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# TAX REACTIONS ON ENTREPRENEURIAL PHILANTHROPY

## The case of the Netherlands

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### 1 Introduction

Traditionally, philanthropy is thought to be an activity of rich individuals and charities funded by individuals. In this context, donations, transfers without a direct return, are the typical form of philanthropy. It is important to stress that these are transfers without a *direct* return, as in many cases, donors do expect an indirect return. In their literature survey on philanthropy, Bekkers and Wiepking (2011) identified eight key mechanisms that in combination drive individual philanthropy: (1) awareness of (perceived) need, (2) solicitation (being asked for a donation), (3) cost and benefits of a donation, (4) altruism, (5) psychological benefits (warm glow), (6) reputation, (7) values and (8) (perceived) effectiveness of a donation. Such a combination of motives was already present when the typical Dutch *hofjes* were founded in the 14th century. These *hofjes* are an early form of private social housing: small city houses gathered around a green which provided free or cheap housing for the elderly and the poor. For founders, the indirect return could be an increase or confirmation of prestige, social status and better chances to get to heaven after death: the poor as treasurer of heaven (Hooijer 2019, Chapter 2). A similar mix of charitable, social status and immortality motives can be found in the context of, for example, current-day art patrons. Donating to the arts can give access to certain social networks and is expected of those in certain circles. It can even make the donor immortal when a room or an entire gallery is given her name. It is, therefore, important to recognize that individual philanthropy is usually not purely altruistic. Bekkers and Wiepking (2011, p. 936) even found in their literature survey that private benefits dominate altruistic motives.

Nowadays, philanthropy is no longer an activity of individuals only. Companies have also become important players. Some well-known examples of corporate foundations are the Carlsberg Foundation (one of the oldest corporate foundations, founded in Denmark in 1876), the IKEA Foundation and the Wal-Mart Foundation. Philanthropy has, in this development, followed the general economy in which economic activities were no longer only enterprises of individuals but also bundled in legal forms, companies.

Companies and (former) entrepreneurs initiating philanthropic activities brought their entrepreneurial customs, values and expectations into the world of philanthropy. This influenced philanthropic activities. Entrepreneurs and companies have certain expectations and introduce

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their business attitude into the philanthropic world. This leads to new forms of philanthropy next to the conventional form of donations. Examples of such new forms of philanthropy are program-related investments and donations to for-profit companies.

These developments in the world of philanthropy lead to several questions related to tax incentives for charitable donations and charities. A tax incentive is a provision in tax legislation, regulation or practice that leads to a reduction or postponement of tax income for the government and deviates from the ordinary or benchmark structure of a tax system.[1] In short: tax legislation is used to give fiscal rewards for certain desired behaviour. Tax incentives for corporate philanthropy include, for example, deductibility of gifts and an exemption of gift tax.

Many questions that arise as a result of corporate philanthropy in relation to tax incentives are at the top of the charitable agenda in the Netherlands. As the Dutch tax rules for charitable activities are still based on traditional forms of philanthropy, the Dutch tax administration and the philanthropic world are currently struggling to fit the more entrepreneurial forms of philanthropy into this system. This chapter takes, therefore, after a short discussion of the general business rationales for corporate philanthropy, the Netherlands as an example. I give a brief overview of corporate philanthropy in the Netherlands and discuss problems which have been encountered in the Netherlands in relation to deductibility of corporate gifts, donations of shares, donations to for-profit entities and program-related investments, solutions that have already been found and solutions that are proposed. Furthermore, I discuss the threats a proposal for an EU Directive on a common corporate tax base entails for an EU level playing field of corporate giving and competition for corporate donations.

## 2 Business rationale for corporate philanthropy

Just as individuals do not only have altruistic motives for philanthropy, corporate philanthropic activities are usually not done without a business rationale. I, therefore, respectfully disagree with OECD (2020, pp. 102–103) that seems to make a sharp distinction between sponsoring (business costs) and donations (not business cost). According to OECD (2020), sponsoring is fully deductible as business costs as in return, "corporations purchase publicity and advertising from philanthropic entities for the fair market value of those services". Donations do not seem to be regarded as business costs by OECD (2020), as there is deemed not to be a return. This echoes the French system, where all payments to philanthropic entities are considered donations (OECD 2020, p. 103) and hence not business costs. However, this disregards the fact that businesses usually have a clear rationale for their actions and that although donations do not lead to a direct return from the philanthropic entity, they do lead to indirect returns, which provide a business rationale for the donation.

There is a large strand of management literature on the impact of so-called corporate social responsibility (CSR) activities on firm performance.[2] CSR firms are found to have a better long-run performance. CSR is regarded to contribute to an organization's reputation and thus to increase sales and profits. A well-designed CSR policy can reinforce the authenticity of a brand. However, CSR is not only a marketing strategy but also a recruiting strategy, especially for millennials who, both as consumers and as employees, are found to value CSR even more than previous generations (McGlone, Winters Spain and McGlone 2011). CSR has also been found to be increasingly important for competitiveness, because it can lead to innovation. Furthermore, CSR can not only lower the cost of equity but also of debt (El Ghoul et al. 2011; Goss and Roberts 2011).

Expectations for CSR performance have progressed from "net zero" practices aimed primarily at reducing or offsetting negative impact toward "net positive" contributions: minimizing negative impact while also contributing positively to society and the environment. Customers and employees expect CSR efforts from companies.

A 2017 KPMG survey found that CSR reporting is by now standard practice for large and mid-cap companies around the world, an upward trend also driven by investor pressure. Amongst the world's 250 largest companies, the reporting rate was 93%, and in the worldwide sample of the top 100 companies by revenue in each of the 49 countries studied by KPMG, the reporting rate was 75% (KPMG 2017).

In short: corporate philanthropy is regarded a strategic activity that may play an important role in the process of stakeholder management, including enhancing relations with employees, customers and regulators (Brammer and Milington 2006). Management literature, therefore, shows that there is a valuable indirect return for donations and gives a clear business rationale for philanthropic activities. Given this business rationale, it would follow that such donations are to be regarded as business costs.

## 3 Corporate philanthropy in the Netherlands

Several Dutch companies have incorporated charitable foundations that are registered charities in the Netherlands.[3] According to Lonneke Roza in Venema (2018), there were at least 75 corporate foundations in the Netherlands in 2018. This does not seem like much, given the fact that there are almost 44,000[4] registered charities in the Netherlands, but Roza noted that she made a conservative estimate, as corporate foundations are not registered separately. Furthermore, many companies do not incorporate their own foundation but donate directly to the causes they want to support. In addition, charities like the Prins Bernhard Cultuur Fonds offer companies the possibility to create an endowed fund.[5] This means that the company does not have to incorporate and maintain a charity itself.

In order to obtain charity registration, corporate foundations must meet the same requirements other charities must meet for registration, such as the expenses being for more than 90% in the public benefit; having an independent board (meaning that at least half of the board members must be independent from the company or its shareholders); restrictions regarding the remuneration of board members; the obligation to publish information, including recent accounts and a policy plan, on a website; and articles of association stating that any liquidation proceeds must go to a similar charity.[6]

Given the 90% public benefit requirement, corporate foundations are not allowed to spend more than 10% of their expenses for the benefit of the company or its shareholders. In cases where there is a very close bond between the activities of the company and the CSR activities, a corporate foundation might not be the best solution for corporate philanthropy. If, for example, the philanthropic activities focus on premises of the company and are all done with employees of the company, it might be more cost effective to perform the activities from a business unit within the company. The same applies when the philanthropic activities are relatively limited or are mainly in the form of donations to charities.

## 4 Deductibility of corporate donations and Dutch tax law in general

In the Netherlands, business costs, for example, costs made for business reasons, are, in principle, fully deductible.[7] There are exceptions to this principle. For example, gifts that are made for business reasons but meet the definition of bribes in criminal law are not deductible.[8] However, bribes are usually not part of a corporate philanthropy policy and can safely be regarded as being out of scope for purposes of this chapter.

From the discussion of management literature in Section 2, it can be derived that in most cases, corporate charitable gifts will be done for business reasons such as meeting expectations of consumers and employees. In my view, it is not necessary that there be a direct return provided by the recipient, such as in the case of sponsoring. An expected indirect return, for example, in terms of reputation, brand value or employee or customer expectations would also suffice for the gift to be business-like. In those cases, corporate gifts are fully deductible as business costs in the Netherlands, without a threshold or a maximum. For these business gifts, it is not relevant whether the recipient is a registered charity. This deduction can, in my view, not be regarded a tax incentive, as it stems from the ordinary Dutch tax system that allows deduction of business costs.

If, however, costs are not made for business reasons but for shareholder reasons, these are, in principle, not deductible. This means that if, for example, a company gives a large amount to the church the sole shareholder, an individual, is member of, one must establish what the reason was for this gift. If there is no business reason for the gift and it was only done because the shareholder wanted the company to do so, this would not be a deductible gift. For Dutch tax purposes, this would be deemed a hidden non-deductible distribution of profit (dividend) to the shareholder and subsequently a gift from the shareholder to the church. The dividend will be taxed with personal income tax (PIT) in the hands of the individual shareholder, but she can claim a deductible gift for the same amount if all PIT requirements for gift deduction are met. One exception to this rule is that corporate gifts that are substantiated with written documents and are made to charities registered in the Netherlands[9] are deductible up to a maximum of the highest of 50% of the profits or EUR 100,000 (the gift deduction).[10] For business gifts made for business reasons, this provision is irrelevant, as such gifts are fully deductible in the same way as any other business costs are. Especially for small and medium-sized enterprises (SMEs), it is of importance that it is stated in a decree that an entity making a gift because of personal charitable wishes of the shareholder can deduct this gift, making use of this gift deduction (and within the boundaries of the gift deduction).[11] This is a deviation from the ordinary application of the Dutch corporate income tax and, therefore, a tax incentive.

This tax incentive is attractive for a shareholder if her private funds do not suffice to donate directly. However, if the shareholder has enough private funds and sufficiently high taxed income, donating directly might be more attractive from a tax point of view. In 2021, the Dutch corporate income tax rate is 15% for the first EUR 245,000 and 25% for the remainder. The highest tax rate in personal income tax is 49.5% in 2021 (this rate applies, for example, to wages and income from independent activities; the lowest rate for these activities in 37.1% in 2021), and the lowest rate (for income from a substantial shareholding) is 26.9% in 2021. A gift to a charity registered in the Netherlands can, if certain requirements are met, be deducted in full.[12] Even though the tax rate against which a gift can be deducted is no longer the top rate of 49.5% but a rate that is gradually reduced to 37.1%, a shareholder who (or whose partner, as gifts can also be taken into account by one's partner for tax purposes) has sufficient taxed income can, therefore, benefit more from donating in private than from having the donation being made by her company.

The cap of EUR 100,000 makes the corporate gift deduction unattractive for larger companies that will usually be expected to spend much more on corporate giving. However, if the gifts can be regarded as business expenses, this restriction is not of relevance.

## 5 Gifts in the form of shares

In the Netherlands, gifts can be done in cash and in kind, including in the form of shares. In this respect, there is no difference between gifts that are deducted as business expenses or that are deducted under the gift deduction.

However, for charities that receive shares of a company, this is not without difficulties. The Dutch tax administration requires a yearly mark-to-market valuation of shares owned by a charity, demanding that an increase in value of the shares, including unrealized gains, lead to an increase of charitable spending, as otherwise, according to the tax administration, the requirement that a charity may not own more assets than necessary for the continuity of its activities (in short: anti-hoarding requirement) is not met.

It is questionable whether this view is correct. It is disputed in literature, but it was never tested in court. However, in 2019, the Ministry of Finance announced a policy change according to which a mark-to-market would not be necessary (anymore). In case of large shareholdings, the Ministry suggested requiring that the charity have enough control to ensure that enough funds will flow to the charity to fund its activities. The Ministry of Finance announced it would, together with the charitable sector, develop guidance on this requirement.[13] This guidance might be included in a decree. The latter would give the guidance a stronger status, also in relation to the principle of legal expectations and an obligation for the tax administration to apply the guidance. The Ministry of Finance promised that this guidance would be published in 2020,[14] but this promise was not met.

## 6 Donations to for-profit companies

Some entrepreneurial charities donate to for-profit companies. An example is the Bill and Melinda Gates Foundation that gives donations to pharma companies to develop vaccines. The reason for such donations us usually a market failure. For example, from a humanitarian point of view, vaccines that can protect against infectious diseases in developing countries should preferably be cheap and free from patents. However, developing such vaccines requires substantial resources. These can only be recovered through high prices for vaccines protected by patents. That makes the vaccines out of reach for the poor. The market mechanism encourages developing medicines that can be protected by patents and cure diseases found in rich countries that can pay high medicine prices.

The market failure is that not all positive external effects are included in the price. Rich countries benefit if infectious diseases are contained in poor countries. Through mutations, these diseases can also become dangerous for people living in rich countries. Furthermore, developing such medicines might lead to valuable knowledge which can be used again later. Such positive external effects can be a reason for governments to support research. Developing countries usually lack the resources to fund such research. Charities may step in and enable companies to develop vaccines and medicines that are of importance for developing countries.

The Dutch tax administration can be reluctant to regard such donations to for-profit entities as charitable. As the Dutch charitable status requires that at least 90% of the spending be for the public benefit, this point of view can be problematic. The philanthropic sector has asked the Dutch Ministry of Finance to regard donations to for-profit entities as charitable if the donation pursues one or more of the philanthropic objects of the charity. It is not yet clear whether the Ministry of Finance is willing to meet this wish of the sector.

## 7 Program-related investments

An alternative for a donation is a loan at a low interest rate or taking a minority share. The high risk of such investments is not compensated by financial means. A financial reward is also not the primary purpose of such investments. Well known are micro-financing initiatives in developing countries supporting people to support themselves instead of becoming dependent on donations, following the well-known quote, "Give a man a fish, and you feed him for a day. Teach a man to fish, and you feed him for a lifetime".[15]

This kind of philanthropy is not new. At his death in 1790, Benjamin Franklin bequeathed £1,000 to both Boston and Philadelphia. This bequest had to be used the following 200 years to give loans to young apprentices as he had once been. The interest-bearing loans had to be paid back and then be used to provide new loans. In 1990, the balance in the Boston trust was $4.5 million, while the Philadelphia account was valued at $2 million (Yenawine 2016).

This revolving fund made Franklin the founding father of what were called program-related investments (PRIs) by the Ford Foundation in 1968. According to the Ford Foundation (1974), PRIs could achieve certain philanthropic goals more effectively than donations. Already in 1969, the United States included this kind of philanthropic spending in tax legislation. PRIs generally come out of a foundation's grant budget and count toward the 5% of assets that U.S. foundations are required, under tax law, to pay out every year. The U.S. Internal Revenue Code defines PRIs as those investments in which (1) the primary purpose is to accomplish one or more of the foundation's exempt purposes, (2) production of income or appreciation of property is not a significant purpose and (3) influencing legislation or taking part in political campaigns on behalf of candidates is not a purpose (Internal Revenue Service 2020). Such PRIs must be distinguished from so-called mission-related investments (MRIs, also referred to as impact investments) that are designed to generate both a social and a financial return. MRIs are not deemed a charitable activity, nor do they qualify as charitable distributions in the United States (Levitt 2011).

The U.S. Internal Revenue Service (IRS) provides for extensive guidance on PRIs (Internal Revenue Service 2020). In determining whether a significant purpose of an investment is the production of income or the appreciation of property, it is relevant for U.S. tax purposes whether investors who engage in investments for profit only would be likely to make the investment on the same terms as the private foundation. If an investment incidentally produces significant income or capital appreciation, this is not, in the absence of other factors, regarded as conclusive evidence that a significant purpose is the production of income or the appreciation of property. To be program related, the investments must significantly further the foundation's exempt activities. They must be investments that would not have been made except for their relationship to the exempt purposes. The investments include those made in functionally related activities that are carried on within a larger combination of similar activities related to the exempt purposes. Recipients of PRIs do not have to be charitable themselves and may even be for profit. The IRS guidance mentions various examples of PRIs, including low-interest or interest-free loans to needy students, high-risk investments in non-profit low-income housing projects and investments in businesses in low-income areas.

Based on the Charities (Protection and Social Investment) Act 2016, the United Kingdom also recognizes PRIs for charitable purposes. PRIs that further the object of the charity are considered for the UK expenditure requirement (Charity Commission for England and Wales 2017).

The situation is completely different in the Netherlands. The Dutch tax administration regards PRI in the same way as other investments. This means that charities that invest in PRI on a large scale may be confronted with the anti-hoarding requirement that was discussed in Section 5. This problem has been brought to the attention of the Ministry of Finance. The Ministry announced that in collaboration with the philanthropic sector, guidance would be published in 2020 on PRI (confusingly called impact investments by the Ministry of Finance) that do not breach the anti-hoarding requirement.[16] However, this promise was not met.

## 8 Corporate giving, EU law and the Common Consolidated Corporate Tax Base

The decision whether to provide tax benefits for corporate giving is at the discretion of national governments, also in the European Union (EU). As is the case with all tax legislation, the fiscal sovereignty of EU Member States is, however, restricted by EU law, including the fundamental freedoms included in the Treaty on the Functioning of the EU (TFEU). In various judgments, the ECJ held that a different treatment of non-resident charities solely based on their place of residence is a restriction of the free movement of capital of article 63 TFEU and, therefore, not allowed.[17] Member States are not obliged, however, to mutually recognize each other's charities. They can still impose their own charity requirements on foreign charities, including a registration requirement. This means that also after this case law, tax benefits for corporate charitable giving vary widely in the EU.

On 16 March 2011, the European Commission published a Proposal for a Common Consolidated Corporate Tax Base (CCCTB).[18] This proposal aimed to provide large companies with a single set of corporate tax rules for doing business across the internal market and included a provision on charitable gifts. However, the Member States could not come to an agreement on this proposal. It was withdrawn and replaced on 25 October 2016 by a proposal for a two-step process: first a CCTB without consolidation and then a full CCCTB.[19] The 2016 CC(C)TB is still in discussion. The provision on charitable gifts differs significantly from the 2011 proposal. It would significantly change the landscape for corporate donations in the EU.

The 2011 CCCTB seemed to be derived from the French corporate gift deduction. Based on article 12 of the 2011 CCCTB, gifts to charities would be deductible up to a maximum of 0.5% of revenues in the tax year. Furthermore, only gifts to charitable bodies as defined in article 16 of the 2011 CCCTB could be deducted.[20] In a proposal for amendments,[21] it was suggested to add that the purpose had to be included in a list in Annex III to the Proposal.[22] The aim of including this list was to align the CCCTB definition of charitable bodies with that in Proposal for a Council Regulation on the Statute for a European Foundation (FE).[23] The latter would have enabled the incorporation of a separately constituted EU entity for a public benefit purpose. Member States had to regard an FE as equivalent to resident charities and give them, their donors and their beneficiaries the same tax treatment as resident charities. However, Member States could not unanimously agree to the FE Proposal, and in March 2015, it was withdrawn.[24]

It seems that also within the context of the CC(C)TB, Member States could not come to an agreement on what constitutes a public purpose. Article 9(4) of the 2016 CCTB simply provides that Member States may provide for the deduction of gifts and donations to charitable bodies. A definition of "charitable body" is missing. Formulating such definition seems to be left to the Member States. This means that if the 2016 CC(C)TB would be adopted, tax benefits for corporate charitable giving would be as divergent in the EU as they are today. The CC(C)TB will not lead to a level playing field for businesses providing donations to philanthropic activities. Depending on the Member State in which a donation is made, there will be more or fewer possibilities to deduct the gifts.

One could question whether corporate charitable gifts that are part of a CSR strategy could not simply be deducted as business costs under the CC(C)TB. Given the fact that the CC(C)TB would only apply to large corporations, it would not be very likely that charitable gifts would be based on shareholder motives, and one would expect a business rationale. Article 9(1) 2016 CCTB provides that expenses are deductible only to the extent that they are incurred in the direct business interest of the taxpayer. Article 9(2) elaborates that the expenses referred to in article 9(1) include all costs of sales and all expenses, net of deductible value added tax, that the taxpayer incurred with a view to obtaining or securing income, including costs for research and development, acquisition or construction costs of assets less than EUR 1,000 and costs incurred in raising equity or debt for the purposes of the business. If these provisions would apply to charitable gifts, there would not be any divergence between Member States with respect to corporate charitable giving. This would enhance the internal market.

However, given the fact that the deduction of charitable gifts is specifically included in article 9(4) and that the treatment of gifts in the CC(C)TB seems to be derived from the French system that does not regard donations as business costs, it might be argued that charitable gifts are not regarded as deductible expenses within the meaning of section 9(1). It might be that these costs are not regarded as being in the *direct* business interest of the taxpayer and cannot be regarded as being incurred with a view to obtaining or securing income. This would not be in accordance with the evidence from management literature that CSR, including charitable corporate giving, has a clear business rationale, just as other marketing and recruitment strategies do, and can increase profits and reduce the costs of attracting debt.

It is difficult to understand why regular marketing and recruitment costs would be deductible under article 9(1) and CSR costs in the form of charitable donations would be restricted by national provisions based on article 9(4). For companies that would be taxed in the Netherlands under the CC(C)TB, this would, for example, mean that they could no longer fully deduct these gifts as business costs but would be limited by the maximum of EUR 100,000. The latter amount might suffice for an SME but is not even close to the amount of corporate giving that the public expects from large companies.

When questioned by Parliament on the impact of the CC(C)TB on corporate charitable giving by Dutch companies, the Dutch State Secretary of Finance answered that given the various objections of several Member States, including the Netherlands, it is not to be expected that Member States will come to an agreement soon on the CCTB proposal.[25] However, this is beside the point that it would be important for a level playing field in the EU internal market that the Member States give more thought to the business rationale for corporate charitable giving by large businesses within the CC(C)TB scope and consider including such gifts in the already quite specific enumeration of article 9(2).

## 9 Conclusion

Corporate philanthropy is here to stay in the Netherlands. Corporate donations as such are not problematic from a Dutch tax perspective, as these will usually be deductible in the same way as regular business costs are. This might change, however, if the CC(C)TB Directive were adopted. In that case, such donations might only be deductible up to an amount of €100,000. The CC(C)TB would, therefore, negatively affect the level playing field in the EU for corporate philanthropic donations and receiving philanthropic organizations and thus have a negative effect on the internal market.

Currently, in the Netherlands, it gets complicated when charities become entrepreneurial in the way they want to achieve their objectives. In this respect, the tax legislation is lagging behind in the Netherlands. It is problematic for charities to comply with the requirements for charitable status when shares were donated to them, when they engage in PRI or when they donate to for-profit entities. This charitable status is necessary to be eligible for tax incentives. It is to be hoped that the Dutch Ministry of Finance will publish the promised guidelines soon and that these will be more adaptive to modern forms of philanthropy. As it is, Dutch tax law is a hindering factor for charities that want to apply more entrepreneurial forms of philanthropy to achieve their goals.

## Notes

1 Various terms are used for this phenomenon, including tax expenditure, tax break, tax subsidy and tax concession. For an extensive discussion on what tax incentives are, I refer to Hemels 2017.

2 For an overview of sources, I refer to Orlitzky and Benjamin (2001), Bocquet et al. (2013), Bernal-Conesa, de Nieves Nieto and Briones-Peñalver (2017) and Carini et al. (2017).

3 For example, the Philips Foundation, ING Nederland Fonds and Facilicom Foundation.

4 Kamerstukken II, 2019–2020, 35 437, no. 7, p. 18.

5 For example, endowed corporate funds within the Prins Bernhard Cultuurfonds: Ahrend Fonds, Amsterdam Institute of Finance Fonds and AVRO Cultuurfonds (Prins Bernhard Cultuurfonds 2021).

6 Article 5b AWR in connection with article 1a Uitvoeringsregeling AWR 1994 (Implementing Decree AWR, UAWR).

7 Article 8(1) Wet op de vennootschapsbelasting 1969 (Corporation Tax Act 1969; CITA) in connection with article 3.8 Wet inkomstenbelasting 2001 (Personal Income Tax Act 2001, PITA.

8 Article 8(1) CITA in connection with article 3.14(1)(h) PITA.

9 These charities do not necessarily have to be resident in the Netherlands, as charities resident in other countries (both EU and third countries) can also apply for registration in the Netherlands (article 5b Algemene wet inzake rijksbelastingen (General State Tax Act, AWR). It is not relevant if non-resident charities are registered in their country of residence, but they have to meet all Dutch charity requirements. Various non-resident charities, including corporate charities, are registered in the Netherlands. Just to mention some examples: Alliance Foundation (Switzerland), the Fondazione Prada (Italy) and Shell Foundation (United Kingdom). This can be found on the public register https://www.belastingdienst.nl/rekenhulpen/anbi_zoeken/.

10 Article 16 CITA.

11 Decree of 31 October 2016, no. BLKB2016/152, Staatscourant 2016/58695.

12 So called periodic gifts are, in short, gifts to a charity registered in the Netherlands that are agreed on in a deed and that are made in yearly instalments for a minimum of five years (articles 6.34 and 6.38 IB). These gifts are fully deductible without a threshold or a maximum. Other gifts (gifts that do not meet the requirements of a periodic gift) are deductible insofar as these exceed 1% of the income up to a maximum of 10% of the income. In practice, all substantive gifts are given the form of a periodic gift.

13 Kamerstukken II, 2018–2019, 35 026, no. 63, p. 9.

14 Kamerstukken II, 2019–2020, 35 437, no. 7, p. 6.

15 For the unclear origins of this quote, I refer to Quote Research (2015).

16 Kamerstukken II, 2019–2020, 35 437, no. 7, p. 6.

17 Case C-386/04, Stauffer, 14 September 2006, ECLI:EU:C:2006:568; Case C-318/07, Persche, 27 January 2009, ECLI:EU:C:2009:33; Case C-386/04, Stauffer, 14 September 2006, ECLI:EU:C:2006:568; Case C 25/10, Heukelbach, 10 February 2011, ECLI:EU:C:2011:65; Case C 10/10, Commission v Austria, 16 June 2011, ECLI:EU:C:2011:399; Case C-485/14, Commission v. France, 16 July 2015, ECLI:EU:C:2015:506. In the latter case, the Court pointed out that Art. 40 of the European Economic Area (EEA) Agreement on the free movement of capital between nationals of States party to the EEA Agreement must be interpreted in the same way as Art. 63 TFEU.

18 COM(2011) 121 final. Hereinafter: 2011 CCCTB.

19 COM(2016) 685 final and COM(2016) 683 final. The latest Presidency compromise text on the CCTB proposal is dated 6 June 2019 https://data.consilium.europa.eu/doc/document/ST-9676-2019-INIT/en/pdf. It is this version that is used as reference in this chapter, and it will be referred to as 2016 CC(C)TB.

20 The requirements were that: (1) the body had legal personality and was a recognized charity in its state of establishment; (2) its sole or main purpose and activity were one of public benefit; an educational, social, medical, cultural, scientific, philanthropic, religious, environmental or sportive purpose was considered to be of public benefit, provided that it was of general interest; (3) its assets were irrevocably dedicated to the furtherance of its purpose; (4) it was subject to requirements for the disclosure of information regarding its accounts and its activities; (5) it was not a political party as defined by the Member State in which it was established.

21 Council of the EU, Presidency comments on the compromise proposal for a CCCTB, 16 April 2012, no. 8790/12, FISC 52, http://www.uva.nl/binaries/content/documents/personalpages/n/o/m.f.nouwen/nl/tabblad-een/tabblad-een/cpitem%5B14%5D/asset?1368633253789.

22 The purposes included were: (1) arts, culture or historical preservation; (2) environmental protection; (3) civil or human rights; (4) elimination of discrimination based on gender, race ethnicity, religion, disability, sexual orientation or any other legally prescribed form of discrimination; (5) social welfare, including prevention or relief of poverty; (6) humanitarian or disaster relief; (7) development aid and development cooperation; (8) assistance to refugees or immigrants; (9) protection of, and support for, children, youth or the elderly; (10) assistance to, or protection of, people with disabilities; (11) animal protection; (12) science and research; (13) education and training; (14) European and international understanding; (15) health, physical well-being and medical care; (16) assistance to, or protection of, vulnerable and disadvantaged persons; (17) the promotion of philanthropy.

23 COM(2012) 35 final, 2012/0022 (APP).

24 Withdrawal of commission proposals, 2015/C 80/08, *Official Journal of the EU*, C80/17.

25 Kamerstukken II, 2018–2019, 35 026, nr. 67, p. 6.

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