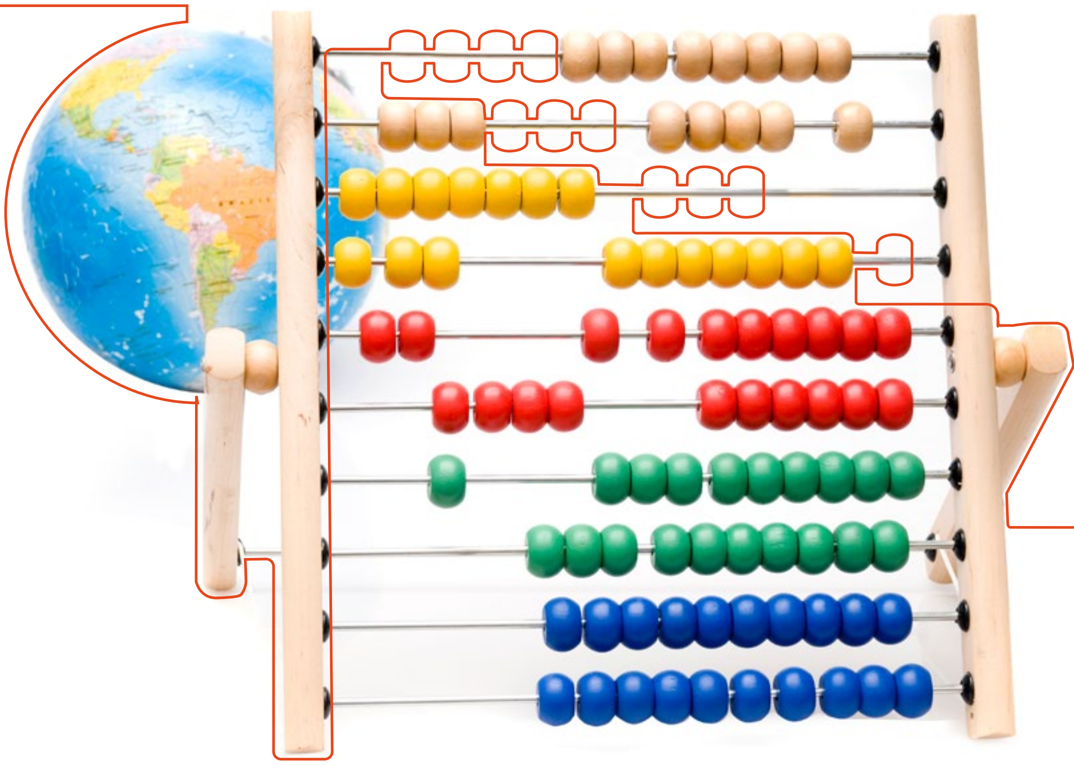
DONATION STATES

An international comparison of the tax treatment of donations

May 2016



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CAF Charities Aid Foundation

About the Charities Aid Foundation (CAF)

Charities Aid Foundation ("CAF") is a leading international civil society organisation (CSO). The CAF Global Alliance includes nine offices covering six continents which help people and business support charities in more than 100 countries worldwide. Our mission is to motivate society to give ever more effectively and help transform lives and communities around the world. We work to stimulate philanthropy, social investment and the effective use of charitable funds by offering a range of specialist financial services to charities and donors, and through advocating for a favourable public policy environment.

About the Future World Giving project

Future World Giving is a project that aims to understand the barriers to the development of a culture of giving and identify recommendations which if enacted could help to create an enabling environment for civil society to thrive. Previous reports have looked at how governments can help CSOs to earn public trust *(Building Trust in Charitable Giving)* and what policies help to foster independence in the sector *(Enabling an Independent Not-for-profit Sector)*. This, the third report in the series, looks at the utility, justifications for and ideal implementation of tax incentives for giving.

About TrustLaw – Thomson Reuters Foundation

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Foreword

The majority of the world's nations offer some form of tax incentive for donors. This global consensus suggests that governments recognise that charitable giving is important.

The ability of civil society organisations (CSOs) to raise resources and achieve financial independence must be considered a pre-requisite to building a civil society that is able to be both effective and sustainable in the long term. Charitable donations are a vital source of funding for many organisations and as such, understanding how the tax system can be harnessed to incentivise donors should be seen as an important piece of the puzzle when it comes to developing the capacity of civil society globally.

It would be wrong to suggest that creating a healthy civil society is simply a matter of adequate financing. A culture of community activism, political engagement, volunteerism and the freedom of association and assembly provides the foundation on which civil society rests. However, it would also be wrong to view tax incentives for giving as being separate from the wider policy landscape affecting CSOs and donors.

It is our hope that by exploring the benefits and weaknesses of differing approaches to incentivising charitable giving we can help to inform a lively debate around the world about how best to increase the resources available for civil society. Comparing systems for incentivising giving should broaden thinking and help to challenge unhelpful assumptions.

Is a global organisation working to promote giving and support the growth of civil society, CAF has a keen interest in this debate. Our Future World Giving programme attempts to examine how governments and non governmental organisations can promote a vibrant civil society and foster the culture of giving which can sustain it. As economies grow and millions more people have incomes which afford them the opportunity to give, these questions become ever more pressing.

By comparing the tax incentive systems of 26 different nations, this report – the third in our Future World Giving series – attempts to develop a more holistic understanding of the efficacy of different approaches. Unlike other studies of tax incentives for giving, this report attempts to put tax incentives in the wider policy context. In doing so, we consider not only the value of incentives but also how that value differs for different donors, what causes are incentivised and how accessible incentives are.

Building on *Rules to Give By* – a report we produced with Nexus and McDermott Will & Emery that looks at the basic legal environment for giving in all 193 UN recognised nations – this report looks in depth not only at the availability and value of tax incentives for giving but also considers the political justifications for those incentives, the range of causes available to donors and the fairness of the system as a whole. I look forward to seeing how it influences the debate on how we motivate more people to give ever more generously and effectively.

John Low

Dr John Low
Chief Executive
Charities Aid Foundation

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Executive Summary

Key findings

1. The balance of evidence suggests that people and corporations are responsive to incentives. The presence of incentives has been shown to positively influence the frequency of donations by individuals with people in countries with tax incentives being 12 percentage points more likely (33 per cent); than those that offer no incentives (21 per cent) to have made a donation in the past month. In addition, more generous incentives generally lead to higher donor responsiveness. Both experimental data and analysis from historical records in the United States show that when the marginal cost of giving falls (i.e. the value of incentives increases) people tend to increase the size of their donations.

2. Incentives for giving cannot be understood as an alternative model of public service delivery. Justifying incentives for giving on the basis that they can expand the provision of services that might otherwise be provided by government misunderstands the value of giving and could lead to negative unintended consequences for civil society. To do so benefits neither government nor civil society. Though incentives can be articulated as a tax expenditure the idea that incentives for giving are merely an alternative funding mechanism for state services mischaracterises the strengths and weaknesses of civil society which cannot be understood as a proxy for government service provision.

3. Tax incentives are not the most important policy lever in motivating giving. Factors such as the legal environment in which civil society operates, the range of causes which are incentivised, administrative barriers to giving and the ability of organisations to fundraise publically are likely to be more important in motivating giving than tax incentives.

4. Tax incentives are being used to side-line certain parts of civil society. The politicisation of tax incentives whereby legitimate causes which do not align with the government's agenda are ineligible for or receive less favourable donor incentivised status, is damaging to the independence of civil society. Such politicisation of incentives is contributing to the closing space for civil society globally.

5. Awarding donor-incentivised status to state controlled organisations erodes confidence in giving. A number of countries in our study offer tax incentives exclusively, or at a favourable rate to organisations which are delivering government projects, are affiliated to government or are wholly government controlled. This undermines the very independence of civil society that allows it to build trust with the public.

6. Higher tax nations offer more compelling incentives (assuming that deductions or credits are equal to the rate of taxation). There is evidence that as the rate of income tax increases (assuming incentives rules stay the same) people are likely to give more as the marginal cost of giving decreases. This is particularly true for those in the highest income categories. As such, tax incentives in lower tax nations my be less effective and other strategies – such as match funding – may be preferable. Behavioural sciences may provide the most cost effective solutions to motivating greater giving.

7. Complexity in claiming incentives limits donor responsiveness. The effectiveness of tax incentive regimes in many countries is undermined by the difficulty that many donors face in claiming them. Complex procedures for claiming, a lack of guidance, the requirement to fill in detailed tax returns, regional variations and complex systems whereby causes receive differing tax treatments can harm donor responsiveness.

8. Tax deductions are the preferred method of incentive globally. Three quarters of the countries in this study (18 of the 24 which offer incentives) offer incentives in the form of tax deductions. The deductive approach has several perceived advantages including simplicity from the point of tax authorities and a natural weighting towards higher income audiences where a higher responsiveness is assumed. However, this assumption does not necessarily stand up to scrutiny and in any case may lead to a system that lacks progressiveness.

9. Most countries weigh pragmatism above concerns about progressiveness in designing their incentive regime. A pragmatic approach to policy which favours efficiency and perceived responsiveness in wealthy individuals and corporations has led to inequality in both the value of incentives and the ability to claim them which might have a chilling effect on mass engagement in giving. A system where those with the greatest ability to afford to donate receive the greatest incentives to do so may lead to a civil society that rather than representing those interests which are crowded out by the powerful in society, actively reinforces the existing socio-economic structure.

10. Tax credits are the most progressive model for incentivising giving. Offered at a flat rate at the highest level of income tax, tax credits ensure those with the lowest incomes do not endure the highest marginal cost when donating.

11. Hybrid systems – which mix deductive and credit based incentives – introduce unnecessary complexity. This complexity makes them more difficult for donors to comprehend and more expensive to administer. This undermines the benefits of both a deductive system – which benefits from simplicity and pragmatism, and a credit system – which should be progressive and accessible.

12. Corporations see, on average, more favourable tax conditions for giving than individuals. Globally, according to the Rules to Give By Index, 77 per cent of nations offer some form of incentive to corporate donors whilst 66 per cent of nations offer some form of tax incentive to individuals. This study finds that the terms of those incentives tend to be – though not exclusively – more favourable for companies too. There are a number of possible explanations for this, ranging from a perception of greater responsiveness, belief by government officials that companies are more likely to support government aligned causes or simply the desire to attract business through a favourable tax environment. However, such sectoral favouritism may actually undermine corporate giving, as the public may come to view more favourable conditions for companies than they themselves enjoy with suspicion and thus the reputational effect of corporate giving may actually become negative.

13. Globally, there is a wide variance of incentive values and cap levels. The value of incentives in the countries included in this report ranges from zero to 300 per cent of the value of income tax; whilst caps on what can be claimed by individuals range from 5 per cent to no cap at all. Caps on corporate giving vary even more widely from 0.5 per cent to no cap at all.

14. Cross border giving is poorly incentivised. Tax incentives for cross border giving to foreign civil society organisations are rare and even where they exist on paper they are often difficult or impossible to claim in practice. In many transitional economies donors are not allowed to claim incentives even for domestically registered organisations that operate abroad.

Summary of Recommendations

Recommendations for each Future World Giving report are divided into three 'tiers'. At the end of the project we will bring all these recommendations together. The three tiers represent policy outcomes which are increasingly progressive in terms of creating an enabling environment for not-for-profit organisations. These tiers should help governments and those advocating for improved conditions for civil society to prioritise policy developments by seeking to implement recommendations in one tier before moving on to the next. Evaluating the policies of different countries against this framework will allow more effective international comparison and help to promote a healthy competition to meet universal standards.

It is important that recommendations are proportionate to the socio-economic context of every country. We believe that all governments should aspire to implementing Tier 1 recommendations, which have only limited resource implications. Governments in countries which have rapidly growing civil societies should prioritise meeting all of the recommendations in Tier 2 to future proof the sector and maximise its potential. Similarly, governments in advanced economies with a strong history and culture of philanthropy should not be complacent about the continuing development of policies which encourage greater public engagement in giving. To this extent, implementing all the recommendations in Tier 3 should be the long term goal for every nation.

Tier 1	Tier 2	Tier 3
UNDERSTANDING INCENTIVES Governments should develop a clear, evidenced and consistent rationale for incentives which is both progressive and sustainable in the long term		
All governments should commit to encouraging giving and have a clear agenda for how they intend to do so.	Governments should undertake international comparative studies to learn about the differing approaches to incentivising giving.	Governments should monitor the effects of changes in tax policy and incentives to better understand their impact on giving.
Governments should develop a clear rationale for how the system of tax incentives that is in place delivers their agenda for encouraging giving.		
INCENTIVISING A PLURALIST CIVIL SOCIETY Incentives should be justified on the basis that the government recognises the benefits of having a vibrant and diverse civil society, irrespective of whether it aligns with policy priorities		
Any framework for deciding what causes and organisations are eligible for receiving donor incentivised gifts needs to reflect a formal overriding definition of public benefit.	If fairness is a priority then to avoid giving a disproportionate benefit to the wealthiest in society, we believe that tax credits are the most effective system (whether they are claimed by the donor or passed on to the beneficiary organisation).	Where governments wish to increase resources to a particular part of civil society they should fund them directly or use match funding rather than unbalance the tax incentive regime.
The onus of any framework for designating eligibility to receive incentivised gifts should be on prohibiting private or closed group benefit and stipulating factors that exempt such a status in an inclusive, pluralist and open system.	Policy makers and advisors should not characterise tax incentives as subsidies which are offered on the basis that they will help to fund activities which would otherwise be provided by the state.	
All eligible causes should be incentivised under exactly the same terms regardless of populism or perceived priority to avoid the politicisation of civil society organisations.		

BALANCING FAIRNESS AND PRAGMATISM

Incentives should be designed to elicit the maximum rates of responsiveness whilst prioritising fairness. Policy makers should aim for the optimum balance between the two.

It is legitimate for governments – particularly in developing nations – to cap the amount of incentives that can be claimed to avoid unaffordable tax expenditure but low threshold caps should be avoided.	Caps should be defined as a percentage of income rather than a fixed financial value so as not to disincentizise the wealthiest individual and corporate donors.	High income countries should aim increase the percentage of income at which donations are taxed, ideally up to 100%.
The basic system of tax incentives should be, as far as possible, the same for companies and individuals.	In general, nations should not set a minimum value of donation or 'floor' in order for individuals to claim incentives for giving. If a system of tax incentives requires a floor in order to avoid an excessive administrative burden on small gifts then the floor should be no lower than the median hourly income of a given country.	Where a system of tax deduction is preferred, care must be taken to ensure that claiming incentives is open to the widest possible audience of tax return filers.
Hybrid systems – which mix deductive and credit based incentives – should be avoided.	When incentivised, donations of goods and services should be well regulated. A valuation by an independent accredited source should be required to avoid exaggerated claims.	
Low tax economies should offer more favourable incentives in order to offset the relatively lower value that can be claimed. Removing caps, floors, offering full deduction, or ideally credits at above the highest rate of tax could increase responsiveness to incentives.	Payroll giving should be legislated for and promoted to enable ease of access to incentives, particularly in nations where there are barriers to claiming incentives for those on lower incomes	
Where tax expenditure must be limited, governments should resort to caps rather than limiting eligible causes.		

1. Introduction

With 66 per cent of nations offering some form of tax incentive for individual donations (and 77 per cent offering incentives to companies)[1] it is remarkable, and concerning that so little research has been undertaken into the comparative structure, political justifications for, and effectiveness of incentives regimes for charitable giving between different nations. With discretionary income on the rise globally at the same time as an ever increasing need thanks to widening inequality and humanitarian crises – now is the time for a global consensus on what tax incentives are for and how they should be implemented to bring about the maximum benefit for all.

By looking at a sample of 26 nations – detailed notes on each are available in a separate annex – this report will look at the way tax incentives regimes are conceived and implemented to ascertain the ideal approach to incentivising charitable giving. In identifying an ideal approach it will of course be necessary to define the ideal outcome. As an organisation which exists to try and create a sustainable resource base on which civil society can flourish globally, CAF believes that tax incentives should be judged to some degree on the extent that they elicit greater giving. However, if as is the case for CAF, an ideal scenario for civil society is seen as one where everyone is encouraged to give generously to a range of causes which is as wide and vibrant as the needs, interests, concerns and aspirations of the society it reflects, we must take a holistic approach which looks beyond the value of incentives and donor responsiveness.

The study of tax incentives has typically been viewed through the lens of macro-economic realism whereby the cost of incentives are weighed up against donor responsiveness and the social goods that charitable contributions can buy. However, this report hopes to add the weight of a global comparative study to those who have sought to broaden the conception of the role that tax incentives for giving play in society. This report will make the case that charitable giving has benefits for society which cannot be evaluated against services which might have otherwise been provided by the state. We make the case – building on a previous report of the Future World Giving project, *Enabling an Independent Civil Society*[2] – that tax incentives policy should be evaluated against its efficacy in delivering a vibrant, independent and pluralistic civil society.

This report finds that incentivising charitable giving should not be seen as a means of replacing or augmenting the state in its duty to provide services. However, neither does it find the argument that charitable giving is not personal consumption and therefore should not be taxed to be sufficiently robust a position on which to underpin tax policy. Rather, there is a need to better understand the relationship between the government – the body charged with managing fiscal policy – donors and CSOs. There is a need to acknowledge that on one hand incentives are a form of tax expenditure, or at least forgone tax receipts on the part of the state, but also that incentives to a wide range of causes are justified on the grounds that such pluralism in civil society benefits society at large.

This broadening of measures by which we judge tax incentive policy is timely. Globally, concern is building about a trend in which governments are seeking to restrict funding to organisations which do not support their agenda. According to the International Center for Not-for-profit Law (ICNL), “since 2012 more than ninety laws constraining the freedoms of association or assembly have been proposed or enacted.”[3] US President Barack has lamented “undue restrictions on civil society and fundamental freedoms” and called for “laws, policies, and practices that expand the space for civil society to operate in accordance with international law.”[4] Such appeals seem, unfortunately, to have fallen on deaf ears.

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1 Quick, E. ,Kruise, T. A. ,Pickering, A. (2014) *Rules to Give By: A Global Philanthropy Legal Environment Index.* Nexus, McDermott, Will & Emery and Charities Aid Foundation (CAF).

2 Pickering, A. (2014) *Future World Giving: Enabling an Independent Not-for-profit Sector.* Charities Aid Foundation.

3 Rutzen, D. (2015) Aid Barriers and the Rise of Philanthropic Protectionism, *International Journal of Not-for-Profit Law* / vol. 17, no. 1.

4 United States, Office of the President (2014) *Presidential Memorandum – Civil Society: Deepening U.S. Government Efforts to Collaborate with and Strengthen Civil Society* [Online] Washington D.C. Office of the Press Secretary.

Tax incentives are often considered an important factor in encouraging philanthropy and therefore in creating an enabling environment for civil society. However, this assumption should be seen as the corollary to far less widely appreciated reality: that tax incentives can be, and in fact are used to marginalise or crowd out certain parts of civil society. In this way, rather than being of niche interest to those with an interest in fundraising or fiscal policy, tax incentives policy and the way it is justified and implemented should be of interest to anyone wishing to combat the closing space for civil society globally.

The 26 sample nations used in this report span six continents and account for 77 per cent of global GDP.[5] Our sample includes; Argentina, Australia, Bangladesh, Brazil, Canada, China, Egypt, France, Germany, India, Ireland, Italy, Japan, Mexico, Nigeria, Peru, Philippines, Poland, Russia, Saudi Arabia, Singapore, South Africa, Turkey, United Kingdom, United States and Vietnam. This diverse set includes nations in all four income categories defined by the World Bank[6] and allows for comparison between the tax treatment of donations in nations with differing systems of government, stages of economic development and cultures of charitable giving. In selecting the above nations we have attempted to augment the usual suspects in comparative academic study of laws relating to charitable giving with nations whose citizens are beginning to enjoy sufficient a discretionary income that they might be able to contribute significant resources to CSOs at home and abroad. Indeed, the original scoping report of the Future World Giving project, *Unlocking the Potential of Global Philanthropy*[7], calculated that according to OECD projections, the world's middle class population would grow by 165 per cent from 2009 to 2030 with 70 per cent of that growth occurring outside of the traditional philanthropic centres of Europe and North America.

In making recommendations across such a diverse sample of nations it was necessary to go beyond merely assessing the costs to government of incentives for giving and the responsiveness of donors to incentives and also consider the appropriateness of incentive regimes for differing contexts. As such, this report deals with the varying moral and political justifications for tax incentives, the extent to which price elasticity ought to effect their design, the ways in which incentives are structured and CSOs gain donor incentivised status, the real comparative value of incentives, the tools used to limit tax losses and the myriad barriers to claiming incentives faced by donors. In addition, this report deals with a question which lies at the heart of policy making when it concerns tax incentives: what is the ideal balance between progressiveness for all and pragmatism from the point of government in designing a system of incentives for charitable giving?

It is hoped that the findings of this report will prompt a wider discussion about tax incentives for giving in which ideological positions, entrenched interests and baseless assumptions are challenged. Such a discourse may well be essential in securing the future sustainability of civil society.

5 Using 2014 World Bank GDP data we calculate that the 26 sample nations have a GDP of US$60.2 trillion which accounts for 77 per cent of the global total of US$77.8 trillion – World Bank, *GDP at market prices (current US$)*. [Online].: [Accessed January 2016]

6 World Bank, *How are the income group thresholds determined?* [Online].

7 Pickering, A. (2013) *Future World Giving: Unlocking the Potential of Global Philanthropy*. Charities Aid Foundation.

2. *Justifying incentives*

It is fairly clear that giving is in some way innate to humanity. To differing extents, the charitable act has been evident in societies regardless of economic, religious and political context, throughout history. But even if giving is ubiquitous, that does not mean it has been immune from criticism. A number of philosophers have raised doubts over the moral position of charitable giving. Proponents of ethical egoism, such as James Rachels for instance, argue that only a self-interested act can be justifiable because we know our own interests better than the interests of others and “if we set out to be 'our brother's keeper,' we would often bungle the job and end up doing more mischief than good”.[8] Some rational egoists, such as Ayn Rand, even argue that altruism is actively undesirable because the act of prioritising another’s needs above one’s own devalues an individual’s existence in such a way that writ large, it could be corrosive for society.[9]

Whilst such moral opposition to altruism may not represent a mainstream view, it demonstrates that it is not sufficient merely to rest on the overwhelming consensus that giving is virtuous and benefits society in order to justify incentives. The idea that people might want to, should be allowed to, and should even be incentivised to give their money away may not be controversial for most people; but a failure to make a compelling moral case for giving could undermine our attempts to assess the efficacy of tax incentive regimes designed to promote giving. We cannot hope to know what causes should be eligible if we don’t know on what basis they are being awarded. Likewise, we cannot hope to judge the fairness of a system if we cannot articulate the moral imperative on what it rests. This report finds, in fact, that the design, implementation and ultimately the efficacy of tax incentives for charitable giving rest overwhelmingly on the strength and purity of the justifications for their existence.

Charitable giving may pre-date nation states, democracy and even government as a social tool for mitigating the natural order in which the strong thrive at the cost of the weak, but that does not mean that it should necessarily survive in perpetuity without concession. Even in nations where government is very limited, individuals have to cede some degree of personal sovereignty in order to enable the state to protect and rule. This social contract has connotations for the freedom of the individual to give away their money, as in theory unfettered giving – charitable or otherwise – could interfere with the provision of justice and democracy. As the Stanford University philosopher and political theorist Rob Reich puts it, “We need only consider debates about estate taxation and campaign finance contributions to realize that the state may have good reasons – reasons founded on justice – to limit the liberty of people to give money away.”[10] The same potential for destabilising the social contract that brings about government exists with charitable giving. The capacity for the wealthiest individuals and foundations to exert outsize influence in society risks a regression to the state of nature where the strong are dominant. With the wealthy already well-placed to influence policy, the importance of ensuring that eligibility for charitable status, and in particular, tax incentives, is defined in such a way that enhances the common good is crucial.

The above pattern of thinking shows that however intrinsic and desirable giving is, it must be reconciled with the sovereignty of the state. Inevitably, though, the popular discourse on the relationship between the state and charitable giving is distorted by assumptions that have their roots in ideology rather than reason. Those with libertarian tendencies might, for example, argue that a smaller state leaves greater room for civil society and that with reduced taxes and public services, the wealthy will be more inclined to take responsibility for addressing society’s ills upon themselves. In reality, there is no strong evidence for this.[11] Indeed, if there is a relationship between high taxation and giving, then it may well be a positive one. A study plotting the charitable giving of the richest

8 Rachels. J. (2008) *Ethical Egoism*. In, *Reason & Responsibility: Readings in Some Basic Problems of Philosophy*, edited by Feinberg. J and Shafer-Landau. R, 532–540. California: Thomson Wadsworth.

9 Rand, A. (1982) *Faith and Force: Destroyers of the Modern World*, Philosophy: Who Needs it, New American Library.

10 Reich, R. (2011) *Toward a Political Theory of Philanthropy*, in, *Giving Well: The Ethics of Philanthropy*, Illingworth, P. Pogge, T. Wenar, L. eds, Oxford University Press

11 A comparison between data from CAF’s “World Giving Index” and the Heritage Foundation’s “Index of Economic Freedom shows no correlation between the size of the state and levels of engagement in charitable giving. Does small government encourage a culture of charitable giving? Future World Giving, Charities Aid Foundation.

0.01 per cent of Americans against the marginal rate of taxation since 1917 reveals that "a surge in contributions [...] from the early 1930s to the late 1960s is correlated with the dramatic increase in marginal tax rates for these top income taxpayers to levels as high as 90 per cent in the mid-1940s."[12] The study also reveals that though the effect is less dramatic, the wealthiest decile increased their giving by 0.4 per cent for every 1 per cent increase in taxation.

2.1 *Tax Base Rationale*

If we accept that government is necessary to guarantee justice and a degree – which varies from one nation to another – of social protection, then we must also concede that proponents of charitable giving must make concessions where unfettered donations could undermine the social contract. By the same token, if we believe (and for the purpose of this report we do) that charitable giving is fundamental for resourcing a civil society that counter-balances the state, then we must also accept that government should make concessions to avoid crowding out charitable activity. This notion forms the basis of the most basic but nevertheless intellectually robust justification for tax incentives for giving. Popularised by William Andrews,[13] and characterised as the "Tax Base Rationale" by Reich, it argues that tax incentives for charitable giving ought not be considered as tax breaks or even sacrificed revenue from the state coffers at all, because people should only be taxed on personal consumption or wealth accumulation and money given away to charity does not count as either. The above argument might have an appealing simplicity, but it fails to recognise that the boundary between charitable giving and discretionary spending on, for example, consumable goods, is blurry, both definitively and from the perspective of the donor/consumer. Furthermore, such a rationale designates all giving that is not personal consumption as charitable and takes the power to define charitable purposes away from the state completely. This, as Reich points out, has perverse connotations. To illustrate this, Reich imagines a millionaire making a tax deductible donation to a large multinational profit making company in support of its attempts to disempower trade unions.[14] Clearly, any justification on which tax incentives are offered for charitable giving must recognise the need to protect collective rights and afford the role of arbitrator of eligibility to the apparatus of the state, if not the government.

2.2 *Subsidy Rationale*

The second, and by far the most popular justification for tax incentives for charitable giving identified by Reich responds to this need to guarantee that the giving of the individual does not come at the cost of the state. The "Subsidy Rationale" justifies incentives on the grounds that "the state provides incentives for charity because it is believed that the incentives stimulate the production of something of greater social value than what the state could have produced on its own, had it not offered the incentives."[15]

As popular as this justification is with fundraisers and lawmakers alike, it is deeply flawed. Whereas the Tax Base Rationale puts too much onus on individual freedom the Subsidy Rationale prioritises the state to such an extent that charitable giving is seen as worthy of being encouraged only when it augments, replaces or compliments the activities of the state. As Reich notes, "what's obvious about the subsidy rationale is that it shifts attention from the fair treatment of the donor to the recipient of the donation and the good that is done with the gift."[16] Such a justification may recognise the social goods resulting from a CSOs work that are also valued by the State, but the diversity of their missions and operations means that they may well be achieving a far greater social value that doesn't necessarily lead to recognition by the state. Hence, according to the Subsidy Rationale, activities that have benefited society but are not closely aligned to the activities of the state, such as human rights

12 Fack, G. & Landais, C. (2012) *Charitable Giving and Tax Policy: A Historical and Comparative Perspective* Paris School of Economics, CEPR / CEPREMAP
13 Andrews, W. (1972) *Personal Deduction in an Ideal Income Tax*. Harvard Law Review 86
14 Reich, R. (2011) *Toward a Political Theory of Philanthropy*
15 Ibid.
16 Ibid.

advocacy, are not deserving of receiving tax incentives. As we will see throughout this publication, the popularity of The Subsidy Rationale has, and continues to have, a strongly negative effect on the development of tax incentives regimes around the world.

2.3 Pluralism Rationale

Both the Tax Base Rationale and the Subsidy Rationale make strong cases for the existence of tax incentives, but also contain ideas which could lead to unintended negative consequences for the development of a culture of giving. Whilst the former fails to recognise any legitimate role for the state in restricting – or even taxing – a transaction that an individual subjectively deems to be charitable, the latter could be used by the state to justify incentivising only donations which directly reinforce the narrow interests of the state.

Such justifications can be seen through the lens of Isiah Berlin's "Two Concepts of Liberty" as resting on the desire for different kinds of freedom. The Tax Base Rationale prioritises freedom from external interference (negative liberty) and the Subsidy Rationale prioritises protecting people from inhibitions of the social structure in carrying out their free will (positive liberty). Berlin may have rejected the Tax Base Rationale as we have, on the grounds that the unfettered freedom it affords the wealthy to pursue their own interests at a cost to state coffers is outweighed by the impact this may have on the agency of others: "Men are largely interdependent," he wrote, "and no man's activity is so completely private as never to obstruct the lives of others in any way. 'Freedom for the pike is death for the minnows'; the liberty of some must depend on the restraint of others. Freedom for an Oxford don, others have been known to add, is a very different thing from freedom for an Egyptian peasant."[17]

But whilst Berlin recognised the importance of positive liberty, he expressed grave fears that governments could use the guaranteeing of positive liberties to exert stifling control over individuals and groups with ideas, opinions and values that deviate from what is judged to be in their own, and society's, best interests. This of course, is an inherent danger in using the Subsidy Rationale to justify tax incentives for charitable giving because it hands to the state the ability to determine which causes are charitable; or put another way, what is (whether we know it or not) actually in our best interests. Berlin's solution is to recommend a balance between his two concepts of liberty, in which the agency of individuals and groups are protected but a pluralism in values is also maintained through state restraint:

> *"Pluralism, with the measure of 'negative' liberty that it entails, seems to me a truer and more humane ideal than the goals of those who seek in the great disciplined, authoritarian structures the ideal of 'positive' self-mastery by classes, or peoples, or the whole of mankind. It is truer, because it does, at least, recognise the fact that human goals are many, not all of them commensurable, and in perpetual rivalry with one another. To assume that all values can be graded on one scale, so that it is a mere matter of inspection to determine the highest, seems to me to falsify our knowledge that men are free agents, to represent moral decision as an operation which a slide-rule could, in principle, perform."*
>
> Isaiah Berlin, Two Concepts of Liberty, 1958[18]

In line with the conclusions of Berlin, Reich offers what he calls a "Pluralism Rationale" which balances the need to advance the agency of the individual through incentives for donations to a diverse range of causes, whilst also acknowledging the need for, and legitimacy of some state imposed boundaries on what might be considered eligible charitable purposes.

17 Berlin, I. (1958) Two Concepts of Liberty. In: *Isaiah Berlin, Four Essays on Liberty*. (1969) Oxford: Oxford University Press.
18 Ibid.

However, a pluralist approach to justifying tax incentives – and the prominent and active role of CSOs in society generally – is more difficult to articulate than the more intuitively logical Subsidy Rationale. Politicians and civil servants will perhaps naturally favour incentives which they perceive to deliver a fair return on the public's investment. They might argue, quite persuasively, that in a democracy the government has a mandate to use tax revenues to deliver the agenda for which they have been elected. By extension, the notion that the government ought to be compelled to offer tax incentives to charities which are working to undermine their vision is necessarily undemocratic.
The above complaint rests on the false assumption that an increase in funding to critical CSOs equates to a transfer of power from governments, and in the case of democracy, citizens. The flaw in this logic is the notion that the relationship between both parties is necessarily a zero-sum game.[19]In reality, civil society plays a crucial role in counter-balancing the tendency for the state to justify limitations on the liberty of groups that may be under-represented or disempowered through what John Adams termed as the tyranny of the majority.[20] Visiting the United States of America in 1835, Alexis de Tocqueville feared that democratic government offered few guarantees that a marginal majority could not impose its slight preference against the dire needs of a slight minority;

> *"No one will assert that a people cannot forcibly wrong another people; but parties may be looked upon as lesser nations within a greater one, and they are aliens to each other: if, therefore, it be admitted that a nation can act tyrannically towards another nation, it cannot be denied that a party may do the same towards another party."*
>
> Alexis de Tocqueville, Democracy in America, 1835[21]

The need to balance positive and negative liberties against one another is especially crucial in the relationship between the state and civil society. In essence, it is by fulfilling this need that the Pluralism Rationale justifies tax incentives for charitable gifts. So for Reich, "the benefit being produced is civil society itself, not the catalogue of public goods or benefits produced by the roster of organizations that constitute civil society".

Ultimately, governments are beholden to the majority in an electorate (and to the funders of political candidates and parties to differing extents) but the interests of the state are served by the strengthening of institutions, the rule of law and civic engagement. Charitable giving is the cornerstone of a civil society that allows critical views to be communicated constructively. Those views may be uncomfortable and sometimes even disruptive for government, but stifling them will corrode the very social contract on which government rests. When leaders fail to see civil society in this light, as has been the case in Egypt,[22] they are liable to find that their desire to stifle civil society has the effect of creating more, rather than less social unrest. Incentivising charitable giving under broad, pluralistic definitions of what constitutes public benefit can act as a pressure gauge that regulates the myriad passions and furies of society and releases it in such a way that it can be a reliable and powerful source for good.

This report finds the Pluralism Rationale to be the most compelling, and sustainable justification for tax incentives for charitable giving. However, as we will see in subsequent chapters, it appears to be far less prominent in the thinking of governments when it comes to developing incentives regimes for giving and as a result, many governments have adopted self-serving policies which view incentives as a subsidy for extending the agenda of the government.

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19 Sending, O. J. and Neuman, I. B. (2008) *Governance to Governmentality: Analyzing NGOs, States and Power.* International Studies Quarterly, 50,651-672.
20 Adams, J. (1788) *A Defence of the Constitutions of Government of the United States of America*. Vol. 3. London
21 Tocqueville, A. and Bender, T. (1981) *Democracy in America*. New York: Modern Library.
22 Pickering, A. (2014) *By trying to control civil society, the Egyptian government could fuel more social unrest.* New Statesman. [Online].

3. Assessing the efficacy of incentives

Clearly, in order to warrant this study into the strengths and weaknesses of different tax incentive regimes for charitable giving around the world, it is necessary to assume that tax incentives for giving are worthwhile. However, that does not automatically mean that they are the most effective way of motivating donors.

Match funding, for example has been offered as a potentially highly effective way of motivating increased donations. One study found that the offer of a match "increases both the revenue per solicitation and the probability that an individual donates" with overall funds donated increasing by 19 per cent.[23] Indeed, the fields of behavioural economics and psychology have produced a litany of experimental evidence which suggests that utilising "social norms" and "nudging" behaviour with subtle and inexpensive changes to the way that we communicate and place messages in our environment can be as, or more effective than financial incentives. For example, in one experiment, donations into charity collection buckets in supermarkets increased by 48 per cent when a poster of an eye was introduced into the environment compared to the control, which was a poster of stars.[24] As discussed in section 1, we do not find judging the success or importance of tax incentives for charitable giving to be as simple as simply assessing the extent to which they increase donations. The ethical and philosophical justifications for tax incentives, as well as the effect they have on the perceptions of the public, the state and civil society itself on their respective relationship is also part of the consideration. Having said that, it is clearly important to understand to what extent tax incentives are effective as a motivator of charitable giving, not least because, contrary to our misgivings, most policy makers see strong price elasticity in the response to incentives as an important factor.[25]

Unless we accept entirely that tax incentives for charitable giving are already wholly justified – either because they promote a plural civil society or because such gifts should not be considered part of a person's taxable income – we must also consider the degree to which these incentives are efficient. If incentives are to be justified, to any extent, on the basis that they result in increased giving, then we must prove the counterfactual claim (i.e. that people would have given the same amount in the absence of the incentive) to be false. Even for proponents of the pluralism rationale, this question might be relevant in deciding whether there ought to be caps on the incentives that can be claimed. Boris Bittker defines the need to prove elasticity particularly well:

> *"In the indictment of tax deductions for charitable contributions, the charge is that they are inefficient because such a large fraction of charitable gifts would be forthcoming in any event that the incremental contributions stimulated by the deduction are too small to justify their cost."*[26]
>
> Boris Bittker, The Propriety and Vitality of a Federal Income Tax Deduction for Private Philanthropy, 1972

This alleged inelasticity, where donors are sufficiently committed to giving that they continue to do so even as the cost rises (as incentives are removed for example) is taken by some to be a challenge that must be answered in order to justify tax incentives on the grounds that they are cost efficient. This effectively means "that a policy of increased tax deductibility can [only] be efficient if a drop in the tax cost (i.e., the cost of the donation) results in a disproportionate increase in donations"[27] or, put

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23 Karlan, D. and List, J. A. (2006) *Does price matter in charitable giving? Evidence form a large scale natural field experiment.* Woking Paper 12338, National Bureau of Economic Research.

24 Powell, K. L., Roberts, G., Nettle, D. & Fusani, I. (2012) *Eye images increase charitable donations: evidence from an opportunistic field experiment in a supermarket*. Ethology, 118:1096.

25 Price elasticity in this document refers to the price elasticity of demand. It is a commonly used measure in economics to assess the responsiveness, or elasticity, in the demand for a given good or service in relation to its price. In the case of tax incentives for giving the "good or service" is charitable giving. Given that the cost of giving increases when the value of tax incentives decreases it is possible to look at tax incentives on the basis of "price". The market is said to be responsive, or elastic, when demand increases as a result of a fall in price. In practice, a study of price elasticity in demand gives the percentage change in quantity demanded in response to a one percent change in price. A negative value would indicate price elastic behaviour

26 Bittker, B. J. (1972) *The Propriety and Vitality of a Federal Income Tax Deduction for Private Philanthropy.* In: *Tax Impacts of Philanthropy*. Aaron, A. ed. Princeton NJ: Tax Institute of America, 145-59.

27 Peloza, J. & Steel, P. (2006) *The Price Elasticity of Charitable Contributions: A Meta Analysis.* Journal of Public Policy & Marketing. Vol. 24, No. 2 pp 260-373.

another way, charitable giving can be shown to be price elastic.

Clearly, attempts to measure the effect of incentives offered through the tax system suffer from the lack of a controlled environment in which the response to an incentive could be measured against a counterfactual environment in which the incentive had not been offered. For the most part, we are forced instead to rely on experimental research. For example, a 2002 experiment issued tokens to subjects and instructed them that they could either keep them or give them to others. The value of the tokens fluctuated when they were transferred, mimicking the 'cost' of giving which may be positive or negative. The authors concluded that people are less inclined to give when the cost of doing so increases, providing evidence that people are innately responsive to tax incentives when making donations.[28]

The closest that we can realistically get to the ideal test scenario (of a randomised, controlled trial of incentives) is to take advantage of changes in tax policy and review the resulting change in giving habits. By looking at the charitable contributions of people, particularly over longer time periods whereby the relative cost of giving (i.e. changes in income tax) rises and falls, researchers have attempted to establish the price elasticity of charitable giving. Such a wealth of these studies have taken place in the United States, that it was possible for John Peloza and Piers Steel to produce a meta-analysis of 138 studies comprising a combined sample size of over 1.4 million people. The study found that after removing outliers of more than three standard deviations from the mean, the weighted price elasticity for charitable giving (in the United States at least) was -1.11. This effectively means that an extra 1 per cent in the value of incentives offered (or a 1 per cent cheapening of the donation) would result in an increase in donation size of 1.11 per cent; allowing us a clear, if somewhat marginal case for tax incentives being treasury efficient. However, if the sole argument for incentives for charitable giving is they "enable the government to justify the transfer of responsibility for the provision of some public services to charities and nonprofit groups", then such a marginal return may not be sufficient.[29] As stated above, this report suggests that the pursuit of a diverse and independent civil society is the most viable justification for incentives for charitable giving. It would seem that even those who prefer a Subsidy Rationale that rests on the elasticity of charitable giving would need to bolster their position by supplementing it with elements of the Pluralism Rationale.

Unfortunately, there is a lack of comparable studies from other nations to enable a global comparison of the price elasticity of charitable contributions in relation to incentives. It may be that cultural differences, traditions, religion or any other significant socio-economic or demographic variable have the effect of amplifying or muting a people's response to incentives. Indeed, the legal and regulatory environment in which CSOs operate can have a determinate impact on the perceived trustworthiness and independence of CSOs. As such, these themes were explored in the Future World Giving project in Building Trust in Charitable Giving and Enabling an Independent Not-for-profit Sector. However, with this in mind, and with the caveat that any association could not be said to be a correlation, it is possible to observe a relationship between the number of people who regularly make donations in nations which have some form of tax incentive for charitable giving, and those which have none at all.

The Rules to Give By Index[30], produced by Nexus, McDermott, Will & Emery and CAF, analysed the basic legal infrastructure for charitable giving in all 193 United Nations-recognised nations. As part of this, the report used data from the 2013 World Giving Index[31] to see whether those nations which offered incentives to donors saw a higher proportion of people making donations to CSOs in

28 Andreoni, J. and J, Miller. (2002), *Giving according to GARP: an experimental test of the consistency of preferences for altruism.* Econometrica 70(2): 737–53

29 Peloza, J. & Steel, P. (2006) *The Price Elasticity of Charitable Contributions: A Meta Analysis.* Journal of Public Policy & Marketing. Vol. 24, No. 2 pp 260-373.

30 Quick, E. Kruise, T. A, Pickering, A. (2014) *Rules to Give By: A Global Philanthropy Legal Environment Index.* Nexus, McDermott, Will & Emery and Charities Aid Foundation (CAF).

31 Charities Aid Foundation. (2013) World Giving Index 2013.

the month before being survey. The report found that the proportion of people donating money to charity is 12 percentage points higher in nations which offer some form of tax incentive to individuals (33 per cent) than those that offer no incentives (21 per cent). Furthermore, it found that a similar effect could be seen across nations of differing levels of economic development with Low Income nations (as defined by the World Bank) actually seeing the largest difference in the proportion of people making monthly donations between countries offering incentives (27 per cent) and those offering none (18 per cent).

This apparent relationship offers another potential way of judging the efficacy of tax incentives for charitable giving: perhaps their presence alone is sufficient, because the existence of tax incentives indicates a legal environment which is inherently enabling, regardless of whether or not incentives are actually claimed by donors (and bearing in mind that in many nations incentives are not offered to those who don't itemize their tax returns). Though the above evidence may not suggest causation (it may well be a sign that tax incentives are most likely to be available in nations where a strong culture of giving creates a demand for incentives), it suggests that tax incentives are part of a wider package of policies which create an enabling environment for civil society to develop.

4. *Eligibility of beneficiary organisations*

The means by which governments shape the law and judiciaries interpret it to bestow or deny donor-incentivised status to CSOs will not only skew the flow of donations to certain causes but may also come to define what causes are seen as charitable. Even the most pluralistic justification for offering tax incentives to donors must define what causes are, and are not, worthy of such exceptional treatment. If we consider the value provided to society by CSOs to be special then a list of causes, characteristics and activities that defines them is a necessary corollary. This creates a troubling paradox for policy makers as on the one hand, at its essence civil society is an unchecked public sphere where independent voices can coalesce around shared interests[32], and on the other hand, CSOs as organisational embodiments of civil society must have legal status in order to gain tax exempt and donor incentivised status. As such, the means by which governments confer tax privileges – to some causes and deny them to others – is as philosophically fraught as it is necessary.

4.1 Patchwork vs Staircase systems

Within our sample of 26 nations we have identified two broad structures for offering donor-incentivised status to CSOs:

- Patchwork System: Incentives are offered, offered at a higher rate, or with higher caps for certain recognised purposes.
- Staircase System: Incentives are offered, offered at a higher rate, or with higher caps as organisations register, or pass through additional tiers of registration limited to certain charitable purposes.

Most nations use a combination of both approaches to incentivise some causes over others. Italy, for example, offers a range of tax credits and incentives which differ from one cause and/or organisation type to another. However, over and above this Patchwork System of incentives, some organisations can apply to register as ONLUS (Organizzazioni non lucrative di utilità sociale) enabling donors to receive a higher, flat tax credit. However, some nations lean heavily towards a patchwork system in which incentives are offered to donors only when giving to specific causes; and in some cases only when giving to specific CSOs. In the case of Bangladesh, for instance, deductions are available only on donations to a narrow list of causes including charitable hospitals, national level institutions set up in memory of the liberation war and gifts in memory of the "Father of the Nation, as well as to a cultural development institution established in Bangladesh by the Aga Khan Development Network".

Though Turkey appears to have a relatively straight foreword one step system, this represents an extreme high-pass filter in which the number of organisations that have successfully applied for and received public benefit status from the Council of Ministers is very low. Only five per cent of foundations and only 0.04 per cent of associations have actually achieved the public benefit status required to enable donor incentivised gifts.

If this study is reflective of the global environment, most nations which allow tax breaks to donors can be said to be using a stepped system to some extent; in that CSOs must gain some form of legal status, accreditation or successfully register with regulators in order to receive tax gifts that reduce the tax liability of donors. However, some nations have multiple "steps". In Australia, for example, there are approximately 600,000 non-profit organisations, of which almost 60,000 are registered with the Australian Charities and Not-for-profits Commission as "charities", allowing them to receive tax concessions and be eligible to receive public funds. In order to allow donors to claim tax incentives for donations, charities must apply for Deductible Gift Recipient (DGR) status. At present, approximately 28,000 organisations have DGR status.[33]

32 Habermas, J. (1962) The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society. Translated by Thomas Burger, 1989. Cambridge, MA: MIT Press.
33 McLeod, J. (2013) *The PAF Report – Private Ancillary Funds After 12 Years.* JBWere

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4.2 Inclusive versus exclusive frameworks for designating eligibility

Of the twenty-six countries in our study, we judge 12 of them to have an inclusive approach to tax incentives that offers donors the freedom to donate to their chosen cause based on a broad definition of public benefit. This is not an easy distinction to make. In one sense, definitions of what causes are charitable or considered to be of "public benefit" will inevitably exclude certain purposes. However, a distinction can be made between those nations that offer tax incentives on the basis of what the public might broadly agree on as constituting legitimate causes, and those nations that offer incentives to causes that are either non-political – and hence exclude issues such as human rights or the environment – or align closely with the government's own agenda.

In general, we have noted that nations that have inclusive and exclusive frameworks for accrediting CSOs to receive incentivised gifts tend to have certain distinct features and approaches:

- Inclusive: A broad legal definition of public benefit underpins eligibility to receive tax-efficient gifts. CSOs tend to be accredited to receive incentivised gifts through a one-step system.

- Exclusive: Criteria for eligibility are highly specific to certain narrow causes and may be subject to political/executive discretion. CSOs tend to be accredited to receive incentivised gifts by registering under a patchwork system of different causes and programmes or through a complex stepped system that has multiple tiers, rates of incentives and caps for different causes.

Nations that could be said to have inclusive frameworks generally have a legal definition of public benefit and specify broad areas under which certain purposes are considered to be in the public good. Under such a framework, the advancement of a broad range of causes can be considered charitable (the "benefit" part of public benefit) providing that they do not contravene the law and benefit the public in general, or a sufficient section of the public (the "public" part of public benefit), and do not give rise to more than incidental personal benefit for those running the organisation or donating to it. Where organisations are able to register under these conditions in order to enable donors to donate and claim tax deductions or credits, this could be considered to be an inclusive system.

The twelve countries in our report that could be said to have inclusive systems that offer tax incentives include, to differing degrees, Canada, Ireland, Germany, Japan, Mexico, Philippines, Poland, Russia, Singapore, Turkey, the United Kingdom, and the United States of America. Whilst it is impossible to prove causation, it may be significant that according to the World Giving Index 2015[34] (excluding Turkey for which no data is available) the average proportion of the population reporting having given money to charity in the past month was almost double (44 per cent) that of those which could be said to have exclusive systems (24 per cent).

Nations which have what we have termed exclusive eligibility criteria for donor incentivised gifts to CSOs include Argentina, Australia, Bangladesh, Brazil, China, Egypt, France, India, Italy, South Africa and Vietnam. In some instances, we have judged eligibility to be exclusive due to the fact that a prominent feature of the incentive regime is that some causes are subject to higher incentives than others. Whilst some states within the USA offer additional incentives on top of federal ones for certain local priorities, we do not on balance consider this to be a prominent feature of the system as a whole. A counter example would be a nation like France, which allows a 75 per cent tax credit to be offered – up to a cap at 20 per cent of income – for donations in support of certain causes, such as school meal provision, whilst for other causes the incentive drops to a 66 per cent tax credit above a €521 threshold.

34 Charities Aid Foundation. (2015) *World Giving Index 2015*

Other countries have more forcefully exclusive eligibility requirements which exclude most causes from donor-incentivised fundraising completely to the benefit of a narrow group of highly selective causes. In Brazil for example, the federal government offers incentives under the following themes; children and adolescents, sports, culture, audiovisual, elderly, handicapped and cancer; and even then only to organisations that have a specific project previously approved by the Government. Furthermore, even within this narrow list of causes, organizations eligible under the theme of "handicapped" and "cancer" are subject to lower caps (2 per cent instead of 6 per cent of taxable income). State level incentives are offered under a specific theme, São Paulo's Municipality regulates tax incentives related to culture for example. Given the paucity of incentives at federal level this is seen as a key feature of the incentive eligibility system in Brazil.

4.3 Political/executive discretion in eligibility by charitable purpose

We have already dealt with the question of how tax incentives for donors can be justified in the first part of this report, and made the case for governments to be the convenors and the judiciary to be the arbiters of the process. But if we assume that incentives are desirable, we also have to concede that it puts a great deal of responsibility in the hands of government to shape the eligibility of CSOs to receive incentivised gifts. It goes without saying that even under the most liberal interpretation of what causes should be eligible; a process must also be in place for deciding when an organisation or cause is not eligible. The extent to which that process is reflective of the broader public interest and a commitment to a vibrant and diverse civil society, or merely a desire to further the ruling government's agenda, may well be as important for the development of a culture of giving as the value of incentives. Indeed, where incentives are perceived to be politically distributed, the resulting cynicism may be worse than having no incentives at all.

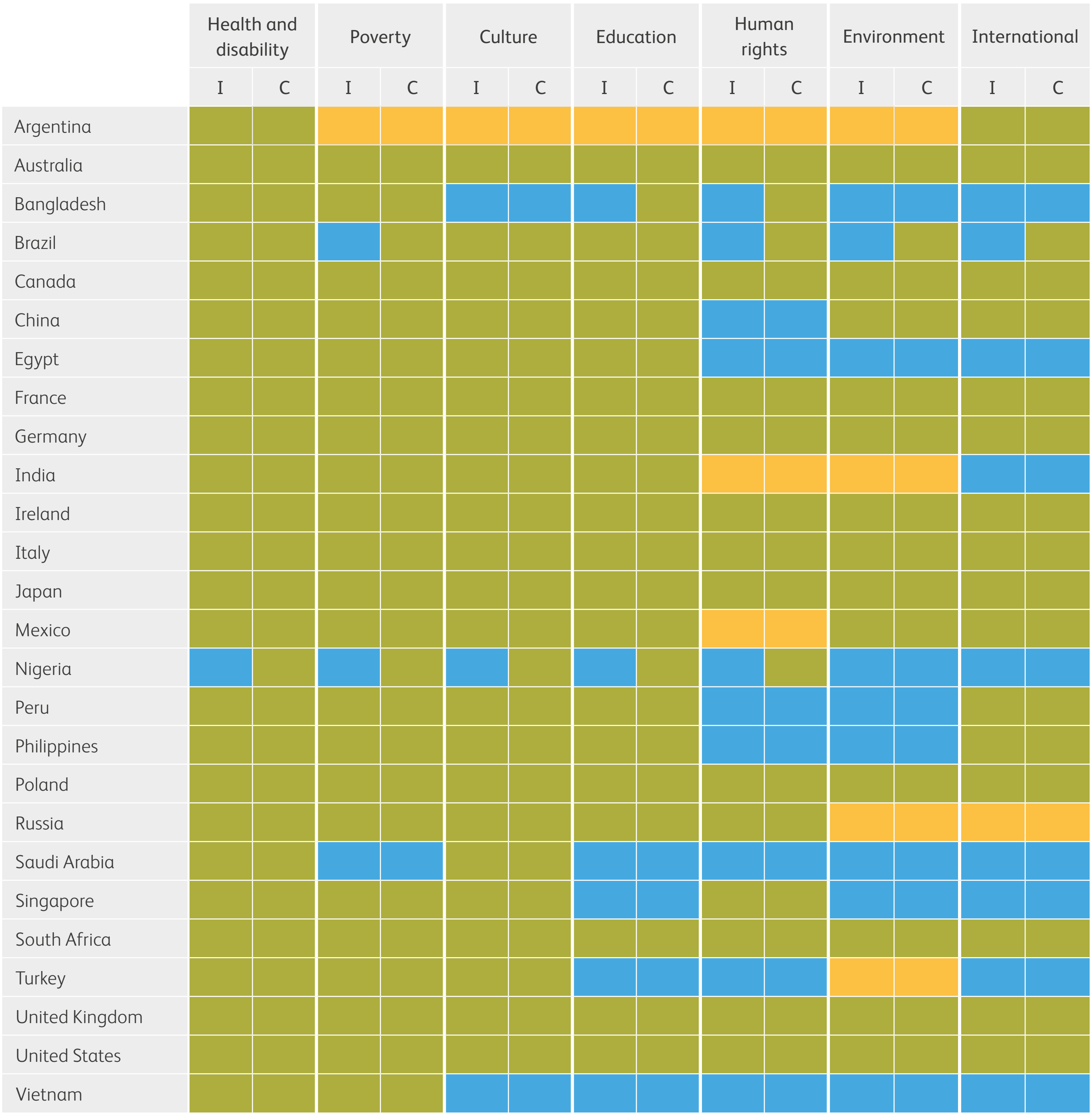
The world has seen a worrying closing of civic space, which threatens the very independence of civil society. CAF has detailed at length the grave importance of this issue in "Enabling an Independent Not-for-profit Sector",[35] highlighting the fact that it could undermine efforts to get a new generation of upwardly-mobile citizens in transitional economies to engage in philanthropy. Despite the potential for emerging domestic cultures of giving to drive sustainable development, governments are increasingly seeking to limit eligible causes to those which are uncritical of the state and its agenda. "Dozens of countries that had previously allowed or even welcomed democracy and rights support activities inside their borders are now working to stop it."[36]

This trend is not merely a tangential issue in the discussions of tax incentives for giving: when both the range of causes to which donors can give and their perception of having free will in making a donation is eroded, even the most generous incentives will not persuade them to part with their money. In our view, insofar as is achievable, incentives should strive to be cause neutral within the confines of broad public benefit definitions. Clearly, there is a democratic argument that governments elected by citizens should be able to make policy adjustments that bring the range of causes to which donors can give tax effectively into line with consensus politics. However, that debate should be a highly inclusive and deliberative one; with decisions being taken after hard-fought agreement.

35 Pickering, A. (2014) *Future World Giving: Enabling an Independent Not-for-profit Sector.* Charities Aid Foundation.

36 Carothers, T & Brechenmacher, S. (2014) *Closing Space: Democracy and Human Rights Support Under Fire* Carnegie Endowment for International Peace.

Figure 1 Range of public benefit purposes for which tax incentives can be claimed on donations for individuals and companies



I Individual donor
C Corporate donor
Incentivised gifts available for this cause
It may be possible to make incentivised gifts to this cause either the law is not clear or only applies to certain circumstances
Gifts to this cause are not incentivised

4.3.1 Limiting of legal purposes

In some nations covered for this report, the cause areas in which the government would inevitably come in for criticism from civil society groups are simply excluded from incentives completely. In Vietnam for example, causes under which organisations can claim donor-incentivised gifts are limited to: institutions or establishments raising or caring for children in difficult situations, disabled people, elderly feeble people, charitable, humanitarian or study promotional funds. Clearly, this precludes more obviously challenging areas such as human rights and environmental protection. Similarly, although tax incentives are available for corporations in Saudi Arabia (individuals do not pay income tax), the permissible causes for "charitable societies" and "charitable foundations" are limited to: helping the poor, improving residences, providing financial aid to needy people; youth employment activities; and providing healthcare, educational and social services. This means that there is little room for funding – let alone incentivising – certain causes.

4.3.2 Executive influence in assigning tax incentivised status

Some incentive regimes appear to allow the government considerable discretion in awarding organisations which fit their political agenda with the ability to receive donor-incentivised gifts. For example, the system under which incentives are offered in Brazil is extremely complicated; and this complexity offers ample opportunity for incentives to be moulded around a political agenda. Federal tax incentives for individuals are restricted to donations to organisations delivering specific government-approved projects in the fields of: child and adolescents sports, culture, audiovisual, elderly, handicapped, and cancer. Tax incentives for corporations are less restricted. Corporations can also claim incentives when giving to specific government-approved projects related to those causes but are also able to claim incentives when giving to a wider range of organisations. State and Municipal tax incentives are also liable to be used to promote politically-favourable CSOs. States and cities are able to set their own priorities – São Paulo, for instance, offers incentives for cultural organisations – though even within this narrow cause a complex and bureaucratic application process for organisations seeking to gain donor-incentivised status creates the potential for local politicians to reward only their favoured organisations, or at least the perception that they do. Added to this perception that the system for offering incentives to donors is prone to political interference, the spectre of corruption and cronyism has dogged Brazilian civil society; with scandals often relating to the rewarding of status to organisations affiliated to government ministers. A notorious example relates to a 2009 covenant agreed between the Ministry of Tourism and the Brazilian Institute of Development for Sustainable Infrastructure (IBRASI) – a CSO – for capacity building in the promotion of tourism in the state of Amapá. The CSO received government money which it then sub-contracted to fake companies allowing associates of government officials to embezzle in excess of R$15 million (US$3,7 million).[37]

In other nations, either intentionally or through poor policy implementation, there are tax incentives which although somewhat progressive on paper, are rarely easily or widely available in practice. In China, for example, the Public Welfare Donations Law details a relatively wide range of purposes under which incentives can be claimed, including: disaster relief, poverty alleviation, assistance to the handicapped, education, scientific, cultural, public health, athletic undertakings, environmental protection and construction of public facilities, and social development and progress. However, in practice, the requirement to gain official status as a "public benefit social organization" – an unclear process that few organisations appear to have successfully navigated – rules most CSOs out of receiving donor-incentivised gifts. Despite the roll-out of relatively generous tax incentives in China (30 per cent deduction of taxable income) rates of giving remain low – just 13 per cent of Chinese people reported giving money to a CSO in the previous month to being surveyed for the World Giving Index in 2013, seeing it place 107th out of 135 nations on that measure. This continuing lack of donations to CSOs despite the availability of incentives is partly reflective of poor policy implementation; with tax officials remaining unaware of the incentives on offer. Low levels of giving are also, according to

37 de Sainte Croix, Sarah. (2011) Ministry of Tourism Scandal Erupts in Brazil. [Online] The Rio Times.

the Council on Foundations, “a reflection of the lack of clear, simple and well-publicized tax exemption regulations and procedures for individual donors”.[38]

The notion that the Chinese state might be using tax incentives to guide the development of civil society away from more disruptive activities by rewarding only a select few independent organisations as well as Government Organised NGOs (GONGOs) is given credence by a 2013 document leaked to the press. Document Nine as it has become known, was submitted to the Third Plenum of the Eighteenth Party Congress of the Chinese Communist Party and lists as one of its “seven perils” for the next decade of Communist government, “Promoting civil society in an attempt to dismantle the ruling party’s social foundation”. This rare and transparent example of a government articulating its motivations for suppressing civil society states that; “civil society has been adopted by Western anti-China forces and used as a political tool” and that “their [CSOs’] advocacy is becoming a serious form of political opposition.”

Much like China, Turkey offers tax incentives to donors who make contributions to CSOs that deliver against one of the following public benefit purposes; Health, social aid, education, scientific research and development, culture and environmental protection. However, in order to receive incentivised gifts, CSOs must apply to the Council of Ministers for public benefit status (associations) and foundations must apply for tax exempt status (foundations). Currently the number of organisations that have successfully applied for and received public benefit status/tax exempt status from the Council of Ministers is very low. Only 5 per cent of foundations have tax exempt status, and only 0.04 per cent of associations have the public benefit status.[39]

4.3.3 Differing incentive values for charitable purposes

Even if we accept the suggestion made already in this report – that public benefit should be defined on broader criteria than simply matching the government’s own agenda, or trying to emulate populist sentiment – there remains a question as to whether some causes ought to receive greater incentives than others.

As was outlined earlier in this chapter, it is the opinion of this report that incentives should be offered on the basis of a single-stepped ‘staircase system’ where registration in an ‘inclusive framework’ of broad public benefit purpose definitions entitles a CSO to receive donor incentivised contributions. The logical extension of this position is that donors should receive the same incentives when giving to all registered CSOs. However, in some nations included in this study, different incentives are offered to organisations that have particular charitable causes.

In India, for instance, donors who give to CSOs that gain registration under Income Tax Act Section 80G are generally able to deduct 50 per cent of the value of the donation against their taxable income. However, there are a number of causes which enable the donor to claim larger deductions. For example, donations to government-operated charities under 80G (more on what this means in the next sub-section) qualify for a 100 per cent deduction. In addition to the above, Section 35AC of The Income Tax Act allows donors to deduct the full value of their donations (subject to caps) against taxable income when making contributions to certain priorities; such as drinking water projects, home building for the poor, and school building in poor areas. Section 35CCB of the Act also allows 100 per cent deductions on donations to associations and institutions carrying out programs of conservation of natural resources. In addition, Section 35(1)(iii) of the Act allows deductions of 125 per cent or 175 per cent for donations to certain research and science endeavours. In addition to these enhanced incentives, which can apply to certain CSOs as well as organisations in other sectors, deductions against

38 Council on Foundations. *China, Country Notes.* [Online]
39 Balkan Civil Society Development Network. (2014) *Monitoring Enabling Environment for Civil Society Development: the civil society environment in Turkey 2014 report.*

total taxable income are capped at differing rates (ten or 100 per cent) depending on the charitable purpose for which the contributions are made.

In France, individuals are able to claim a 75 per cent credit against tax liability on donations totalling up to €521. Incentives above the €521 threshold are calculated at 66 per cent of the donation but limited at 20 per cent of total taxable income. However, donations to certain causes (such as supplying free meals for persons in difficult situations) can retain a 75 per cent credit on tax liability above the €521 threshold. In Italy, there is a range of legal forms under which donations qualify for different incentives. Donors to organisations with ONLUS status – for which CSOs can apply under a relatively wide range of purposes – are eligible to receive tax credits of 26 per cent of the value of their donations against taxable income (subject to caps). However, donors to non-profit foundations and associations with exclusive interest in performing arts and Social Promotional Associations receive only a 19 per cent credit. Donations to "Non Governative Organisations", Universities, public and private research entities, national parks/resources and environmental protection are fully tax-deductible. On top of this complicated set of credits and deductions for different legal forms, incentives are capped – in some cases by value and in other cases as a percentage of taxable income – at different levels based on either purpose or organisational form. The Turkish state raises the cap on deductions from 10 per cent of taxable income to 100 per cent for certain charitable purposes such as foundations and associations running food banks.

This study recommends avoiding the use of different values of charitable tax incentive for different causes and organisational types where possible, and finds in favour of a single rate of incentive. There are a number of reasons that incentivising one cause or organisation type above others could be problematic. For one thing, it may well act as a disincentive for donors to give to causes that attract lower rates of tax relief, as donations to these causes become comparatively more costly and thus may seem less appealing. However, differential rates of relief may also pose problems for the organisations receiving the highest incentives. This may seem counterintuitive, but we must consider that when a certain charity receives preferential donor-incentivised status, this frames their request for donations in the eyes of the donor. And when the government offers higher incentives for a certain cause, there is a danger that it will be perceived as being offered on the basis that it is closely aligned with the government's agenda. Charitable giving is an expression of independent agency, so any sense that a gift is being made to support the activities of the state may undermine the belief that a donation to that cause is a transaction which takes place wholly within the civil society space.

Interestingly, behavioural economics suggests others ways in which higher incentives for a given cause might actually have unintended, and even counter-productive consequences. When offering higher rates of incentives for a particular cause or organisation type, governments should consider the crowding out effect of such incentives through the erosion of the positive image motivation for making a donation.[40] When giving to charity, donors want to be perceived to be supporting an organisation out of pure altruism, in as far as that is possible. However, by giving to a cause that allows them to claim the highest incentives, a donor may worry that they will be perceived by their peers to have prioritised their charitable activity on the basis of those incentives. Finally, and perhaps most importantly, such an approach makes understanding the effect that incentives have on giving – a difficult enough task in the simplest of scenarios – almost impossible.

4.3.4 Incentives for alignment with government agenda

At face value, it may seem fiscally responsible to incentivise those who wish to augment their tax liabilities by making further contributions to state-directed enterprise. Indeed, there may well be circumstances where the agenda of the government and the priorities of donors are so closely

40 Leicester, A., Levell, P. & Rasul, I. "Tax and Benefit Policy: Insights From Behavioural Economics", IFS Commentary C125, Institute of Fiscal Studies (2012) SBN: 978-1-903274-91-0

aligned that any additional subsidy provided by the state would be eminently justifiable. The clearest examples of this come in the form of humanitarian aid appeals. However, the method by which government chooses to incentivise giving which fits its own agenda is important. For example, compare the Turkish government's lifting of the 10 per cent cap on the deduction against taxable income for donations through the Prime Ministry for disaster relief and for gifts to the Turkish Red Crescent with the recent (2015) Nepal earthquake appeal in the United Kingdom by the Disaster Emergency Committee (DEC – a conglomerate of UK based international aid INGOs) which has been bolstered by £5 million in match funding by the UK aid agency, the Department for International Development. Clearly, the former represents an enshrinement of preferential treatment for humanitarian causes in the tax system whereas the match funding offered to donors to the Nepal appeal was manifestly government policy. This distinction is significant as whilst government schemes can afford to be selective, the ideal tax incentive system for giving should be, as far as possible, cause neutral.

The practice of offering preferential tax treatment for donations to certain causes, even populist ones, which are preferred by government should be treated with caution. When we allow government to manipulate incentives to support their own agenda we run the risk that the independence of civil society as something fully distinct from government could be jeopardised. This challenge is demonstrated at its most extreme within our sample of countries by the case of China. Civil society in China has largely been crowded out by quasi-governmental organisations known as GONGOs (government organised NGOs). Though it is technically possible for all CSOs to apply to be recognised and receive donor-incentivised gifts under the Public Welfare Donations Law, such status is rarely granted to independent CSOs. The International Center for Not-for-profit Law (ICNL) reports that there has been a concerted effort to create "safe" CSOs in China which the government can rely on to be supportive. A recent example of how this is being achieved has seen the Beijing Civil Affairs Bureau asking civil servants to withdraw from GONGOs so as to leave apparently non-governmental but essentially compliant CSOs.41

Though India has a wealth of independent CSOs, its government has also shown a willingness to blur the lines between the state and the civil society. Known as "government NGOs", organisations such as the Prime Minister's National Relief Fund; the Prime Minister's Armenia Earthquake Relief Fund; the Africa (Public Contributions – India) Fund; and the National Foundation for Communal Harmony are essentially government controlled organisations that share status under Income Tax Act Section 80G with independent CSOs. Whilst many CSOs are registered under 80G to enable them receive donor incentivised gifts, this only enables the donor to claim back 50 per cent of the value of their donation in tax deductions. However, donors to government NGOs are able to receive a 100 per cent deduction. The incentive for Indian companies is even more stark, as in some cases they are able to claim a 200 per cent deduction on gifts to government / public entities, which can be offset against other income if it results in a net operating loss.

Such examples of the state seeking to muscle in on tax incentives for their own agenda, and even wilfully crowd out independent CSOs by offering preferential treatment in granting donor-incentivised status to government run CSOs, or offering higher rates of incentives for such organisations, clearly obscures the distinction between the state and civil society.

4.4 Cross border giving

In many ways, the study of the tax treatment of cross border giving offers the best glimpse into how tax incentive regimes are, or were in the past justified politically. It is perhaps the most extreme basis on which a conversation can be had about the extent to which governments should balance the

41 International Center for Not-for-profit Law. *NGO Law Monitor: China.* [Online]

moral imperative of the citizenry and commitments to pluralism in civil society against the natural desire of policy makers to ensure that they are incentivising in line with the domestic public interest. Most policy makers have a natural desire to control the impact of offering tax benefits for charitable gifts; in order to ensure to ensure that the primary benefits are felt domestically (i.e. among their own citizenry). The extent to which this desire can be tempered in order to allow incentivised cross-border giving depends on a range of factors.

4.4.1 Arguments for and against incentives for cross-border giving

From the point of view of governments and particularly of revenue collection agencies, debate about the provision of incentives for cross-border giving will likely be framed according to the subsidy rationale discussed in section 2. Accordingly, it will likely be argued that lost tax revenue will not be mitigated by an equitable or indeed greater benefit to the nation. This was indeed the case in the United States when lawmakers decided to extend the geographical limitation on deductibility to individual donors in the 1938 Revenue Act.[42] In relation to the earlier 1935 Revenue Act which placed geographical restrictions on corporate deductibility, the House of Representatives Ways and Means Committee stated in its report that:

> *"The exemption from taxation of money or property devoted to charitable and other purposes is based upon the theory that the Government is compensated for the loss of revenue by its relief from financial burden which would otherwise have to be met by appropriation from public funds, and by the benefits resulting from the promotion of the general welfare. The United States derives no such benefit from foreign institutions, and the proposed limitation is consistent with the above theory."*[43]

Clearly, this is an argument that is likely to have some traction with any government that imposes taxes. This is amply demonstrated by the fact that no country in our sample of 26 nations has a truly open policy that offers tax incentives on the same basis to foreign organisations of any country as it does to domestic organisations.

Despite this, it is noteworthy that many countries in our sample do allow, to differing extents, some means of donating for the benefit of beneficiaries abroad, whilst claiming tax incentives on their donation. As we will discuss, these options range from narrow and specific domestic vehicles that are affiliated to the government, to tax treaties and regional agreements which allow incentives to be claimed on direct donations to foreign organisations. Given that tax authorities would ordinarily see this as a straightforward tax loss, we might reasonably ask how this can be justified.

One potential explanation is the desire to extend a nation's "soft power" through cultural and economic influence. Many in government have long understood that military power has its limitations and that "persuasion through soft power can yield more concession, cooperation, and enduring support [...] than coercion alone."[44] The unique nature of philanthropy is recognised as having particular relevance in this realm. Being a product of society, rather than government bestows a sense of cultural freedom and unshackled human endeavour which often results in a less cynical response abroad, and hence enables philanthropy and the organisations it supports to be more effective. Paradoxically, allowing independent altruism to leach through national borders has the effect of enhancing the national reputation and hence soft power.[45] Put differently, "international philanthropy—precisely because of its independence from the state— offers a direct, tangible, and genuine manifestation of culture, values, and people through action on the ground. This production

42 Prior individual donors could receive tax deductions on donations to foreign CSOs. Revenue Acts from 1917 to 1935 included no geographical limitations on deductions. The 1935 Act placed limits on corporate deductibility for foreign donations,

43 H.R. Rep. No 1860 75th Cong, 3rd Sess. 19 (1938).

44 Josephs, Nye, Jr. (2004) *Soft power: the Means of Success in World Politics.* New York, Public Affairs.

45 Anheier, A. Simmons, A. (2005) *The Role of Philanthropy in Globalization.* In: *Rethinking Philanthropic Effectiveness: Lessons from an international Network of Foundation Experts.* Eilinghoff. D ed. Bertelsmann Foundation

of attractive cultural values, in turn, produces benefit—in the form of soft power—that inures to the state writ large."[46] Indeed, while some policy makers have worried that large donors such as the Bill & Melinda Gates Foundation and the Ford Foundation essentially have a foreign policy profile in and of themselves and thus retain soft power rather than passing it on to the state, these are extreme outliers. Even if we limit ourselves to talking about foundations, the collective efforts of all but the largest organisations "are more likely to create cumulative soft power [... to the] government rather than for those organisations individually."[47]

But the above argument for the soft-power benefit of philanthropy becomes less clear when it comes to donations to wholly foreign CSOs as the connection, in the eyes of beneficiary communities, to the donor is less tangible. Though it could be argued that systems could be developed to require due diligence and prove the equivalency of foreign CSOs to that of a qualifying domestic organisation, regulators might contest that such a system would be a) extremely difficult to manage and b) prone to abuse. However despite compelling fiscal and political arguments against allowing incentivised donations to permeate through national borders, in a number of countries in our study such practices are common place (as will be detailed below). In many cases, this occurs through domestically-registered CSOs and foundations that subsequently make grants to foreign organisations, but in some instances direct donations to foreign CSOs are permitted. Perhaps the most persuasive argument as to why incentives are allowed to be used in this way, even if this was not the intention of legislation in the first instance, is the simplest reason of all; need.

The scale of resources necessary to address the continuing human suffering and inequity that persist around the world is difficult to overstate. The United Nations Conference on Trade and Development has estimated that the world will have to overcome a US$2.5 trillion investment shortfall to deliver on the Sustainable Development Goals.[48] For philanthropy to play a significant role as a partner in delivering these goals, it must seek to be as effective as possible. However, many thinkers in the development sector believe large international NGOs (INGOs) have, often by virtue of being headquartered in wealthy nations, become far too dominant as deliverers of development initiatives at the expense of local/national organisations with ties to the community and an understanding of the context. This is exacerbated by official aid flow from governments. The OECD estimated in 2013 that only about 1 per cent of Official Development Assistance (ODA) from Development Assistance Committee (DAC) member countries goes to CSOs registered in the destination country.

Policy makers are, in spite of globalisation, as likely as ever to see the world through the lens of national interest. A narrow reading of the realpolitik foreign policy might well lead one to assume that a policy of limiting incentives for giving to organisations and activities which benefit people and communities within the national border is inevitable. However, a broader reading explains the variety of practice that we see in our study. Firstly, as stated above, there are legitimate reasons to allow donations to be incentivised for domestic organisations operating, and even grant making, abroad that are in line with considerations of the national interest. Secondly, extending cultural and economic "soft power" through philanthropy can help to advance national interest. Furthermore, it could be argued that meeting multilateral commitments and investing in the security and development of other nations can have both preventative and causal benefits at home. However, we should also note the primacy of public demand in advanced democratic societies. Citizens are increasingly connected to networks outside of their country through social media and global news coverage and their strong desire to help others can weigh heavily on the hand of politicians as they pull policy leavers.

46 Jenkins, G. (2007) *Soft Power, Strategic Security, and International Philanthropy.* North Carolina Law Review, Vol. 85,

47 Chang, J. Goldberg, J, I. Schrag, N, J. (1996) *Cross-border Charitable Giving.* New York University

48 United Nations. (2014) *Investing in the SDGs: An Action Plan – World Investment Report 2014.* The United Nations Conference on Trade and Development

4.4.2 Approaches to incentivising cross-border giving

The nations in this study have a wide range of approaches to incentivising donations to international causes. These approaches can be divided into three categories of ascending openness as detailed in Fig 2. It should be noted that this categorisation does not factor in the laws which apply to corporate or private foundations which were not part of the scope of our study. However, in many nations such entities are able to make cross border transfers allowing donors to indirectly give tax effectively.

Figure 2 The range of approaches to incentivising cross-border giving

Model	Indicators	Explanation
Insulated Government seeks strict control of where incentives can be gain for donations to international causes	No donations for international causes are incentivised	No incentives are available for any gift to an organisation or programme whose beneficiaries are not wholly domestic.
	Government programmes and GONGOs operating abroad	The government runs programmes or has a hand in the management/governance of organisations that operate abroad but that are allowed to receive donor-incentivised gifts.
	CSOs with special permission or legal status to operate abroad	The government provides a list of named, domestically registered organisations which operate abroad but are eligible for donor-incentivised gifts.
Hybrid Law is neutral on the location of beneficiaries but the recipient organisation must be domestically registered.	Domestic registered organisations operating abroad	Providing an organisation is established and registered domestically, no judgement is made about the location of its charitable activities.
	Deductions to 'Friends of' organisations	It is possible to establish an organisation that can receive donor-incentivised gifts specifically to make grants to a named foreign CSO.
	Wider legal opportunities for conduit organisations	Organisations are able to gain charitable status and receive incentivised gifts that, whilst legally under the discretion of that organisation, are intended by the donor to reach a foreign CSO. These may take the form of donor advised funds (DAFs).
Open It is possible, to a greater or lesser extent to make donations directly to foreign based organisations.	Deductions to certain countries with tax treaties	Some countries have tax treaties with other nations that enable donors to claim incentives on cross-border donations against foreign earned income either where equivalency has been demonstrated or when registered status is deemed to be equivalent.
	Regional equivalency	Regional agreement/legal precedent establishes the expectation that donors should be eligible for incentives when donating to any organisation in the region. This is technically the case in the EU as a result of the Persche ruling. (ECLI:EU:C:2009:33)
	Any that meet domestic standards of equivalency	Foreign charitable donations are eligible for tax incentives providing they would qualify under domestic definitions and/or due diligence has been undertaken.

4.4.2.1 Insulated approaches to incentivising cross-border giving

Ten countries in our sample of 26 restrict incentivised giving entirely to domestic causes, or allow incentives for overseas causes only in certain and highly prescriptive cases.

Singapore is perhaps the most striking example of a wealthy nation that operates an insulated system of tax incentives for giving. Singapore has a system in which there are no options for donors to support international causes tax efficiently. Indeed, donations to support a "foreign charitable purpose" are not tax deductible even if they are made to one of the highly-regulated approved Institutions of a Public Character (IPC) based in Singapore but operating abroad. Given the fact that incentives are offered at 300 per cent of income tax rates this presents a huge relative disincentive for Singaporean donors to give to international causes.

Vietnam represents another strictly insulated system. Donations are only deductible if they are given to a qualifying domestic organisation; and in order to establish a charitable organisation or to be recognized by the State authority as charitable, organisations are not allowed to operate abroad. In Bangladesh, tax incentives are only available for a narrow range of purposes defined by the government, which do not currently include international causes. However, the government names some specific organisations for which it allows tax-deductible gifts and it is not inconceivable that it could choose to do so with organisations operating abroad, although this does not currently appear to be the case.

In China, the law appears to leave open the possibility of making tax-deductible gifts to Chinese registered organisations which operate abroad. However, in practice, the inability of most organisations to legally fundraise and the difficulty that many donors face in claiming tax incentives makes this difficult (See section 8). It does appear that whilst corporations would find it difficult to make tax-efficient donations to organisations operating abroad, corporate foundations may be able to make tax-effective grants to foreign causes, although this is once again unclear. In any case, though corporate foundations have flourished in recent years, they seem heavily targeted on domestic causes.[49]

Turkey is an example of a nation that does not allow incentivised gifts to organisations operating abroad, except in highly-proscribed circumstances. For example, Article 89/10 of Turkish Income Tax law stipulates that donations to the Prime Ministry, upon natural disasters for which the Cabinet of Ministers has taken a decision to launch an aid campaign, can be totally deducted from an individual's income / corporate gains. This could conceivably be for foreign disaster relief. Furthermore, Article 89/11 of ITL states that all charitable giving granted to Turkish Red Crescent, apart from its commercial enterprises, can be totally deducted from an individual's income / corporate gains. Similarly, this might involve foreign aid activities. South Africa is another country which offers incentives for cross border giving only in very specific circumstances. Corporations may claim deductions on gifts to institutions undertaking qualifying conservation activities in a transfrontier area involving Mozambique and Swaziland, as well as South Africa. Likewise, India only permits incentivised gifts to Indian-registered organisations operating abroad if they are promoting "international welfare in which India is interested". As this phrase in the law is not further defined, it allows significant government discretion.

Australia is another example of a nation that is highly prescriptive in the way it grants permission for donations to foreign causes to be incentivised. To obtain a tax deduction, gifts must be made to an Australian charity which has official accreditation to send money overseas. Typically these charities have an Overseas Aid Gift Fund for this purpose. There are approximately 40 charities in Australia

49 Xiaoming, F. (2013) *China's Charitable Foundations: Development and Policy-Related Issues.* Working Paper No. 485. Stanford Center for International Development

with this accreditation. The funds are only able to be sent for use on projects in developing countries (the Australian government has issued a list of approved developing countries).

In the case of some countries in our study, the law is unclear on whether incentives can be claimed on giving internationally but the general intent of other legal instruments suggest that incentives are unlikely to be claimable. Given the barriers to international contact and funding for Egyptian organisations imposed by Law 84 (2002) which, according to ICNL "requires that associations seeking funds from Egyptian individuals also secure advance approval from the Ministry"[50] it is not clear whether this is achievable for domestic organisations seeking to operate abroad or not. Similarly, given that under the so called "Foreign Agents" law, Russian CSOs will have to register as a "foreign agents" if they receive funding from abroad and engage in "political activities", it would seem clear that the Russian government favours an insular approach to the charitable economy. However, it is not specifically stated in the law that Russian donors are prohibited from claiming incentives either for donating to domestic organisations operating abroad, or indeed to foreign organisations.

4.4.2.2 Hybrid approaches to incentivising cross-border giving

As discussed in Section 3.4.1, there appears in most cases to be a compromise, particularly in wealthier societies, between the desire to ensure that the benefits of tax incentives are felt domestically, and the myriad moral and geo-political arguments for a more expansive approach. As a result, half of the countries in our study (13 out of 26) could be said to have a hybrid approach to incentivising cross-border giving – albeit that some countries also have aspects of a more open model.

Argentina, Australia, Brazil, Canada, France, Germany, Ireland, Italy, Mexico, Philippines, Poland, Saudi Arabia, the United Kingdom and the United States all allow domestic organisations that have operations abroad to received donor-incentivised gifts providing that they qualify for such a status domestically.

Though we have not looked at tax laws in sufficient depth to make an assessment for every country, we are aware that some countries permit organisations to be established specifically for the purpose of supporting a foreign CSO financially and are able to receive donor-incentivised gifts. Such "friends of" organisations technically retain discretion over the funds, but there is a reasonable expectation that they will transfer them to the foreign recipient. Conduit organisations can allow donors to "suggest" a destination for funds whilst the ultimate discretion lies with the organisation with which they have made an agreement.

4.4.2.3 Open approaches to incentivising cross-border giving

None of the countries in our study could be said to have a truly open system of incentives for cross-border giving in which donors are able to give to foreign CSOs in any nation directly and claim incentives. However, donors in some countries in our study are (in theory if not practice) able to make donations to foreign CSOs in certain scenarios.

For instance, The Unites States of America has income tax treaties with Canada, Mexico and Israel that allow US donors to claim tax incentives on their income from those countries in the US on the basis that regulatory standards are seen as equivalent. Conversely, residents of the three nations listed above may enjoy the same privilege on donations to US organisations. In addition, the USA allows deductions against estate taxes. France, Germany and Italy have similar treaties with selected jurisdictions that allow foreign source income to receive incentives.

50 International Center for Non-for-Profit Law. *Egypt, NGO Law Monitor.*

Perhaps the most open approach to tax incentives for cross-border giving exists, on paper at least, in the European Union, where a ruling by the European Court of Justice (ECJ) has established the expectation that, to be consistent with the European Community Treaty, donors should be able to claim incentives on donations to a beneficiary organisation in another member state (of the European Union (EU) or the European Economic Area) where it can be shown to meet definitions and standards needed to qualify as a domestic public benefit organisation. In January 2009, the European Court of Justice issued its judgment in the case of Hein Persche v Finanzamt Ludenscheid. The case was brought by Mr. Persche, a German national, who made a gift in kind, valued at about EUR 18,180 to a Portuguese charity. Mr. Persche claimed a tax deduction in his tax returns but the Finanzamt (District Tax Office) refused the deduction on the grounds that the beneficiary of the gift was not established in Germany. Mr Persche appealed this decision in the European courts, and the ECJ found in his favour, ruling that:

> "1. *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.*
> 2. *Article 56 EC 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."*[51]

The "Persche ruling" has had a significant impact on policy, and according to the International Center for Not-for-profit Law has, "triggered a wave of reform of tax legislation within the EU."[52] However, though it may well be the case that regulators and tax authorities across Europe are still acclimatising to the new legal landscape and putting systems in place to accommodate cross-border incentivised giving, the free movement of incentivised gifts that the ruling seemed to anticipate has not come to pass.

Six nations in our study are members of the EU: France, Ireland, Italy, Germany, Poland and the United Kingdom. Whilst legislation in each has been amended to accommodate the Persche ruling, this appears to have been done to the letter of the law rather than the spirit. Tax authorities have seemingly used bureaucratic complexity, burdensome administrative hurdles and a lack of transparent process to limit the availability of incentives for tax incentives for donations within the EU.

For example, in order to claim tax credits in France, the recipient organisation must have either gained accreditation by French tax authorities or the donor must be able to prove its equivalency. To achieve the latter, it rests on the donor to file evidence that proves that the organisation is comparable within French law to a qualifying domestic organisation. The situation in the United Kingdom is even more Kafkaesque. After legislating to change the definition of an exempt charity, Her Majesty's revenue and Customs (HMRC) issued a communiqué stating how eligibility would be determined for claiming Gift Aid on donations to organisations in the EU. It explained that donations could only qualify to nations that could demonstrate a suitable set of powers in regards to exchanging and recovering information. The release goes on to explain that HMRC would implement a pre-approval process that would result in a list of approved recipient organisation across the EU. The communiqué explicitly stated that a list of qualifying countries and a "list of charities that have gained approval will be

51 Case C-318/07, Hein Persche v Finanzamt Lüdenscheid (2009) ECLI:EU:C:2009:33
52 The International Journal of Not-for -Profit Law, Volume 13, Numbers 1-2, April 2011, The International Center for Not-for-Profit Law

available on the HMRC Charities website in due course."[53] At the time of writing, neither has been published. In Germany, the spirit of the Persche ruling has been side-lined in favour of insular national interest: in order to deduct charitable donations to EU- or EEA-based organizations that have no activities in Germany, the activities "either have to support individuals which have their permanent residence in Germany or the activities could benefit Germany's reputation."[54]

53 Great Britain, Her Majesty's Revenue and Customs. (2009) *General outline: meaning of 'charity' and 'charitable'.* [Online] (Cm. IHTM11112).
54 The International Journal of Not-for-Profit Law. (2011) Volume 13, Numbers 1-2, April 2011, The International Center for Not-for-Profit Law

5. *Value of incentives*

It is clearly evident from our study that the efficacy of tax incentives for giving will be determined by much more than their financial value. We have already seen that the way in which eligibility is awarded and the causes which qualify are likely to be significant in understanding the likely donor response to incentives. This report will also explore the way in which differences in the form that incentives take and different approaches to certain categories of donors might impact on donor responsiveness. However, any comparative study of tax incentives for giving must give heavy weighting to the financial value of incentives to the donor.

Unlike many such studies, we have aimed to consider the value of tax incentives for a range of audiences. As well as considering the value of incentives for wealthy donors and companies, we have looked at different sized donations at varying levels of wealth to gain a more balanced understanding which is inclusive of all donors.

The real effective monetary value of tax incentives for charitable giving has three central components which will be explored in detail in this section;

- Rate of taxation
- Rate of incentive
- Caps and floors

5.1 *Rate of taxation*

We have already observed in section 2 that a meta-analysis of available academic studies shows that people are somewhat responsive to tax incentives (or, at least, people in nations where studies have been completed are). Though some individual studies show only very weak elasticity, and others even find inelasticity, the assumption that giving increases as the relative cost of giving declines remains prevalent. However, given the extent to which this assumption remains central to the policy debate on tax incentives for giving, it bears far greater scrutiny.

The assumption of rationality in economics has long been a controversial one. In the early 1960s Gary Becker claimed that "everyone more or less agrees that rational behaviour simply implies consistent maximisation of a well-ordered function, such as a utility or profit function", and that whilst an assumption of rationality implied "lightning-fast calculation, hedonistic motivation, and other presumably unrealistic behaviour"[55] at an individual level, empirical evidence at the macro level continued to suggest that markets are rational. However, there have been persistent findings in empirical studies of certain economic activities of irrational behaviour even at the macro level, and as a result no orthodoxy has prevailed when it comes to rationality.

What is not in doubt is that the rate of income tax an individual pays necessarily determines the potential pot of taxation available to be claimed in incentives. Therefore, it stands to reason that when incentives are in place, they become more appealing (in pure value terms at least) as the rate of income tax increases. For example, despite the fact that in India the rate of incentive for donors is just 50 per cent of the value of a gift, a high rate (30 per cent) tax payer receives incentives of a higher financial value than a wealthy donor in Russia, where the incentive rate is actually 100 per cent, simply because Russia has a flat 13 per cent rate of income tax. As such, we might rationally expect price elasticity to increase markedly as rates of taxation increase.

Responsiveness to differing levels of taxation by donors has been tested in a study by Gabrielle Fack and Camille Landais using data on charitable contributions alongside changes in the marginal tax rate in the USA from 1917 to 2005. Over this time span, the rate of income tax for wealthy citizens

55 Becker, G., S. (1962) *Irrational Behavior and Economic Theory.* Journal of Political Economy, Vol. 70, No. 1, Feb. pp. 1-13. The University of Chicago Press

fluctuated dramatically from a low of around 10 per cent to a high of 90 per cent, creating a natural experiment. The study found that for the richest 10 per cent of the population, price elasticity was equal to -0.6. In other words, a 1 per cent increase in the cost of giving – which in this case means a 1 per cent reduction in marginal tax rate – resulted in a 0.6 per cent increase in donations. However, when the authors focused on the top 1 per cent of donors, they found price elasticity to be "not significantly different from one" suggesting that the richest 1 per cent would essentially increase their donations by the same proportion that their tax bill had increased. Finally, though the data was not sufficiently robust to allow a calculation of elasticity, the authors of the study observed a "surge in contributions by the top 0.01 per cent of taxpayers from the early 1930s to the late 1960s [which] is correlated with the dramatic increase in marginal tax rates for these top income taxpayers to levels as high as 90 per cent in the mid-1940s". The authors concluded that, "the variations in reported contributions for the top 10 per cent to top 1 per cent and for the top 1 per cent to top 0.01 per cent have been quite modest, compared with the variations experienced by the top 0.01 per cent of taxpayers",[56] suggesting that donors only become truly responsive, or "rational", at the very highest income levels.

Table 1 Highest rate of taxation for individuals

Country	Top rate of income tax (%)
Japan	50
Canada	46.16
France	45
Germany	45
China	45
United Kingdom	45
Australia	45
United States	45
Italy	43
South Africa	41
Ireland	40
Turkey	35
Argentina	35
Mexico	35
Vietnam	35
Poland	32
Philippines	32
Bangladesh	30
India	30
Peru	30
Brazil	27.5
Egypt	25
Nigeria	24
Singapore	20
Russia	13
Saudi Arabia	0

56 Fack, G & Landias, C. (2012) *Philanthropy, Tax Policy and Tax Cheating: A Long Run Perspective on US Data.* In: *Charitable Giving and tax Policy: A Historical and Comparative Perspective.* Paris School of Economics

Assuming the rate of deductibility stays static, increases in the rate of income tax result in a corresponding increase in the value of incentives for, and hence a reduction in the cost of giving. Furthermore, the evidence, in the USA at least, seems to suggest that higher rates of taxation tend to lead to an increase in giving (greater price elasticity), particularly amongst the very wealthy. To this extent, an unavoidable conclusion can be made; that those countries with the highest rates of taxation not only offer the greatest opportunity for creating generous incentives for giving but are likely to see the highest responsiveness to those incentives amongst the wealthiest tax payers.

5.2 Rate of incentive

19 out of the 24 nations in our study (excluding Saudi Arabia, which has no income tax, and Nigeria, which has no incentives for individuals) offer incentives at 100 per cent of the value of income tax. That is to say; donors can (or in the case of the UK, CSOs can) claim or be exempt from 100 per cent of the tax that has or would be paid on the amount being donated.

Included in the above calculation is Canada, as donors paying the highest rate of income tax (excluding surtaxes) can claim 100 per cent of tax paid on a donation back in credits. However, a dizzying array of different provincial tax rates and local tax rates which often differ from the rate of credit mean that generalisations are difficult and notable exceptions exist. In Alberta for example, the highest rate of tax is lower than the highest rate of credit meaning that those making large donations could, subject to hitting a cap on net income, claim more in credits than the value of tax paid on the donated income. New Brunswick offers the reverse scenario as the highest rate of tax, at 25.75 per cent is 7.91 per cent lower.

Ireland, like Canada, has a credit based system; although in this case the grossed-up incentive is passed onto the beneficiary organisation. Unlike Canada, Ireland has, since 2013, had a single credit rate of 31 per cent of the donation. As a result, high rate (40 per cent) income tax payers receive an incentive with a value that is less than 100 per cent (79.8 per cent) of tax paid on gross income. However, a person earning the €32,800 (US$36,457) that is the threshold for the 40 per cent tax rate would still receive a credit of 31 per cent of the donation, despite paying only 20 per cent income tax. As such, were they also to donate €4,500 (approximately $5,000) they would, or rather the beneficiary would, receive a credit worth 155 per cent of the tax liability on gross income for that donation. Three other countries offer tax incentives at less than 100 per cent of the rate of income taxation: France at 66 per cent, India at 50 per cent (though in limited cases it can be 100 per cent) and Bangladesh at 15 per cent.

Singapore is notable for being the only country that offers all donors incentives at a rate higher than 100 per cent. The deduction for Singaporean donors has risen steadily from 200 per cent of a donor's rate of income taxation to 250 per cent in 2009 and then to 300 per cent from 2015. Despite the low rate of taxation in Singapore (the highest rate is 20 per cent), this unique approach succeeds in making Singapore the most tax-effective place in our study for a wealthy donor to give, and likely in the world (see Figure 4). However, those on lower incomes pay so little tax (median income earners would be in the 7 per cent bracket) that even the 300 per cent rate does not see Singapore offer the most tax-efficient system for lower income earners. Though a rational donor would be highly responsive to such a generous incentive, there is evidence to suggest that the effect may be less pronounced than might logically be expected. Though not directly comparable to tax incentives (except arguably for grossed-up forms of incentive as seen in the United Kingdom and Ireland), research on the effects of match funding may suggest a broader learning. Studies seem to show that above certain limits, price elasticity actually falls relative to the increasing incentive.[57] Therefore, the merit in setting the value of match funding (and perhaps incentives) above 100 per cent may

57 Karlan, D. and List, J. A. (2006) *Does price matter in charitable giving? Evidence form a large scale natural field experiment.* Woking Paper 12338, National Bureau of Economic Research.

be questionable as it may not promote greater giving, and might even actually dampen levels of generosity.

5.3 Monetary effect on incentives on donations

The calculations in this section attempt to estimate the tax treatment of comparable qualifying donations, and the resulting monetary value of claimable incentives. Clearly, as stated throughout this document, the effectiveness of tax incentives is not solely determined by their relative financial value. The range of causes on which a donor can claim incentives; cultural norms and expectations about giving; the standard of regulation of charities; their independence from government; and overarching perceptions about the effectiveness and trustworthiness of CSOs will likely have a stronger impact on an individual or company's willingness to donate. Nevertheless, there is strong evidence that tax incentives for philanthropy are effective and that propensity to give increases as the relative cost of giving declines. As such, this study attempts to assess the relative monetary value of incentives in our sample of 26 nations.

In order to get a full picture of the financial value of incentives in our sample countries we have looked at a range of scenarios: for wealthy donors, "ordinary" donors (of median or modest income) and corporate donors. In doing so, we have had to make a number of reasonable assumptions, which are highlighted in the text where they apply to a specific scenario.[58] It should also be noted that we have taken a narrow view of incentives and look only at tax incentives on income which does not include dividends or interest. This may very well have a significant impact on the overall picture. A separate study which takes the full range of incentives available for all economic activity as well as incentives for legacy gifts would be a useful addition to the overall study of incentives but falls outside of the scope of this report.

5.3.1 Wealthy individual donors

In most cases, the key factors in determining the relative financial value of incentives are the rate of tax paid by the donor and the effective rate of relief from taxation offered as an incentive for giving. For wealthy donors, the effect of these two factors are exaggerated by paying a higher rate of tax; with the cost of giving falling significantly where gifts are fully deductible in high-tax countries. Table 2 illustrates this effect by taking the example of a donor with an annual taxable income of US$1,000,000 making a US$10,000 donation to a qualifying CSO.

58 Assumptions which apply to data for the whole section are:

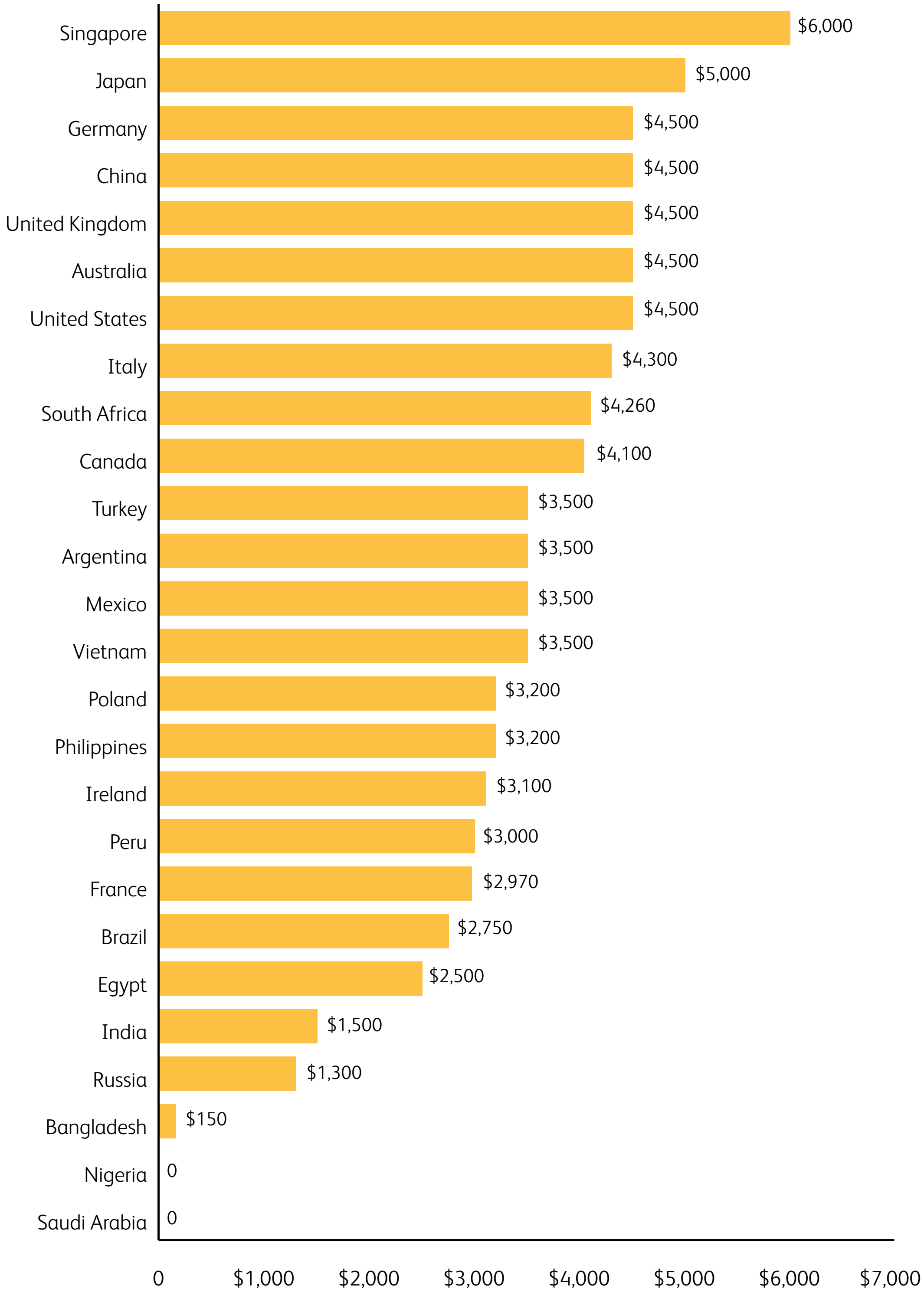
- Gift is made to an association that has a public benefit purpose which would qualify for incentives in all nations where incentives are offered
- The beneficiary organisation has obtained the most common form of tax exempt status conferring donor incentives
- Calculations are based solely on income taxes and do not include supplementary taxes such as mandatory pension contributions
- The donor is, where a factor, unmarried and with no dependents
- US calculation assumes the donor is a resident of Ohio as it is close to the median state tax rate and does not impose state limits on deductions. Top rate of income tax includes state tax
- Canada results are based on Ontario province and are inclusive of state income tax
- France has a wealth tax on assets which can mean an equivalent tax against income of 75 per cent. Donors who choose to reduce wealth tax liability up to a cap of €50k cannot also claim against income tax. France has a higher cap on donations below €521 and 66 per cent after
- In the UK and Ireland the value of the Incentive is passed on to the beneficiary organisation
- China calculations are based on a donor being a resident of Beijing
- In Ireland, a flat credit is offered at 31 per cent of the value of the donation resulting in a rate which varies depending on what tax rate a donor pays
- In Mexico, last years taxable income is taken into account for the imposition of the cap on deductions. As such, we are assuming an identical income for current year

Table 2 Tax treatment of a donation of US $10,000 for a donor with an income of US $1,000,000

Country	Highest rate of income tax (%)	Effective rate of relief (%)	Incentive value on a US $10,000 donation (US $)
Singapore	20	300	6000
Japan	50	100	5000
Germany	45	100	4500
China	45	100	4500
United Kingdom	45	100	4500
Australia	45	100	4500
United States	45	100	4499
Italy	43	100	4300
Canada	43	100	4,100
South Africa	41	100	3500
Turkey	35	100	3500
Argentina	35	100	3500
Mexico	35	100	3500
Vietnam	35	100	3500
Poland	32	100	3200
Philippines	32	100	3200
Ireland	40	78	3100
Peru	30	100	3000
France	45	66	2970
Brazil	28	100	2750
Egypt	25	100	2500
India	30	50	1500
Russia	13	100	1300
Bangladesh	30	15	150
Nigeria	24	0	0
Saudi Arabia	0	0	0

With individual donations in this example totalling just 1 per cent of taxable income, the percentage and value caps placed on the amount that can be claimed in tax incentives are not reached in any of the nations in our study. As a result, with the exception of Singapre, which offers an effective rate of incentive of 300 per cent, the top 16 most tax effective regimes in the example given, simply line up in order of the highest marginal rate of income tax.

Figure 3 Incentive value on a US $10,000 donation for a wealthy donor



Within our sample of 26 nations, the majority (19) have restrictions in place to protect the tax base from the cost of unlimited incentives. These caps and floors are discussed in detail in section 6. To understand the effect that such limits on incentives have on wealthy individuals, it is necessary to create a donor scenario in which they are tested. As such, Table 3 and Figure 4 show the tax outcome when a donor has an earned income of US$1,000,000 and donates all of it to a qualifying CSO (subject to above assumptions). Though this may seem an unlikely scenario at first, for individuals who have considerable wealth in the bank, giving away a large proportion of their taxable income is not inconceivable. For example, individuals living off inherited wealth or the proceeds of selling a business or shares may find that they are able to make donations which are far in excess of their annual earned income.

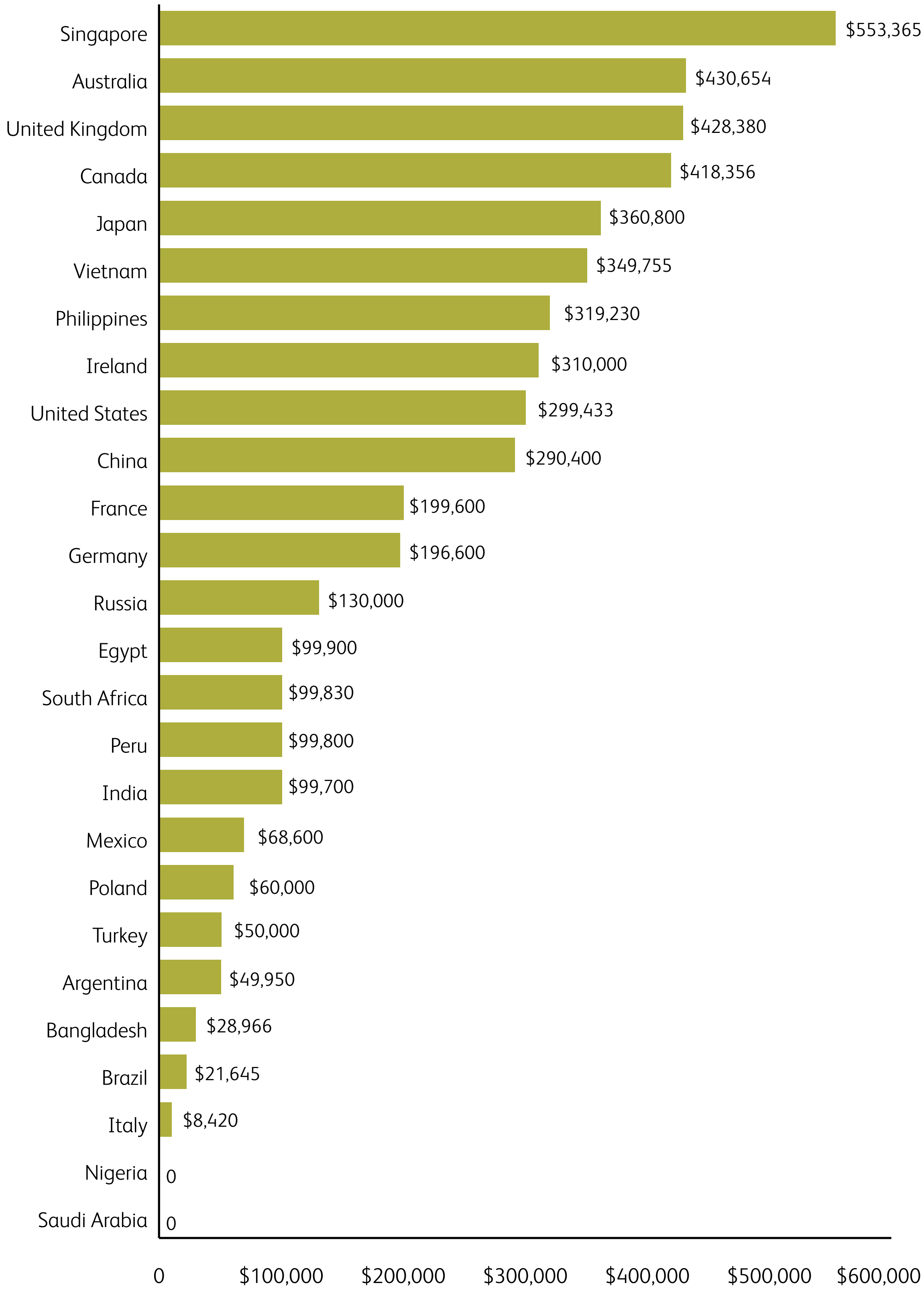
Table 3 Monetary value of incentives on a US $1,000,000 donation where that accounts for 100% of the donors gross annual income

Country	Top rate of income tax (%)	Effective income tax rate on total income (%)	Effective rate of relief excluding cap (%)	Cap on incentive (%)	Cap on incentive (US$)	Tax base for incentive	Tax incentive value on US $1,000,000 donation, assuming 100% taxable income (US$)
Singapore	20	18.4	300	unlimited		n/a	553,365
Australia	45	43.1	100	100		Tax liability	430,654
United Kingdom	45	42.8	100	100		Tax liability	428,380
Canada	46.16	44.22	100	75		Net income	$418,356
Japan	50	40	100	40		Taxable income	360,800
Vietnam	35	35	100	100		Tax liability	349,755
Philippines	32	31.9	100	100		Taxable income	319,230
Ireland	40	38.9	79.8	100	1,111,475	Tax liability	310,000
United States	45	40.1	100	50		Adjusted gross income	299,433
China	45	41.8	100	30		Taxable income	290,400
France	45	44.8	66	20		Taxable income	199,600
Germany	45	43.3	100	20		Taxable income	196,600
Russia	13	13	100	25		Taxable income	130,000
Egypt	25	24.9	100	10		Taxable income	99,900
South Africa	41	39.3	100	10		Taxable income	99,830
Peru	30	29.8	100	10		Taxable income	99,800
India	30	29.7	50	10		Taxable income	99,700
Mexico	35	33	100	7		Taxable income (previous year)	68,600
Poland	32	31.7	100	6		Net	60,000
Poland	32	31.7	100	6		Net	60000
Turkey	35	34.5	100	5		Net	50,000
Argentina	35	34.9	100	5		Taxable income	49,950
Bangladesh	30	24.8	15	30	Max donation = 193,108. 15%. Max deduction = 28,966	Adjusted gross income	28,966
Brazil	27.5	27.1	100	8		Tax liability	21,645
Italy	43	42.1	100	2	77126	Taxable income	8,420
Nigeria	24	14.2	0	0		n/a	0
Saudi Arabia	0	0	0	0		n/a	0

It is immediately apparent from looking at the value of incentives in this alternative scenario that the imposition of caps has a profound impact on the relative benefit to the donor when wealthy donors give away a large proportion of their income. For instance, when making a donation of $10,000 at 1 per cent of income (Table 2 and Fig 3) the values of incentives received in Vietnam and the Philippines rank 11th and 15th respectively due to the fact that their highest rates of income tax are relatively low.

However, by virtue of not imposing caps (except to avoid claiming more than donors have paid in tax) they move up to 6th and 7th respectively when making a $1,000,000 donation representing 100 per cent of income (Table 3 and Fig 4) Conversely, due to caps against taxable income of 20 per cent and 2 per cent respectively, Germany and Italy drop from 3rd and 8th place on donations of $10,000 (1 per cent of taxable income) to 12th and 24th place for donations of $1,000,000 (100 per cent of taxable income).

Figure 4 Tax incentive value on US$1,000,000 donation by an individual, assuming 100% taxable income



5.3.2 "Ordinary" donors

The focus of study on tax incentives is often on the wealthiest individuals in society. There are several understandable reasons for this narrow approach. Firstly, there is a disproportionate interest in understanding the behaviours and motivations of wealthy philanthropists amongst CSOs hoping to receive donations; philanthropy advisers hoping to improve market conditions in which they have a vested interest; and wealthy people themselves, whose interest is rational and self serving. Secondly, it is far easier to gain an understanding of the effect of incentives where data is readily available. Given that much of the research into the effectiveness of tax incentives has its origins in the United States, where only those who itemize their tax returns can claim deductions for charitable donations, quantitative research is skewed towards wealthy donors.[59] Thirdly, research relating to incentives for wealthy donors creates a feedback-loop whereby the disproportionate focus on rich donors fuels an assumption that such a focus is normative. Fourthly, there exists a pervasive assumption that wealthy individuals are more price elastic when it comes to charitable giving and that this, combined with the fact that they pay higher taxes, means that their giving is far more likely to be affected by tax incentives.

Clearly, the assumptions listed above merit some testing. Furthermore, regardless of donor responsiveness, it is necessary to consider the question of fairness given that tax incentives for charitable donations clearly have differing marginal costs depending on the income of the donor. However, in order to fuel a more expansive discourse about the relative fairness of incentives, it is necessary to explore the relative value of incentives in our sample nations for what might be considered an "ordinary donor". This is necessary in order to see at what rate of tax incentives would be claimed for such a donor.

Defining an "ordinary donor" is of course problematic. On one hand, the average income of many nations is heavily skewed by the wealth of the richest in society. This problem is even more pronounced when using GDP per capita as an approximation of an ordinary donor. A truer reflection of the common experience of earned income is given by the median income. As such, we use data from the International Labour Organization[60] for most of the nations in our study to provide an approximation of an "ordinary donor" income. In other cases we obtained data on median income from Eurostat[61] or the relevant national statistics agency[62]. However, in some of the less wealthy nations in our study, median income is sufficiently low that it is simply not realistic that such a person would be in a position to make a US$100 donation, a somewhat arbitrary amount but a figure large enough that donors are likely to be motivated to claim an incentive. As such, in these cases, the average income[63] was used as it provides a more reasonable approximation of a middle-class person who might be in a position to make modest donations.

The above methodology for approximating an "ordinary donor" obviously has some flaws. However, given that it is only being used to select an appropriate tax level it provides a sufficiently robust basis for assessing the value of incentives to the mass market. Table 4 shows the relative tax bands for "ordinary donors" and the resulting value of incentives on a donation of US$100.

59 Itemization of taxes is associated with greater wealth because some of the most common forms of relief claimed relate to high value assets and activities. For example, one of the most common forms of relief claimed through itemized tax returns is mortgage interest relief.

60 An approximate median income for Argentina, Brazil, France, Germany, Peru and Russia was calculated by averaging 5th and 6th quartile average incomes. It was obtained from the International Labour Organization and is available at www.ilo.org/ilostat

61 Median income for Italy and Poland was obtained from: Eurostat. (2014) *Living Conditions in Europe*. Eurostat Statistical Books

62 Median income data obtained from; The Australian Bureau of Statistics, (Australia) available at www.abs.gov.au, Statistics Canada, (Canada) available at www.statcan.gc.ca, National Bureau of Statistics of China, (China) available at www.stats.gov.cn, Central Statistics Office (Ireland) available at www.cso.ie, Ministry of Manpower (Singapore) available at www.stats.mom.gov.sg, Her Majesty's Revenue and Customs (United Kingdom) available at www.gov.uk/government/statistics, US Census (United States of America) available at www.census.gov

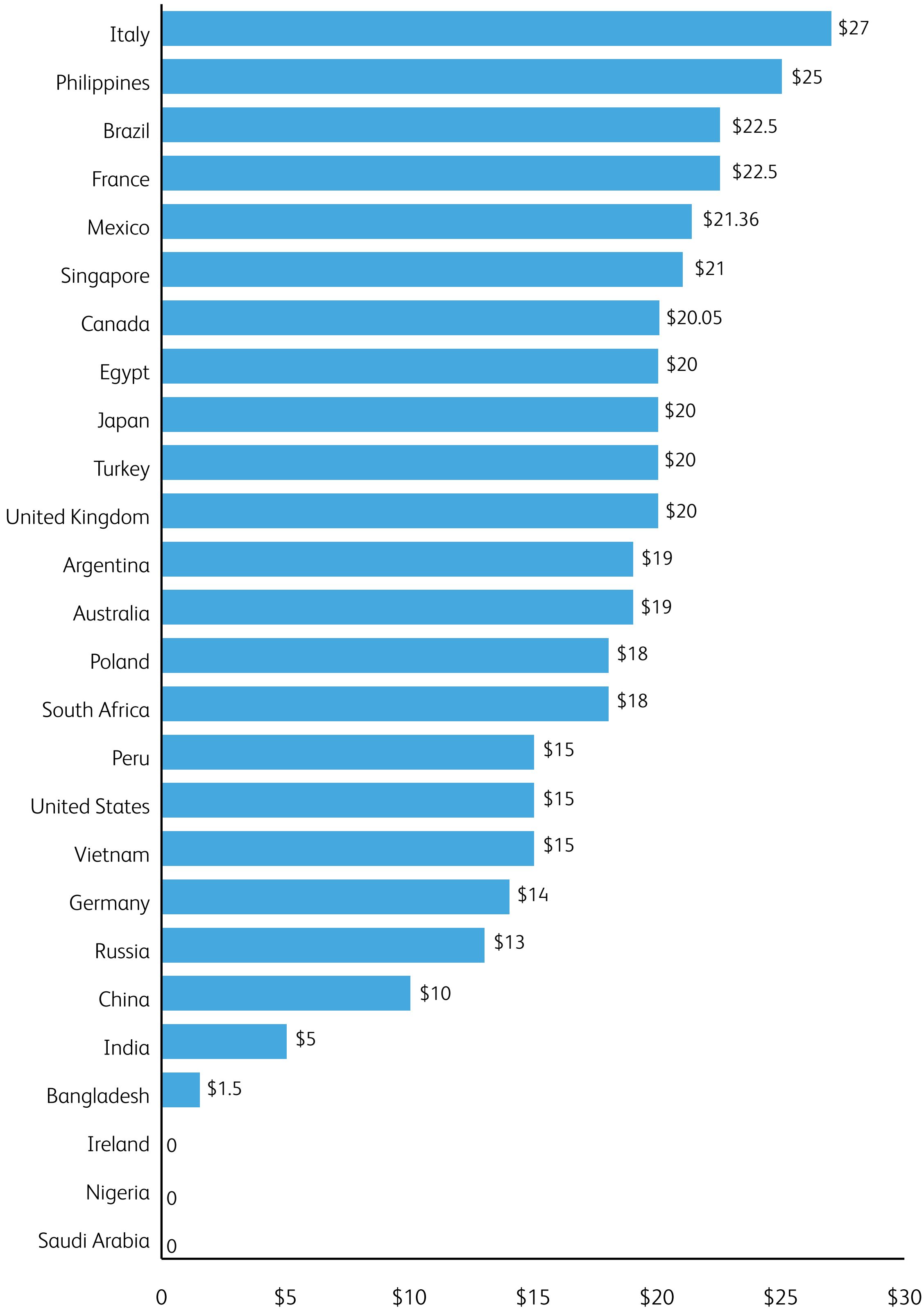
63 Average income used in Bangladesh, Egypt, India, Mexico, Nigeria, Philippines, South Africa, Turkey and Vietnam. Data was obtained for the World Bank and is available at http://data.worldbank.org

Table 4 Monetary value of incentives on a US$100 gift by an 'ordinary' donor

Country	'Ordinary donor' tax band (%)	Floor	Tax incentive value on US100 donation (US$)	Value of incentive as proportion of income tax due on donation (%)
Argentina	19.0		19.00	100
Australia	19.0	AUD$2 (US$1.47)	19.00	100
Bangladesh	10.0		1.50	15
Brazil	22.5		22.50	100
Canada	20.1		20.05	100
China	10.0		10.00	100
Egypt	20.1		20.00	100
France	30.0		22.50	75
Germany	14.0		14.00	100
India	10.0		5.00	50
Ireland	20.0	Euro 250 (US$276.19)	0.00	0
Italy	27.0		27.00	100
Japan	20.0	JPY2000 (US$16.1563)	20.00	100
Mexico	21.4		21.36	100
Nigeria	19.0		0.00	0
Peru	15.0		15.00	100
Philippines	25.0		25.00	100
Poland	18.0		18.00	100
Russia	13.0		13.00	100
Saudi Arabia	0.0		0.00	0
Singapore	7.0		21.00	300
South Africa	18.0		18.00	100
Turkey	20.0		20.00	100
United Kingdom	20.0		20.00	100
United States	15.0		15.00	100
Vietnam	15.0		15.00	100

Mirroring the tax treatment of wealthy donors, the nations that offer the highest value incentives for "ordinary donors" are those that offer full deductibility/credit but levy the highest taxes. Due to the fact that we had to use average income as our approximation of an "ordinary donor" in some of the poorest countries in our study, the above-median income figure this represented equated to a generally higher rate of tax. As such, the Philippines, which ranked 15th for wealthy donors making a gift at 1 per cent of income, ranks 2nd for "ordinary donors" in terms of the monetary value of charitable tax incentives.

Figure 5 Tax incentive value on US$100 donation for an ‘ordinary donor



5.3.3 Corporate donors

Private business is the engine room of the global economy and corporations have the resources, scale and wherewithal to drive positive change in society through their business and their philanthropy. As such, tax incentives for companies can be a powerful tool for positive change, not only through the activities that they fund, but also by connecting the private sector to communities. Of course, it must be conceded that in some contexts, governments might need to limit potential tax losses. In nations where one industry is particularly dominant, or where large multinational companies account for the majority of tax receipts for example, allowing a high, uncapped rate of incentive would undermine the government's fiscal position. Though corporate philanthropy can and should play a leading role in the development project in nations in which they do business – even taking approaches that challenge government policy – the ultimate responsibility, and legitimacy, resides with the government.

The above rationale may explain why we generally see lower caps for corporations than individuals in our sample and whilst this will be discussed in more detail in section 6.1, in this section we will explore the effect that this, and other tax instruments have on the value of incentives that can be claimed by companies. In order to test the effect of incentives properly, it was important to recognise the massive variation in size and profitability of companies. As such, we have made calculations based on companies with annual profits of US$1 billion, US$100 million and US$40 million making a donation of US$10 million. This equates to companies giving one, 10 and 25 per cent of their profits in philanthropy respectively. Even one per cent would represent a relatively generous gift as a proportion of profits. Only 22 of the FTSE 100 companies in the UK reached this threshold in 2012, with the median being just 0.7 per cent of pre-tax profits given philanthropically;[64] and in the USA the average was 0.7 per cent[65]. Despite this, if we are to analyse the theoretical environment for corporate giving in the countries in our study, it is necessary to test the effect of tax incentives on donations which equate to a larger proportion of pre-tax profits.

64 Charities Aid Foundation. (2014) *Corporate Giving by the FTSE 100*. CAF. [Online]

65 Indiana University Lilly Family School of Philanthropy and Giving USA Foundation (2014) Giving USA 2015: *The Annual Report on Philanthropy for the Year 2014*

Table 5 Monetary value of incentives on corporate donations of US10,000,000 where that accounts for 1, 10 and 15 percent of pre-tax profits

Country	Corporation tax (%)	Incentive value (%)	Cap (%)	Cap value (US$)	Base	Value of incentive for donations valuing 1, 10 and 25 percent of pre-tax profit (US$)		
						1%	10%	25%
Singapore	17	300	100		Taxable income (over 5 years)	5,100,000	5,100,000	5,100,000
Argentina	35	100	5		Taxable income	3,500,000	3,500,000	2,000,000
United States	35	100	10		Taxable income	3,500,000	3,500,000	3,500,000
Japan	33.1	100	0.6		Income, Capital	3,306,000	625,000	250,000
Australia	30	100	n/a		n/a	3,000,000	3,000,000	3,000,000
Mexico	30	100	7		Taxable Income	3,000,000	3,000,000	2,800,000
Nigeria	30	100	10		Net income	3,000,000	3,000,000	$1,200,000
Philippines	30	100	100		Taxable income	3,000,000	3,000,000	3,000,000
Germany	29.7	100	20		Gross revenue	2,965,000	2,965,000	2,965,000
Peru	28	100	10		Taxable income	2,800,000	2,800,000	2,800,000
South Africa	28	100	10		Taxable income	2,800,000	2,800,000	2,800,000
Canada	26.5	100	75		Net income	$2,650,000	$2,650,000	$2,650,000
Brazil	25	100	2		Net profit	2,500,000	2,500,000	2,500,000
China	25	100	12		Net profit	2,500,000	2,500,000	2,500,000
Egypt	25	100	10		Taxable income	2,500,000	2,500,000	2,500,000
Vietnam	22	100	100		Taxable income	2,200,000	2,200,000	2,200,000
Saudi Arabia	20	100	n/a		n/a	2,000,000	2,000,000	2,000,000
Turkey	20	100	5		Taxable income	2,000,000	2,000,000	2,000,000
United Kingdom	20	100	100		Taxable income	2,000,000	2,000,000	2,000,000
France	33	60	0.5		Gross revenues	1,980,000	500,000	200,000
Poland	19	100	10		Net income	1,900,000	1,900,000	1,900,000
India	34	50	10		Taxable income	1,699,500	1,699,500	1,699,500
Ireland	12.5	100	100		Taxable income	1,250,000	1,250,000	1,250,000
Bangladesh	20	20	20	1,026,762	Taxable income	1,026,762	1,026,762	1,026,762
Italy	31.4	100	2	77,126	Taxable income	77,126	77,126	77,126
Russia	20	0	0		n/a	0	0	0

As is the case with tax incentives for individuals in our study, Table 5 shows that corporations in nations with the highest corporation taxes enjoy the greatest reduction in the marginal cost of giving as a result of incentives. The exception to this rule is Singapore, which despite having a low rate of corporation tax (17 per cent) enables companies giving US$10,000,000 to receive a US$5,100,000 in deductions, more than halving (51 per cent) the cost of giving. This is due to the fact that the rate of incentive is 300 per cent of the rate of taxation. The reverse effect is naturally also true in nations which offer incentives at less than the rate of taxation such as France (60 per cent), India (50 per cent) and Bangladesh (20 per cent). However, once we start to look at donations which account for larger proportions of pre-tax profits, we see that caps have a profound impact on the value of incentives.

Figure 6 Corporation tax incentive value of a US$10 million donation by level of taxable income (US$)

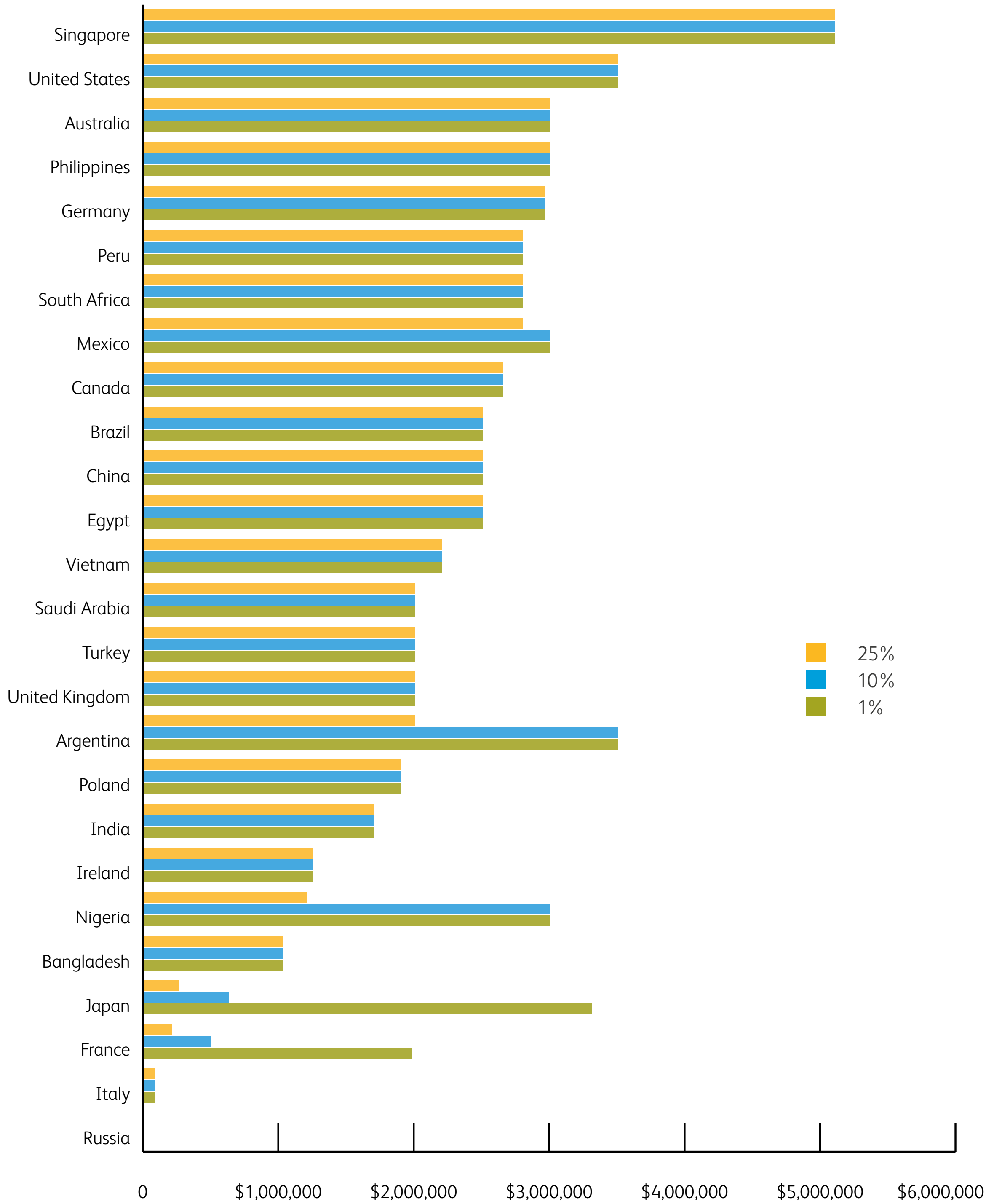


Figure 6 shows the striking effect that low percentage caps have on the monetary value of incentives when companies give the same amount but representing different proportions of their pre-tax profit. For example, though a Japanese company donating US$10,000,000 would receive the fourth highest incentive by value (US$3,306,000) when the gift constitutes 1 per cent of its pre-tax profit, a company making the same gift that was equal to 10 per cent of pre-tax profit would receive just US$625,000 – seeing it fall to 24th place on that measure.

6. *Caps and floors on relief*

In addition to setting values of incentives at less than 100 per cent of the rate at which tax is paid, governments in many countries in our sample use a variety of caps and floors to limit the amount of relief that can be claimed on donations. There are a number of reasons that governments might choose to use such tools. The principal one is the reduction of tax revenue losses, as argued below, but a second possible motivation, particularly in the case of incentive floors, could be to reduce the administrative burden for tax authorities.

A third hypothesis as to why governments favour instituting caps and floors is a desire for fairness; although as we will see, the validity of this notion appears to be highly questionable in practice. However, there are wider philosophical and political arguments that could broadly be linked to equality in the charitable ecosystem which may have more merit.

6.1 Capped relief

Many countries impose a cap on the overall amount of tax relief an individual can receive each year. Uncapped incentives, such as those we see in Singapore; and full deductibility, where incentives are effectively capped at 100 per cent of taxable income (such as in the UK, Ireland, Vietnam, Philippines and Australia) are the exception rather than the rule. Most countries that offer tax incentives for individuals impose a cap of some kind.

Caps on incentives are most commonly specified as a percentage of taxable income, and range from severe (5 percent of taxable income in Argentina, or – looking outside this report – 0.02 per cent in Senegal) to generous (75 per cent in Canada). Some countries set a fixed monetary limit on tax relief instead, and this again ranges from a very limited allowance (Sweden allows up to 1,500 krone to be deducted – equivalent to roughly US$229) up to a fairly generous one (Ireland imposes a limit of €1 million on tax relief). A small number of countries use a combination of the two approaches, and specify their caps in terms of the lower of a percentage of income and a fixed amount: Belgium, for instance sets its cap at 20 per cent of income or €250,000 depending on which is lower.

The level at which a cap is set can also vary according to the type of gift. The most common form this takes is for there to be one cap on donations to not-for-profits and then a different, higher cap (or no cap at all) for gifts to particular types of beneficiaries specified by the government (often public institutions or affiliated bodies). For instance, within our study, the Turkish government removes the cap of 10 per cent on the deduction against taxable income for donations through the Prime Ministry for disaster relief and for gifts to the Turkish Red Crescent. Looking outside our sample of nations, in Jordan donations to government departments, public or official institutions or municipalities can be deducted without limit, whilst donations to charitable organisations are subject to a cap of 25 per cent of taxable income.

Analysis of the Annex to this document will demonstrate that Italy has a complex array of differing caps both on fixed monetary value and in the form of percentage caps on taxable income for different activities and organisational types. As discussed in 3.3.3. and 3.3.4., the use of differing caps can lead to the risk that government might use incentives to advance its political agenda, or at least a public perception that this might be the case. Furthermore, such a system may, as will be discussed in section 8.2, undermine the effectiveness of incentives as donors are put off by excessive complexity. The countries that do not cap incentives (up to 100 per cent of taxable income) for individuals mentioned above, afford companies the same privilege. However, amongst the rest of our sample countries caps on corporate incentives for charitable giving are similarly varied. Some nations cap incentives at a much lower percentage of taxable income than they do for individuals. France, for example, caps corporate incentives for giving at 0.5 per cent of taxable income compared to 20 per cent for individuals. In Japan the caps are set at 0.6 per cent and 40 per cent respectively. Based on counting countries which only limited incentives to taxable income as having a 100 per cent cap and excluding Russia (which does not have incentives for companies), Nigeria and Saudi Arabia (which do not have incentives for individuals); the average cap across all of the countries in our sample is 41.1 per cent for individuals, but 35.5 per cent for companies. Whilst, in many countries companies enjoy a more advantageous system than individuals, as we explore in section 9, they appear to be subject to lower caps against their taxable income.

6.2 Progressiveness of caps

As is discussed in section 7, there is a legitimate debate to be had about how, and indeed whether, we should seek to mitigate the upside-down effect that tax incentives have; whereby those who pay the highest rates of income tax have a greater incentive to give. However, caps on incentives are a fiscal tool which is predicated not on fairness from the point of view of donors at different points on the wealth spectrum, but on the desire to limit tax losses to the public purse.

That the above assertion is true can be demonstrated in the effect that percentage caps have on how a fixed-size donation is incentivised for companies with differing profitability. Figure 6 shows that whilst the rate of corporation tax has the largest effect on the value of incentives, low percentage caps on the amount that can be claimed against taxable income can radically distort the value of incentives on the same sized gift by different sized companies. For example, in France, a company that has taxable income of US$1 billion and donates US$10 million (1 per cent) will receive a tax credit of US$1.98 million, whilst a company that has a taxable income of US$40 million (25 per cent) making the same sized donation would only receive a US$200,000 credit. The situation in the identical scenario in Japan is even starker, with each company receiving a deduction, worth US$3,306,000 and US$250,000 respectively. Clearly a system where donors receive larger incentives for gifts which are less generous relative to their profitability cannot be a system based on fairness from the perspective of companies. Rather, such a system is designed as a blunt but simple tool for protecting tax revenues.

One possible justification for imposing caps on incentives for donations could be the desire to prevent the excessive influence of the wealthiest individuals and corporations on civil society organisations. Given that our research uncovered little evidence of this justification for caps in either political debate or academic literature, this hypothesis can probably be rejected, although further research would be worthwhile. However, there remains an interesting philosophical argument about whether caps allow incentives to target people on lower incomes, and thus ensure that the funding of CSOs better represents the interests of the public. In reality, the likelihood is that capping incentives results in a loss of income for CSOs, and their beneficiaries. Indeed, this loss of funding has often been the principal defence against caps. For example, in 2012 a proposal to cap Gift Aid at 25 per cent in the UK was dropped, largely on the basis of the fear that it could cost CSOs as much as £500 million a year by some estimations.[66]

Interestingly, fixed monetary value caps have the reverse effect. Take the case of corporate tax incentives in Bangladesh for example. As shown in Figure 6, a $10 million donation results in a flat incentive value of US$1,026,762 regardless of a company's taxable income (provided that it is less than the 20 per cent cap), as this is the maximum value of deductions that can be claimed. This means that a company with corporation tax liabilities of US$40 million can claim incentives worth 2.5 per cent of taxable income, but a company with profits of US$1 million can only claim back 0.1 per cent in deductions. The effect is obviously mirrored for individual donors in Italy and the Republic of Ireland, which both impose value caps (see Figure4).

66 Oxford Economics. (2012) *The potential impact of a cap on Charity Tax Relief.* Oxford Economics, May 2012. CAF. [Online]

6.3 Minimum qualifying donation?

As well as placing an upper limit on the amount of charitable tax relief that an individual can receive, some countries impose a lower limit (or 'floor') on the size of donations that are eligible for relief. This is far less common than having a cap, but there are still a number of examples around the world. Countries that impose a minimum qualifying donation rule seem to fall into two camps. The first are those that impose a reasonably high minimum, presumably with the intention of restricting the availability of incentives to those making larger donations. Examples of this former kind include Ireland, which has a €250 lower limit on eligible donations and Switzerland, which has a lower limit of 100 Swiss Francs (US$101). Though such a policy seems transparently unfair, in that it crowds out less-wealthy individuals from being able to claim incentives, it is possible to build a pragmatic case for such high minimum qualifying donations based on the perceived problem of "buying the base". Put simply, "buying the base" refers to incentives which merely reimburse donors for gifts which they would have made in any case, even without the incentive. It is often presumed (we will investigate this claim in discussing different forms of relief in section 7) that those paying lower taxes and/or with a modest disposable income are less responsive to tax incentives. If we were to accept this presumption and conclude that donors at this level would make the same-sized gifts regardless of incentives then any incentives offered would merely be "buying the base." As such, a deduction with a floor "has the additional efficiency advantage that it entails less "buying of the base"".[67]

The second type of floor imposed is a much lower one, designed to establish a minimum level at which the administration of charitable tax reliefs is feasible and practical. This sort of floor may not even be enshrined in legislation, but rather something that is merely used in practice. Australia, for instance, has an official AUS$2 lower limit on donations that qualify for tax relief; whilst in Japan, although there is no official minimum, the threshold for determining the amount of tax relief is ¥2,000 (roughly £12). Similarly, in Canada there is no official lower limit, but in practice most not-for-profits do not issue the receipts required in order to claim tax relief for donations of less than 20 Canadian dollars (roughly £11).

The UK used to have a high minimum eligibility criterion: Gift Aid was originally applicable only to donations of £600 or more. This lower limit was subsequently lowered to £250 before being abolished in the year 2000 as part of a package of measures designed to boost charitable giving. The available evidence suggests that while this change may not have had a huge impact on the overall amount of money going to charity, it has had a "democratising" effect, in the sense that a higher proportion of the donations now come from those giving smaller amounts.[68]

Table 7 Countries that have a floor on the claiming of incentives

	Individual donors	Corporate donors
Australia	$2	$2
Ireland	€250	€250
Japan	JPY 2,000 (annual)	n/a

Outside of formal minimum floors, there are other potential impediments to those with only modest wealth receiving tax incentives on smaller donations. Whilst many of the general barriers to claiming incentives – which will be discussed in section 8 – indirectly affect less-wealthy donors due to their lack of access to accounting expertise or personal influence, some nations impose more direct barriers on "ordinary donors" ability to claim tax incentives for giving. In some nations, the process

67 Jean B, H. (2008) *The Case for Tax Credits*. The Tax Lawyer 61.2: 549–597
68 National Audit Office. (2013) *Gift Aid and reliefs on donations.* [Online]

for claiming an incentive is tied in to other interactions which are associated with wealth. In the United States for example, only those who itemize their tax returns are able to claim charitable deductions. Given that the itemization of tax returns is closely associated with other socio-economic markers such as home ownership,[69] in practice this rules many lower-income donors out of the incentive. Indeed, this is cited by the US Treasury as a motivation for suspending a trial between 1982 and 1986 in which nonitemizers were able to claim deductions: the Treasury claimed that "extension of this deduction to nonitemizer taxpayers who on average have only small amounts of deductions – creates unnecessary complexity, while probably stimulating little additional giving and presenting the IRS with a difficult enforcement problem."[70] Whether administration costs constitute a sufficient burden to counterbalance moral considerations of fairness surely rests in the hands of politicians and the electorate, but presumably the costs would have to be very high indeed to risk creating a perception that incentives, and by proxy philanthropy, is seen by government as the preserve of the wealthy.

69 Robinson, J. (1990) Estimates of the Price Elasticity of Charitable Giving: A Reappraisal Using 1985 Itemizer and Norutemizer Charitable Deduction Data. The Journal of the American Taxation Association 12 : 39-5

70 US Treasury. (1984) Tax Reform for Fairness, Simplicity and Economic Growth: The Treasury Department Report of the President. Office of the Secretary Department of the Treasury. [Online]

7. *Form of relief*

Alongside the value of a charitable tax relief, the other most important variable is the form in which it is offered. This will have a profound effect on nature of the incentive and how effective it is. There are three broad forms that a charitable tax relief can take:

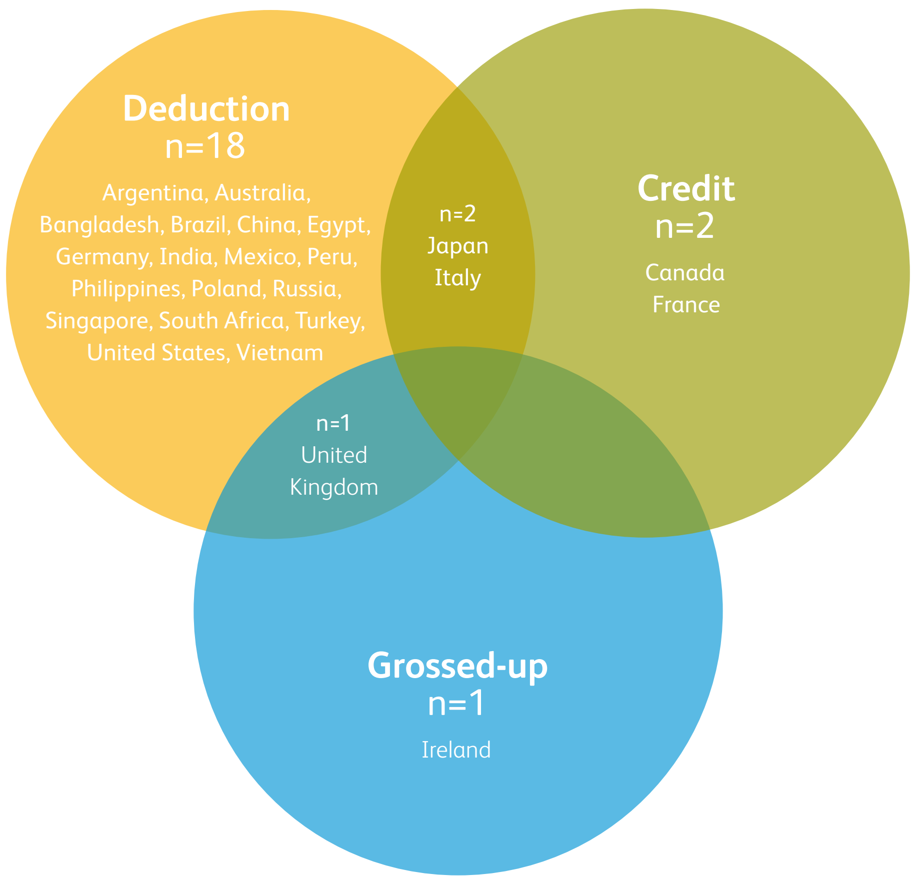
1. Direct deduction: where an individual is allowed to subtract all or part of the value of their donations from their income before they are taxed and thereby reduce the amount on which they pay tax. This is the most prevalent approach, epitomised by the US charitable deduction.

2. Tax credit: where an individual is allowed to deduct all or part of the value of their donations from the amount of tax that they owe, after this has been calculated. This approach is less common than direct deduction, but can be found in a number of countries including France, Canada, Spain and New Zealand.

3. Grossed-up donation: where an individual is allowed to empower a charity or other recipient to reclaim all or some of the tax paid on a donation so that it is effectively made gross of tax. This is an unusual approach, and appears to be used only in the UK and Ireland.

In addition, as is shown in Figure 7, some countries employ hybrid approaches which take elements from more than one of these three principal forms of relief.

Figure 7 Venn diagram of forms of relief for individual donors



n = 24 nations (excludes Nigeria and Saudi Arabia which do not offer tax incentives to individuals)

Each of these forms of relief will be examined in the section as well as what we have termed supplementary forms of relief such systems for incentivising gifts of goods and services and for allowing citizens to dedicate some of their income tax to charitable activities.

7.1 Deduction

Of the 24 countries in our sample which offer tax incentives to individuals, 18 (or three-quarters) offer relief in the form of a deduction from taxable income. Deductions work by taking charitable gifts into account before tax is calculated, essentially reducing taxable income by the value of the gift (where donations are 100 per cent deductible).

As we have already discussed, one of the most robust arguments in favour of tax incentives relies on the premise that rather than representing personal consumption, tax incentives for charity merely reflect the fact that benevolence should not in fact be taxed at all. A core proponent of this position in relation to charitable deductions specifically is Professor William D. Andrews who points out that "the material goods or services purchased with the contributed funds inure entirely to the benefit of persons other than the donor" and as such should not be taxed as personal consumption.[71]

Despite such defences, and particularly in light of the apparent popularity of the deductive approach to incentivising philanthropy, it is necessary to highlight a popular criticism of deductions for giving: that it disproportionately favours the wealthiest in society. Where donations are fully deductible against income tax (regardless of caps), donors can merely claim incentives at the highest tax band for which their income qualifies them. Perversely, this means that where two donors make precisely the same gift, one may receive a greater deduction by virtue of earning more money, despite their greater ability to afford the gift. Put simply, "the opportunity cost of virtue falls as one moves up the income scale."[72]

Stanley S. Surrey – sometimes called the father of modern tax policy[73] after serving as Assistant Secretary of Treasury for Tax Policy from 1961 to 1969, as an advisor to the United Nations and having taught at Harvard Law School – termed this the "upside-down effect."[74] For Professor Surrey, all tax incentives can essentially be expressed as tax expenditure; and only by doing so can we accurately judge their fairness. Surrey takes issue with the fairness of tax deductions which are often completely unavailable to the poor and tend to rise disproportionately with wealth due to the nature of progressive taxation. In illustrating this perverse effect Surrey resorts to satirical sketch writing, imagining the reaction of Congress if the Department of Health, Education and Welfare[75] had enacted a Division of Charitable and Educational Assistance that would distribute its funds as follows:

> *Suppose a person calls and says: "I am too poor to pay an income tax but I am contributing $20 to my favorite charity. Will the Government also help it?" The answer here will be: "We appreciate your sacrifice but we cannot use our funds in this situation."*
>
> *Suppose a person calls and says: "I am quite well-off and want to send a check for $3,000 to one of my favorite charities ..." The answer here will be: "We are delighted to be of assistance and are at once sending a Government check for $7,000 to that charity."*[76]

Andrews concedes that "These are devastating criticisms ... [and if] correct, it seems to me the provisions in question are indefensible." However, he considers the criticisms to be "somehow overstated and that more sense can be made out of these two provisions than tax expenditure analysis immediately indicates." Whilst Andrews sees Surrey's analysis as useful in some provisions of the tax law as legitimate, like in the case of the exclusion of municipal bond interest, with respect to which he thought the "tax expenditure analysis is completely valid", he finds its application to

71 Andrews, W. (1972) *Personal Deduction in an Ideal Income Tax*. Harvard Law Review 86. Harvard Law.
72 Musgrave, R. A. & Musgrave, P. (1984) *Public Finance in Theory and Practice*, 4th edition, New York: McGraw Hill.
73 Thurmonyi, V. (1988) *Tax Expenditures: A Reassessment*. Duke Law Journal. Vol. 1155
74 Surrey, S. S. (1973) *Pathways to Tax Reform: The Concept of Tax Expenditures*. Harvard University Press
75 The Department of Health, Education and Welfare is now the Department of Education and the Department of Health and Human Services.
76 Ibid.

charitable contribution deductions to be tenuous. For Andrews, charitable contributions literally do not fit the definition of personal income popularised by Henry Simons as "the sum of personal consumption and accumulation", [77] because they do not result in meaningful personal benefit that might otherwise be taxable:

> *"A good argument can be made that taxable personal consumption should be defined to include divisible, private goods and services whose consumption by one household precludes enjoyment by others, but not collective goods whose enjoyment is nonpreclusive or the nonmaterial satisfactions that arise from making contributions."*[78]

Ultimately, in many countries including his native United States, Andrews was defending the winning side. But however you judge the strength of Andrews' retort to the critique of tax deductions offered by the tax expenditure argument put forward by Surrey, it is unlikely that it weighed heavily on the minds of decision makers. Rather, it seems that policy makers favour considerations of administrative burden, price elasticity and possibly the disproportionate influence of the wealthy above those of fairness. Take the case of the United States as an example, where it is clear that the perceived burden of extending tax deductions to non-itemising tax payers who are typically lower paid, combined with assumptions about the responsiveness of that group, trumped concerns about equity. Indeed, a 1984 Treasury report to the President called for a trial extension of the charitable deduction to non-itemizing taxpayers to be abandoned, despite the fact that the trial was still underway and would in fact clearly show non-itemizers to be responsive[79] (if less so than itemizers):

> *"It is doubtful that the first dollars of giving, or the giving of those who give only modest amounts, are affected much by tax considerations. Rather they probably depend more on factors such as financial ability to give, membership in charitable or philanthropic organizations, arid a general donative desire. As potential giving becomes large relative to income, however, taxes are more likely to affect the actual level of donations."*[80]

Given that a meta-analysis of studies into tax incentives failed to find a statistically significant link between wealth and price elasticity,[81] whilst other studies have suggested that historically, only the extremely wealthy (top 0.01 per cent) show significantly higher levels of elasticity than ordinary donors,[82] it seems difficult to justify a lack of progressiveness in deductive systems based on their increased efficacy in recruiting the wealthy, though this remains a live debate. As discussed in section 5.3.2, a great deal of emphasis is placed on wealthy donors, not only by policy makers, but also by academics and those interested in charitable fundraising. The targeting of wealthy donors is rational from the point of view of any audience seeking to gain the maximum donated revenue by targeting the smallest possible audience. Given that both those seeking to maximise donations from wealthy individuals and corporations, and also those individuals and corporations themselves, have a disproportionate interest in incentives (because they often pay higher taxes) as well as an outsized influence on policy makers, it is perhaps unsurprising that policy in our study tends to favour deductions that rise at the same rate as marginal taxation. It is not possible to say whether this results in an incentive which is more effective at incentivising charitable donations than other forms of relief, but it is clear that an analysis that prioritised progressiveness would not rate tax deductions highly.

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77 Simons, H. C. (1938) *Personal Income Taxation.* University of Chicago Press

78 Andrews, W. *Personal Deduction in an Ideal Income Tax.* Harvard Law Review 86. Harvard Law.

79 Duquette, C. M. (1999) *Is Charitable Giving by Nonmonetizers Responsive to Tax Incentives? New Evidence.* National Tax Journal. June, 195-206

80 US Treasury. (1984) Tax Reform for Fairness, Simplicity and Economic Growth: The Treasury Department Report of the President. Office of the Secretary Department of the Treasury. [Online]

81 Peloza, J. & Steel, P. (2006) The Price Elasticity of Charitable Contributions: A Meta Analysis. Journal of Public Policy & Marketing. Vol. 24, No. 2 pp 260-373.

82 Fack, G. & Landias, C. (2012) *Philanthropy, Tax Policy and Tax Cheating: A Long Run Perspective on US Data. In: Charitable Giving and tax Policy: A Historical and Comparative Perspective.* Paris School of Economics

7.2 Credits

Five of the 24 nations in our study that offer tax incentives for the philanthropy of individuals offer tax credits (21 per cent); two alongside other deductions (Italy and Japan), one as part of a hybrid system with grossed up benefits for recipient organisations (United Kingdom) whilst two nations, Canada and France, have an exclusively credit based incentive regime for charitable giving. Whilst the value of a deduction increases as an individual's marginal rate of tax increases (because the adjustment for donations is made prior to tax being applied, meaning it is worth more to someone who would have paid more tax on that income), the value of a tax credit is the same for all taxpayers (because it is merely used to reduce one's actual tax bill after it is calculated). This means that offering relief in the form of a tax credit is a more progressive approach than offering deductions. In his summary of the case for tax credits, Brian Jenn summarises this point well:

> *"When credits and deductions are measured against each other with equity as the primary criterion for evaluation, credits will generally produce a more vertically equitable pattern of benefits across income levels. In general, dignitary values and the intuition of Surrey's upside-down subsidy critique of deductions will support the use of credits. This is especially apparent in the case of the charitable deduction, which grants taxpayers effective power to direct government resources to private ends."* [83]

Indeed, both Surrey and Andrews concur that tax credits offer a fairer deal for all taxpayers, especially when incentives are viewed as tax expenditure. Andres states that the "more comprehensive way to improve the fairness and cost efficiency of tax expenditures is to transform them into flat credits. Credits are better targeted because they give the same benefit, per dollar of expense, to taxpayers in all brackets."[84] Surrey goes considerably further. He recommends that, to eliminate any special benefit for higher-rate tax payers, credits should be included in gross income.[85]

Clearly, there is an inherent danger that high-rate donors would be less responsive (rationally so) if tax credits were offered at a lower rate than the highest rate of income taxation. To avoid this, credits could be offered at the highest rate of tax to all donors (essentially the system in Canada until a higher rate was offered in the 2016 budget to appease those paying a new additional tax band of 33 per cent over CAN$220,000), though this could be politically problematic given the prospect of tax losses amongst generous, lower-income donors. Even presuming that high-rate tax payers receive an equal benefit to that which they might gain under a system of deduction, they may still prove to be less responsive to credits. There is a great deal of academic literature on "prospect theory" which demonstrates that people tend to act irrationally when it comes to weighing up potential losses and gains in their decision making.[86] Consistently, experimental studies have shown that individuals weigh losses much higher than gains in their decision making. This inherent "loss aversion" could have important connotations for the effectiveness of different forms of relief: studies have shown that people will be in some instances more than twice as averse to a loss as they would be to gaining the same value (the "endowment effect"[87]). Given that higher-rate tax payers are typically more responsive to incentives and subject to the greatest tax losses, this could point to potentially grave losses of charitable income from wealthy donors.

Herein lies perhaps the best argument in favour of tax deductions for charitable giving rather than tax credits; "as if taxpayers do systematically differ according to income, an attempt to tailor tax incentives to the responsiveness of those taxpayers might be justified. In this case, a deduction

83 B, H, Jenn. (2008) *The Case for Tax Credits. The Tax Lawyer* 61.2 : 549–597

84 Andrews, W. (1972) *Personal Deduction in an Ideal Income Tax*. Harvard Law Review 86. Harvard Law.

85 Surrey, S, S. (1973) *Pathways to Tax Reform: The Concept of Tax Expenditures.* Harvard University Press

86 Kahneman, D. & Tversky, A. (1979) *Prospect Theory: An Analysis of Decision under Risk*, Econometrica, Vol. 47, No. 2.

87 Thaler, R. (1980) *Toward a Positive Theory of Consumer Choice.* Journal of Economic Behavior and Organization.

might be deemed the most politically feasible means of providing higher marginal incentives to higher-bracket taxpayers."[88]

Furthermore, if it is assumed that lower-rate tax payers exhibit low price elasticity, giving what they can afford loyally regardless of incentives – although as we have discussed, this assumption is prominent however questionable – then credits would merely increase the tax cost of "buying the base". As Jean states, "if lower-income taxpayers are unlikely to be affected by charitable giving incentives because they are already giving as much as their budget allows, a below-the-line deduction that avoids subsidizing giving that those taxpayers would have undertaken anyways may have an advantage."[89]

88 Jenn, B, H. (2008) *The Case for Tax Credits.* The Tax Lawyer 61.2 : 549–597
89 Ibid.

7.3 Grossed-up donation

In the case of direct deduction and tax credit, it is the donor who receives the benefit of the tax break. In the case of grossed-up donations, however, it is the charity that receives the primary benefit. This has implications for the nature of the incentive on offer, and the sort of motivation it offers for donors.

The two examples of nations offering a grossed-up incentive which benefits the recipient organisation are the Republic of Ireland and the United Kingdom. In both cases, the grossed-up element which passes to the beneficiary organisation takes the form of a flat tax credit. In the case of the Republic of Ireland, the flat 31 per cent incentive which is passed to CSOs has the advantage of mitigating the "upside-down effect" – which sees the marginal cost of giving decrease for those who can best afford it – by offering an equal benefit. Similarly, the Gift Aid system in the United Kingdom offers a universal credit that can be claimed by CSOs on donations at a flat rate of 20 per cent (this amounts to 25 per cent of the value of the donation, as it is calculated as 20 per cent of the grossed-up value of the gift). However, in addition, higher rate tax payers can claim a tax deduction of the remaining 20 per cent (40 per cent tax payers) and 35 per cent (45 per cent tax payers). Clearly, whilst this system ensures that all taxpayers are able to empower CSOs to claim an equal grossed-up incentive, the additional deduction which can be exclusively claimed by higher rate tax payers means that a system which ostensibly avoids the "upside-down" effect retains it, and arguably in an exaggerated form.

As discussed above, prospect theory suggests that donors may respond less favourably to incentives which are seen as supplementary rather than those which, physiologically at least, have the effect of avoiding losses. A grossed-up tax credit which is passed on to the beneficiary organisation (excluding higher rate Gift Aid) should, if people were to act rationally (under the "expected utility theory"), be no less compelling to the donor than a tax deduction as the marginal cost of giving would effectively be the same as the equivalent value credit. However, the "endowment effect" could potentially explain why take-up of Gift Aid in the UK remains relatively low[90] compared to the claiming of tax reliefs in the form of deductions in other nations: the desire to "gain" a subsidy on top of a donation may be far less compelling than the desire to avoid losing the entitlement to a deduction.

It is of course difficult to judge the effectiveness of grossed up donation schemes without having the opportunity to see what would have occurred had such a scheme, or an alternative scheme been in palace. In the absence of such counterfactual data, we can only judge the uptake of such schemes where they exist. In the UK, Gift Aid has been available to donors since the 1990/91 tax year and use of Gift Aid continues to grow at a rate of about 1 per cent per annum. By 2012 the proportion of donors using Gift Aid had risen to 42 per cent.[91] A steady increase in both the uptake of Gift Aid and the overall amount being donated through the scheme (about 3 per cent per annum) suggests that the Gift Aid scheme is having some degree of success in motivating donors. However, as we shall see, administering the scheme and combining it with deductive elements in a hybrid model has weakened the effectiveness of the scheme.

Clearly, more research needs to be done to assess how responsiveness changes when incentives are passed on to beneficiary organisations rather than the donor. It may well be in some countries that a system where CSOs are able to claim – with the consent of the donor – tax back from the government, solves structural problems which limit donor responsiveness. Russia, for example, is considering such legislation in order to overcome the combination of bureaucratic burden and low incentive value (the top rate of tax is 13 per cent) which puts off many donors from claiming incentives. Passing on the onus for keeping records to CSOs may well prove effective in getting

90 Directory of Social Change. (2009) *21 Years of Gift Aid*, Directory of Social Change.
91 Ibid.

more Russian donors to increase donations in the knowledge that the money that they give will be augmented when the beneficiary claims a tax credit from the government in their name, without them having to make a claim themselves.

7.3 Hybrid systems

Of the 24 nations in our sample of 26 which offer incentives to individuals for their charitable giving, four are examples of hybrid approaches. In Japan, for instance, donors are able to choose whether to take tax relief in the form of a deduction or a tax credit. However, it is quite hard to judge the effectiveness of offering such a choice because the overall system of charitable tax relief in Japan is among the most complex in the world, and presents significant barriers to donors using it effectively.

The UK also has a hybrid system, but it is a hybrid between a grossed-up donation and a direct deduction approach. The main form of tax relief in the UK is Gift Aid, through which UK taxpayers can empower charities to which they have made a donation to reclaim the basic rate of tax paid on that donation on their behalf. Those who pay higher-rate tax can get additional relief, but this time in the form of a personal tax deduction. Through the self-assessment tax system, a higher-rate taxpayer can claim back the difference between their highest marginal rate of tax and the basic rate of tax paid on any donations made in the tax year.

The hybrid nature of the UK system has been a source of controversy, as some have argued that it is both unfair in principle[92] and ineffective in practice[93] to offer different tax reliefs for basic rate and higher rate taxpayers on donations of the same kind. Whilst that is a debate that continues to rumble on, the one thing that is certain is that having a hybrid system creates confusion. Research consistently shows that awareness of the higher-rate reclaim element of Gift Aid remains low.[94] Hence, although it is an important incentive for those who do take advantage of it, it is significantly under-utilised across the piece.

7.4 Supplementary forms of relief

In addition to adopting different forms of relief from income taxation, many of the countries in our study have differing approaches to incentivising gifts of goods and services whilst others allow a portion of income taxation to be channelled directly to charitable causes at the point of collection.

7.4.1 Donations of goods or assets

The primary focus of charitable tax incentives in most countries is cash gifts. However, a significant number of countries also offer tax relief for donations of goods or assets. This is most notably the case in the US, where non-cash donations are an important part of the landscape of charitable giving; accounting for over $30bn of deductions in 2010.[95]

Canada and Mexico also allow non-cash donations to be deducted from income tax, but outside North America, the list of countries that allow donations in kind does not appear to show any real rhyme or reason: it includes, for instance, Germany, the Philippines, South Africa, Turkey and Vietnam. The main issue with allowing tax relief on donations in kind is that it requires there to be a system of broadly objective assessment of fair market value in order to avoid widespread abuse and error through overvaluation of goods. This has been a major issue in the US in the past, and despite marked improvements it continues to be a problem today. A 2012 US Treasury report estimated that $1.1 billion of tax income was lost in 2012 due to incorrect deduction of non-cash donations.[96]

92 Toynbee, P. (2012) *On charity George Osborne must stand up to the self-interested super-rich.* [editorial] The Guardian. [Online]

93 Scharf, K. & Smith, S. (2009) *Gift Aid donor research: Exploring options for reforming higher-rate relief.* Her Majesty's Revenue and Customs.

94 See, for instance: Scharf, K. & Smith, S. (2009) *Gift Aid Donor Research: Exploring options for reforming higher-rate relief.* HM Revenue and Customs/HM Treasury.

95 Liddell, P. & Wilson, S. (2010) Individual Noncash Charitable Contributions 2010. Internal Revenue Service. [Online]. NB: for the purposes of ensuring that this figure was of most use for comparisons with other countries, donations of corporate stock were excluded, as they receive different tax treatment in other jurisdictions.

96 US Treasury. (2012) *Many taxpayers are still not complying with noncash charitable contribution reporting requirements.* US Treasury Inspector General for Tax Administration, [Online]

In some countries, the concern about abuse or error leading to over-claiming for gifts in kind has meant that while such gifts are allowed, there is not a standardised rule entitling individuals to claim deductions for them. Instead they are dealt with on a case-by-case basis, where a tax official determines whether there is sufficient evidence that the donation has been made and that the valuation of the donated goods is accurate. A system likes this operates, for instance, in Vietnam. However, this is obviously only practical where a small number of in-kind donations are expected. If these sorts of donations become more common, it is likely that a more standardised system of valuation and deduction claiming would have to be introduced to avoid the administrative burden becoming impractical.

7.4.2 "Percentage rules"

There is a further mechanism in a number of countries that allows individuals to use the tax system to their advantage in making donations. This is the system often called "percentage philanthropy", in which individuals are allowed to nominate for a small percentage of the tax they have paid to go to an approved charitable organisation rather than into the normal State coffers.

This is not strictly speaking a tax relief, however as it involves using the tax system to encourage charitable giving and enable individuals to support not-for-profits more effectively it is relevant to many of the issues discussed in this report.

The origins of percentage philanthropy lie in the division of Church and State in mainland Europe in the 19th and 20th centuries. This led to governments looking for mechanisms to enable people to continue to support religious institutions effectively. In Germany and Austria, this took the form of a compulsory tax on all members of the church, but in the predominantly Catholic countries of Southern Europe (Spain, Portugal and Italy), it took the form of a voluntary contribution from tax available to all taxpayers for secular as well as religious purposes. It is this that provided the model for modern forms of percentage philanthropy.

The idea of percentage philanthropy may have originated in Southern Europe, but it has reached its most developed form in Central and South-eastern Europe. A number of countries in this region have adopted percentage rules in their tax system as a mechanism to encourage support for not-for-profits, in recognition of the fact that their civil society infrastructure is comparatively weak. Countries that have done this include Hungary, Slovakia and Lithuania, which all have "two per cent rules", and Poland and Romania, which have a "one per cent rule".

There is a valid question about whether the money directed through percentage rules can really be called a donation or whether it is merely a form of taxation. However, leaving this concern aside, there is also research to suggest that percentage rules can be an effective tool for developing a culture of charitable giving in countries that have no real philanthropic tradition.[97] As such they are an interesting policy idea to consider.

97 Gerencsér, B. & Oprics, J. (2007) *The Role of Percentage Designation in Creating a Culture of Giving.* Nonprofit Information and Training Centre Foundation.

8. Barriers to claiming incentives

In addition to justification on moral grounds, tax incentives for charitable giving can be judged in terms of their effectiveness in motivating greater generosity. This is important when considering the complexity of incentives and the bureaucratic hurdles faced by donors in claiming them, as whilst incentives might be in place and even appear generous on paper, the ability of donors to understand and claim, and their experience of the process will impact on the effectiveness of incentives in motivating increased giving.

8.1 Bureaucratic barriers

We have already seen from the case of the United States that where incentives are claimed through the self filing of itemized tax returns, this can present a considerable barrier to donors of a modest income who either are not required to itemize for other areas of their finances, or lack the knowledge to be able to do so. According to Brian Jenn's calculation for 2004, only about 35 per cent of taxpayers in the US chose to itemize, leaving a majority of taxpayers unaffected by tax incentives.[98] Clearly, such a system creates a significant barrier for donors who are less likely to itemize tax returns merely to claim charitable deductions where they do not have more financially compelling reasons – such as mortgage deductions – to do so. As such, bureaucracy is a significant barrier to the effectiveness of incentives for a large part of the population. Given that the majority of nations in this study follow a similar deductive system of tax incentives for giving, this is very likely a common barrier to claiming incentives. For example, Turkey only allows donors who file tax returns to claim incentives and experts consulted as part of this report suggested that this would likely rule the vast majority of ordinary donors out of the reliefs on offer.

Tax deduction is the most common form of incentive in our sample of 26 nations. Indeed, 18 of the 24 nations which have incentives for individuals (with a further 3 having hybrid systems) and 24 of the 25 nations which offer incentives for corporations do so in the form of tax deductions. As such, as in the case of the US, the filing of tax returns will, to differing extents, have an effect of donor responsiveness. for giving In Russia, the fact that the highest rate of income taxation is just 13 per cent means that any administrative burden in declaring gifts made over the year may be sufficient to put donors off making claims. In addition, requirements to include the paper trail involved in making donations in declarations is incompatible with the growth of online donations which neither involve paperwork or direct contact with the recipient organisation.

In some nations the bureaucratic barriers to claiming incentives are not limited to the experience of the donor in filing claims but also in tax authorities processing them. This is seemingly an issue in the People's Republic of China, where limited knowledge of deductibility of charitable gifts amongst tax authorities means that the employment of an accountant and/or considerable influence is required to ensure that even an accurately-filed return results in the proper deduction.[99]

8.2 Complexity

As we have already seen, incentives are often judged by the extent to which they ellicit a high degree of price elasticity in donors. Whilst this report finds that judgement to be overstated given the range of alternative justifications for tax exemption, it is clearly important that donors are responsive to incentives which have cost implications for government. As such, the extent to which donors understand the incentives on offer and how to claim them is significant. We have already seen that bureaucratic barriers can put off donors as the effort they need to make to claim outweighs their desire to do so. However, the underlying complexity of the incentives on offer can also have the effect of dulling responsiveness.

98 Jenn, B, H. (2008) *The Case for Tax Credits.* The Tax Lawyer 61.2 : 549–597
99 Council of Foundations. (2014) China, Country Notes. [Online]

In the case of Brazil for example, donors must have a grasp on which causes they may claim an incentive for donations to and at what level incentives for donations to those causes are capped. This patchwork system (as described in section 4.1) is extremely difficult for donors to conceptualise. For instance, a Brazilian donor planning to give tax effectively must know which causes attract incentives (child, adolescents and elderly, sports, culture, cancer and handicapped projects), have an understanding of the different caps (1 per cent for handicapped and cancer projects and 6 per cent for other causes), the total limit (all donations must add up to less than 8 per cent) and when they plan to claim (the total limit drops to 3 per cent if claiming for the previous tax year). In addition, the fact that CSOs in Brazil have to register for donor-incentivised status each year and often lose eligibility makes tax planning even more complicated.

Brazil is not an isolated example of a tax incentive system where complexity might undermine donor responsiveness. Other examples of systems that are complex to the extent that many donors are unable to properly understand the incentives available and rules for claiming include Bangladesh which offers incentives at 15 per cent, capped at 10 per cent of tax liability making it difficult for donors to easily calculate the value of incentives on donations. Likewise, hybrid systems such as Italy, which allows donors to choose between deduction or credit with caps at differing rates for different causes and organisation types, and the UK, which requires high rate tax payers to calculate both a grossed up donation at a flat rate and a deduction on remaining tax liability. Provisions designed to enable CSOs to claim Gift Aid on small donations are a proxy for the scheme as a whole in that even sector experts complained that they found it difficult to understand.[100]

100 Pudelek, J. (2012) Government must rethink 'complicated' Gift Aid scheme for small donations, sector leaders say (Online) Third Sector, 25 May. [Online article]

9. *Incentives for individuals verses incentives for companies*

The extent to which you believe it is important for governments to offer tax incentives on the same terms for individuals and corporations may degree on the extent to which you favour pragmatism over balance and progressiveness. For example, it may make sense in some instances for governments to make tax incentives particularly appealing for companies where, as is the case in developing countries with large reserves of natural resources, they account for the vast majority of tax receipts. In this instance it could be argued that the extra cost of administering tax incentives for individuals would not be worthwhile as here are too few people paying the highest rates of tax. As such, it might seem sensible to offer more generous incentives to companies than individuals, or as is the case in Nigeria, offer no incentives to individuals at all. Similarly, a wealthy nation may see fit to prioritise individual donors as their mass engagement in civil society could enhance social cohesion as wider involvement in charitable giving is associated with other positive social behaviours.[101]

On the other hand, prioritising pragmatic concerns above progressiveness may in fact prove to be counterproductive. Consider for example, a nation where companies receive far greater incentive to give than individuals. In this instance, individuals might perceive some sense of political collusion between government and the private sector or judge the motivations of corporate donors to be related to tax avoidance. In such a circumstance, companies would likely give less to avoid triggering negative public perceptions.

For the above reasons it is necessary to compare the differing responses of the countries in our sample and to try and locate the appropriate balance between the need to create equality between treatment of different types of donors, and the need for pragmatism.

9.1 *Incentivising only one type of donor*

Amongst the 26 countries included in our study, it is notable that three nations offer tax incentives for charitable giving to one type of donor and not the other. Nigeria and Saudi Arabia do not offer tax incentives for individuals but they do offer deductions to companies. In both Nigeria and Peru, tax incentives for charitable giving are only offered to companies. In the case of Nigeria, companies pay a flat rate of 30 per cent corporation tax but are able to claim tax deductions on gifts totalling up to 10 per cent of their taxable income. The top rate of income tax in Nigeria for individuals is 24 per cent, but no tax incentives for charitable giving are available.

It appears that Nigeria is part of a significant, if under-appreciated, typology of charitable tax incentive jurisdictions which offer incentives for companies making donations, but not for individuals. In all, The Rules to Give By Index[102] identifies 28 nations that have corporate-only incentive regimes. Seven of these nations are former Soviet nations in Eastern Europe and Central Asia, but the most significant concentration is, like Nigeria, in sub-Saharan Africa, where 12 nations fit this model. The drivers of this trend are not clear. It might be that at the time they were deciding policy, these low-income nations which are also host to large multinational extractive industry companies saw a far greater benefit in offering incentives to companies than they might have in creating incentives for individuals. However, regardless of the initial rationale for favouring such a model, it does not seem to be practicable in the long term as even amongst low income nations (as defined by the World Bank), the proportion of individuals giving to charitable causes every month according to the 2013 World Giving Index in countries with tax incentives for individuals was 9 percentage points higher (27 per cent) than in those that did not (18 per cent).

101 Charities Aid Foundation. (2013) *Britain's Civic Core: Who are the people powering Britain's charities?* Charities Aid Foundation.

102 Quick, E., Kruise, T. & Pickering, A. (2014) *Rules to Give By: A Global Philanthropy Legal Environment Index*. Nexus, McDermott, Will & Emery and Charities Aid Foundation (CAF).

In the case of Saudi Arabia, this is mostly a moot point because Saudi and Gulf Cooperation Council (GCC) member country citizens do not pay income tax. This is in fact the case in 12 nations, and it scarcely makes sense to criticise a lack of tax incentives in a jurisdiction in which people do not pay income tax. However, the case of Saudi Arabia is not without interest. Saudi and GCC citizens pay a mandatory zakat[103] of 2.5 per cent of income which is collected by the state and distributed to the poor. This is a religious duty that has, in Saudi Arabia (as well as Libya, Malaysia, Pakistan, Saudi Arabia, Sudan, and Yemen)[104] been mandated by the state, and as such is not charitable either in the sense that it is volunteered money or in the sense that it allows for the development of a civil society by allowing people to advance their agency through giving. Whilst Saudi and GCC companies also pay zakat, unlike individuals they pay 20 per cent corporation tax (and up to 85 per cent if involved in the production of oil and hydrocarbons). Full deductibility on this tax liability is offered for companies on donations to accepted charitable purposes (which are fairly limited). Though this reality is merely a product of a tax system which favours individuals, it does have some perverse implications for foreign nationals working in Saudi Arabia who are, unlike the companies for which they work, unable to claim tax deducations on the 30 per cent income tax that they pay.

Russia was the only nation in our sample that offered tax incentives for charitable giving to individuals but not to companies. Indeed, according to the Rules to Give By Index[105], it is the only country to have such a regime. Whereas individuals are able to deduct the value of their donations up to a cap of 25 per cent of taxable income (income tax is a flat 13 per cent), companies cannot deduct gifts against corporation tax but can merely deduct from their value added tax (VAT). Considering that newly-formed companies were the trail-blazers for philanthropy in Russia after the fall of communism[106], it seems curious that they have not been incentivised to develop their giving further.

9.2 The value of corporate verses individual incentives

A more comprehensive appraisal of the differing values of incentives and the imposition of caps on relief in our 26 sample nations is provided in the “Value of Incentives” and “Caps and floors on relief” sections. However, it is worth noting some significant differences in the value of incentives and the imposition of caps on what can be claimed in some nations between individual and corporate donors.

- In Bangladesh, individuals are able to claim 15 per cent of the value of a donation in deductions from taxable income subject to a cap at the minimum between BDT15m and 30 per cent of taxable income. Companies in Bangladesh can only claim 10 per cent of the value of their donation in deductions and the cap is at the minimum between BDT80m and 20 per cent of taxable income. Given that corporation tax is between 27.5 and 45 per cent, and the top rate of income tax is 30 per cent, this perhaps points to the perception that smaller incentives are still compelling for those paying higher rates of tax.

- In France, individuals can claim 75 per cent of the value of donations up to €521 and 66 per cent over that amount, up to 20 per cent of taxable income. Companies have a simpler system to reckon with, and can claim 60 per cent of the value of their donation against their taxable income without being subject to a cap. Given that companies pay 25 per cent corporation tax whilst individuals can pay as much as 75 per cent income tax (including wealth tax) this clearly is a system that favours corporate giving.

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103 Zakat is the third Pillar of Islam which, rather than being considered as strictly charitable, is given on the basis of religious duty, specifically for the benefit of the poor.

104 Powell, R. (2009) *Zakat: Drawing Insights for Legal Theory and Economic Policy from Islamic Jurisprudence.* University of Pittsburgh Tax Review, Vol. 7, No. 43. Seattle University School of Law.

105 Quick, E., Kruise, T. & Pickering, A. (2014) *Rules to Give By: A Global Philanthropy Legal Environment Index.* Nexus, McDermott, Will & Emery and Charities Aid Foundation (CAF).

106 Chertok, M. (2014) *Philanthropy in Russia — an insider's view. Interview in Philanthropy in Focus.* WINGS. [Online]

- In Italy, individuals can claim either 19 or 26 per cent of their donations back, either in tax deductions or credits depending on the cause or organisation type – factors which also relate to a range of different caps. Companies, on the other hand, enjoy 100 per cent tax deduction for their donations subject to a 2 per cent cap. As we will point out in section 8, complexity may be a barrier for some donors. For companies to enjoy more generous incentives and less complexity despite their greater capacity to navigate the bureaucracy seems likely to contribute to a sense of cynicism amongst individual donors.

It may be legitimate for some nations to impose different percentage caps on companies and individuals considering, in general, the relative scale of their resources. Certainly, there is evidence that this assumption is borne out in policy in our sample of nations. As discussed in section 6.1, the average cap on individual donations as a proportion of taxable income comes in at 41.1 per cent, compared to 35.5 per dent for companies. Other nations, such as India, have higher rates of tax for corporations (34 per cent) than even the wealthiest individuals (30 per cent). However, many nations seem to aim for equity in the tax incentives values regardless of the varying rates of taxation on companies and individuals. Argentina, Australia, Egypt, Germany, Mexico, South Africa, Turkey and Vietnam all offer the same percentage values and caps to companies and individuals in their charitable tax incentives regimes.

For the purpose of sending a clear message to all donors, an ideal scenario would be to aim for parity in incentive rates. Where percentage caps exist – although ideally they wouldn't – these should also be equal for individuals and companies, but in recognition of the relative scales (on average at least) of giving between the two donor types, an additional value cap on tax deductions for companies could be imposed.

9.3 Different processes for claiming incentives

As stated in the "Form of relief" section, there are advantages and weaknesses to the three processes for offering tax relief on charitable donations. The choice to follow a tax deduction, tax credit or grossed-up donation model is one which has important implications for the administration, fairness and complexity of a tax incentive regime. However, several of the countries in our study have, by choosing to offer one of those three choices to individuals and another to companies, amplified all three of those concerns.

In both the United Kingdom and the Republic of Ireland, individual donations and corporate donations are treated differently; with individual relief coming in the form of grossed-up donations and corporate reliefs coming in the form of tax deduction. As a result, individual donors essentially have their donations topped up by 25 per cent (with higher rate tax payers receiving a 20 or 25 per cent deduction on top of this), meaning that the relief is passed on to the CSO rather than back to the donor. Companies, on the other hand, receive the full benefit of the relief.

In Canada, individuals receive a tax credit whilst companies receive a tax deduction for their donations. Curiously, individual donors in Japan are able to claim either a tax credit or a tax deduction providing that certain requirements are met. Companies on the other hand are only able to claim a tax deduction. There is, as stated in the "form of relief" section, a strong argument that a tax credit system is more equitable as the value of the relief will be the same regardless of the rate of tax paid. Where the rate of taxation is flat, then a system of deduction might seem equally fair though as is the case in Canada, reductions for small business actually have the result of offering greater incentives to larger companies. As such, Canada has a system that is progressive for individuals but not so for companies.

Outside of differences in the form that relief takes, we should also note the impact of the bureaucratic process on the ability and willingness of donors to claim incentives and hence their efficacy. In China, a lack of clear, simple and well-publicised tax exemption regulations and procedures for individual donors continue to suppress the uptake of incentives for individuals. At the same time, an increase in the deductibility of charitable gifts from 3 to 13 per cent for companies and a simpler process (and capacity) for claiming those incentives has meant that corporations provide 60 per cent of donations in China.[107]

9.4 Different causes incentivised

Our study has revealed that a number of countries offer tax incentives to different causes for individual and corporate donors. In Vietnam, the list of charitable purposes for which individuals and companies can claim tax incentives is almost completely different. Bangladesh has a wide range of charitable purposes (20 purposes) for which companies can claim tax incentives compared to a much narrower list for individuals (eight purposes). Similarly, in Brazil, companies are able to claim incentives for donations to organisations with a broad scope of social purposes on top of the purposes under which individuals can claim incentives for donations. Though a number of countries, such as Brazil and Italy, have differing values for tax incentives to different causes, some of those rates are not consistent between individuals and companies.

107 Council of Foundations. (2014) *China, Country Notes*, updated in 2014. [Online]

10. Conclusion

This report has attempted to provide a meaningful starting point for a proper discourse on the merits and weaknesses of the various tax incentive regimes for charitable giving in place around the world. The approach that we have taken, and advocate for others to adopt and build on, is a holistic one which looks beyond the financial value of incentives and includes factors such as political justifications, cause and organisational eligibility, donor accessibility and fairness. Such an approach has, within our limited sample at least, suggested an unanticipated appraisal of the dominant conception of tax incentives for giving; that we both overestimate and underestimate their importance.

On the one hand, though there is good evidence that donors are responsive to tax incentives (though perhaps less so than we might think), the relative value of incentives may be less important than the form in which they are offered, what causes and organisations are eligible and how accessible they are. As such, the tendency of CSOs, donors and philanthropy advisors to focus on the value of incentives and their associated caps and floors – though clearly important – could be challenged by a call for a more holistic focus on the system of tax incentives. Such an expanded focus seems to suggest a very different weighing of the significance of tax incentives. Viewed from this more elevated vantage point, this report suggests that we may in fact be underestimating the importance of incentives for giving as the potential crowding out effect that incentives have on those causes, organisation types and donors which are excluded can have a determinate impact on the size, political balance and social representativeness of the sector which in turn could influence public trust and ultimately participation in charitable giving.

There is great variety in the incentive systems in our sample of 26 nations. The form of incentives, their value, caps and floors placed on them and differing definitions of what causes, legal forms and to which jurisdictions donors can give and be eligible to receive them all differ across our sample countries. Perhaps this is not surprising as charitable giving and civil society more generally is heavily influenced by the distinct political, economic and social history of a given country as well as factors such as tradition, culture and religion.

Yet our study has shown that most governments tend to either happen upon a model for offering incentives over time as a consequence, often without intention, of wider tax policies and legal rulings, or else copy the basic model of another nation and retrofit that model to their own context. In either case, none of the incentive regimes in our study seem to have been developed using an iterative process which allows for holistic redesign and adaption to provide maximum benefit and fairness for all concerned. Rather, tax incentive regimes have been subject to ad hoc changes motivated by political pragmatism, demand from donors and beneficiaries or reactive adaptation to changing social economic or technological contexts.

This might be expected given two important factors which may limit a more holistic approach to developing tax incentive policy. Firstly, there is a paucity of comparative research on tax incentives which explores not only the differing models in existence around the world but also works through the political and philosophical justifications underpinning differing approaches. This report has contributed to those ends, but much more research is needed. For instance, given that donor responsiveness to incentives dominates the policy conversation, it is striking that longitudinal studies have not taken place in most countries which track charitable giving over time to see the effect of policy changes on the level of giving.

A second reason for the lack of innovation in tax incentive policy for charitable giving could be that as charitable giving in a nation grows, interested parties in civil society and in government become increasingly reticent to risk unbalancing the existing framework. Such conservatism could be seen as rational as in the absence of clear comparative data on the effectiveness of other models for offering tax incentives, most people with an interest in CSOs would likely take a risk averse approach. However, the ossification of tax incentive policy may have deeper roots than even the most persuasive evidence could dislodge.

In many nations the current laws pertaining to CSOs and charitable giving were developed at a time of rapprochement between the state and civil society following a period of social upheaval and oppression. In many cases, this marks a high point in cross sector relations due to the fact that civic activism has to some extent succeeded in changing or influencing government. Take the extreme case of South Africa for example where following the apartheid and a period of consultation with the sector, the new NPO Act included the extraordinary provision that “every organ of state must determine and co-ordinate the implementation of its policies and measures in a manner designed to promote, support and enhance the capacity of nonprofit organisations to perform their functions”.[108] South African CSOs now find themselves defending laws and provisions for CSOs and donors which were drawn up in more idealistic times rather than pushing for improvements out of fear that changes, if they were to occur, would likely be negative.

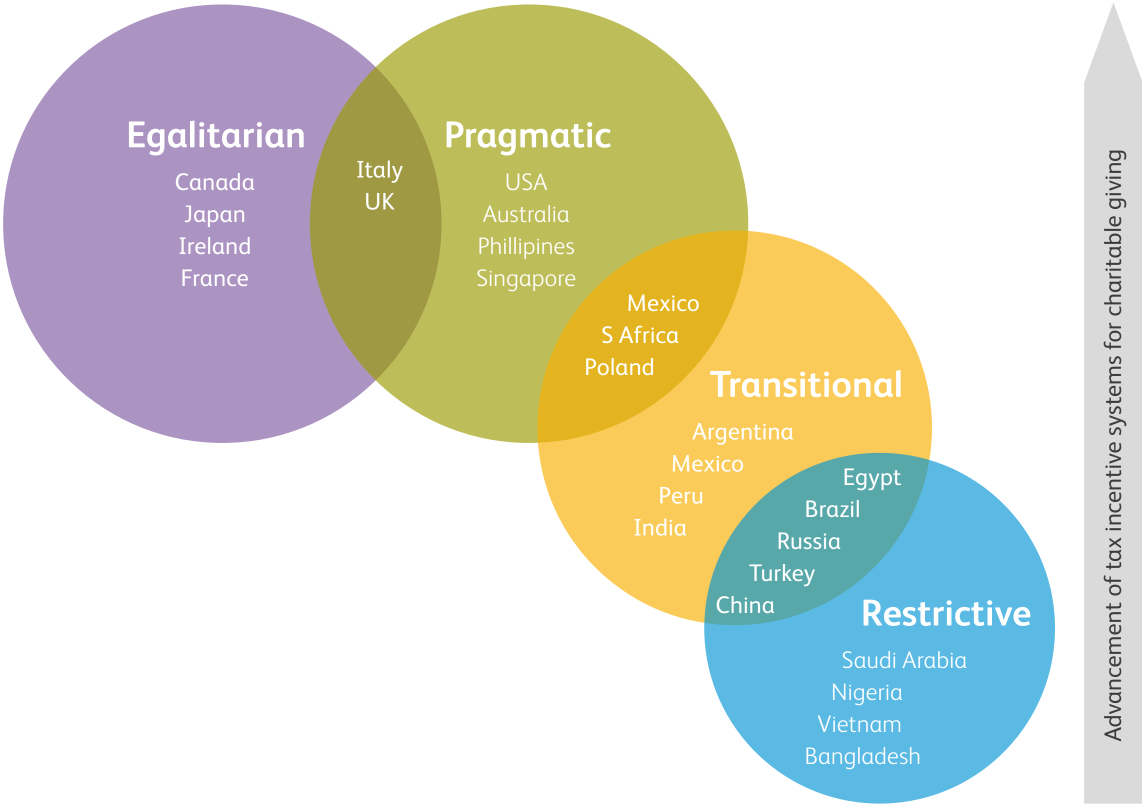
Of course, it is no surprise that the extent to which CSOs and donors are likely to push for improvements in the tax incentive regime is determined by the direction of travel in government policy. It may well be that some of the nations in our study which have restrictive systems (as described below) are in fact improving and that they are exactly the places in which the recommendations of this report ought to have most traction. However, a theme which underlines the findings of this report is that a public conversation about the terms on which tax incentives should be justified is crucial in ensuring that incentives are both fit for purpose in the short term, and sustainable in the long term. A system of incentives which considers tax expenditure to be a subsidy for CSOs will likely seem mutually beneficial when the government is enjoying favourable economic conditions and a populist alignment with civil society. However, when the government’s agenda is in conflict with the policy priorities of large swathes of civil society the same justifications might validate the states use of tax incentives to manipulate donor behaviour in support of its political objectives. As such, only a tax incentive regime built on pluralist principles and justifications will allow both the malleability required to make iterative improvements whilst defending against political interventionism in times of cross sector discord.

It has not been possible to rank the 26 nations in this study in order of which we believe provide the best incentives to donors. Indeed, to do so would contradict one of the principle findings of this report; that for tax incentives to deliver greater levels of giving – both in terms of participation and financial value – the whole system under which they are offered and the interaction between different elements of that system must be fit for purpose. Clearly, to attempt to grade such a complex policy ecosystem in such a way as to allow for a meaningful ranked index would require a level of analysis that is beyond this research.

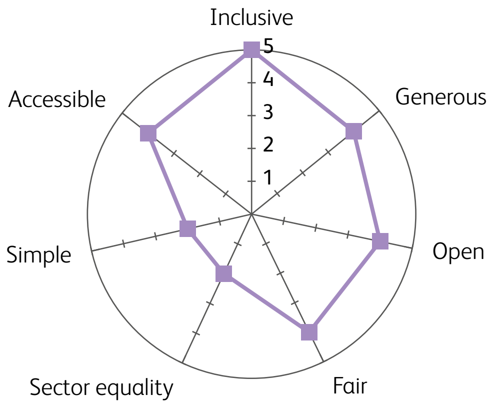
Though it is not possible to credibly rank the nations in this study on their systems for incentivising charitable giving, it is possible to group them based on certain associated policies and political contexts. Fig 8 is a representation of four typologies of systems for incentivising charitable giving in which the 26 nations in this study can be placed. The remainder of this conclusion describes the characteristics of these types which we have labelled; Egalitarian, Pragmatic, Transitional and Restrictive systems. Spider diagrams for each type use a scoring system from one to five. Scores were given based on the comparative strengths and weaknesses identified in researching this report but the process should be seen as illustrative rather than definitive.

108 Government of South Africa (1997) *Non Profit Organisations Act 1997*, Chapter 2. Government Gazette

Figure 8 Typologies of tax incentive regimes



Egalitarian



Strengths:

- Equality across the income spectrum
- Inclusive of a wide range of charitable causes
- Sound philosophical underpinning

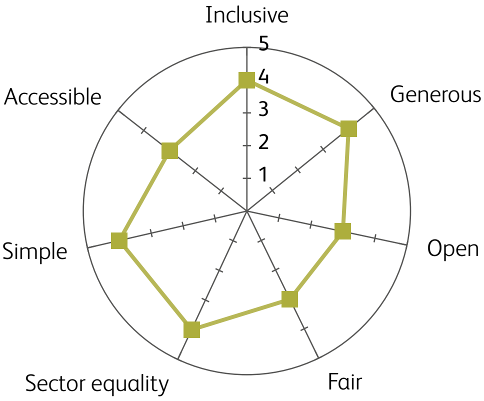
Weaknesses:

- Complex for donors to contextualise in relation to their taxes and to calculate
- Can lead to either a lesser incentive by value or by donor perception
- Depending on how credits are implemented they can create an administrative burden for both claimants and tax authorities

In some of the nations in our study, equality and fairness, from the point of view of all donors, seems to have been a significant consideration. In these countries tax incentives are typically offered in tax credits ensuring an equal benefit for as opposed to a disproportionate benefit for the wealthy (upside-down effect). This can be done in the form of a flat tax credit which may be lower than the highest rate of income tax, in which case this represents a reduced incentive for the wealthy. Other systems may favour a credit which is stepped as donations increase to reduce the cost of incentives for small donations which may not be responsive to incentives (buying the base) which limits progressiveness in favour of pragmatism.

Nations following this model tend to have an inclusive approach which sees them offer equal incentives across a wide range of causes. However, the complexity of calculating, claiming and administering such a system can both reduce the effectiveness of the incentive due to poor donor understanding and increase the cost to government of offering the incentive. The UK and Ireland offer credits on a grossed-up basis which are passed on to the beneficiary which could be said to exacerbate this problem as detailed information is required by CSOs in order to receive the incentivised funds.

Pragmatic



Strengths:

- Easy for donors to understand
- Generous incentives for wealthy donors
- Inclusive of a wide range of charitable causes
- Simple to administer for tax authorities

Weaknesses:

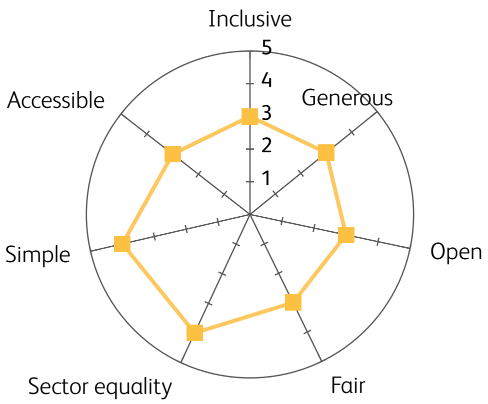
- Marginal cost of giving rises with income level (upside down effect)
- Poorer donors receive lower incentive or are unable to claim

The principle form of tax incentive is a deduction at the point of tax calculation. Donations are fully deductible subject to a cap which is sufficiently high so as not to be a disincentive but low enough to ensure wealthy individual donors and large corporations do not undermine the states fiscal health. Such a system has the benefit of simplicity because donors who file tax returns are used to claiming deductions. In addition, such a system entails significantly lower administrative costs than grossed-up tax credits.

Though this system affords a simplicity which helps to popularise the incentive on offer and reduce administrative costs, this is at the cost of progressiveness. Lower income donors paying less tax receive a smaller incentive as a result. As such, the marginal cost of giving falls as a person's capacity to afford it increases. This "upside-down" effect is pragmatic to the extent that it sacrifices equality for donors of a modest income, often believing this to be justified by their lower responsiveness to incentives. The upside down effect is exaggerated in jurisdictions where only those itemizing their own tax returns care able to claim deductions as such individuals tend to be higher up the socio-economic spectrum and lower income donors are crowded out of accessing the incentive regime completely.

Nations operating the pragmatic model of incentives for philanthropy are favouring an approach which minimises state interference. Justifications for such an approach often focus on the extent to which donors are providing public services which the state might otherwise have to pay for. In this view, incentives are cost effective and pragmatic. However, running alongside this justification is the notion that the state simply should not tax income which has been given to charitable work because it cannot be considered personal consumption. As such, a strong liberal narrative supports the idea that people should be able to direct charitable funds at their own discretion to causes of their choosing. As such, the range of causes which are incentivised is typically broad.

Transitional



Strengths:

- A viable and affordable solution for transitional economies
- Equality of treatment of individuals and corporations
- Allows for future liberalisation

Weaknesses:

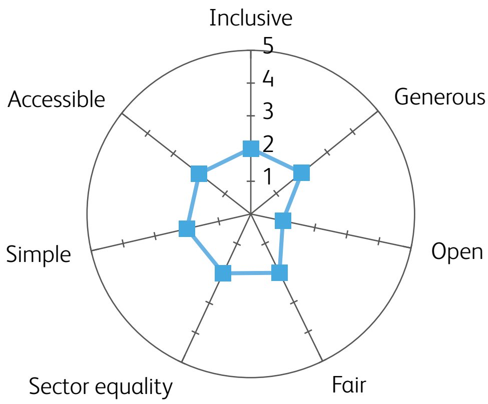
- Risk of politicisation
- Poor motivation for ordinary donors
- Barriers to claiming incentives

Many nations which are in a transitional stage between a developing and an advanced economy in our study seem to share a number of characteristics in the way they incentive giving. Typically, a wide range of causes may qualify for tax incentivised gifts but there may be exceptions or different caps and rates of deductibility for certain causes. As well as operating a staircased system of caps, transitional systems have lower caps in general which in some cases present a very real disincentive for wealthy donors to make very large gifts. There are often significant barriers to claiming incentives which result from a lack of infrastructure, donor education and knowledge and capacity within tax authorities. This effect is compounded for lower income donors who are less likely to be able to access information or specialist advice.

Despite the limitations of such a system, this approach does have a number of advantages for governments with limited tax incomes. Firstly, and crucially, by prioritising which causes may receive incentivised gifts, governments can ensure that tax expenditure (tax losses) are directed to only the most vital causes. This is particularly effective for leveraging the often superior resources of corporations in nations where multinational companies may be more receptive than individuals who have been under exposed to cultures of giving. In addition, by incentivising only those who are most receptive to incentives and putting up barriers to those who are less receptive, governments can maximise the impact of deductions whilst protecting themselves from excessive tax losses with lower caps. Importantly, as the fundamental structure of this system is similar to the Pragmatic model, by simply expanding the range of permissible causes and raising the caps, governments can adapt and liberalise over time.

Despite the above justification, the inherent inequities of the system have potentially long term negative consequences for the development of a culture of giving. The imbalance of a system that prioritises and has differing levels of incentive for certain causes over others creates opportunities for the politicisation of civil society. Furthermore, by crowding out ordinary people from incentives, there is a danger that as much of the population start to enter the middle classes, they will have developed negative associations about the exclusivity of philanthropy.

Restrictive



Strengths:
- N/A

Weaknesses:
- Heavily politicised
- Narrow range of causes
- Individuals discouraged

For some governments the extent to which tax incentives for giving are offered broadly and generously is a question of balancing the needs of civil society and the will of donors with normal fiscal policy. This calculation could be seen as a measure of how important the government thinks civil society is but whilst those following the transitional model may prioritise revenues for the state, that model still seeks to encourage giving to some extent. However, for other governments, civil society is seen as something to be controlled, with tax incentives offered as a means to exclude organisations that do not conform to their political agenda. Whilst there may be inherent cultural and political differences in what causes are considered to be in the public interest, it is possible to objectively identify a pattern of tax policy and surrounding regulation and legislation that crowds out civil society organisations for political reasons.

Those nations following this restrictive model do not allow tax incentives (for individuals at least) for human rights or environmental causes. In addition, they often favour corporate donors rather than individuals; perhaps assuming that companies with interests in the country will be less likely to fund causes which challenge state authority. Nigeria is an extreme example as it does not offer any incentives for individuals whilst Bangladesh allows companies to make deductible gifts to a wider range of causes than individuals. This restrictive model is consistent with a wider trend in global civil society law for governments to institute regressive policies which limit the capacity of civil society to engage in advocacy which is critical of government policy. Such policies, often justified for reasons of economic competitiveness, make negative assumptions about what corporations see as an enabling environment for business. However, by restricting criticism and free speech in civil society governments are unwittingly erecting barriers to the development of a culture of giving which not only compliments sustainable development through the services it provides but actively improves the environment for business by challenging corruption, holding leaders to account and championing the rule of law.

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