TAXATION & PHILANTHROPY

OECD netFWD 2021 Annual Meeting

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Background

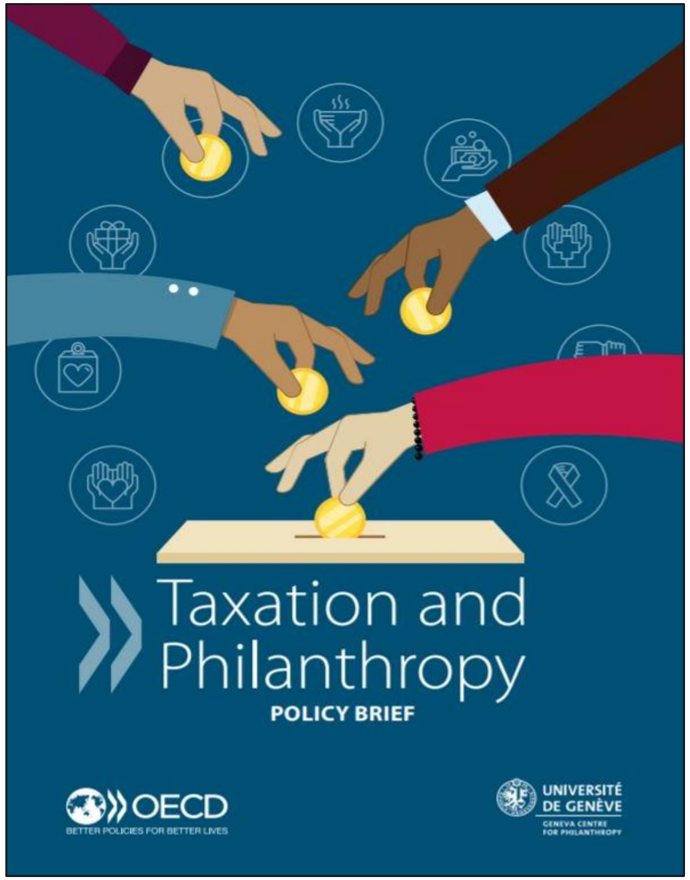
- Report prepared by the **OECD's Centre for Tax Policy and Administration** in collaboration with the **Geneva Centre for Philanthropy (GCP)** as a key input for the GCP's ***Taxation and Philanthropy*** conference held on 26-27 November 2020

- Genesis of the project:

  Professor Henry Peter, University of Geneva, Faculty of Law and Head of the GCP

Overview

- Report examines the **taxation of philanthropic entities and giving** across **40 OECD member & participating countries**
- Draws heavily on **country responses to a questionnaire** on the *Taxation and Philanthropy* issued at the end of 2019
- Report was published in the ***OECD Tax Policy Studies series*** with accompanying **Policy Brief**



The structure of the report

- Introduction: setting the scene
- The case for providing tax concessions for philanthropy
- Tax treatment of philanthropic entities
- Tax treatment of giving
- Tax treatment of cross border philanthropy
- Conclusions and policy options

Setting the scene

- **The philanthropic sector is large**
  - Cross-country studies suggest that the non-profit sector typically contributes in the order of 4.5% to 5% of GDP, or even higher.
  - In the United States, the non-profit sector is estimated to have contributed 5.5% of GDP, or USD 1.185 trillion, in 2019 (US Bureau of Statistics, 2020)
- **The philanthropic sector is diverse**: the number of entities and level of giving varies widely between countries
- **Philanthropic giving is significant** but not the main source of revenue for philanthropic entities
  - Self funding and government grants are a key source of revenue

The case for providing tax concessions

- There is **no single generally accepted rationale** for preferential tax treatment of philanthropic entities or for philanthropic giving
- **Arguments in support** of providing tax concessions include:
  - **Economic theory** (under-provision of a public good or positive externalities): justifiable where the concession results in a larger increase in social welfare than direct spending
  - **Subsidy rationale**: More common in the legal literature, requiring a similar justification
  - **Base defining rationale**: Surplus of a philanthropic entity is different in nature to income
  - **Others**: For example, to strengthen civil society

The case against providing tax concessions

- **Arguments against** providing tax concessions include:
  - **Cost of concessions**: Requires other taxpayers to bear an increased tax burden or less government expenditure on other policy priorities
  - **Competitiveness concerns**: Commercial operations of non-profits vs for-profits, competitive neutrality?
  - **Distributional impact**: Tax incentives for giving may be regressive, because of who gives and how we provide the incentive
  - **Democratic concerns**: Concerns that tax concessions can provide a disproportionate influence to large donors on the use of government resources, i.e. the foregone tax revenue

POLICY OPTIONS

Ensuring the design of tax incentives for philanthropic giving meets policy goals

- **More tightly defined eligibility conditions** will ensure tax concessions are better targeted towards activities that align with the priorities of policy makers
- Inevitably, **trade-offs must be made** between:
  - **Incentivising giving**
  - **Limiting fiscal cost**
  - **Managing both the distributional and democratic impacts** of the tax incentive
- **Tax credits** versus **tax deductions**
- **Fixed versus percentage-based fiscal caps**

Reassessing the design of tax concessions for philanthropic entities

- **Commercial income of philanthropic entities**
  - **Full exemptions** give rise to **competitive neutrality concerns**
  - **Countries should reassess the merits of providing tax exemptions for the commercial income of philanthropic entities**, at least in so far as this income is unrelated to the entity's worthy purpose.
  - Neutrality aims need to be balanced against **compliance and administrative costs/complexity**
- **VAT**
  - **Exempting philanthropic entities** from VAT may **lead to competitive neutrality concerns between for-profit and philanthropic entities**
  - Where exempt, consider subjecting to VAT, but possibly with **exemption threshold to minimise compliance burden on small entities**

Reducing complexity…for entities and giving

- **Consider applying the same eligibility tests for both philanthropic entities and philanthropic giving**
- **For non-monetary donations**, due to the difficulties associated with valuation and compliance costs, **imposing a minimum value threshold for a donation to receive concessionary tax treatment, may be warranted**
- **Consider implementing payroll giving schemes** to increase the effectiveness of the tax incentive for giving

Improving oversight…for entities and giving (i)

- **Establish a publicly available register of approved philanthropic entities**
- **Introduce an annual reporting requirement**, potentially subject to a *de minimis* threshold to minimise compliance burden
- **Consider a combined oversight approach** (e.g. tax administration *plus* specialist/independent commission)
- Consider whether **different treatment of corporate** and **individual giving** gives rise to distortions
  - **Clearly differentiate between donations and sponsorship**
- **Improve data collection and tax expenditure reports**

Improving oversight…for entities and giving (ii)

- **To reduce the risk of tax abuse**, countries could consider a number of policy options:
  - **Maintain a database of harmful practices** that have been observed to support improved compliance and community awareness
  - **Exchange information and good practices** with tax administrations and law enforcement agencies
  - **Implement limits to fundraising expenditures**
  - **Implement rules that limit certain types of operating expenses of PBOs**
  - **Limit the remuneration of staff, managers, and board members of PBOs**
  - **Screen non-resident PBOs and funds** eligible for receiving tax-incentivised donations

Reassess restrictions for cross-border philanthropy

- Most countries do not provide support for cross-border philanthropy, **but there may be a case for reassessing the position**
- A stronger case is likely to exist in areas such as **development, humanitarian, and conflict/crisis situations**
- To address concerns regarding risks of abuse, **countries may wish to consider imposing additional approval and oversight requirements**
- **In the EU**, countries could consider **explicitly incorporating the non-discrimination requirements of ECJ rulings as they pertain to philanthropic entities** into domestic legislation

ANNEX A:
KEY FINDINGS FROM COUNTRY EXPERIENCES

Philanthropic entities (i)

- Philanthropic entities typically must meet **eligibility requirements**:
  - **Not-for-profit** requirements prevent any form of profit distribution
  - **Worthy purpose** requirements: most common are welfare, education, scientific research, healthcare and culture
  - **Public benefit** requirements typically ensure that the body is open to a sufficiently broad section of the public
  - **Formal application process**: in almost all countries
- **Three common approaches** to assigning **oversight responsibilities**:
  - **Tax administration** provides oversight
  - **Tax administration** and **a competent authority** (such as an independent commission)
  - **Another department**, but not the tax administration

Philanthropic entities (ii)

- The report identifies **two common approaches for income tax relief** for philanthropic entities:
  - **exempt** all (or specific) income
  - consider all forms of income taxable, but **exempt if reinvested in a timely fashion towards the worthy purpose**
- Countries following the first approach **generally exclude non-commercial income from the tax base**
- Approaches to dealing with income from commercial activities diverge:
  - **restrict commercial activities**
  - distinguish between **related and unrelated commercial activity**
  - **tax commercial income above a threshold**
- Some countries provide **other preferential tax treatment**, e.g. VAT, property taxes
- Report highlights **a range of common tax avoidance/evasion schemes**

Philanthropic giving (i)

- **Different approaches to tax incentives for philanthropic giving** of individuals
  - **Large majority of countries**: donations are deductible from the personal income tax base
  - **A number of countries**: provide tax credits instead
  - **Small number of cases**: donations are matched or facilitated through an allocation scheme
- **Some countries adopt caps**
  - on the **size of the tax incentive** set equal to a fixed amount
  - others adopt caps **based on a percentage of the donor's income or tax liability**
  - some adopt a **combination of both**
- **The majority of countries that incentivise cash donations** of individuals **also incentivise non-monetary donations**

Philanthropic giving (ii)

- Countries that levy **inheritance or estate taxes** generally provide **preferential tax treatment** for philanthropic bequests.
- Common approaches to **valuation rules of non-monetary donations** are:
  - **require appraisals** if value exceeds a threshold
  - **implement different rules for different types of assets**
  - **review valuations through audits** with appraisals not required
- In most countries, **corporate sponsorship** of philanthropic entities is a **deductible business expense**, where there is a nexus with earning income
- Report **highlights a range of common tax avoidance/evasion schemes**

Cross-border philanthropy

- **Some tax support provided** for **cross-border giving in the EU, but very little outside the EU**
  - **In the EU**: European Court of Justice (ECJ) rulings require Member States to adopt a ‘comparability’ test
  - **Outside the EU**: there are a small number of bilateral treaties
- **PBOs operating across borders**
  - **In the EU**: ECJ rulings require Member States to adopt a ‘comparability’ test
  - **Outside the EU**: most countries do not provide tax relief for foreign philanthropic entities operating domestically. However, many countries do allow domestic entities to operate abroad without losing their tax-favoured status, though they are potentially subject to additional restrictions or reporting requirements