



TAX ASPECTS OF PHILANTHROPY: A SWISS PERSPECTIVE

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TAX ASPECTS OF PHILANTHROPY

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INTRODUCTION

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

Defining philanthropy : What are we speaking about?

► GENERAL DEFINITION:

- › Voluntary giving, primarily for the benefit of others
- › Voluntary giving and receiving of time and money, aimed towards the needs of charity and the interests of all in a better quality of life
- › Use of personal wealth and skills to benefit specific public causes

► DEFINITION FOR TAX PURPOSES:

- › The act of giving by individuals and corporations to philanthropic entities with “worthy purposes” and entities that are engaged in activities in pursuit of those purposes, including by providing funds to other entities (OECD, Taxation and Philanthropy, Paris 2020)
- › In Switzerland: art. 56 lit. g) LIFD: « public service or public « utility » purpose »



TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The Philanthropic sector

- ▶ Very different across countries
- ▶ Inverse relationship between the extent of government social welfare spending and size of non-profit sector
- ▶ According to OECD (Taxation and Philanthropy, 2020, p.12) 4 categories of states:
 - › « **Liberal states** »: welfare state limited, but large philanthropic sector
 - › « **Social-democratic states** »: universal and well developed welfare state, small philanthropic sector
 - › « **Corporatist states** »: originally non democratic states that have become democratic, low welfare and large philanthropic sector
 - › « **Statist states** »: elites are in control, low welfare and low philanthropic activities

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The Philanthropic sector by size: number of entities (source OECD 2020):

COUNTRY	NUMBER OF ENTITIES	POPULATION (M)
Belgium	2'241	11.4
Canada	86'000	37.1
France	4'188	66.9
Germany	600'000	82.9
Italy	98'000	69.4
Switzerland	10'000	8.5
United States	1'682'091	327.1

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The Philanthropic sector by size: annual giving (source OECD 2020):

COUNTRY	ANNUAL GIVING	PERCENTAGE OF GDP
Belgium	EUR 263 m (2017)	n/a
Canada	CAD 13.4 b (2017)	0.77
France	approx. EUR 5 b (2018)	0.11
Germany	EUR 5.3 b	0.17
Italy	750 m	0.3
Switzerland	n/a	0.09
United States	290 billion to 1.2 trillion (US Bureau of Statistics)	1.4 -5.5

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The case for providing tax concessions for philanthropy

IN FAVOR

- Under-provision of public goods (limited resources)
- Efficiency
- Personal factors (motivation, morality, belief in causes, faith, personal experience)
- Societal factors (cultural factors, history of a country, political factors)
- Other: e.g. strengthen civil society

AGAINST

- Regressive nature of tax incentives
- Competitive neutrality: e.g. commercial operations of non-profits
- Cost of concessions: other taxpayers have to bear higher tax burden
- Distributional impact: private decision making on who gets what
- Democratic concerns: disproportional and unchecked influence of large donors (with discretion on government resources (foregone tax revenue))

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The tax treatment of entities

- ▶ Tax concessions:
 - › Exemption of all or specific income (but level playing field for commercial income)
 - › Reduction of taxable profit if invested in the fulfillment of a worthy purpose
- ▶ Purpose test: e.g. welfare, education, scientific research, healthcare, etc.
- ▶ Open for all: restricted group of beneficiaries possible if specific characteristics
- ▶ Specific application procedure to get tax concessions
- ▶ Reporting requirement (tax and supervisory authority); frequency
- ▶ Abuse of tax incentives for philanthropic entities
 - › e.g. Diverting funds for private purposes, for profit business purpose, circular constructions (holding of commercial entity controlled by employees of entity), terrorist financing

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The tax treatment of giving

INDIVIDUALS

- Donations during lifetime
- Bequests upon death
- Cash vs non cash
- Personal income tax, capital gains tax, inheritance and donation tax
- Tax deduction vs. tax credit

CORPORATIONS

- Donation: no self interest
- Sponsoring: Business expensing rules
- Cash vs non cash

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

The tax treatment of giving: tax incentives

INDIVIDUALS

- Deductions : often percentage of taxable income
- Tax credit: direct deduction from tax liability
- Matching: toping up of donations by the State (e.g. Singapore, Norway)

CORPORATIONS

- Mostly deduction from taxable profit
- Tax credit but rarer

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

Limitation to *personal* income tax deductions:

COUNTRY	SHARE OF DEDUCTIBLE DONATION	CEILING (% OF TOTAL INCOME)
Austria	100%	10%
Finland	100%	EUR 500'000
Singapore	250%	No limit !
Germany	100%	20%
Italy	100%	10%
Switzerland	100%	20%
United States	100%	60/30% (dep. on beneficiary)

TAX ASPECTS OF PHILANTHROPY

INTRODUCTION

Limitation to personal income tax credits:

COUNTRY	TAX CREDIT	CEILING
Belgium	45%	10% net income
France	66%	20% taxable income
Japan	40%	40% taxable income
Portugal	25%	Max. 15% of tax liability
Italy	30%	Max. EUR 30k of giving
Israel	35%	30% of taxable income
Sweden	25%	Tax credit max. 1.5k SEK

Tax aspects of philanthropy

INTRODUCTION

Limitation for tax incentives to corporate donors:

COUNTRY	SHARE OF DEDUCTIBLE DONATION	CEILING (% OF TAXABLE PROFIT
Austria	100%	10%
Netherlands	100%	50%
Singapore	250%	No limit !
Germany	100%	20% (or 4% turnover + wages)
Italy	100%	10%
Switzerland	100%	20%
United States	?	?



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OECD REPORT 2020 : TAXATION AND PHILANTHROPY

TAX ASPECTS OF PHILANTHROPY

OECD REPORT 2020: TAXATION AND PHILANTHROPY



Taxation and Philanthropy

This report provides a detailed review of the tax treatment of philanthropic entities and philanthropic giving in 40 OECD member and participating countries. The report first examines the various arguments for and against the provision of preferential tax treatment for philanthropy. It then reviews the tax treatment of philanthropic entities and giving in the 40 participating countries, in both a [French](#) [More](#)

Published on November 26, 2020

Also available in: [French](#)

TAX ASPECTS OF PHILANTHROPY

OECD REPORT 2020: TAXATION AND PHILANTHROPY

► Overview

- › Examines taxation of philanthropic entities and giving across 40 OECD member states
- › Draws on country responses (status end of 2019 as a rule)

► Content

- Introduction
- Case for tax concessions
- Tax treatment of philanthropic entities
- Tax treatment of giving (direct tax and donation tax)
- Tax treatment of cross border philanthropy
- Conclusions and Policy options

TAX ASPECTS OF PHILANTHROPY

OECD REPORT 2020: TAXATION AND PHILANTHROPY

Presentation of the report by Pascal Saint-Amans, Director of the Center for Tax Policy and Administration, OECD on 27 November 2020

6 Take aways

- ▶ 1) Assess the activities eligible for tax exemption: how to define them (eligibility conditions) to be in line with priorities of policy makers
- ▶ 2) What is the most efficient / fair way of allowing tax exemptions (deduction/tax credit), cap,
- ▶ 3) Reassessing the exemption for commercial activity of philanthropic ventures: distortion of competition (museum shop/restaurant) level playing field (VAT, turnover exemption etc.)
- ▶ 4) Reducing complexity: non monetary giving (valuation), compliance cost.
- ▶ 5) Improving oversight of tax concessions, taxpayer money that is spent, make sure it is not abused, criminal activity behind charities: How: best practices, increased trans-parency, annual reporting, supervision vs. tax, safeguards, distinction sponsoring / donation (no direct or indirect interest); transparency for Governments
- ▶ 6) Reassess cross border activities/donations: global causes, poverty, pandemic, etc.
- ▶ Not easy for a country to give tax exemption for activity abroad that it cannot control, conditions are met for more transparency, International framework has changed, exchange of information, inclusive framework, more transparency generally, long term project, and should be favoured on a bilateral manner (CH F)
- ▶ OECD policy paper



TAX ASPECTS OF PHILANTHROPY IN SWITZERLAND

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

General tax framework in Switzerland

- ▶ Direct taxes
- ▶ Indirect taxes
- ▶ Other taxes: inheritance and donation taxes, transfert taxes, real estate capital gains taxes, etc.

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (1)

- ART. 56 g and h LIFD and 23 parag. 1, f and g LHID

– Art. 56

Sont exonérés de l'impôt:

- g. les personnes morales qui poursuivent des buts de service public ou d'utilité publique, sur le bénéfice exclusivement et irrévocablement affecté à ces buts.¹¹⁸ Des buts économiques ne peuvent être considérés en principe comme étant d'intérêt public. L'acquisition et l'administration de participations en capital importantes à des entreprises ont un caractère d'utilité publique lorsque l'intérêt au maintien de l'entreprise occupe une position subalterne par rapport au but d'utilité publique et que des activités dirigeantes ne sont pas exercées;
- h.¹¹⁹ les personnes morales qui poursuivent, sur le plan national, des buts culturels, sur le bénéfice exclusivement et irrévocablement affecté à ces buts;

Art. 56 (free translation)

Are exempt from tax:

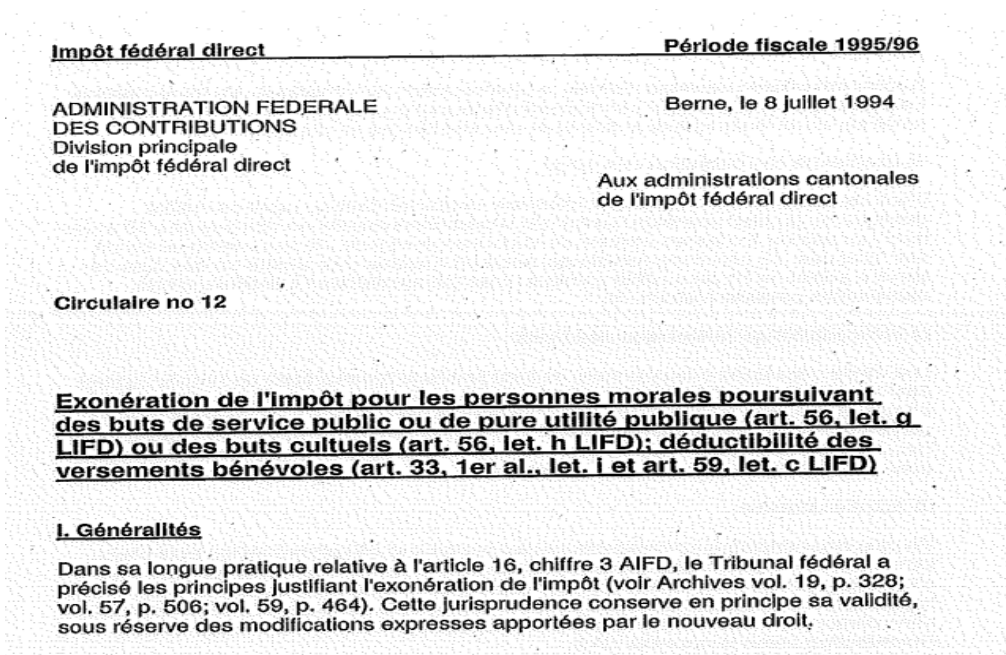
- g. legal persons pursuing public service or public utility goals, on the profit exclusively and irrevocably allocated to these goals. Economic goals cannot in principle be considered to be in the public interest. The acquisition and administration of large capital holdings in companies are of a public utility character when the interest in maintaining the company occupies a subordinate position in relation to the public utility goal and management activities are not exercised;
- h. legal persons who pursue, at the national level, religious goals, on the benefit exclusively and irrevocably allocated to these goals;

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (2)

CIRCULAR 12/1994



GUIDELINES



TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (3)

- › Swiss based entity and incorporated under Swiss law.
 - Foundations, Associations but also other legal entities like company limited by shares or cooperative company (but no distribution of net earnings to « controlling persons »)
- › Pursuit of a public interest purpose
 - General definition in Circular 12/1994: charitable, humanitarian, health, ecological, educational, scientific, cultural nature
 - Activity aimed at an unrestricted circle of beneficiaries (narrowing down possible)
 - Activity carried out in Switzerland or outside Switzerland (worldwide possible)

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (4)

- › Lack of self-interest
 - Subjective element: activity has to serve the public interest and is based on altruism (devotion to the community)
 - Sacrifice in favour of purpose of the charitable entity in the general interest
- › No remuneration of the Board members for their activity as such
 - but remuneration on a time spent basis possible (Geneva: at the rate of attendance of official commissions) and arm's length retribution for activities exceeding the usual scope such as services that would have to be purchased from third parties
- › Entity can have remunerated employees and officers (Board membership possible but with reduced voting rights to avoid conflict of interest)
- › Exclusion or limited profit making activity

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (5)

- › Effective activity
 - Public utility purpose must be effectively pursued (claiming it is not sufficient)
 - No pure accumulation of profits (but increasing wealth possible (e.g.. to cover inflation, postpone assets for important project, etc.
 - Monitored by Tax administration (renewal of tax exempt status) and Supervisory authority (annual report filing)
- › Irrevocable commitment of funds
 - If liquidated: funds cannot return to donor or related parties but must be assigned to an entity with a similar purpose
- › Exemption is granted only upon formal request (Cantonal tax authority)

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (6)

- › Despite harmonised rules: cantonal practice may diverge
 - Purpose: different interpretation of exemption conditions (Board members remuneration, exemption of activities carried out outside Switzerland (canton TG very restrictive), profit making activity in and outside Switzerland)
 - Timeframe: limitation in time
 - Procedure
 - Partial tax exemption
- › Supervisory Authority
 - Cantonal: for regional purpose
 - Federal: for national or international purpose

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Exemption from direct taxes (7)

- › Content of tax exemption:
 - Federal and cantonal profit taxes
 - Capital taxes (wealth taxes) only at cantonal level
 - Gift and inheritance taxes (only at cantonal level)
 - Tax deductibility for donations/bequests made to charities by Swiss residents
 - Real estate capital gains taxes
 - Other taxes (stamp duties etc.)

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Procedure to get tax exemption (8)

- › Official request to the Cantonal tax administration
- › Valid in all other cantons (with exceptions)
- › Has always to be in a position to prove that the conditions are fulfilled

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General interest (9)

- › Essential to get tax exemption: public assistance, arts, science, teaching, human rights, preservation of patrimony, environment protection, preservation of animals, development cooperation, foreign aid, etc.
 - Difficult distinction in practice: objective approach, not if in the interest of the members, does not exclude a commercial activity (e.g. restaurant in a museum) ; self-assistance cultural fields (theatre, movies, etc.) ?, sport federations or associations (FIFA !) ?, private schools ?
- › Judged according to general perception, Swiss legal framework (laws, constitution, jurisprudence, etc.)
- › Level playing field: no distortion of competition
- › In or outside Switzerland (outside: higher standard of proof (activity report, accounting, etc.)

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Possibility to hold participations in private or quoted companies (10)

- › Yes but only if interest in preserving the company is subordinated to general interest
- › Holding participation is not a commercial activity
- › Can be part of ordinary asset management
- › Clear distinction between management and board members (generally only one person with liaison function, “chinese walls”, clear organisational separation)
- › Use of an important part of the created wealth for philanthropic purpose (substantial dividend policy, but no need to distribute substance of the company)
- › How to combine with the need to diversify assets (good governance?)
- › Examples: Switzerland: Fondation Hans Wilsdorf (Rolex), Germany: Robert Bosch Stiftung

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Public interest (11)

- › Purpose in the interest of a public body: for all tasks that are generally attributed to a public body: e.g. water and energy supply, schools (but level playing field with commercial private schools!), old age institutions, hospitals (level playing field), social assistance, public swimming pools and ice skating rings, day-care/nursery schools, etc.
- › May change over time: e.g. Cantonal banks ?
- › Mixed activity: possible but altruistic motivation has to be essential, partial tax exemption possible
- › Official recognition: positive but not mandatory (e.g. delivering official diplomas and licences
- › Difficult case: political parties ? Not harmonised; Lex specialis for contributions (art. 33 i LIFD, and art. 9 parag. 2 , lit. I LHID)

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Religious interest (12)

- › Lex specialis: art. 56 lit. h LIFD, art. 23 parag. 1 lit. g LHID
- › Only if active at a national level, local level not sufficient
- › Not for sects (e.g. Scientology)
- › More restrictive than constitutional right: Freedom of belief
- › Ideology, worldview, philosophy, world outlook : not religious interest (e.g. Société du Mont Pélerin (Mont Pélerin Society) for liberal values, market economy, freedom of speech etc.)
- › Indirect interest is sufficient
- › NB: donations to religious entities are not deductible from income tax (even if the entity itself is exempt)

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Exemption from indirect taxes (1)

› VALUE ADDED TAX (VAT)

- Modification of 1 January 2010 improved input VAT recovery for Swiss charities
- Exemption to register as VAT taxpayer if turnover less than CHF 150'000 p.a.
- Voluntary registration possible for a charity (e.g. if commercial activity is exercised)
- No reduction of input VAT for gifts, dividends or other non-VATable revenues
- Advertising services provided by charities can be considered as non-VATable activity (but with no right to claim back input VAT)
- Can result in significant tax savings if properly implemented

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Tax incentives for individual and corporate donors

› INDIVIDUAL DONORS

- Donations exceeding CHF 100 made to exempt charities pursuing a public interest purpose can be fully deducted of the donors taxable income up to
 - 20% of the taxable income at federal level
 - Generally 20% at cantonal level (VD, GE) but cantonal specificities

› CORPORATE DONORS

- Donations of up to 20% of the corporate profit can be deducted according to the cantonal tax legislation (VD, GE: 20%)
- Donations made to exempt charities pursuing a public interest purpose can be deducted up to 20% of corporate profits at federal level provided the beneficiary is
 - Seated in Switzerland
 - Is exempt from taxes due to its public interest activity

TAX ASPECTS OF PHILANTHROPY

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Inheritance and donation taxes: cantonal taxes (exclusively)

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Services

Impôt sur les successions et les donations 2020

Le tableau qui suit représente les montants exempts d'impôts, en CHF, ainsi que la charge fiscale maximale, en %, prélevée en cas de donations ou successions sur la partie de la dévolution dépassant l'exemption pour la période fiscale 2020. Pour des raisons pratiques, toutes les catégories de contribuables n'ont pas pu être prises en compte et seules certaines d'entre elles sont traitées ci-après.

État des informations: décembre 2020.

Canton		Conjoint	Enfants	Concubin ¹ / Partenaire	Personnes non apparentées	Canton
AG	Impôt	0	0	9	32	AG
	Montant franc	–	–	–	–	
AI	Impôt	0	1	20	20	AI
	Montant franc	–	300 000	5000	5000	
AR	Impôt	0	0	12	32	AR
	Montant franc	–	–	10 000	5000	
BE	Impôt	0	0	15	40	BE
	Montant franc	–	–	12 000	12 000	
BL	Impôt	0	0	15	30	BL
	Montant franc	–	–	30 000	10 000	
BS	Impôt	0	0	16.5	49.5	BS
	Montant franc	–	–	2000 ² / 10 000 ^{3,7}	2000 ² /10 000 ^{3,7}	
FR	Impôt	0	0	8.25–14.025 ¹⁷	22–37.4 ¹⁸	FR
	Montant franc	–	–	5000	5000	
GE	Impôt	0 ^{13,19}	0 ¹³	54.6	54.6	GE
	Montant franc	–	–	500 ^{2,7} /5000 ³	500 ^{2,7} /5000 ³	
GL	Impôt	0	0	12 ⁴	30 ⁴	GL
	Montant franc	–	–	10 000	10 000	
GR ²⁰	Impôt	0	0	0–5 ⁵	10–35 ⁶	GR ²⁰
	Montant franc	–	–	7000	7000	
JU	Impôt	0	0	14	35	JU
	Montant franc	–	–	10 000 ⁷	10 000 ⁷	
LU ⁸	Impôt	0	1–2 ⁹	0	40	LU ⁸
	Montant franc	–	100 000 ^{2,7}	–	–	
NE	Impôt	0	3	20	45	NE
	Montant franc	–	50 000 ²	10 000 ⁷	10 000 ⁷	
NW	Impôt	0	0	0	15	NW
	Montant franc	–	–	–	20 000	
OW ¹⁶	Impôt	0	0	0	0	OW ¹⁶
	Montant franc	–	–	–	–	
SG	Impôt	0	0	30	30	SG
	Montant franc	–	–	10 000	10 000	
SH	Impôt	0	0	40	40	SH
	Montant franc	–	–	10 000	10 000	

Services

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Canton		Conjoint	Enfants	Concubin ¹ / Partenaire	Personnes non apparentées	Canton
SO	Impôt	0 ¹⁰	0 ¹⁰	30 ¹⁰	30 ¹⁰	SO
	Montant franc	–	–	14 100 ³	14 100 ³	
SZ ¹¹	Impôt	–	–	–	–	SZ ¹¹
	Montant franc	–	–	–	–	
TG	Impôt	0	0	28	28	TG
	Montant franc	–	–	5000 ⁷	5000 ⁷	
TI	Impôt	0	0	41	41	TI
	Montant franc	–	–	–	–	
UR	Impôt	0	0	0	24	UR
	Montant franc	–	–	–	15 000 ¹⁴	
VD	Impôt ¹⁵	–	3.5 ¹²	25 ¹²	25 ¹²	VD
	Montant franc	–	250 000 ^{2,7} / 50 000 ^{3,7}	10 000 ⁷	10 000 ⁷	
VS	Impôt	0	0	25	25	VS
	Montant franc	–	–	10 000 ^{2,7} / 2000 ^{3,7}	10 000 ^{2,7} / 2000 ^{3,7}	
ZG	Impôt	0	0	0	20	ZG
	Montant franc	–	–	–	5000 ⁷	
ZH	Impôt	0	0	36	36	ZH
	Montant franc	–	–	50 000	5000 ⁷	

- 1 Pour la qualification du concubin, il faut se reporter à chaque loi cantonale concernant l'impôt sur les successions et les donations.
- 2 Vaut pour l'impôt sur les successions.
- 3 Vaut pour l'impôt sur les donations.
- 4 Supplément *Bausteuer* (impôt sur les constructions) inclus, lequel s'élève actuellement à 15 % de l'impôt sur les successions et donations.
- 5 Le canton ne prélève aucun impôt; les communes peuvent prélever un impôt de 5 % max.
- 6 L'impôt cantonal s'élève à 10 %; les communes peuvent prélever un impôt de 25 % max.
- 7 Au-delà de ce montant, l'intégralité de la dévolution est soumise à l'impôt.
- 8 En principe, pas d'impôt sur les donations; les donations faites dans les 5 ans précédant le décès sont toutefois soumises à l'impôt sur les successions.
- 9 Uniquement impôt communal, lequel s'élève à 2 % max.
- 10 Impôt (émolument) sur la masse successorale de 0.8 %-1.2 % perçu sur l'ensemble de la succession non inclus.
- 11 Ce canton ne connaît aucun impôt sur les successions, ni sur les donations.
- 12 Les communes peuvent prélever un impôt supplémentaire, lequel ne peut être supérieur au 100 % de l'impôt cantonal.
- 13 Cette exemption ne s'applique toutefois pas aux donations issues d'un contribuable dont l'une ou l'autre des trois dernières décisions de taxation, en matière d'impôt sur le revenu et la fortune, entrées en force au jour de la donation, était fondée sur l'imposition d'après la dépense. Seule la part de la dévolution excédant CHF 15 000 est imposable (exemption).
- 14 Selon art. 36 LMSD, l'impôt sur les successions et les donations des forfataires est réduit de moitié. Cela signifie que le taux marginal cantonal est de 1.75 % (3.5 % avec l'impôt communal). Certaines communes exonèrent complètement les successions et les donations de forfataires.
- 15 L'impôt sur les successions et les donations a été abrogé avec effet au 1.1.2017.
- 16 L'impôt cantonal est de 8.25 %. Les communes peuvent percevoir un impôt supplémentaire, qui ne peut pas dépasser 70 % de l'impôt cantonal.
- 17 L'impôt cantonal est de 22 %. Les communes peuvent percevoir un impôt supplémentaire, qui ne peut pas dépasser 70 % de l'impôt cantonal.
- 18 L'exonération de l'impôt sur les donations pour les couples mariés s'applique par analogie aux partenaires enregistrés, en vertu de la Loi sur le partenariat enregistré.
- 19 Révision de la loi au 1.1.2021: passage des droits de succession à l'impôt sur les successions ainsi que 0 % d'imposition pour les partenaires civils et 5 à 40 % pour les parents.
- 20 Hinny / Eckert, Droit fiscal 2021

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Inheritance and donation taxes: cantonal taxes

› **SUBJECTIVE TAX EXEMPTION (DONATION “BY” or “FROM” A CHARITY)**

- Charities: tax exempt in all cantons if entity exempt from direct (profit) tax
- Partial exemption possible

› **OBJECTIVE TAX EXEMPTION (DONATION “TO” A CHARITY)**

- Donation to cantonal exempt charities: not taxable
- Donation to extra-cantonal Swiss charities: not taxable only if reciprocal right !
- Donation to foreign charities: might be subject to tax (except if Double tax agreement between canton and foreign state or between Switzerland and foreign state)

TAX ASPECTS OF PHILANTHROPY

SWITZERLAND

Inheritance and donation taxes: cantonal taxes

› DONATION TO EXTRA CANTONAL CHARITIES:

- No need of a formal agreement (reciprocal declaration sufficient)
- Still possibility of the residency canton of donor to check if conditions are met !
- Cantonal government competent to enter into a reciprocity agreement
 - With other cantons
 - With foreign States ! (e.g. VD with Germany, GR with Liechtenstein, BS with Israel, ZH with the US) , involvement of Federal Government (Switzerland is a Confederation)
- E.g. GE: general exemption for donations to Swiss charities
- E.g. VD: Reciprocity if other canton also grants reciprocity and no profitable activity (e.g. no reciprocity between VS and VD or ZH and GE !)

Tax aspects of philanthropy

Switzerland

Disadvantages of charitable (tax) status:

- › **SOME CHARITIES RENOUNCE TO THE TAX EXEMPTION: E.G. WILSDORF (ROLEX)**
 - Why ?
 - Legal reasons: hard to see any
 - Confidentiality: may be
 - Willingness to contribute like everybody to the public entity they belong to (but less means to fulfil purpose)
 - Price for more freedom ?
 - Tax reasons: may be
 - Regulatory issues: no impact



TAX ASPECTS OF TRANSNATIONAL PHILANTHROPY

TAX ASPECTS OF PHILANTHROPY

TRANSNATIONAL GIVING

› **General rule: national approach**

SOME TAX SUPPORT PROVIDED FOR CROSS-BORDER GIVING IN THE EU:

- European Court of Justice: comparability test
- Small number of bilateral treaties (eg. F-CH)
- Reciprocity Agreements (e.g. D-VD)
- Specific recognition
- Many countries allow domestic charities to operate abroad without losing tax concessions
- Additional restrictions or reporting requirement (more difficult to check)

TAX ASPECTS OF PHILANTHROPY

TRANSNATIONAL GIVING



› International grant-making

US IS HOME TO SOME OF THE LARGEST FUNDS WITH INTERNATIONAL GRANTS:

- More than USD 10 b p.a. (source OECD)
- Half of it by Bill & Melinda Gates Foundations
- Other half (The Susan Thompson Buffett Foundation, Ford Foundation, Foundation to Promote Open Society, etc.)
- Private and Government project financed
- Specific procedure to comply with to make sure that grants used on purpose (US)
- Only grants to “qualified **donees**” abroad (Canada)

TAX ASPECTS OF PHILANTHROPY

TRANSNATIONAL GIVING – AGREEMENT BETWEEN FR AND CH

Texte original

0.642.034.91

Accord

**entre le Conseil fédéral suisse
et le Gouvernement de la République française
concernant le traitement fiscal des libéralités faites
dans des buts désintéressés**

Conclu le 30 octobre 1979
Entré en vigueur par échange de notes le 5 janvier 1982
(Etat le 22 octobre 2010)

Le Conseil fédéral suisse,

agissant au nom des cantons de Zurich, Berne, Lucerne, Uri, Unterwald-le-Haut, Glaris, Zoug, Fribourg, Bâle-Ville, Bâle-Campagne, Schaffhouse, Appenzell Rhodes extérieures, Appenzell Rhodes intérieures, Saint-Gall, Grisons, Argovie, Thurgovie, Vaud et Neuchâtel¹

et

le Gouvernement de la République française,

désireux de faciliter les donations et successions en faveur des collectivités publiques et des organismes à buts exclusivement désintéressés,

considérant que les législations fiscales en vigueur tant en France que dans les cantons suisses prévoient l'exonération des donations et successions en faveur des collectivités publiques et des organismes à buts exclusivement désintéressés,

désireux d'étendre cette exonération aux collectivités et organismes de l'autre Etat sous réserve de réciprocité,

sont convenus des dispositions suivantes:

Art. 1

1. Les donations et successions portant sur des biens mobiliers ou immobiliers consenties ou dévolues à la Confédération suisse, aux cantons suisses parties au présent accord, leurs communes ou autres collectivités locales, sont exonérées en France des droits de mutation à titre gratuit entre vifs et par décès.

2. La même exonération s'applique aux donations et successions consenties ou dévolues aux organismes suisses à buts exclusivement désintéressés, exerçant leur activité notamment dans le domaine scientifique, artistique, culturel ou charitable, à

RO 1982 297

¹ Sont aussi parties à l'accord, le canton du Jura en vertu d'un échange de notes entre l'Ambassade de Suisse en France et le Ministère français des affaires étrangères des 20 fév./18 mars 1980, le canton du Tessin depuis le 29 nov. 1982 (RO 1982 2302), le canton de Genève depuis le 16 juin 1993 (RO 1993 3162) et le canton du Valais depuis le 22 oct. 2010 (RO 2010 5679).

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TRANSNATIONAL GIVING – AGREEMENT BETWEEN FR AND CH

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Impôts directs

condition que cette exonération soit admise en faveur d'organismes de même nature créés ou organisés en France.

Art. 2

1. Les donations et successions portant sur des biens mobiliers ou immobiliers consenties ou dévolues à la République française (Etat, collectivités territoriales et régions) sont exonérées, dans les cantons parties au présent accord, de l'impôt sur les donations et sur les successions (impôt sur les parts héréditaires et impôt sur la masse successorale).

2. La même exonération s'applique aux donations et successions consenties ou dévolues aux organismes français à buts exclusivement désintéressés, exerçant leur activité notamment dans le domaine scientifique, artistique, culturel ou charitable, à condition que cette exonération soit admise en faveur d'organismes de même nature créés ou organisés dans les cantons parties au présent accord.

Art. 3

Seules les autorités compétentes des deux Etats contractants, soit pour la France le Ministre du Budget (Service de la Législation fiscale) et pour la Suisse l'Administration fédérale des contributions agissant au nom des cantons parties au présent accord, peuvent communiquer directement entre elles. Elles s'efforcent de résoudre, par voie d'accord amiable, les difficultés auxquelles l'application du présent accord peut donner lieu.

Art. 4

1. Chacun des Etats notifiera à l'autre l'accomplissement des procédures requises par sa législation pour la mise en vigueur du présent accord. Celui-ci entrera en vigueur à la date de la dernière de ces notifications. Ses dispositions s'appliqueront pour la première fois aux donations intervenues et aux successions ouvertes à compter de l'entrée en vigueur.

2. D'autres cantons suisses pourront, par l'intermédiaire du Conseil fédéral suisse, adhérer au présent accord. Le Conseil fédéral suisse notifiera chaque nouvelle adhésion au Gouvernement de la République française. A l'égard de chaque canton adhérent, le présent accord entrera en vigueur à la date de cette notification.

Art. 5

1. Le présent accord demeurera en vigueur tant qu'il n'aura pas été dénoncé.

2. Le Gouvernement de la République française pourra dénoncer le présent accord, à l'égard d'un, de plusieurs ou de tous les cantons, par une notification au Conseil fédéral suisse. Le Conseil fédéral suisse notifiera au Gouvernement de la République française la dénonciation du, des ou de tous les cantons parties ou adhérents à l'accord.

3. La dénonciation prendra effet un mois après la notification prévue à l'alinéa précédent.

Libéralités faites dans des buts désintéressés – Ac. avec la France

0.642.034.91

Fait le 30 octobre 1979, à Paris, en double exemplaire, en langue française.

Pour le
Conseil fédéral suisse:

François de Ziegler

Pour le Gouvernement
de la République française:

Jean Meadmore

TAX ASPECTS OF PHILANTHROPY

TRANSNATIONAL GIVING – AGREEMENT BETWEEN FR AND CH

› PREAMBLE: PARTIES TO THE AGREEMENT

- › French State and Swiss Confederation but acting on behalf of some cantons e.g. Vaud (Geneva only since 16 June 1993)

› ART. 1: DONATIONS AND BEQUESTS TO SWISS PUBLIC BODIES AND TAX EXEMPT CHARITIES BY FRENCH TAXPAYERS

- Exemption from French “transfer” tax (*droits de mutation à titre gratuit*)
 - If exemption applicable to “similar entities” (*organismes de même nature*) in France
 - Only if specific purpose

› ART. 2: DONATIONS AND BEQUESTS TO FRENCH PUBLIC BODIES AND TAX EXEMPT CHARITIES BY SWISS TAXPAYERS

- Exemption from Swiss tax (cantonal donation and inheritance taxes)
 - If exemption applicable to “similar entities” (*organismes de même nature*) in the respective Canton where the donor is domiciled
 - Only if specific purpose

› ART. 3 – 5: COMPETENT AUTHORITIES / RATIFICATION AND TERMINATION CLAUSES

TAX ASPECTS OF PHILANTHROPY

TRANSNATIONAL GIVING – RECIPROCITY AGREEMENT E.G. VAUD - GERMANY

I C
ALLEMAGNE

Vaud

1. Déclaration de réciprocité du Ministre des Finances du Reich

du 24 novembre 1926¹⁾

2. Déclaration de réciprocité du canton de Vaud

du 14 août 1930

Vu la décision du Conseil du 25 mars dernier et l'office du Département fédéral de justice et police, du 4 août courant,

Sous réserve expresse de réciprocité,

Le Conseil d'Etat du canton de Vaud

déclare:

que les libéralités à cause de mort ou entre vifs, faites aux institutions ci-après, seront exonérées de tout droit de mutation, sous réserve de réciprocité et faculté de révocation en tout temps:

- a) en faveur des églises allemandes, ainsi que des fondations, sociétés, associations et établissements à personnalité juridique, ayant leur siège en Allemagne et y poursuivant exclusivement un but de bienfaisance, d'utilité publique ou religieux;
- b) en faveur d'œuvres exclusivement religieuses, d'utilité publique ou de bienfaisance, s'exerçant sur le territoire de l'Allemagne;

pour autant qu'il soit assuré que la libéralité est affectée à sa destination, n'est pas restreinte à des familles ou personnes déterminées et que le fisc allemand lui-même les exempte du droit précité.

3. Note de l'Ambassade de la République fédérale d'Allemagne au Département politique fédéral

du 8 août 1960²⁾

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TRANSNATIONAL GIVING – RECIPROCITY AGREEMENT E.G. VAUD - GERMANY

› **Reciprocity Agreement to recognise donations to foreign charities entered into by most cantons**

France (23 cantons)

Germany (11 cantons)

Israel (1 canton)

Liechtenstein (4 cantons)

USA (2 cantons)

(source ESTV - Déclarations de réciprocité)

› **Example: Vaud (14 August 1930) – Germany (24 November 1926)**

➤ In favour of

- German churches
- Charities active in Germany

➤ If tax exempt and recognised in Germany

Very specific and probably designed for an individual case



KEY TAKEAWAYS FOR TAXATION AND PHILANTHROPY

TAX ASPECTS OF PHILANTHROPY

KEY TAKEAWAYS FOR TAXATION AND PHILANTHROPY

1. Complex area (even within a country like Switzerland) with many pitfalls
2. Universal recognition of justification (all countries have some kind of incentives)
3. Very important economical actor and factor (e.g. Wilsdorf, Bosch)
4. Transnational philanthropy will be more in the focus due to globalisation
5. National answers to a global phenomenon: willingness to act at global level
6. Beware of abuses (not only tax but also criminal or terrorist issues)
7. More *red tape* to be expected !
8. Are you ready ?



TRANSNATIONAL TAXATION NETWORK
A WORLD WIDE ORGANIZATION OF INDEPENDENT PROFESSIONAL FIRMS



THANK YOU FOR YOUR ATTENTION

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