Tax incentives for donations to social economy entities

Models, trends and challenges

Thematic discussion paper

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Introduction

The aim of this thematic discussion paper is to provide an overview of the income tax reductions for private and institutional donors including cross-border donations and then proceed to discuss their benefits and challenges.

As we have also seen in the previous thematic paper, written by Dr. Giedre Lideikyte Huber, social economy entities (SEEs) normally receive tax reliefs in two main fields: tax exemptions of the social economy entities themselves (e.g., corporate and income tax incentives and VAT reliefs) or tax incentives related to their funding (e.g., deductions for donations by individuals and/or corporations to social economy entities). While the previous two thematic papers and workshops in the field of 'Taxation in support of the social economy' focused on the former, this thematic paper focuses on the latter.

One of the key measures to support SEEs – or rather a subset of them, usually referred to as public benefit organisations (PBOs) – is to provide tax benefits for their donors, with the expectation that the tax relief might increase the overall volume of donations in favour of these organisations.

Tax-privileged donations remain crucial for SEEs which very much still rely on this source of funding, even though their revenues have become increasingly diversified, including commercial income as well.[1] Moreover, charitable giving is a widespread and increasing behaviour among EU citizens.[2] A tax benefit on donations should increase the volume of charitable contributions by making donations less onerous for donors. According to the traditional laws of supply and demand, if donations become less costly due to the tax benefits granted by states, the 'demand' for donations should increase in terms of number of donors and/or amount of donations. In other words, more tax benefits should mean more donations.

This paper examines a specific tax incentive for a PBO's donors as an indirect means of benefitting these organisations. In contrast, the income tax regime applicable to donations received by PBOs is outside the scope of this paper. However, PBOs are generally exempt from income taxes on donations (as well as on other 'non-commercial' revenues, including in most cases bequests), which represents another tax benefit typically granted to them by national legislators.

Frequently associated with the topic of donations to PBOs is the issue of bequests made in favour of these organisations. The common element between the two is the gratuitous nature of the transfer. However, bequests represent a distinct topic, governed by different legal frameworks than those applicable to donations. Therefore, this issue falls outside the scope of this paper (bequests, however, are considered equivalent to donations in relation to the issue of cross-border giving and the non-discrimination of foreign comparable PBOs: see section 4).

Similarly, tax-privileged donations to PBOs should not be confused with tax allocation or designation schemes present in certain Member States of the European Union. These schemes allow taxpayers to allocate a specific percentage of their owed taxes to PBOs and other types of organisations. While they also promote PBOs, they do so in a manner distinct from tax-privileged donations.[3]

[1] Data seem to show that philanthropic giving is not the most significant source of funding for PBOs established in the EU countries: cf. OECD (2020), p. 17 f.

[2] Cf., for an overview, Hoolwerf, Schuyt (2013); OECD (2020), p. 16 f.

[3] Tax allocation represents a different mechanism because it does not provide any financial advantage to the taxpayer, who will not pay less in taxes, nor does it require a donation to the beneficiary entity. The

The present paper is structured as follows. Chapter 1 reviews tax benefits for a PBO's donors and its meaning, followed by a chapter discussing its rationale. Chapter 3 discusses the structures and design of this tax measure. The final chapter sets out cross-border donations and the non-discrimination principle.

1. Tax benefits for donors: what are they?

Generally speaking, a donation is a voluntary transfer of money or other goods made without any expectation of return.[4] The aim of tax-privileged donations is to support organisations that states consider valuable for their beneficial purposes and commitment to general public interest activities. By reducing the financial burden of donations, the state seeks to encourage both individual and corporate generosity towards these entities.

Tax benefits for donors have the following characteristics:

- **Tax incentive**: A tax measure that encourages specific behaviours among taxpayers (i.e., increased donations to SEEs) by providing specific benefits such as reduced income taxes.
- **Support for SEEs**: A measure that reduces the costs of donations for donors, indirectly supporting recipient organisations by attracting more donors and larger donations.
- **State subsidy**: Granting donors tax benefits, in which the state foregoes a portion of its tax revenues to support SEEs.

taxpayer incurs no costs or advantages; all contributions to the beneficiary entity are financed by the state. Consequently, tax allocation schemes cannot be classified as tax incentives since there is no act of generosity from the taxpayer to encourage. In fact, while these schemes relate to taxes, they do not constitute tax measures in the strict sense. Instead, they empower taxpayers to decide how a portion of state resources (more precisely, resources foregone by the state) is allocated to worthy organisations and purposes. These schemes exist in eight Member States, namely, Hungary, Italy, Lithuania, Poland, Portugal, Romania, Slovakia and Slovenia. The percentage of taxes that can be allocated by taxpayers varies across countries. In Slovenia, taxpayers may choose to allocate up to 1% of their personal income tax. In Italy and Portugal, a fixed percentage of 0.5% applies. The fixed percentage is 1% in Hungary and Slovenia and 1.5% in Poland. In Slovakia the percentage is 2% (like in Lithuania), but a taxpayer who has volunteered for an eligible entity for at least 40 hours during the fiscal year, can allocate 3% of their personal tax income liability. The highest percentage (3.5%) is found in Romania. Tax allocation is generally available only to individual taxpayers, with Slovakia being the sole exception, as it also allows corporate taxpayers to opt for it (the percentage for corporate taxpayers is 1% or 2%).

[4] In order to identify and delineate a true donation, two essential elements are thus required: on the one hand, the 'spontaneity' of the attribution, which excludes from donation those transfers that are compulsory by law or contract; on the other hand, the 'gratuity' of the attribution, which excludes transfers made in exchange for a direct and economically assessable benefit for the donor. In general, a gratuitous transfer of services is not considered a donation. In the practice of donations to SEEs, borderline cases can be found, such as mass donations solicited by SEEs (donation crowdfunding and/or fundraising events), sometimes offering a good or service as a form of acknowledgment for the donation received. In this case, elements of exchange permeate the donation, and it is therefore necessary to establish the limits within which such elements do not alter the essence of the donation. In some countries (e.g., Austria), the tax deductibility of the donation is excluded for that portion of the donation corresponding to the fair market value of the good or service received by the donor 'in exchange' for their donation. Donations must also be distinguished – which is not always easy in practice – from sponsorships, which are onerous contracts rather than gratuitous ones. A SEE that assumes the obligation to promote the image or brand of a for-profit company in exchange for a sum of money does not receive a donation; rather it receives a payment for a service rendered that benefits the other party within the framework of a reciprocal contract. This implies that these payments are commercial revenues for the sponsee SEE that receives them, while for the sponsor company they can be, depending on the national legislation, deductible business expenses. Sponsorships may be valuable for SEEs seeking financial resources, particularly from for-profit organisations, to support their public benefit activities; however, they should not be confused with donations. An analysis of the aforementioned cases falls outside the scope of this paper.

- **Resource redistribution**: Reduces state revenues, potentially impacting funding for other public benefit purposes, such as assistance to the poor or support for organisations that do not qualify as SEEs.
- **Tool for taxpayers**: Enables taxpayers to influence the allocation of state resources by identifying beneficiary entities and promoting specific public benefit activities (education, health, social assistance, amateur sport) that the donation is intended to promote.

Box 1: Example of an income tax reduction on a donation

If Noah intends to donate EUR 1,000 to one or more SEEs of his choice and knows that he will save, for instance, EUR 300 in income taxes, he is likely to be more willing to proceed with the donation, as it effectively costs him only EUR 700. In fact, Noah might even decide to be more generous, since the tax savings lower the overall cost of his donation. Similarly, Maria, Henry, and many others – including Company Alfa and Company Beta, if the tax incentive also applies to legal entities – could feel encouraged to join Noah in supporting SEEs.

The European Commission's 2021 Social Economy Action Plan identifies tax reductions for private and institutional donors as an important tool to support the social economy.[5] The European Commission (EC) also recognises the difficulties taxpayers face in accessing tax benefits for cross-border donations as barriers that need to be removed to promote SEEs.[6] Along with its proposal for a recommendation on the social economy[7], the EC published two Staff Working Documents on the taxation of SEEs, which provide a comparative overview of the national tax framework for SEEs and PBOs[8] and specific guidance on taxation issues regarding cross-border donations.[9]

In its proposal of September 2023 for a Directive on the European Cross-Border Association (ECBA)[10] (which was included in the 2023 Commission Work Programme as part of the Social Economy framework) the EC included provisions regarding the freedom for European cross-border associations (ECBAs) to solicit and dispose of donations (Article 5(2)), and a prohibition for Member States to impose restrictions on an ECBA's ability to receive donations (Article 13(2)). This includes the requirement for authorisation or approval from a national authority as a condition for receiving donations from a source within the Union (Article 14(2)(f)).

The Council Recommendation of 27 November 2023 on developing social economy framework conditions acknowledges the positive role that well-designed tax incentives for donations to PBOs can have on fostering the social economy. Accordingly, one of the specific recommendations to Member States in the area of taxation is to develop 'income tax incentives in the form of deductions or tax credits granted to private or institutional donors or a designation scheme according to which taxpayers can indicate to their tax authority the set percentage of their income tax liability to be allocated to public-benefit

[5] COM (2021) 778 final, p. 4.

[6] COM (2021) 778 final, p. 5 f.

[7] COM (2023) 316 final.

[8] SWD (2023) 211 final

[9] SWD (2023) 212 final.

[10] COM (2023) 516 final.

entities'.[11] In the same 2023 Recommendation, the other topic of the barriers for donations across Member States borders is dealt with in another specific recommendation to Member States, which is 'to facilitate compliance on a practical level for public-benefit cross-border donations for taxation purposes, for instance by issuing a standardised form of the recipient entity established in another Member State on the amount of the donation, identifying both the recipient and the donor.[12]

2. Rationale and efficiency of income tax reductions on donations

EU Member States are not obliged to support PBOs by providing tax benefits for donations made in their favour. However, almost all EU Member States (as well as most countries outside the EU) do offer such tax benefits.[13] The most common justification of this is efficiency. The measure is considered efficient because it generates social benefits that exceed those that the state could produce by utilising the tax revenues forgone to finance the measure.[14] While the argument seems simple, proving the positive impact of the measure is challenging.

Additionally, it should be noted that the measure in question may disadvantage citizens who would benefit from alternative uses of the relinquished state resources.[15] Therefore, for efficiency to be established (at least in the context of a Kaldor-Hicks improvement, in which those who benefit from the change could theoretically compensate those who are harmed by it), it is essential to demonstrate that the benefits gained by the consumers of the social good outweigh the losses incurred by those who do not have an interest in the social good that result from tax-incentivised donations. Once again, demonstrating such an impact of the measure is quite challenging. Hence, it is important to support the aforementioned argument with additional points that, when combined, may ultimately strengthen the rationale for prioritising the measure.

One of these additional arguments is treasury efficiency.[16] The tax measure is treasury efficient when it generates donations that exceed the costs, represented by the forgone tax revenue, incurred by the state to subsidise it. When this happens, more resources than those that the state could have directly provided to them flow towards PBOs (which also justifies the preference for the tax incentive over direct subsidisation of PBOs),[17] enhancing the social benefit that these organisations pursue through their actions. States benefit from this arrangement, as they can reduce direct funding to these valuable organisations and encounter fewer unmet social needs to address. Ultimately, the measure may lead to greater public benefit for citizens and communities, as well as cost

[11] C/2023/1344, at 19(b)(ii).

[12] C/2023/1344, at 19(d).

[13] To the best of our knowledge, the only exceptions in the EU are Malta and Slovakia. In Malta a debate on the topic exists and there are representative organisations of the charitable sector pushing for the introduction of the measure.

[14] This is also due to the factors determining 'government failure', which in turn implies 'market failure': cf. OECD (2020), p. 24.

[15] Cf. Reich (2018), p. 199.

[16] Cf. Reich (2018), p. 199.

[17] Cf. OECD (2020); p. 26.

savings for the states.[18] Furthermore, studies have shown that tax incentives have positive effects on donations, although they are not the only driver of philanthropic behaviours.[19]

The most comprehensive report on this subject demonstrated that in 2013, the proportion of people donating money to PBOs was 12 percentage points higher in countries that offered some form of tax incentive to individuals (33%) than those that offered no incentives (21%). The report also revealed a growing global consensus around the need for tax incentives for giving, with 77% of governments offering tax incentives for corporations and 66% offering tax incentives for individual donors.[20]

Box 2. The positive impact of tax incentives on donations in Italy

In Italy, the number of donors benefitting from tax incentives increased by 12% between 2018 (the first fiscal year after the 2017 reform of the third sector) and 2022, although they still represent only 4.3% of the total individual taxpayers. Meanwhile, donations with requested incentives rose significantly, from EUR 257 million in 2018 to EUR 322 million in 2022 (+25%). The average donation amount also grew as income levels rose.[21]

However, other research raises doubts about the actual effectiveness of economic incentives, including tax benefits, in increasing donations.[22]

On the other hand, tax incentives allow citizens to 'vote' (via their donation) on which activities receive subsidies.[23] The public good that the measure produces is therefore a vibrant and pluralistic civil society itself, where citizens can determine which social goals are relevant, including minority and unconventional aspirations, and are encouraged to engage more actively with social issues. The development of the public benefit sector thus becomes a public good itself.[24] This overarching benefit justifies the tax incentive even if it is inefficient.[25]

Considering the previous arguments, along with the fact that this measure is already implemented in nearly all Member States and is the subject of a specific EU recommendation (although this act is not legally binding for Member States), the real question for Member States appears not to be whether to adopt and/or maintain the tax incentive in question, but rather how to develop it effectively to maximise its impact in terms of efficiency, pluralism, or both, depending on each Member State's specific policy goals. In this regard, it is essential to compare the various designs of the measure as

[18] This circumstance is invoked by citizens, for example when a state announces a reduction of the tax incentive, as has recently happened in Belgium. More can be found here: https://www.brusselstimes.com/1484386/more-than-470-ngos-oppose-reduced-donations-tax-deductibility.

[19] Cf. OECD (2020), p. 24 f.; Ruehle et al. (2021); Chan et al. (2024). Cf. also Alepin B. (2021).

[20] Cf. Rules to Give by Index, p. 10.

[21] Cf. Bobba, Caltabiano (2025).

[22] Cf. Chan et al. (2024); Ring, Thoresen (2024). According to Brody (2018), p. 499: 'apparently tax considerations are not paramount to the decision to give'.

[23] Cf. Perry Fleischer (2018), p. 422, quoting the 1998 article from Saul Levmore, *Taxes as Ballots*, published in the University of Chicago Law Review.

[24] Cf. Perry Fleischer (2018), p. 433.

[25] Cf. Reich (2018), p. 202.

found in the existing legislation and to adequately address the critiques that this tax incentive has attracted over time.

3. Structure and design of the tax incentive

Legal provisions granting tax benefits to those who donate to PBOs exist in almost all national jurisdictions of the EU[26]. In many Member States, this measure has been established for some time. For instance, within the context of broader reforms concerning the eligible organisations, the Italian reform of the third sector (Legislative decree, 3 July 2017, n. 117) provided an opportunity to review the incentive for donors, by increasing donors' benefits and allowing individual taxpayers the choice between a tax deduction and a tax credit. In Sweden, a similar measure was previously abolished and then reintroduced in 2019.

The relevant provisions regarding the tax incentives in question are typically found in one of the following contexts:

- in the national income tax laws or codes, where the regulation of eligible organisations is also located[27] and where PBOs (or equivalent organisations, regardless of their legal denomination) are an eminently fiscal category of organisations (tax law model);
- in broader texts or codes that provide the overall legal framework for the eligible organisations, as is the case in some Member States, such as in Italy and Poland, where PBOs are an eminently substantial category of organisations (substantial law model);
- in other EU Member States – including Ireland, Lithuania and Slovenia – the legal provisions establishing the tax incentive are found in tax law; however, there also are comprehensive substantial laws (like the Irish Charities Act of 2009) that provide detailed regulations concerning the beneficiary entities. Hence, the legislation adopted by these countries, though 'hybrid', aligns more closely with the 'substantial law' model described above.

In the first model, the focus of the legislator is primarily on the tax incentive (and the overall preferential tax regime applicable to the eligible organisations) and its administration, which is typically managed by the national tax authority. The identification of recipient entities also falls under tax law and is guided by the specific objectives of that legislation. The regulation of the tax incentive can be quite detailed, as observed in Austria following the 2023 reform of the public benefit sector (in force since 2024). In the second and third models, the substantial regulation of the beneficiary entities takes precedence in the legislator's considerations, with the tax incentive representing merely one of the promotional measures in favour of PBOs. This leads to a fundamentally different approach to the administration of the tax incentive, particularly concerning the registration and oversight of recipient entities. The process is not entirely left to the tax authority; instead, the public authority responsible for PBOs plays a central role. The regulation of eligible organisations may be more detailed compared to the regulation of the tax incentive, as is the case in Italy following the 2017 reform of the third sector.

Notwithstanding their variety, all these regulations share a common goal: they seek to encourage donations to particularly worthy organisations by reducing the costs of

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[26] Cf. previous footnote 13. See also the tables provided in OECD (2020), SWD(2023) 211 final, and Fici (2023).

[27] Has been identified in Austria, Belgium, Cyprus, Czech Republic, Denmark, Germany and the Netherlands.

donations made in their favour. This leads to similarities in the general structure of the tax incentive. The main differences in the national regulation of this measure pertain to:

- the nature of the donors to whom the benefit applies;
- the type of donations for which the benefit is granted;
- the type of benefit provided to donors, including the conditions and limits which the provision of the benefit is subject to;
- the type of beneficiary organisations to which donations must be directed for the tax benefit to apply;
- the manner in which the tax incentive is managed by each Member State, including procedures for eligibility (approval, certification, registration, etc.) and supervision of the beneficiary organisations.

In the following sections of this paper, each of these aspects will be examined in greater detail, taking into consideration the main points and possible alternatives.

3.1 Incentivised donors

In principle, donors who can claim the application of the benefit may be both individuals, who are subject to personal income tax, and companies or other legal entities that are subject to corporate income tax. Accordingly, nearly all EU Member States that have established the tax measure allow both categories of donors to access the tax benefit, thereby incentivizing both, although potentially in different ways. This is due to the specific regulations, which may vary for individuals and legal entities, even within the same national jurisdiction. Only in Sweden is the benefit restricted to individuals. In this case, companies and other legal entities that are subject to corporate income tax and wish to reduce the costs of their support for PBOs, can only engage in sponsorships, provided that the costs associated are deductible as business expenses under national law. Another isolated case is Lithuania, where the tax benefit is granted exclusively to legal entities, although individuals are entitled to allocate a portion of their taxes to PBOs.[28]

3.2 Eligible donations

Donations to PBOs may in principle be monetary or non-monetary. To be eligible for the tax benefit, monetary donations must, in certain cases and/or Member States, be made not in cash but via electronic means. Unlike monetary donations, not all countries grant tax benefits for donations of goods. There are also countries in which donations of goods are eligible for tax benefits only if the donors of PBOs are legal entities.

This restriction is primarily due to the difficulties associated with calculating the value of in-kind donations, which can lead to potential abuses of the tax incentive. This also justifies the caution surrounding non-monetary donations, even in countries that consider them eligible for the tax benefit. In such cases, an assessment of the fair value of the donated goods is required by law. In the most severe instances, this evaluation must be included in a sworn report by a registered auditor, which must be submitted to the tax authority.

An additional explanation might be that donations of goods allow a donor who may not particularly value the donated items to derive a tangible benefit from the tax incentive. Such donations create a sort of market in which the tax incentive acts as a return rather

[28] Cf. previous footnote 3.

than merely a discount on the cost of the donation. Consequently, the tax incentive may ultimately benefit the donors, which contrast with the rationale behind the tax incentive.

Donations of services do not fall within the scope of the tax incentive in question. They are not donations in the strict sense but rather constitute volunteering.

3.3 Benefits, limits and conditions

There are three general types of tax benefit used by Member States to reward and encourage donations to PBOs: deduction from taxable income; deduction from tax liability or 'tax credit'; and 'matching'. Each of these measures can be, and is often, subject to restrictions aimed at limiting the impact of the tax incentive on the state budget. Additionally, there are legal requirements that must be fulfilled for the benefit to be recognised, such as:

- the exclusive use of electronic money transfer methods (e.g., in Italy);
- the issuance of a receipt or certificate by the recipient organisation (e.g., in Hungary);
- the communication of the donors' data to the tax authority (e.g., in Austria for individual donors);
- the requirement to exceed certain minimum donation value thresholds (in many Member States).

There is no single reference model, and even within the same Member State, multiple solutions or alternatives may exist for the same category of taxpayers or vary based on the taxpayer's classification (individual or corporation).

3.3.1 Deduction from the taxable income

The most common mechanism to ensure a benefit for a PBO's donor is the deduction of the value of the donation, or a portion of it, from the taxable income, as a special or a business expense. Hence, the taxpayer does not pay taxes on the deducted amount. The benefit the donor receives, or rather the costs they save, depends not only on the percentage of the donated value that the donor can deduct, but also, in a progressive income tax system, on their marginal tax rate.

Box 3. Examples of deductions from taxable income

Example 1: In 2024, Mario, an Italian donor, donated EUR 1,000 to a third sector organisation (TSO). Mario's total income in 2024 was EUR 40.000, and therefore, based on Italian tax law, his marginal rate is 35%. The cost of the donation that Mario saves is EUR 350. Had Mario's total income been EUR 120,000, he would have saved EUR 430 for the same donation (1,000*43%). The tax benefit is higher (430>350) because the marginal tax rate applicable to Mario is higher. Example 2: In 2024, Emilia, an Austrian donor, donated EUR 1,000 to a PBO. Emilia's total income in 2024 was EUR 40.000, leading to a marginal rate of 40%. The cost that Emilia saves is EUR 400. Had Emilia's total income been EUR 120,000, she would have saved EUR 500 for a donation of the same value. Here, the tax benefit is again higher (500>400) due to a higher marginal tax rate (50%).

The examples illustrate that when the tax incentive consists of a deduction from the taxable base in a progressive income taxation system, wealthier taxpayers receive greater benefits from the tax incentive. In other words, donations to PBOs cost wealthier taxpayers less than they do for those with lower incomes. This disparity among income groups is more pronounced in countries that permit donors to deduct the full value of their donations. Conversely, if a flat tax rate applies (e.g., for corporate donors), this issue does not arise. This 'plutocratic bias' inherent in the deduction mechanism has faced significant criticism;[29] while it may enhance the efficiency of the measure, it conflicts with the rationale of pluralism.

Legislators can impose ceilings on tax benefits for donations in various forms. These can be a percentage of the deductible value, such as in Belgium where individual taxpayers can deduct 45% of the donated amount. Alternatively, ceilings can be set as a maximum deductible amount, either as a fixed sum or a percentage of total income. For example, Denmark has a fixed ceiling of DKK 17,200 (approximately EUR 2,300 in 2022), while Finland's is EUR 50,000. In Austria and Italy, the ceiling is 10% of total income, whereas in Croatia it is 2%, and in the Czech Republic it is 15% for individual donors and 10% for corporate donors. Poland and Bulgaria have ceilings of 6% and 5% for individuals, and 10% for corporations, respectively. Portugal sets a ceiling of 0.8% of total turnover for corporate donors. Some countries combine criteria, such as Estonia, where individual donors can deduct up to 5% of taxable income with a maximum of EUR 1,920, and Belgium, where individual donors may deduct up to 10% of net income or EUR 392,000, while corporate donors may deduct up to 5% or EUR 500,000. Luxembourg uses a similar structure with a ceiling of 20% of taxable income or EUR 1,000,000.[30]

If the aforementioned limits are exceeded, taxpayers may or may not be allowed by law to carry the expense of the donation forward for a limited number of fiscal years, as is the case in Italy and Luxembourg, among others.

National legislators may also set a minimum donation amount for the tax benefit to apply: this minimum amount is EUR 40 in Belgium for individual taxpayers; EUR 120 in Luxembourg; EUR 850 in Finland; in the Czech Republic, the minimum amount is CZK 1,000 or 2% of the taxable income for individuals and CZK 2,000 for corporations. This threshold is set by law because the administrative costs of the measure would otherwise overcome the benefits expected from its application.

3.3.2 Tax credit

A different mechanism utilised in some Member States for rewarding donations to PBOs is tax credit. In this case, the donor may deduct the value of the donation, or a portion of it, from their tax liability. As a result, this mechanism allows the donor to pay less in taxes than they otherwise would have. For instance, in Italy a donor with a total income of EUR 40,000, may donate EUR 1,000 to a TSO and deduct 30 % of the donated amount from their gross tax liability, thus saving EUR 300. Unlike deductions from the taxable base, tax credits mitigate disparities in treatment among taxpayers based on their wealth, as total income and the marginal tax rate are not relevant. What matters is solely the value of the donation and any potential limits established by law. Additionally, taxpayers subject to flat income taxation can also benefit from the tax incentive in question. For

[29] Cf., among many others, Reich (2018), p. 199.

[30] In some Member States, there are special provisions on long-term donations, to which different limits on tax deduction apply. In Greece, corporate donations to PBOs are tax-deductible by 20% of the value of the donation or 40% of the value of the donation if it is provided to a PBO under a long-term donation contract. In the Netherlands, periodic gifts – namely, donations based on an obligation entered into by notarial or private deed of donation to pay annually for five or more years while the donor is alive – are fully deductible up to EUR 250,000. Other gifts taken together in a year are deductible if they exceed 1% of the gross income (with a minimum of EUR 60) and up to 10% of the gross income.

these reasons, tax credit (especially when combined with limits) is favoured by those who critique the deduction mechanism for its 'plutocratic bias'.[31] On the other hand, tax credit may conflict with the efficiency rationales, as it may encourage fewer donations compared to the deduction from the taxable base.

3.3.3 Matching

A third type of tax relief, which is unique to Ireland within the EU, is commonly referred to as 'matching'. Donations made by individuals ranging from EUR 250 to EUR 1,000,000 per year qualify for this tax relief. The benefit can be claimed by the designated charity at a rate of 31%, or 10% if there is a 'connection' between the donor and the charity, regardless of the donor's total income. Importantly, the total payment to the charity cannot exceed the amount of taxes the donor has paid during that year.

Box 4. Example of tax reduction on donation in Ireland

John, an Irish taxpayer, donates EUR 1,000 to an approved charity. The charity is entitled to request a payment from the tax authority amounting to EUR 310. However, if John is an employee or a member of the recipient charity, the charity can only claim a payment of EUR 100. John's total income is irrelevant; however, for the payment to be made to the recipient charity, John must have paid at least EUR 310 in taxes (or at least EUR 100, in the case of 'connection').

3.4 Beneficiary organisations

As previously noted, donations are considered tax-privileged by law only when they are made in favour of certain legal entities. These entities are typically PBOs, although many national laws identify other potential recipients of tax-privileged donations, including, at times, public entities and religious organisations (which, however, in some Member States may also qualify as PBOs). PBOs are organisations that hold a public benefit status as provided (albeit in different ways) in the legislation of all Member States of the EU. Thus, PBOs are not technically a specific legal type of entity, but rather organisations that possess a legal qualification obtained in accordance with relevant national legislation. The legal designation of organisations with public benefit status varies from country to country. Usually, these organisations are referred to by law as 'public benefit organisations', but other terms are also used, such as 'charitable organisations' and 'third sector organisations', among others.

Despite the diversity of legislative models and legal designations, national regulations regarding public benefit status share several common traits, allowing PBOs to maintain a common identity regardless of their country of incorporation. The public benefit status is an optional legal status that national laws make available to private law organisations which, regardless of their legal form (association, foundation, mutual society, company or cooperative, except those entities explicitly excluded by law, such as political parties, trade unions, etc.), meet the following legal requirements:

- the exclusive pursuit of a public benefit purpose and/or the performance of a public benefit activity, as identified by law, which may include long lists of public benefit purposes or activities in certain jurisdictions (such as Germany and Italy, among others);

[31] Cf. Reich (2018), p. 202.

- the use of assets solely for public benefit purposes ('asset-lock');
- the non-distribution of profits, either directly or indirectly (i.e., through operations that confer unreasonable benefits on third parties to the detriment of a PBO's assets), to founders, members, shareholders, directors, etc., at any stage of the organisation's lifecycle, including at its dissolution, in which case the residual assets shall be devolved for public benefit purposes.

Usually, PBOs are also subject to specific governance and transparency obligations aimed at ensuring their behaviour aligns with their mission of promoting trust and accountability and facilitating state supervision. PBOs are required to register on special registers or lists. Registration is possible only if the necessary legal requirements are met by the interested organisations and is necessary for them to acquire the legal status. Accordingly, PBOs lose their status upon removal from the designated register or list on which they are registered. The loss of the status does not terminate the legal personality of the organisation, which continues to exist as an ordinary association, foundation, cooperative, company, etc., without the public benefit status. On the other hand, the loss of the status may be accompanied by the obligation for the entity to devolve all or part of its assets in a disinterested manner (e.g., to other PBOs), as occurs in the case of its dissolution.

PBOs are subject to a specific form of public supervision to ensure compliance with the regulations surrounding public benefit status. The failure to meet the requirements for qualification as PBOs and/or persistent violations of applicable rules can result in de-registration and loss of status. Given these characteristics, the category of PBOs does not coincide with that of non-profit organisations, whose distinguishing trait is simply the prohibition regarding the distribution of profits. PBOs also do not coincide with SEEs, although PBOs are an essential part of the social economy. Finally, PBOs do not coincide with social enterprises, although in some countries social enterprises can obtain the public benefit status.

In conclusion, PBOs are perceived by legislators as those organisations that, due to their specific characteristics, best align with the rationales of the tax measure in question. It is important to note, however, that in some national laws the status of PBO and the registration in the relevant public register are not, by themselves, sufficient for an organisation to qualify for tax-privileged donations. For the tax measure to apply, some national laws impose additional requirements, as well as the necessity for registration in other registers or lists.

4. Cross-border donations and non-discrimination principle

If the principal justification for tax-privileged donations to PBOs is to promote organisations that contribute to the public good, enhance civic participation and foster the socio-economic development of communities, then how should a state handle donations made to national PBOs that pursue public benefit purposes abroad ('indirect cross-border philanthropy') or to foreign PBOs ('direct cross-border philanthropy')?

If tax benefits are applied to these 'cross-border donations', they could effectively represent a contribution made by one state to a foreign state or community. In this scenario, do the traditional justifications for granting such tax incentives still hold? Are there further and/or more specific justifications?[32]

Examining non-European legal systems, we find that tax incentives typically do not apply to donations made by national taxpayers to foreign PBOs. A somewhat more lenient stance is observed regarding donations to national PBOs operating abroad. This is similarly reflected in EU Member States concerning donations to PBOs established in non-EU countries. However, can EU Member States adopt the same position regarding donations to PBOs based in another Member State?

The Court of Justice of the European Union (CJEU) has ruled that such discrimination against foreign PBOs in favour of national ones is not permissible, as it violates EU primary law, particularly the principle of the free movement of capital within the EU.

Specifically, the CJEU has determined that foreign PBOs cannot be discriminated against in favour of national PBOs that are 'comparable'. This protection includes not only the direct taxation of PBOs but also the tax treatment of donations (and bequests) made to them. Hence, donations (and bequests) to foreign PBOs must be afforded the same tax privileges as those granted to national PBOs, provided that the foreign PBOs are deemed 'comparable'.

The pertinent rulings include:

- *Laboratoires Fournier* (C-39/04): art. 49 TEC precludes legislation of a Member State which restricts the benefit of a tax credit for research only to research carried out in that Member State;
- *Centro di musicologia Walter Stauffer* (C-386/04): art. 73b of the EC Treaty, in conjunction with art. 73d, must be interpreted as precluding a Member State which exempts from corporate tax rental income received in its territory by charitable foundations which, in principle, have unlimited tax liability if they are established in that Member State, from refusing to grant the same exemption in respect of similar income to a charitable foundation established under private law solely on the ground that, as it is established in another Member State, that foundation has only limited tax liability in its territory;
- *Hein Persche* (C-318/07): where a taxpayer claims, in a Member State, the deduction for tax purposes of gifts to bodies established and recognised as charitable in another Member State, such gifts come within the compass of the provisions of the EC Treaty relating to the free movement of capital, even if they are made in kind in the form of everyday consumer goods. Art. 56 TEC precludes legislation of a Member State by virtue of which, as regards gifts made to bodies recognised as having charitable status, the benefit of a deduction for tax purposes is allowed only in respect of gifts made to bodies established in that Member State, without any possibility for the taxpayer to show that a gift made to a body established in another Member State satisfies the requirements imposed by that legislation for the grant of such a benefit;
- *Missionswerk* (C-25/10): art. 63 TFEU precludes legislation of a Member State which reserves application of succession duties at the reduced rate to non-profit-making bodies which have their centre of operations in that Member State or in the Member State in which, at the time of death, the deceased actually resided or had his place of work, or in which he had previously actually resided or had his place of work;

[32] According to OECD (2020), p. 35 f., states should also encourage cross-border philanthropy, as it can serve as a global response to challenges of a global nature, while simultaneously providing benefits to the states themselves, such as the development of 'soft power' abroad.

- *European Commission v Austria* (C-10/10): by authorising the deduction from tax of gifts to research and teaching institutions exclusively where those institutions are established in Austria, the Republic of Austria has failed to fulfil its obligations under art. 56 TEC.

This body of jurisprudence, along with the principle of non-discrimination of PBOs under tax law, has been the focus of a staff working document of the EC accompanying the proposal for a recommendation on developing social economy framework conditions[33].

In this document, the Commission – moving from the consideration that Member States 'are free to design their tax systems as they see fit' but they must comply with EU law, as interpreted by the Court, and that EU law has important implications for Member States when it comes to cross-border situations connected to the exercise of the four fundamental freedoms – explains that 'while it is for each Member State to determine whether it will provide for a certain tax treatment for charitable organisations and charitable giving and, if so, what kind of general interests it wishes to promote by offering such tax treatment under national law, once a Member State decides to provide for an advantageous tax treatment for domestic charities and charitable giving, it should provide for non-discriminatory tax treatment of comparable foreign charities and donations and bequests made to such entities. This ensures that the tax autonomy of the Member States is exercised in accordance with the fundamental freedoms of the TFEU.

Since 2005, the European Commission has opened 39 infringement proceedings against Member States under art. 258 TFEU which mirror the aforementioned case-law. While most discriminatory tax regulations have been resolved, three infringement cases were ultimately referred to the Court: Commission v Austria (C-10/10), Commission v France (C-485/14) and Commission v Greece (C-98/16).

However, the working document from the European Commission does not detail the current state of national rules regarding the recognition of foreign PBOs following the CJEU's rulings. In the majority of EU Member States, national laws generally allow, and sometimes even explicitly permit, taxpayers to make tax-privileged donations to foreign entities, provided they are deemed 'comparable' to national entities eligible for these donations under national law. However, exceptions do exist.

In Cyprus, for example, only entities with registered offices within the country can be recognised as philanthropic entities eligible for tax deductions under art. 9.1 (f) of Law no. 118(I)/2002.

Romania restricts tax-privileged donations exclusively to Romanian PBOs.

In Greece, donations to foreign PBOs yield lesser benefits for taxpayers compared to those made to national PBOs, amounting to a form of discrimination.

Italian law lacks explicit provisions permitting foreign 'comparable' organisations to enjoy the benefits available to national third-sector organisations (TSOs). Furthermore, the Italian tax authority recently clarified (in response no. 406/2021) that for a foreign organisation to qualify, it must be registered in the National register of TSOs, effectively circumventing the comparability test. This registration requires foreign entities to relocate their registered seats to Italy, thus becoming Italian organisation.

[33] SWD (2023) 212 final.

Generally, the burden of proof regarding the comparability test falls on the taxpayer (or the organisation seeking benefits), and there is no clear or transparent guidance on the procedures and criteria for conducting this test by the competent national authority.

For example, in Belgium, to obtain tax privileges for donations to organisations based in another EEA member state, a taxpayer must provide evidence to the tax administration that the foreign organisation is comparable to and accredited in a manner similar to a Belgian eligible organisation. In Bulgaria, donors must submit an official statement, translated into Bulgarian, from the relevant foreign authority certifying the status of the foreign organisation. In Latvia, taxpayers are required to present documentation to the tax administration confirming that the foreign organisation's status equates to that of the national status, verifying that the recipient entity operates in specific public interest fields, and that at least 75% of the donated amount is used for public benefit purposes.

In certain jurisdictions, such as Denmark and Finland, national laws require prior approval of national organisations to qualify for tax-privileged donations. Similarly, prior approval from the relevant Member States for comparable foreign organisations is also mandated.

Some national laws explicitly state that comparable foreign organisations can attain recognition (such as the ANBI status in the Netherlands – the status of a public benefit organisation) by registering with the competent national authority or by being approved by the national tax authority to become recipients of tax-privileged donations, as seen in France, Sweden, and more recently in Austria and Germany. In such cases, the responsibility for proving eligibility lies with the organisation, which, once registered or approved, can benefit from this status on a permanent basis. In France, if a foreign organisation has not previously gained approval, taxpayers can still submit evidence to the tax authority demonstrating compliance with the necessary requirements for approval.

The preceding information highlights that the principle of non-discrimination for foreign PBOs compared to national PBOs has yet to be effectively implemented by member states. Not only do several national laws still need to align with the principles of EU law, but there are also laws that, by imposing the burden of proof regarding comparability on the taxpayer, significantly obstruct equal treatment between national and foreign PBOs. Conversely, some jurisdictions are showing a positive legislative trend by allowing foreign PBOs to demonstrate their comparability to national PBOs, which could enable them to obtain PBO status and/or secure registration in lists of potential beneficiary organisations in different Member States. However, public awareness regarding the procedures and criteria for the comparability test remains insufficient, along with varying regulations and administrative practices among Member States. These inconsistencies create substantial hurdles to the equal treatment of all PBOs, irrespective of their nationality, negatively impacting the fundamental rights of PBOs to freely provide services and operate across the EU.

Currently, the recent proposal for the ECBA from the European Commission does not address this issue, as it fails to encompass ECBAs with public benefit status. In any event, even if it did include such provisions, it would only apply to specific associations – namely ECBAs – leaving the situation unresolved for many other PBOs.

In contrast, establishing a European legal status for PBOs – as recommended by the EP[34] in a resolution of 2022 following the results of a specific study on the subject[35] – might significantly alleviate these challenges. If national PBOs were able to achieve a European public benefit status that all Member States would be required to recognise under EU law, these organisations would be treated as 'comparable' to their national counterparts, effectively eliminating discrimination. A European public benefit status would pre-emptively resolve comparability issues without necessitating complex, case-by-case analyses or lengthy documentation processes for registration in foreign beneficiary registers.

This approach would still respect Member States' sovereignty over taxation, as it would not compel states to grant tax benefits to PBOs; rather, it would ensure that European PBOs be treated as if they were national PBOs, reinforcing the principle of non-discrimination throughout the EU.

5. Conclusion

Tax-privileged donations to PBOs are widely recognised as an important fiscal measure among EU Member States, aimed at promoting these organisations and their public benefit objectives. It is undeniable that they represent one of the main fiscal tools available to Member States in support of the social economy. Not surprisingly, these donations are the focus of a specific recommendation from the European Union to its Member States.

Such tax-privileged donations increase the private resources available to PBOs, alleviating the fiscal burden on the state, while also enabling citizens to direct funds toward their preferred public benefit causes, thereby enhancing civic participation. While the necessity of this measure is well established, the critical question remains: how can it be designed to achieve its specific goals more effectively, as identified by each Member State? Comparative analysis reveals that various solutions exist among Member States, each presenting its own advantages and disadvantages.

A related issue that warrants particular attention is the removal of existing barriers to cross-border donations. In the absence of European legislation to address this issue, each Member State should enhance its criteria and procedures to facilitate foreign PBOs in receiving tax-privileged donations. Good practices observed in some Member States may serve as valuable examples for others seeking to identify potential improvements.

[34] Cf. European Parliament resolution of 17 February 2022 with recommendations to the Commission on a statute for European cross-border associations and non-profit organisations (2020/2026(INL)).

[35] Cf. Fici (2021).

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Annex 1 Guiding EU legal principles for Member States on the non-discrimination of PBOs under tax law (according to the EC)

- Member States are free to decide and define whether they will provide for tax advantages for charitable organisations and charitable donations and, if they do, under which conditions and which charitable purposes they wish to promote.

- However, when taking such a decision, the main principle is the principle of non-discrimination, i.e., Member States may not limit tax benefits to domestic charitable organisations or donations/bequests made to domestic entities, while excluding from such benefits comparable foreign charities or donations/bequests to comparable foreign charities.

- There is no mutual recognition of foreign charities required under EU law, but only equal treatment or non-discrimination of comparable foreign charities.

- The question arises as to what a comparable foreign charity is. There is no single answer to this question, as Member States are free to define the public benefit purpose and other requirements (as long as such requirements are non-discriminatory) that charities will have to meet; and the comparability test will naturally flow from such definitions. While comparability is an EU parameter, it is for each and every Member State, i.e., its national administration and courts, to implement it in its laws and administrative practices.

- Thus, in order to obtain tax benefits, foreign charities and their donors will need to prove that they meet the public benefit purpose and other requirements as defined in the domestic legislation of a Member State. In other words, the burden of proof is on charities and their donors; and in case of charities operating on an EU-wide level, they might face 27 such comparability tests.

- In this context, charities and their donors must be granted an opportunity to provide the relevant evidence regarding comparability of foreign charities for them to be able to claim the domestic tax treatment in a Member State.

- Finally, a Member State must have a possibility to verify the submitted information, via the internal or external mutual assistance mechanisms applicable between Member States and between Member States and third countries. In the absence of such a possibility, which could be more likely in an non-EU-Member State scenario, a Member State is entitled to refuse to grant the tax benefit at issue.

Annex 2 Glossary

Charitable status

A status granted to not-for-profit organisations that are established for an exclusively charitable purpose. The ‘purpose’ is what the organisation was set up to achieve and must be for public benefit. The legal definition of a charity and ‘charitable purpose’ is often defined in national legislation.

Grant

A sum of money awarded *una tantum* that is provided for free by a governmental agency or private organisation. Most grants are provided with a view to funding a specific project and require some level of compliance and reporting.

Legal form

The form under which an organisation is incorporated. The legal form determines how aspects like property rights, liability, governance and control, reporting, profit distribution and funding will affect the organisation.

Market

Any exchange that results from a contractual agreement. A market is created whenever potential sellers of goods and services enter into contact with potential buyers and there is a possibility of exchange through a contractual agreement.

Non-profit and Not-for-profit

The most well-known definition is provided by Johns Hopkins University. According to this definition, the sector includes organisations that are: voluntary; formal; private; self-governing; and do not distribute profits. The term “non-profit” refers to organisations that have to comply with a non-distribution constraint. The term “not-for-profit” is more general and refers to the goal pursued (which is other than profit). Non-profit organisation: an organisation that has a legal form which does not permit the distribution of profit and which is able to trade freely in furtherance of a social purpose. Examples include most foundations, associations and non-profit companies.

Profit

The residual return to the entrepreneur, i.e., the difference between total sales revenue and total costs incurred by the enterprise.

Progressive tax rate

A tax rate that increases or progresses as taxable income increases.

Reduced VAT rate

Various types of VAT rates can be applied that depend on the product or service involved in the transaction. Reduced VAT rates refer to special rates which were set according to standardised VAT rates. In the EU, one or two reduced rates may be applied to supply of specific goods and services based on the VAT Directive.

Social economy

Entities sharing the following main common principles and features: the primacy of people as well as social and/or environmental purpose over profit, the reinvestment of most of the profits and surpluses to carry out activities in the interest of members/users ("collective interest") or society at large ("general interest") and democratic and/or participatory governance. This includes cooperatives, mutual benefit societies, associations (including charities), foundations and social enterprises.

Social Economy Entity

Private law entities providing goods and services to their members or to society, encompassing organisational forms such as cooperatives, mutual societies, associations (including charities), foundations or social enterprises, as well as other legal forms, that operate in accordance with the following key principles and features: (i) the primacy of people as well as social or environmental purpose over profit; (ii) the reinvestment of all or most of the profits and surpluses to further pursue their social or environmental purposes and carry out activities in the interest of their members/users ('collective interest') or society at large ('general interest'); and (iii) democratic or participatory governance.

Social enterprise

Social enterprises are now generally understood as part of the social economy. Social enterprises operate by providing goods and services for the market in an entrepreneurial and often innovative fashion, having social and/or environmental objectives as the reason for their commercial activity. Profits are mainly reinvested with a view to achieving their societal objective. Their method of organisation and ownership also follow democratic or participatory principles or focus on social progress. Social enterprises adopt a variety of legal forms depending on the national context. Terms such as "social economy enterprises", "social and solidarity enterprises" and "third sector" are also used by some stakeholders, countries and international organisations to refer to social economy entities. Work integration social enterprises are a common type of social enterprise across Europe. They specialise in providing work opportunities for disadvantaged people.

Social insurance

Protection of the individual against economic hazards (such as unemployment, old age, or disability) in which the government participates or enforces the participation of employers and affected individuals.

Social investment

The term refers to all the targeted actions aiming to develop an economic environment that enables social enterprises to access finance. Social investment includes financial instruments (i.e., grants, loans, equity and hybrid instruments) that together with other types of support aim to maximise social impact. Traditionally, it involves several actors including supply-side (investors), demand-side (social enterprises), intermediaries and business development support organisations. The term is sometimes used more narrowly in reference to the provision of repayable finance with the aim of generating social impact, alongside an expectation of some financial return (or preservation of capital). More recently, social investment is sometimes used interchangeably with "impact investment" or "impact finance". The latter terms usually involve investors who seek a blended return based on several criteria (financial, social and environmental) and who tend to focus on financing scaling-up and replication of social enterprises. As for the use within the EC, it usually refers to policies designed to strengthen people's skills and capacities and support them to participate fully in employment and social life. In more recent years, the European Commission has also been using this term to refer to the provision of repayable finance to social enterprises.

Subsidy

A sum of money granted by the state or a public body to help an industry or business keep the price of a commodity or service low.

Tax exemption

A specific category of income, organisation or activity that is not subject to taxation by the government.

Tax incentive

A reduction made by the government in the amount of tax that a particular type of organisation or group of people has to pay or change in the tax system. They are usually intended by public authorities to encourage particular types of behaviour and/or to favour specific groups.

Tax deduction

An amount deducted from taxable income that lowers the amount of taxes an organisation or group of people owes the government.

Value Added Tax (VAT)

A general tax that applies in principle to all commercial activities involving the production and distribution of goods and the provision of services. It is a consumption tax because it is borne ultimately by the final consumer and is therefore not a charge on business.

VAT exemption

Some supplies of goods and services are exempt from VAT, and most of these are examples of 'exemptions without the right to deduct'. The right to deduct refers to a taxable person's right to claim the input VAT they paid on goods and services from tax authorities. VAT is deducted by subtracting the deductible amount from the VAT payable in the regular VAT return submitted to the tax authorities. There are two categories of exemptions without the right to deduct: exemptions for activities carried out in the public interest and exemptions for other activities.

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