic support for philanthropic organizations. The tax incentives for cross-border situations are outside the scope of this study, just as in many other studies on tax incentives for philanthropy.

In recent years the tax treatment of charitable organizations and their donors in cross-border situations received renewed attention. Amongst others in 2006, when the European Court of Justice (hereinafter ECJ) in a preliminary procedure in the case *Stauffer*, on the tax exempt status of an Italian charity with commercial properties in Germany, explicated that in accordance with European Union (EU) law comparable charitable organizations in other EU Member States should not be discriminated based on residency requirements.[4] This initial case was followed by three more cases on the tax status of charitable organizations and their donors in the EU: *Persche*,[5] *Missionwerk*[6] and *Commission v. Austria*.[7] Of these cases the Persche case is most relevant for this article, since this case concerns the taxation of donors. In this judgement, the ECJ ruled in line with the Stauffer case that based on the free movement of capital comparable donations to charitable organizations should be treated equally, regardless whether it concerns a donation within a EU Member State or crossing borders between two EU Member States. The ECJ does not require charities to mutually recognize each other's charities. The ECJ however did highlight that the tax authorities can require the taxpayer to provide such proof as the residence country of the donor 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 tax incentive requested.[8]

[2] High income economies are those with a Gross National Income per capita of $12.746 or more (World Bank, 2014).
[3] Of the 193 UN Member States 16 were exempt from analysis, due to absence of corporate and/or personal income taxes or due to incomplete information.
[4] ECJ, 14 September 2006, Case C-386/04, *Centro di Musicologia Walter Stauffer v. Finanzamt München für Körperschaften*.
[5] ECJ, 14 October 2008, Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid*.
[6] ECJ, 10 February 2011, Case C-025/10, *Missionswerk Werner Heukelbach eV v. État Belge*.
[7] ECJ, 8 March 2011, Case C-10/10, *European Commission v. Republic of Austria*.
[8] ECJ, 14 October 2008, Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid*.

The tax treatment of charitable organizations in cross-border situations in the EU has been discussed by several scholars, amongst others Hemels (2005, pp. 165-167) and Koele (2010). Subsequent to the decisions of the ECJ Heidenbauer (2011) and Von Hippel (2014) examine whether the tax laws of EU Member States are compatible with EU non-discrimination law and allow for tax incentives for cross-border gifts.

The attention for the tax treatment of cross-border philanthropy in Europe provoke a comparison with cross-border donations on the other side of the Atlantic Ocean. Since the late '60s donations to organizations set up in the US that spend their funds on charitable or educational purposes in foreign countries are deductible, based on several rulings.[9] In 1972 these IRS rulings were incorporated into the legislation.[10] Foreign organizations can set up a 'friends of' organizations under the laws of the US to raise funds for a specific charitable organization abroad. Through this 'friends of' organization the American donors can claim a tax relief,[11] which is widely used among American taxpayers. In most European countries it is also possible to establish a 'friends of' organization, however, this is less frequently used than in the US.

Allowing for tax incentives for donations to 'friends of' organizations that eventually are spend abroad, makes it possible with a unilateral measure to contribute to foreign charitable causes with a tax benefit. Direct donations to charitable organizations established abroad are not rewarded with a tax deduction.[12]

In a panel session on the topic during the 2012 annual congress of the International Fiscal Association in Boston Heidenbauer et al. (2013) compared the US with Europe concerning the tax treatment of charitable organizations and their donors in cross-border situations. Koele (2007) compared the tax aspects of cross-border philanthropy for two European countries (Germany and the Netherlands) with that of the United States. She dealt with the different legal levels where the tax treatment of cross-border philanthropy can take place. She examined the domestic tax legislation in all three countries, EU law and also included bilateral tax treaties.

The United States is one example of how domestic tax legislation can handle the tax treatment of cross-border philanthropy. Bilateral tax treaties are another legal source that can be used to agree on the application of tax incentives for donations in cross-border situations. In the standard model tax treaties by the United Nations[13] and the Organisation for Economic Co-operation and Development (OECD)[14] a provision on the application of tax incentives to donations, however, is not included, so no commentary is available either. If countries use one of these models as a starting point for treaty negotiations, the tax treatment of charitable contributions would not implicitly be included. If these countries want a provision on the tax treatment of charitable contributions in their tax treaty, they would thus have to bring this to the table for negotiation explicitly, next to the model treaty. The bilateral tax treaties the US concluded with Canada, Israel and Mexico, for example, all include a provision in which they mutually agree to apply the available tax incentives for donations in cross-border situations.[15]

Returning to the academic literature, Heidenbauer et al. (2013) compare the US with two EU countries: the Netherlands and Austria. Furthermore, they added Australia to the comparison: a country that hardly leaves any room for tax incentives on donations to foreign charities. After describing the situation concerning tax incentives for cross-border gifts in these countries and the implications of the EU law, the authors continue with the use of bilateral tax treaties to allow for tax incentives for cross-border gifts and other pathways that have the potential to allow for tax incentives in cross-border situations: the European Foundation and the use of local intermediary charities. The

[9] US: Rev. Rul. 68-117, 1968-1 C.B. 251; Rev. Rul. 68-165, 1968-1 C.B. 253; Rev. Rul. 71-460, 1971-2 C.B. 231

[10] Sec. 1.170A-89a) (1)

[11] US: IRC section 170 (f)(18).

[12] US: IRC section 170 (c)(2)(A).

[13] UN – United N ations Model Double Taxation Convention between Developed and Developing Countries (2011).

[14] OECD - Income and Capital Model Convention and Commentary (2010).

[15] 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).

latter is also addressed by Koele (2007) in the form of Transnational Giving Europe and by Hemels (2009). I will pay more attention to it after explaining what the European Foundation entails.

In 2012 the Proposal for a Council Regulation on the Statute for a European Foundation (FE) was presented.[16] Aim of the FE was to introduce a new European legal form that would be recognized in all Member States to facilitate cross-border activities by charitable organizations within the EU. The Proposal included a provision on the tax treatment of donors to the FE,[17] which had the potential to enable tax incentives for cross-border donations within the EU. By November 2013, however, this provision was excluded in the discussion of the Proposal.[18] At the end of 2014, it was proposed to withdraw the Proposal due to the lack of prospects that an agreement could be reached.[19] Between launching the Proposal in 2012 and the proposed withdrawal in 2014 academics had reached the same conclusion: the European Foundation only had the potential of a partial solution, since it required charitable organizations to be active in multiple countries and it did not seem efficient for countries that had to establish a supervisory structure. Foremost, legal scholars had forecasted that it would cause great difficulties to achieve unanimity amongst Member States, since the Proposal required Member States to trust each other's supervisory structures (Hemels, 2014; Hemels & Stevens, 2012; Hemels, 2015).

Thus, for the moment the FE is no measure to regulate the application of tax incentives to cross-border philanthropy. However, the FE was not the first idea along these lines. An earlier suggestion was that by the Canadian legal scholar Drache (2004). He suggested to create a mutually accepted definition of the activities that qualify as 'charitable' in an international setting, such as international disaster relief efforts, the promotion of democratic ideals, preservation of heritage sites and medical research. Countries would allow the applicable tax incentive for cross-border donations in case it concerned these mutually agreed on charitable activities. This would allow donors to rely on the tax facilities in their country when contributing to a charity abroad and it would allow countries to maintain their tax regime.

A measure that is already used in practice is the local intermediary organization, which was also addressed by Koele (2007, p. 205, 279), Hemels (2009) and Heidenbauer et al. (2013). The local intermediary organization is not just a legal measure, like the provisions in domestic tax law and in bilateral tax treaties or the application of the ECJ decisions. Instead, it is an initiative of collaborating charitable organizations that make strategic use of the existing provisions in the applicable tax sources. Within these collaborations, a donor that wants to make a contribution to a charity abroad transfers the donation to a local intermediary charity that is eligible to receive donations with a tax benefit. By donating to a domestic charity, the donor receives the tax incentive which is applicable in his tax jurisdiction. The local intermediary charity transfers the donation to the intended recipient organization abroad. An example of a local intermediary organization in the US is the King Baudouin Foundation United States.[20] Transnational Giving Europe is an example of a network of several local intermediary organizations in different European countries.[21] Countries can restrict the use of this measure by adding requirements on the qualifying charitable organizations and donations in the domestic tax law. If, for example, domestic tax legislations restricts tax incentives to domestic donations, this measure cannot be used to obtain a tax incentive on a cross-border donation in that country. Countries could also decide in their domestic tax legislation to limit tax incentives for cross-border donations to specific causes, such as international aid or disaster relief.

Although there are legal measures and practical solutions to apply tax incentives for cross-border donations, not all governments might embrace these measures. Some might not want to stimulate donations that leave their territory with a tax incentive. And others might only want to do so in order to stimulate a specific policy goal. The next paragraph discusses the underlying arguments, as derived from literature, for these standpoints.

[16] COM(2012) 35 final, 2012/0022 (APP).

[17] Article 50 FE Proposal.

[18] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/141115.pdf

[19] http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-910-EN-F1-1-ANNEX-4.Pdf

[20] www.kbfus.org.

[21] www.transnationalgiving.eu.

3. Rationales in favour and against the use of tax incentives to support cross-border philanthropy

With the increase in cross-border philanthropy, as part of the increasing amount of cross-border transactions, governments are required to take a standpoint towards the application of tax incentives to cross-border donations.

One of the reasons why taxes are levied is to finance government obligations. Tax incentives, however, are applied at the expense of tax revenue and therefore, the term 'tax expenditures' is also used (Surrey, 1970). Applying a tax incentive on a cross-border donation implies an expenditure of tax revenue to a cause in another country. Subsequently, there is a lack of national benefit, or more specific public benefit for the inhabitants of the donor country, and thus no rationale to grant a tax incentive (Bater, 2004, p. 3, 15; Koele, 2007, p. 8). 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 organizations, which can only be achieved if the beneficiary of the charitable contribution is resident in the same country as the donor.'* I, however, think this argument should be used in a more nuanced manner. Whether a private donation to a foreign charity relieves part of the government burden or does not, depends on what constitutes 'government burden'. In case government burden solely includes tasks within the territory of the country, it is unjustifiable from this perspective to apply a tax incentive for cross-border donations. However, when part of the government burden is located outside the country's territory, as is the case with foreign aid and international affairs in many countries, it becomes easier to justify a tax incentive for a cross-border donation.

The stronger social and economic ties between countries, the more desirable it is for countries to allow for tax incentives in cross-border situations. This is what the bilateral tax treaty between the United States and Canada illustrates. Their physical proximity, the large size of their bilateral trade, the huge number of tourists and employees travelling back and forward create great interest in the ability to make cross-border charitable 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. This same reasoning 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 on beforehand intended by the signing countries. This is what we see in the EU with the enforcement of the four fundamental freedoms as stipulated in the Treaty on the Functioning of the u (TFEU).[22]

Creating a new legal entity for charitable organizations that is recognized throughout the EU, however, is currently a bridge to far for the EU Member States as we saw with the FE. One of the underlying reasons why the EU Member States could not agree on the FE, is because it requires trust in other country's supervisor authorities. In general, the lack of trust in other countries supervisory structures is a reason to restrict the application of tax incentives to gifts to domestic charities (Bater, 2004, p. 2, 15; Koele, 2007, p. 8-9). A lack of fiscal control over the recipient organization could lead to donations being made with indirect government support to undeserving organizations (Hemels & Stevens, 2012; Hemels, 2015). The use of local intermediary charities could overcome this issue (Bater, 2004, p. 23-24).

Not only might countries have different standards concerning the fiscal supervisory over charities, what a public benefit organization (PBO) entails also differs among countries. Requirements imposed on PBOs, can vary widely. The minimum asset requirements for PBOs in one country can, for example, exceed the maximum assets of a PBO in a different country. A public benefit organization in one country might thus not meet the requirements to become a public benefit organization in another country.

Furthermore, the lack of a common understanding of the concept 'public benefit' or 'charity' can refrain governments from applying tax incentives to cross-border donations (Bater, 2004, p. 15; Koele, 2007, p. 8). Both Drache and Bater (2004), however, point out that also strong overlaps 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

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

be a possible reason for some governments to stimulate private contributions to these causes through tax incentives.

Furthermore, charities 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, for example medical research (Bater, 2004, p. 23). Some of these transcending causes can only be realized in an efficient manner when dealt with in an international context. Finding and implementing a solution to the plastic soup, for example, can only be reached if countries collaborate.

Regardless of one's personal standpoint, the question whether a tax incentive should apply in a cross-border situation to support cross-border philanthropy must be answered with regard to the prevailing socio-political ideas in the country where the tax incentives are granted. These dominant ideas differ across countries and subsequently the answer to the question differs, resulting in a broad range of approaches towards the application of tax incentives in cross-border situations.

4. Categorizing tax jurisdictions

The different approaches governments hold towards the application of tax incentives to cross-border philanthropy come forward in the comparisons made by legal scholars. They analyzed the effects of the developments in EU law compared the relevant tax provisions on the use of tax incentives for cross-border philanthropy of countries in and outside the EU with each other. Each of them, for obvious reasons, focused on a limited amount of countries. A full overview of the countries that stimulate charitable giving with a tax incentive and which of them also grant the incentive in cross-border situations, however, is lacking.

Creating an extensive overview, for example adding on to the study of Quick et al. (2014) on UN Member States, would be interesting. Gathering information on all countries that grant tax incentives on charitable donations of the 193 Member States, however, would be time consuming. And one could wonder whether this is useful, since the majority of these countries most likely do not apply tax incentives in cross-border situations. In addition, tax law changes fast over time, especially in a topic on motion like cross-border philanthropy. Consequently, the overview would be outdated before even completed. Therefore, I propose to categorize countries into four ideal types, according to the available measures to apply a tax incentive for cross-border donations.

Categorizing countries based on their tax jurisdiction has advantages. First of all, it produces an overview of the different approaches governments hold, without getting outdated easily. Second, since the tax jurisdictions are clustered based on the available measures to obtain a tax incentive for a cross-border donation, jurisdictions are grouped in which donors can rely on similar measures. The use of ideal types does go with a drawback. Discussing tax jurisdictions in terms of ideal types requires a certain level of generalizability. Every jurisdiction, however, has its own peculiarities which require detailed analysis. Therefore, the use of ideal types only gives an indication of what measures can be used to obtain a tax incentive for a cross-border donation in a specific jurisdiction. Detailed analysis of the concerned jurisdiction is necessary though, if one is in search of information on a specific country. The ideal types, however, are intended to be helpful for a broad range of tax jurisdictions.

I cluster the different approaches into four ideal types, based on the measures available to obtain a tax incentive for a cross-border donation. These measures can be found at different legal levels. At the national level countries can 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 charity. At the international level countries can engage in bilateral tax treaties in which they recognize each other's charities and mutually apply their tax incentives to cross-border donations. The same can be agreed on a supranational legal level.

Countries can allow for tax incentives on donations to foreign charities based on different principles. They can grant the tax incentive if the foreign charity has a public benefit status in the country where it is resident (home country). This requires the country providing the tax incentive (host country) to rely on the regulations and requirements in the country of residence of the charity. The tax benefit can also be granted to a foreign charity based on the comparability of the foreign charity with a domestic charity (except for the place of residence). Some countries require the foreign charity to be registered on a list of the tax authorities, which entails host country control. Other countries require both home and host country control (Hemels, 2009).

In section 2 several country examples were provided, however, without relating the measures to the legal levels or the principles they rely on. I will provide this in section 5. Before doing so, I clarify how the tax jurisdictions are classified in four ideal types.

Tax jurisdictions are compared and ranked regarding the degree in which they allow for tax incentives on cross-border donations. This results in four ideal types: 1) closed jurisdictions; 2) restrictive jurisdictions; 3) relatively open jurisdictions and 4) open jurisdictions. Countries without a tax incentive in place at the domestic level fall outside the comparison. The categorization of the jurisdictions into ideal types is done as systematic as possible, in order to increase the internal validity. The following steps are taken:

1. Does the domestic tax legislation allow for tax incentives on direct cross-border donations? If yes > ideal type 4) open jurisdiction.
2. Does the domestic tax legislation allow for tax incentives on indirect cross-border donations (through a local intermediary charity) and/or does the country have international agreements, such as tax treaties and/or supranational agreements, that allow for tax incentive on cross-border donations
   a) with at least 10 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.
3. Does the country have international agreements, but with less than 10 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.
4. None of the above? If yes> ideal type 1) closed jurisdictions.

Domestic tax legislation, bilateral tax treaties and supranational agreements are the main sources of data collection. In addition, important case law is studied. This, however, is limited to case law of courts at the international level such as the ECJ. To gain insight in the application of domestic tax law, in first instance the original documents are consulted. When this is not possible due to language barriers, this will be notified explicitly. Even though translations of the language are available caution is required since certain concepts are difficult to translate or their meaning is influenced by the socio-cultural context. The Tax Research Platform of IBFD is used in case language barriers prevent consultation of original legislation.[23] Furthermore, secondary sources are consulted, such as country reports gathered by several organizations. The European Foundation Centre and Transnational Giving Europe provide legal and fiscal country profiles for EU Member States, Albania, Liechtenstein, Norway, Switzerland, Turkey and Ukraine, focusing on the relevant features for charity organizations.[24] The publication following the 2012 Conference of European Tax Law Professors (EATLP) also provides national reports concerning the tax treatment of charities (Vanistendael, 2015).

5. Four ideal types

The four ideal types I propose are laid out in this section. I describe the common characteristics of each ideal type. After that, the ideal types are exemplified with three country examples.

5.1 Closed 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 charity organizations, for example through a tax credit or deduction from taxable income. Closed jurisdictions, however, do not have domestic legislation that allows for a tax benefit for cross-border donations nor bilateral or supranational agreements with other

[23] http://online.ibfd.org/kbase/#topic=d&N=3+10&WT.i_s_type=Navigation&ownSubscription=true&Nu=global_rollup_key&Np=1.

[24] www.efc.be/programmes_services/resources/Pages/Legal-and-fiscal-country-profiles.aspx and http://www.transnationalgiving.eu/tge/details.aspx?id=219942&LangType=1033

countries on tax incentives for cross-border donations. Examples of these countries are Australia and Japan. Furthermore, 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 charities. Hungary is one of the countries in the EU that uses a tax designation scheme.

5.1.1 Australia

In Australia gifts by individuals to specific recipient organizations are deductible from taxable income.[25] Organizations that are eligible to receive tax deductible gifts have to qualify as 'Deductible Gift Recipient' (DGR). In the Income Tax Assessment Act 1997 the requirements for these organizations are specified.[26] One of the requirements is that the organization must be in Australia. This is a strict requirement, entailing that the organization must be established and operated in Australia as well as have their purposes and beneficiaries in Australia.[27] Due to this condition, donations to organizations in other countries are not tax deductible in Australia based on domestic tax legislation.

The only organizations that are allowed to have their purposes and beneficiaries outside Australia are overseas aid funds, developed country disaster relief funds, DGRs listed by name in the income tax law if the government of the day (when they were listed) approved overseas purposes or beneficiaries and public funds on the Register of Environmental Organisations. Still, these organizations must be established and operated in Australia.[28] This does allow a little room to contribute to a cause abroad with the benefit of a tax incentive, however, the gift will not benefit a foreign organization, since the DGR must provide the services.[29] Therefore, an Australian DGR cannot function as a local intermediary charity to make a cross-border donation. Stewart (2012) points to anecdotal historical evidence that an Australian Trust, recognized as a DGR, may have been used as a local intermediary organization. The donors, however, could not have bind the Trust to contribute their gift to a particular foreign organization, since this would have undermined the tax deductibility of the gift.

Australia has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.[30] It is neither part of a supranational agreement on this issue. Therefore, Australia qualifies as a closed tax jurisdiction.

5.1.2 Japan[31]

Japanese taxpayers can benefit from a tax incentive when they contribute to a Japanese charity. This incentive can take the form of a deduction from taxable income, a tax credit or a reduction of the income tax, depending of the type of recipient organization. The receiving charity needs to have a specific authorization from the National Tax Administration, for the tax incentive to apply. The Japanese charity can receive this authorization if it is a Public Interest Corporation, an Organization Eligible for 'Designated Contributions' or a Special Nonprofit Corporation.[32] An overview with requirements that charities have to meet to receive authorization from the National Tax Administration is not available. However, foreign charity organizations have not received this authorization and from that I derive that tax incentives do not apply for cross-border donations.

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[25] AU: Income Tax Assessment Act 1997 Sub-Division 30ª.
[26] AU: Income Tax Assessment Act 1997 Sub-Division 30B.
[27] www.ato.gov.au/Non-profit/Guides/In-detail/Guides---booklets/Gifts---fundraising/GiftPack/?anchor=In_Australia#In_Australia accessed 8 June 2015.
[28] https://www.ato.gov.au/Non-profit/Guides/In-detail/Guides---booklets/Gifts---fundraising/GiftPack/?anchor=In_Australia#In_Australia accessed 8 June 2015.
[29] Australia – Tax Ruling TR 2033/5 at paras 131.
[30] 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.
[31] For Japan original legislation could not be consulted because of language barriers. 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. Furthermore, secondary literature was consulted.
[32] http://www.cof.org/content/japan accessed 5 June 2015.

Japan has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.[33] Nor is Japan part of a supranational agreement on this issue. Therefore, Japan is characterized as a closed country when it comes to the applicability of tax incentives for cross-border charitable donations.

5.1.3 Hungary[34]

Residents of Hungary who pay income tax in Hungary are entitled to designate 1% of their income tax to specific charitable organizations.[35] The charity organizations qualifying for the tax designation scheme have to be registered in Hungary and have to pursue a public benefit activity.[36] This public benefit activity has to help accomplish a state or municipal task defined within a law directly or indirectly. 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. Before January 1st 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.[37] The Hungarian government abandoned this incentive for individuals, possibly to avoid an infringement procedure of the European Commission.

Hungary has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.[38]

5.2 Restrictive jurisdictions

In restrictive jurisdictions it is possible to obtain a tax incentive in cross-border situations, based on bilateral tax treaties or supranational agreements. However, the range of countries with which these agreements exist are limited. I draw a boundary, although artificially determined, at a range of agreements with 10 countries.

Furthermore, countries with more agreements, but where it is practically cumbersome 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 -but practically close to impossible- to receive a tax benefit on a cross-border donation, 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. 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’.

5.2.1 United Kingdom

Donations by individuals can benefit from ‘Gift Aid’ in the United Kingdom (UK). This entails that donations are deemed to be made under the deduction of basic rate tax, which the charity or Community Amateur Sports Club (CASC) then can reclaim from the UK tax authorities: Her Majesty’s Revenue and Customs (HMRC).[39] For Gift Aid to apply, the receiving organization needs to be recognized by the HMRC as a charity or a CASC. Charities must be registered with the Charity Commission for England & Wales, or the Office of the Scottish Charity Regulator or be exempted

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[33] All bilateral tax treaties of Japan that were in force on 5 June 2015 were consulted on IBFD.org. The search term ‘charit’ was used to track potential provisions on charitable donations.

[34] Due to language barriers original legislation could not be consulted for Hungary. Instead, the translation of Act CXXVI of 1996, ‘*On the use of a specified amount of personal income tax in accordance with the taxpayer’s instruction’* and Act CLVI of 1997, ‘*on public benefit organizations’* provided by the International Center for Not-for Profit Law (ICNL) and legislationline.org was consulted.

[35] Hungary – Act CXXVI of 1996.

[36] Hungary – Act CXXVI of 1996, section 4 jo Act CLVI of 1997, para 2.1.

[37] http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_Hungary.pdf accessed 8 June 2015.

[38] All bilateral tax treaties of Hungary that were in force on 5 June 2015 were consulted on IBFD.org. The search term ‘charit’ was used to track potential provisions on charitable donations.

[39] UK: ITA 2007 Chapter 2 of Part 8 Section 521.

from registration duty but recognized by HMRC as a charity. To qualify as a charity, the organization must pursue a charitable purpose as specified in the legislation.[40] CASCs are amateur sports clubs that are open to all, irrespective of ability.[41]

With effect of 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.[42] Since the UK, as an EU Member State may not discriminate comparable charitable organizations in other EU Member States.[43] In practice, however, it is still difficult for foreign organizations to obtain the charity status (Smith, 2012). The HMRC decides on a case by case basis whether foreign organizations meet the UK charity requirements. The foreign organization 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.[44] By December 2013 103 foreign organizations had applied to qualify as a charity in the United Kingdom. Only 9 were accepted. Most organizations were rejected because they did not meet the requirements for charities under UK law (Koele, 2014). Since it is practically cumbersome to register as a charity in the UK, the country is classified as a 'restrictive jurisdiction'.

The UK has not concluded any bilateral treaties that include a provision on the mutual application of tax incentives to charitable donations.[45]

5.2.2 Germany

In Germany a deduction from taxable income applies for donations and contributions to PBOs.[46] Both cash and in kind donations qualify for tax deductibility. For the tax deduction to apply, the receiving organization has to be recognized by the German tax authority as a PBO. This is done whenever the organization pursues a public-benefit purpose, a charitable purpose or a religious purpose, which is included in the German Fiscal Code. The activities of an organization that serves a public benefit purpose are dedicated to the altruistic advancement of the general public in a material, spiritual or moral sense.[47] 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 EEC Member States, these are also deductible, as is required of EU Member States. However, one of the requirements is that the PBOs activities are deemed able to contribute to the Federal Republic of Germany's international reputation. For a German taxpayer to be able to benefit from the tax deduction when a donation is made to a qualifying foreign PBO, he needs to provide the German tax authorities with all the necessary documents to prove that the foreign PBO meets all requirements set out above. The requirement that PBOs have to contribute to the Federal Republic of Germany's international reputation puts strong restrictions on qualifying charities in other EU or EEC Member States. Germany is therefore classified as a restrictive jurisdiction.

Germany has not concluded any bilateral tax treaties that include a provision on the mutual application of tax incentives to charitable donations.[48]

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[40] UK: Charities Act 2011 Chapter 1 of Part 1 Section 3.
[41] UK: Charities Act 2011 Chapter 1 of Part 1 Section 6 and Corporation Tax Act 2010 Chapter 9 of Part 13.
[42] UK: FA 2010 Schedule 6 Part 1 Section 1.
[43] ECJ, 14 October 2008, Case C-318/07, *Hein Persche v. Finanzamt Lüdenscheid*.
[44] UK: FA 2010 Schedule 6 Part 1 Section 2.
[45] All bilateral tax treaties of the UK that were in force on 5 June 2015 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.
[46] DE: EStG section 10b.
[47] DE: AO section 52, 53 and 54.
[48] All bilateral tax treaties of Germany that were in force on 9 June 2015 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

5.2.3 Spain[49]

In Spain donors can receive a tax credit for donations to qualifying organizations.[50] Donations can be made in cash and in kind.[51] Transnational Giving Europe has Spanish partners, from which I derive that Spanish charities are allowed to act as local intermediary charities.[52]

Donors can only receive a tax credit for donations to foreign organizations when a delegation of that organization is registered with the Spanish Register of Foundations to carry out its activities in Spain it is eligible for tax creditable gifts. To be included in the register, the public benefit organization must meet all the requirements under Law 49/2002 and the deed of incorporation of the foundation must be translated into Spanish.[53]

Although Spain is an EU Member State, it does try to restrict the application of tax incentives to charitable donations to the own country, by requiring charities resident in other EU Member States to register with the Spanish Register of Foundations and to carry out its activities in Spain. Besides, Spain has not concluded any bilateral tax treaties that include a provision on charitable contributions.[54] Therefore, Spain is a restrictive jurisdiction.

5.3 Relatively open jurisdictions

A more moderate category are the relatively open tax jurisdictions, that do allow for tax incentives on cross-border donations, but mainly through local intermediary charities and/or based on tax treaties and supranational agreements. I draw an arbitrary boundary at the amount of more than 10 countries, but less than 20 countries with which the country has agreed to allow for tax incentives on cross-border donations. Furthermore, the facts and circumstances should make it possible to obtain a tax benefit on a cross-border donation.

5.3.1 France

Individual donors can get a tax credit for donations to qualifying public benefit organizations (PBOs), which are organizations with a general interest status and organizations with a public benefit status.[55] To obtain the public benefit status, organizations must adopt statutes that comply with the model statutes set out by the Council of State and satisfy requirements regarding the financial viability and size of the organization, next to engaging primarily in general interest activities. [56] 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.[57]

Donations to PBOs in EU or EEA Member States can also benefit from the available tax credit. For the tax credit to apply, the foreign PBO 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. Furthermore, the foreign organization has to obtain a specific agreement from the French tax authorities.[58]

Alternatively to this agreement, the foreign charity has to provide evidence that the organization is comparable to a French tax exempt organization. This might seem more favorable then it is in reality. The conditions under which a foreign charity is comparable to a French tax exempt organization are still under discussion. It is assumed that for all donations to foreign charity organizations that do not have the agreement from the French tax authorities separate evidence has to

[49] 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.
[50] http://online.ibfd.org/document/ita_es_s_1 accessed 9 June 2015.
[51] Supra.
[52] http://www.transnationalgiving.eu/tge/details.aspx?id=219958&LangType=1033 accessed 10 June 2015.
[53] Supra.
[54] All bilateral tax treaties of Spain that were in force on 9 June 2015 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.
[55] FR: article 200 and 238bis CGI.
[56] FR: article 200 CGI.
[57] All bilateral tax treaties of France that were in force on 5 June 2015 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.
[58] FR: article 200 CGI.

be delivered to the French tax authority in the region where the donor is registered. The burden of proof is on the donor. For each single donation evidence has to be provided that the foreign charity is comparable to a French charity and a new decision is made by the relevant local tax authority. No repository is kept of previous decisions.[59]

The French tax authorities have attempted to limit the scope of the legislation that allows foreign charities eligible for receiving donations with a tax credit. On February 28, 2011 the French authorities drafted an administrative circular stating that EEA recipient organizations should perform the greater part of their activities in France for their donors to receive a tax incentive.[60] On January 30, 2012 the French Tax Authorities did another attempt to limit the applicability of the tax credit to cross-border donations. The French Tax Authorities then released guidelines stating that the tax credit would only apply to cross-border donations if the activities concerned the spread of the French culture, language or scientific knowledge or concerned the organization and implementation of humanitarian programs. The draft administrative circular, nor the guidelines have been put into force, however, the conditions under which cross-border donations can benefit from a tax credit in France remain uncertain.[61]

Although gift tax is outside the scope of this article, it is relevant to note that the European Commission (EC) started an infringement procedure against France because it exempts donations to charitable organizations resident in France and conducting their activities on French soil from the French gift tax, whereas comparable charitable organizations resident and conducting their activities in other EU Member States are subject to a 60% tax.[62]

5.3.2 Belgium

In Belgium a tax credit applies to donations to qualifying charities. Gifts to organizations that allow for a tax credit are organizations that are either explicitly approved by law, recognized by the Ministry of Finance or received recognition by Royal Decree. 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 organizations by law. Belgian qualifying charities can be used as local intermediary charities.

Cash gifts to qualifying organizations 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 recognized 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.[63] 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 Communities and Regions, a province, a municipality or a public center for social welfare, under the condition that these public powers designate the work of art to their museum.[64] This measure does not apply to donations to National Museums in other countries.[65] Belgium is therefore an example of a relatively open jurisdiction.

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59 http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_CountryProfile_2014_France.pdf accessed 7 April 2015.

60 I. Combes (2013) http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_France.pdf accessed 4 March 2014.

61 http://www.usig.org/countryinfo/france.asp#_ref5#_ref5 accessed 4 March 2014.

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

63 BE: article 145/33 §2 WIB 92.

64 BE: article 145/133 § 1 (4°) WIB 92.

65 BE: article 145/33 §2 WIB 92.

Belgium has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.[66]

5.3.3 United States

In the US donations can be deducted from federal income tax when made to a qualifying organization. The deductions allowed and their conditions and limitations are described in detail in the Internal Revenue Code.[67] Qualifying organizations must be organized and operated for exempt purposes, which are described in the IRC under section 501(c)(3). Therefore, these organizations are also referred to as U.S. 501(c)(3) organizations.

To qualify as a 501(c)(3) organization, the charity has to be created in or under the laws of the US, any state, the District of Columbia or any possession of the US (including Puerto Rico). This puts high territorial restrictions on the qualifying organizations, excluding all organizations that are not established under the laws of the US. It does not, however, restrict qualifying organizations to spend 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' organization in the US. This organization is set up under the laws of the US to raise funds in the US for a specific foreign charitable organization. Donors that wish to contribute to a charity abroad can also establish a donor-advised fund under a U.S. 501(c)(3) organization. The U.S. 501(c)(3) organization owns, controls and administers the funds, but the donor can make recommendations on the spending of the funds.[68]

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 that the US holds with these countries.[69] 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 organizations were it 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.[70]

5.4 Open 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 artificial boundary at 20 countries. Regardless 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.

5.4.1 The Netherlands

The Netherlands 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 charity organization has to qualify as a 'Public Benefit Pursuing Entity' and be registered as such at 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

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[66] All bilateral tax treaties of Belgium that were in force on 9 June 2015 were consulted on IBFD.org. The search term 'charit' was used to track potential provisions on charitable donations.

[67] US: IRC, section 170.

[68] US: IRC section 170 (f)(18).

[69] 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).

[70] 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).

by the Ministry of Finance all have to meet the same requirements. To obtain the PBE status an organization needs to meet certain requirements, of which the most important requirement is that the organization pursues the public benefit exclusively or almost exclusively (at least 90%).[71]

By consulting the PBE register at the Dutch tax authorities the donor can see which arts organizations qualify to receive tax deductible gifts. In addition to the PBE status that can be obtained by foreign charity organizations, Dutch PBEs can also function as a local intermediary charity to make a cross-border contribution. However, in December 2014 the Ministry of Finance in a decree took the stance that a PBEs should not function as a conduit organization.[72] The operating range of this decree, however, is not yet clear.

The Netherlands in one case allows for the application of tax incentives to charitable contributions based on a tax treaty. The Netherlands has a tax treaty with Barbados in which a provision is included on charitable contributions.[73] In the next section, on Barbados, this provision is explained in further detail.

5.4.2 Barbados

In Barbados donations to registered charities are deductible from taxable income.[74] To register as a charity, the organization has to be established for charitable objects and purposes and operate for the public benefit.[75] The 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.[76] The relevant article 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."*

Barbados thus applies a tax deduction for charitable contributions to charities in the other Contracting State and vise versa, wherein the Contracting States may agree on the organizations' qualification as charitable institution. Thus, both home- and host- country control apply. This provision was included in the bilateral tax treaty between Barbados and the Netherlands on the request of Barbados.[77] Presumably it was also on the request of Barbados that this provision was included in the treaties with the other countries.

Barbados is part of the Caribbean Community (CARICOM).[78] The CARICOM Income Tax Treaty, however, does not include a provision on charitable contributions. Nor does it abide CARICOM Member States to grant personal allowances to residents of another Member State.[79]

[71] NL: article 5b AWR.
[72] NL: resolution of 19 December 2014, nr. BLKB2014/1415M.
[73] Article 22 Barbados – The Netherlands Income Tax Treaty (2006, as amended through 2009).
[74] 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 8 June 2015.
[75] Barbados: Charities Act, Cap. 243.
[76] Barbados – Mauritius Income Tax Treaty (2004), Barbados – Mexico Income Tax Treaty (2008), Barbados – the Netherlands Income Tax Treaty, Barbados (2006, as amended through 2009) – Seychelles Income Tax Treaty (2007), Barbados – Ghana Income Tax Treaty (not yet in force).
[77] This can be read in the Parliamentary Papers of the Netherlands: *Kamerstukken II* 2006/07, nr. 31020, A and nr. 1 p.9.
[78] CARICOM Income Tax Treaty (1994).
[79] CARICOM Income Tax Treaty (1994), article 22.

5.4.3 Sweden[80]

Sweden is an open country when it comes to the tax credit that donors can receive when making a gift to charity organizations.[81] For the tax credit to apply, the recipient organization has to be recognized by the Swedish Tax Agency as an organization that shall enjoy income tax relief. Charity organizations can apply for this status by filling out a form and providing the Swedish Tax Agency with the required documents. Furthermore, the foreign charity organization needs to meet the requirements for restricted tax liability. Finally, the charity organization needs to have at least one certified accountant. There are two charitable activities designated that enjoy income tax relief, namely charitable activities for poor and needy and the promotion of scientific research.

Donors to foreign equivalents of qualifying Swedish organizations, located in the EEA or with which Sweden has a tax treaty in which an article on information exchange in tax matters is included, may also enjoy the tax credit.[82] The foreign charity organizations also have to apply at the Swedish Tax Agency to become recognized as an organization that shall enjoy income tax relief. The information does not need to be translated into Swedish, but can be provided in English.[83]

Sweden has not concluded bilateral tax treaties that allow for tax incentives on cross-border donations.[84]

6. Concluding Remarks

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.

The main reasons why countries restrict tax incentives for charitable donations to the domestic situation is because there is not enough national benefit of cross-border donations to justify the drainage of tax revenue. Additionally, countries often do not hold the same definition of what activities should be granted a tax incentive. Their definition of public benefit differs. On the other hand, there is also a lot of overlap in the definition of public benefit. This overlap, as well as activities that contribute to the global welfare can be an inducement to apply tax incentives for cross-border donations. Besides, countries might want to apply tax incentives for donations that go to countries with which they want to strengthen their ties. Balancing these arguments to decide whether or not to apply tax incentives for cross-border donations is a matter of politics. The different political opinions result in a broad range of approaches towards the application of tax incentives to cross-border donations.

The categorization of countries into ideal types I suggested in this article gives an overview and structures the broad range of approaches. Determining the position of one’s own tax jurisdiction in the broad range of tax jurisdictions becomes straightforward with this categorization. By doing so, the use of the categorization goes beyond the country examples given in this article. Furthermore, the ideal types contribute to the comparability of countries concerning the application of tax incentives to cross-border philanthropy. In future research on this topic the ideal types can be useful to find measures to apply tax incentives for cross-border donations per ideal type.

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80 For Sweden no legislation could be consulted. Instead, the country details are based on the Swedish country profile of Transnational Giving Europe. http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_CountryProfile_2014_Sweden.pdf accessed 8 June 2014.

81 http://online.ibfd.org/document/gthb_se_s_1 accessed 8 June 2015.

82 http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_CountryProfile_2014_Sweden.pdf accessed 8 June 2014.

83 http://www.transnationalgiving.eu/uploadedFiles/TGE/Cross_border/TGE_EFC_Sweden.pdf accessed 8 June 2015.

84 All bilateral tax treaties of Sweden that were in force on 9 June 2015 were consulted on IBFD.org. The search term ‘charit’ was used to track potential provisions on charitable donations.

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