UNIVERSITÉ DE GENÈVE
GENEVA CENTRE FOR PHILANTHROPY

Concept paper

Conference « Philanthropy and taxation »

Organized by the Geneva Centre for Philanthropy, University of Geneva

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Geneva, Switzerland

1. Objective

The present concept paper defines the research areas regarding the interaction – if any and if deemed appropriate - between taxation and philanthropy in the perspective of the international conference, which the Geneva Centre for Philanthropy of the University of Geneva ("**GCP**", www.unige.ch/philanthropie) plans to organize in Geneva in 2020 ("the **Conference**"). It briefly exposes the scope of the Conference and the key research topics.

2. Format

The Conference will be a global event, held in Geneva, gathering the most prominent scholars, as well as government representatives and other important stakeholders in the field of philanthropy[1]. The Conference will include scientific presentations and workshops as well as a conference opened to the public held by a renown keynote speaker.

3. Definitions and scope

The **term "philanthropy"** does not have a generally accepted definition. For the purposes of the Conference, it will be deemed to have one of its common meanings[2], namely an act of gratuitous transfer of funds or other property for altruist purposes, as well as the activity of charitable organizations. One of the purposes of the Conference will however also be to question this definition, including in the light of the emergence of the phenomenon of social entrepreneurship (see *infra* par. 3.4).

[1] The Centre also considers inviting the representatives of NGOs, foundations or donors.
[2] https://www.merriam-webster.com/dictionary/philanthropy access date 26.02.2019.

Regarding the scope of the Conference and related research, a distinction may be made between (i) the persons it relates to ("personal scope"); (ii) the issues it aims to address ("material scope") and (iii) the "geographical scope" of the analysis.

As far as the **personal scope** is concerned, the idea is to analyze the implications of the various forms of taxation of any stakeholder in the field of philanthropy. Focus will be put on the taxation of donors and philanthropic organizations. The impact of "philanthropic" tax mechanisms on other stakeholders, such as all the taxpayers in a given jurisdiction, will however also be addressed.

Concerning the **material scope** of the research, the main questions are defined below (*infra* par. 4). The first – and by essence preliminary – issue is the theoretical justification of tax incentives in favor of philanthropic initiatives. The second subject explores and compares specific models of tax incentives and their efficiency. The third topic addresses the issue of cross-border philanthropy. Finally, the Conference will seek to explore and challenge the limits of the traditional definition of philanthropy, studying the phenomenon of social entrepreneurship, which in certain cases could be defined as a quasi-philanthropic activity.

From a geographical standpoint, the scope will be that of the OCDE member states and key partners as well as some other selected jurisdictions

In accordance with the GCP's vision, the Conference will favor a **multidisciplinary approach**. The ambition is to address the topic from multiple angles, combining various fields of humanities, social sciences, including therefore economics. The Conference will therefore involve researchers from various fields, i.e. law, economics, sociology, psychology, philosophy, political sciences, etc. Regarding the **methodology**, the Conference will accept both theoretical and empirical works.

4. Research questions:

4.1. Are tax incentives for philanthropy justified?

A number of countries subsidize philanthropic activities through tax incentives. The economic result of such subsidies is that legislators delegate some of their budgetary prerogatives to private actors. Instead of collecting taxes and using them to achieve public policy goals, the legislator transfers some of its powers to private initiatives. Such delegation is considered by some as problematic from different perspectives. The **democratic criticism** points out that budgetary decision-making is one of the principal prerogatives of the state (Reich, 2018). Citizens grant such right – and duty - to their elected representatives and not to private actors. Indirectly, delegation of budgetary powers creates decision-making mechanisms equivalent to the ones of voting, where "voting" power increases with the size of the subsidized donation (Lideikyte-Huber, 2015). The situation is even more delicate in the presence of cross-border donations, as tax-subsidized donations leave a given jurisdiction. **Egalitarian criticism** highlights that tax subsidies for charitable transfers are highly regressive. In particular, top income taxpayers face a higher subsidy due to the progressivity of the income tax schedule (Fack & Landais, 2016). Such tax subsidies therefore infringe basic taxation principles, such as the principle of equal treatment and the principle of the ability to pay. Critics also point out the difficulties in assessing the **efficiency** of tax incentives for the charitable sector, and thus the uncertainty of their overall impact.

The recent **empirical research** raises questions about the suitability of tax incentives for philanthropy. For instance, scientists observe a strong correlation between the tax burden as a proportion of a country's GDP and the proportion of the population giving to charity (Bekkers, 2018; Salamon, Sokolowski & Haddock, 2017). In other words, even though there might not be a causal effect, there seems to be strong evidence showing that countries in which citizens are contributing more to public welfare through taxes are more involved in charity (Bekkers, 2018). This evidence would be contrary to the argument put forward by certain economists stating that private action intervenes where the State fails.

In this regard, the Conference will i.a. seek to address the following questions:

- In the first place, is subsidizing philanthropy via taxes compatible with the fundamental principles of democracy?
- Should private initiative be a substitute for State action? Is it possible to measure and compare the efficiency of State, respectively of private interventions?
- If there is evidence - or, in the lack thereof, if it is assumed – that private initiatives aiming at achieving public policy goals are efficient (or more efficient), does that justify having recourse to tax incentives in order to stimulate them?
- Should a State define the scope of philanthropic tax subsidies? If yes, on what basis? For instance, should tax reliefs be granted (or only granted) in order to pursue specifically identified goals (for instance one or more of the SDGs)?

4.2. <u>Which types of tax incentives for philanthropic activities are conceivable and what is their respective efficiency?</u>

Tax incentives in the field of philanthropy can take many forms. Even though their economic objective might be seen as the same, i.e. to lower the net cost of charitable giving and charitable activity, the instruments used for that purpose differ among jurisdictions. A first distinction can be made between the tax reliefs granted to charitable organizations, on the one hand, and to donors, on the other. The former usually enjoy full or partial tax-exempt status. With regard to the latter, deduction from taxable income is a widely used instrument, for instance in the US, Germany, Switzerland, the Netherlands and Japan (Hemels, 2018). Other approaches aimed at donors are tax credits, tax assignment or tax refund to a charitable organization (Hemels, 2018; Bekkers & al., 2018).

The choice of approach relies on multiple factors (e.g. legal tradition, political credo) that do not necessarily result from an extensive efficiency analysis. The question of efficiency should however be a key decision making factor. The equation is based on the assumption – requirement – that while tax subsidy provides benefits to donors and beneficiaries of philanthropy, States overall benefit more than what they concede. As the nature of tax incentives for philanthropy is already controversial for a number of reasons (see *supra* par. 3.1), the State must scrupulously estimate their efficiency. In this respect, economists and public policy researchers distinguish between **social efficiency** and **treasury efficiency** of tax subsidies in the field of philanthropy. A socially efficient subsidy increases social welfare and a treasury efficient subsidy generates an increase in donations that is greater than the value of the subsidy itself; treasury efficiency is neither necessary nor sufficient in order to generate social efficiency (Monnet & Panizza, 2017). Treasury efficiency can be measured using standard econometric techniques whereas social efficiency is more difficult to evaluate, as it requires creating and evaluating social welfare which is a more immaterial concept (ibidem).

In this regard, the conference will i.a. seek to address the following questions:

- What are the different tax incentive mechanisms conceivable to subsidize philanthropic activities? What reasons do motivate states to adopt a specific tax incentive to subsidize philanthropy (legal tradition, political choices, efficiency studies, etc.)? Can one observe increasingly standardized patterns in philanthropic tax subsidy mechanisms?

- What is the efficiency of tax subsidies in the field of philanthropy in general, from treasury, respectively social efficiency perspectives? What is the empirical knowledge about the efficiency of specific tax instruments?

- How can efficiency be measured? What are the main obstacles in gaining knowledge about the efficiency of tax subsidies for philanthropy (access to reliable data, including analysis of their hidden or indirect impact(s), etc.)?

4.3. Cross-border philanthropy and tax barriers: should they be eliminated?

Traditional tax subsidies for philanthropic activities aim at limiting tax reliefs to charitable activities performed within the national borders. There are two main reasons for such a restriction. Firstly, the driving principle is that in order to be justified, such reliefs have to produce a **positive impact on the public budget**, which can only happen if the receiving entity is in the same jurisdiction. Secondly, cross-border philanthropic activities are more difficult to control and therefore potentially subject to a **misallocation of funds** (tax evasion, terrorism funding, etc.) (Heidenbauer & al., 2013).

Nonetheless, in recent years, certain countries (for instance Austria, Ireland, and the Netherlands) have softened their legislations in that respect. In addition, the European Court of Justice has issued several landmark decisions (cases *Persche*, *Stauffer* and *Missionswerk WernerHeukelbach*), greatly facilitating cross-border philanthropic transfers within the EU (Buijze, 2016). In certain countries having a restrictive legal approach to cross-border philanthropy, such as Switzerland, tax authorities tolerate solutions, such as the "Transnational Giving Europe" network, whereby the beneficiary of the donation is a local foundation which, in turn, makes a cross-border donation. Despite these changes, cross-border philanthropy still faces multiple barriers[3].

Understanding the barriers to cross-border taxation of philanthropy is also important because of the role philanthropy plays in development assistance. Official development assistance (ODA) and private philanthropy towards developing countries have with that regard a common goal. Private philanthropy is complementary to ODA, but is usually more flexible and can reach different tiers of development, working under loser constraints in order to search for local solutions. However, recent data collected by the OECD indicates that philanthropic flows are still modest in volume compared to ODA (it indeed only accounts for about 5%), even though in some fields the role of philanthropy is crucial (for instance, philanthropy is the third provider of health funding in developing countries) (OECD, 2018). It is important to understand whether tax barriers could be one of the reasons impeding more substantial private philanthropic flows for development assistance.

In this regard, the Conference will i.a. seek to address the following questions:

- How do countries define domestic and foreign philanthropy? What are the tax mechanisms affecting cross-border philanthropy in a comparative perspective?
- Is there a trend to facilitate transnational philanthropy? Should such trend be encouraged, or on the contrary, discouraged?
- To what extent are donors and philanthropic organizations sensitive to cross-border tax barriers? Which mechanisms established by the private sector can facilitate tax-efficient cross-border donations (e.g. Transnational Giving Europe)? To what extent national authorities do tolerate such solutions?
- What are the patterns and risks of misusing tax incentives for philanthropic giving by corporations or individuals in the cross-border context?
- Do tax barriers negatively affect philanthropic flows for development assistance and, if so, to which extent?

4.4. <u>What is the role of tax incentives in corporate philanthropy and social entrepreneurship?</u>

Traditionally, the legal status of a philanthropic organization, allowing it to operate under special favorable tax conditions (e.g. exempt from profit or other taxes), has stood under the assumption that a philanthropic organization does not engage in commercial activities. This

[3] The expert panel at the Annual IFA Congresses 2012 discussed this specific problem and called for making "a policy choice between the restrictive approach of "fiscal mercantilism", on the one hand, and a "common market for charities", on the other" (Heidenbauer & al., 2013).

legal status is generally also a condition enabling an organization's donors to enjoy specific tax benefits in relation to their donations. Over the last two decades, one can however witness the emergence of an entirely new sector that does not fit into the traditional "business vs. charity" distinction. That new sector is usually called "social entrepreneurship" or "for-profit charity"". The so-called "social enterprises" operating in this new sector (for instance, "hybrid entities" or "B-Corporations") blur the line between the profit and non-profit sectors, as they derive revenues from commercial activities, but their main – or in any event substantial - objective is rather to have a positive social impact than to (solely) maximize their owners' profit. Certain countries (e.g. the US, Italy) have introduced new legal forms of entities to accommodate those "hybrid" goals (without however granting them any tax benefit). Most countries still rely on the traditional system. Social entrepreneurs thus face the following dilemma: either operate via a tax-exempt organization, without the possibility to self-finance their activities, or choose a business entity, which is taxable, with potential difficulties in finding investors that sponsor their socially responsible activities.

In this regard, the Conference will i.a. seek to address the following questions:

- What is the role of tax incentives in corporate philanthropy?
- Does social entrepreneurship call to redefine the traditional boundaries of philanthropy? Can social enterprises help to boost the philanthropic sector or substitute it?
- Should social enterprises be treated as ordinary corporations from a tax perspective, or should they enjoy – in whole or in part - tax exemptions as do traditional charitable organisations? Could or should the answer depend on the type of activity exercised by the entity or its social goal?
- Does the solution rather lie in imposing the creation of separate legal entities, one or more pursuing for-profit purposes and the other(s) non-profit purposes? How should these entities interact and which conditions, if any, should be set in that context?
- Should the tax reliefs be granted to the persons financing or investing in such social enterprises rather than to the social enterprises themselves?

Henry Peter/Giedre Lideikyte Huber/March 22, 2019

The Geneva Centre for Philanthropy (GCP)
It is with the aim of creating a platform for reflection, research and academic teaching that the University of Geneva, with the support of several important foundations, created in 2017 a Centre dedicated to philanthropy: The Geneva Centre for Philanthropy (GCP). The Centre approaches Philanthropy from a multidisciplinary and innovative perspective.
https://www.unige.ch/philanthropie/en/

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