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Tax Incentives for Charitable Giving as a Policy Instrument: Theoretical Discussion and Latest Economic Research

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This article explores a long-standing research and policy question on whether tax incentives for charitable giving are desirable from legal and economic perspectives. The author discusses legal and empirical aspects that are important in designing tax incentives for charitable giving. Firstly, this article introduces the general theoretical criticism related to the use of tax expenditures as policy measures. Secondly, the author reviews the most recent economic literature that studies various aspects related to the efficiency of tax incentives for charitable giving. In conclusion, both theoretical and empirical research argues that incentivizing charitable giving via tax incentives (especially tax deductions) is not the most equitable and/or the most efficient policy option, at least concerning the current forms of tax incentives. Financial incentives structured as direct expenditures, such as matching grants for charitable donations, may be a more suitable policy option. Economic literature proposes ways to make tax incentives more efficient, for instance taking into account heterogeneous taxpayers' responses to tax incentives. Such policy options should however be carefully evaluated from a legal perspective, especially in light of the ability-to-pay principle.

1. Introduction

The political and academic debate about the use of tax incentives for charitable giving is neither new nor unstudied. However, as happens with certain scientific discussions, the general, political and even academic interest in them is cyclical: it may decline for a while and then be rekindled due to some circumstances. At present, the interest in tax matters related to philanthropy seems to be high in many (developed) countries. The reasons for this could be numerous. The information on large-scale philanthropy and related tax advantages is more accessible. Moreover, public awareness about the controversial nature of the philanthropic activities of high-profile billionaires, such as the creation of the Chan Zuckerberg Initiative via a for-profit LLC[1]or the activities of Jeff Bezos,[2]is increasing. In addition, certain extraordinary events and their press coverage, like the fire of the Notre Dame cathedral in Paris, have shed light on the mechanisms and possible motivations related to certain donations.[3]All those reasons could partly explain the recent surge in normative criticism of tax incentives for philanthropy.[4]In Switzerland, a rise in the number of charitable foundations during the last three decades has reignited the legislative discussion about improving the legal framework for philanthropic activities.[5]New tax incentives are among the legislative proposals that are under discussion in the Federal Parliament.[6]

The specific debate about the suitability of tax incentives to encourage charitable giving does not systematically reflect the broader criticism of the use of tax expenditures in policymaking. This is regrettable, because a large body of public finance literature has

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1. R. Reich, *Just giving: Why philanthropy is failing democracy and how it can do better* p. 199 (Princeton University Press 2018).
2. A. Giridharadas, *Why Jeff Bezos' Philanthropy Plan Is Well-Intended – and Misguided* , Time (18 Sept. 2018), available at https://time.com/5398801/jeff-bezos-philanthropy/ (accessed 15 July 2020); J. Miller, *The Bezos backlash: Is 'big philanthropy' a charade?* , BBC (16 Sept. 2018), available at https://www.bbc.com/news/business-45520594 (accessed 15 July 2020).
3. L. Drompt, *Notre-Dame et ses évergètes* [Notre-Dame and its benefactors], Le Courrier (16 Apr. 2019), available at https://lecourrier.ch/2019/04/16/notre-dame-et-ses-evergetes/; L. Peillon, *Jusqu'où sont défiscalisés les dons des entreprises pour Notre-Dame?* [To what extent are corporate donations to Notre-Dame tax-free?], Libération (16 Apr. 2019), available at https://www.liberation.fr/checknews/2019/04/16/jusqu-ou-sont-defiscalises-les-dons-des-entreprises-pour-notre-dame_1721684 (accessed 15 July 2020).
4. *See* Reich, *supra* n. 1 , at pp. 148-152.
5. B. Eckhardt, D. Jakob & G. von Schnurbein, *Rapport sur les fondations en Suisse 2019* , Vol. 20, p. 6 (Center for Philanthropy Studies (CEPS), Universität Basel 2019).
6. Conseil des États, *Renforcer l'attractivité de la Suisse pour les fondations* , 14.470, Autumn 2021 (2014).

explored this question since the late 1960s and it could bring additional insights in favour or against the use of tax incentives in the field of charitable giving. As tax incentives for charitable giving are significant tax expenditures in a number of countries,[7]it is interesting to study the general critique of tax expenditures in the specific debate about incentivizing charitable giving.

Next to the *normative* discussion about the suitability of tax incentives to encourage charitable giving, a large body of literature addresses this question from an *empirical* perspective. For several decades already, researchers have tried to estimate the efficiency of tax incentives for philanthropic giving using statistical and econometric computational methods. In the last decade, the number of studies has sharply risen in this respect. The researchers analyse various aspects related to the efficiency of tax incentives. For instance, they compare the efficiency of tax incentives as opposed to direct subsidies, or the efficiency of tax incentives for different categories of donors or charitable sectors.

This article therefore merges two different aspects of the scientific discussion about incentivizing charitable giving behaviour with taxes: the general theoretic criticism of using tax expenditures in policymaking and the most recent empirical studies on the efficiency of tax incentives for charitable giving. The article presents the analysis below in three steps. Section 2. of this article discusses the theoretical criticisms of tax expenditures as policymaking tools. Section 3. presents the latest economic research on the efficiency tax incentives for charitable giving. Section 4. summarizes the findings presented in the previous parts and discusses them. Section 5. presents the conclusions.

2. Theoretical Criticism of Tax Expenditures

2.1. Concept and studies

This section concerns the general criticisms of using tax expenditures to achieve policy goals.

All tax incentives, including the tax incentives for charitable giving, are tax expenditures.[8]The latter are indirect government subsidies made through a tax system (e.g. via deductions, credits, exclusions, exemptions, deferrals and preferential rates) to achieve various social and economic objectives.[9]In other words, tax expenditures can be defined as revenues foregone by the government due to special provisions in their tax legislation.[10]However, no universally accepted definition of tax expenditures exist. The reason for this is that the concept of tax expenditures intrinsically relates to the concept of an ideal income tax and the latter has always been controversial.[11]

Economists agree that tax expenditures have nearly identical effect on the budget as direct spending programmes, even though they are administered by different governmental agencies.[12]Governments often use tax expenditure instead of direct expenditure programmes.[13]However, extensive recourse to such indirect spending schemes is subject to various criticisms. An important body of theoretical literature debates the use of tax expenditures in policymaking and in the following paragraphs the author summarizes the most important aspects for the present topic.

The intellectual debate about the place of tax expenditures in a progressive tax system goes back more than half a century. The US scholars were the first ones to take an interest in this question, starting with the groundbreaking research by Stanley S. Surrey in the 1960s, who defined and developed the concept of tax expenditures.[14]Surrey's critical analysis of governmental spending through tax expenditures gained both national and international acclaim and paved the way for multiple studies in this field.[15]

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7. In the United States and in Canada, the tax expenditures for charitable giving represent one of the largest federal expenditures. *See* https://home.treasury.gov/policy-issues/tax-policy/tax-expenditures (accessed 5 Feb. 2020); https://www.canada.ca/en/department-finance/services/publications/federal-tax-expenditures/2019/part-2.html#a3 (accessed 5 Feb. 2020). However, as discussed further in this article, a number of countries, like Switzerland, do not practice tax expenditure reporting and therefore the amounts are unknown.
8. However, not all tax expenditures are tax incentives. For instance, the expenditures related to involuntary activities of taxpayers, destined, for instance, to relieve "misfortune or hardship", e.g. prosthetic or auditory devices, do not seek to encourage any specific taxpayer behaviour and therefore are not incentives. S.S. Surrey, *Tax incentives as a device for implementing government policy: a comparison with direct government expenditures* , 83 Harvard Law Review 4, p. 712 (1970).
9. Id., at p. 706. Different definitions of tax expenditures exist. *See* , for instance, G. Mourre, *Lessons from the 2013 report "Tax reforms in EU Member States"* , Paper presented at the workshop "The use of tax expenditures in times of fiscal consolidation", Brussels, 23 Oct. 2013.
10. International Monetary Fund, *Manual on Fiscal Transparency* (2007), available at https://www.imf.org/external/np/fad/trans/manual/index.htm (accessed 15 July 2020). *See* the debate on the definition of "special provisions" in B.I. Bittker, *Accounting for Federal "Tax Subsidies" in the National Budget* , 22 National Tax Journal 2 (1969); Surrey, *supra* n. 8 . Tax expenditures do not necessarily represent an estimate of the revenue that might be collected if the tax law was modified – different tax expenditures cannot be aggregated. In fact, a modification of one tax law provision might change taxpayer's behaviour and could affect taxpayers' marginal tax rates and itemization status. As a result, that would modify the magnitude of other tax expenditure estimates. J.M. Poterba, *Introduction: Economic analysis of tax expenditures* , 64 National Tax Journal 2, p. 452 (2011); Mourre, *supra* n. 9 , at p. 11.
11. *See* the summary of the academic debate between US scholars on the definition of tax expenditures and the ideal tax system in the 1970s and 1980s: V. Thuronyi, *Tax Expenditures: A Reassessment* , Duke Law Journal 6, p. 1167 (1988).
12. L.E. Burman & M. Phaup, *Economic, policy and budgetary aspects of tax expenditures* 19 (L. Bauger ed., European Commission 2013).
13. International Monetary Fund, *supra* n. 10 , at p. 76.
14. More precisely, the term "tax expenditures" was defined by Stanley Surrey in 1967. Burman & Phaup, *supra* n. 12 , at p. 19.; *see also* P.R. McDaniel & S.S. Surrey, *Tax expenditures* (Harvard University Press 1985). Some other famous Surrey's publications include: S.S. Surrey & W.F. Hellmuth, *The Tax Expenditure Budget Response to Professor Bittker* ,22 National Tax Journal 4 (1969); Surrey, *supra* n. 8 . *See also* Thuronyi, *supra* n. 11 , at p. 1155.

The studies on tax expenditures had numerous theoretical and practical implications. In the framework of the present article, the author would like to highlight two of them. Firstly, the theory on tax expenditures brought to light the simple fact that through various tax reliefs, a government is effectively spending money.[16]In as early as 1970, Surrey highlighted the risk that "the lack of an explicit accounting in the federal budget for the tax expenditures involved in tax incentives and the lack in most cases of an accounting in the tax statistical data combine to cause many to forget that dollars are being spent".[17]Tax expenditure doctrine influenced tax laws and budgetary processes in the United States[18]as well as in a number of other countries. However, the matter remains relevant to this day. Even though certain countries, such as Germany and the United States, already started reporting tax expenditure information in the late 1960s,[19]most other countries, such as Switzerland, still have no tax expenditure accounting mechanisms and do not possess data on its federal or cantonal and communal tax expenditure. Among other disadvantages, this lack of knowledge greatly impedes any studies about the efficiency of tax incentives, including the ones for charitable giving.

A second important implication of the studies on tax expenditures is that they brought to light a number of potential drawbacks of using tax expenditures to promote policy goals in comparison with direct governmental spending. "Direct" or "budgetary" expenditures are the methods of direct governmental financial assistance to the concerned parties, such as loans, direct grants, guarantees of loan repayments and so on.[20]Any financial incentive given by the government may be designed as either a direct expenditure or a tax expenditure.[21]The academic doctrine started by Surrey expressed a strong preference for the incentives being given through direct spending mechanisms. Even though certain scholars countered certain points of Surrey's criticism,[22]many of the concerns raised by Surrey are still valid. For this reason, the author summarizes his main arguments – and some counterarguments – in the following section.

2.2. Criticism of tax expenditures

2.2.1. Inequality

The most important argument in criticizing the use of tax expenditures that has not yet met any compelling counterargument is that they are *fundamentally inequitable* .[23]More precisely, tax expenditures are contrary to the principle of ability to pay.

The principle of the ability to pay is an old and widely accepted principle of equitable taxation, used by legislators to define a "fair" tax burden to be borne by an individual taxpayer.[24]It reflects a social welfare ideology, according to which the taxation of income takes into account the subjective situation of every individual taxpayer.[25]The content of the principle of ability to pay is often described using abstract concepts of horizontal and vertical equity. According to the principle of horizontal equity, people in similar positions should contribute similarly to the financing of the state, whereas according to the principle of vertical equity, people in different positions should contribute differently.[26]The principle of ability to pay is implemented in nearly all Western countries through progressive income taxation structures.[27]

In light of the above, the criticism of the inequitable character of tax expenditures concerns two aspects of the principle of ability to pay. Firstly, in the system of progressive income taxation, a tax incentive in the form of a tax deduction (but not in the form of a tax credit) is worth more to high-income taxpayers than to low-income taxpayers. In other words, in violation of the principle of vertical equity, taxpayers with higher ability to pay benefit more from tax expenditures than the ones with a lower ability to pay. Thus, tax expenditures provide an "upside-down" subsidy, because their benefits increase as the recipient's income and/or wealth increases.[28]Thus, providing financial rewards through tax incentives produces effects opposite to what a country has decided

15. Surrey himself published several studies on this subject (S.S. Surrey *Federal Income Tax Reform: The Varied Approaches Necessary to Replace Tax Expenditures with Direct Governmental Assistance* , 84 Harvard Law Review 2 (1970); Surrey, *supra* n. 8 ; S.S. Surrey & P.R. McDaniel, *The Tax Expenditure Concept and the Budget Reform Act of 1974* , 17 BC Indus. & Com. L. Rev. 5, p. 679 (1975); S.S. Surrey & P.R. McDaniel, *The Tax Expenditure Concept: Current Developments and Emerging Issues* , 20 Boston College L. Rev. 2, p. 225 (1978)). For criticisms of Surrey's theory, *see* Bittker, *supra* n. 10 ; E.A. Zelinsky, *Efficiency and Income Taxes: The Rehabilitation of Tax Incentives* , 64 Texas Law Review 5 (1985); E.A. Zelinsky, *James Madison and Public Choice at Gucci Gulch: A Procedural Defense of Tax Expenditures and Tax Institutions* , 102 Yale Law Journal 5 (1993); Thuronyi, *supra* n. 11 .
16. Thuronyi, *supra* n. 11 , at p. 1205.
17. Surrey, *supra* n. 8 , at p. 725.
18. Zelinsky (1993), *supra* n. 15 , at p. 1165.
19. International Monetary Fund, *supra* n. 10 , at p. 77.
20. Surrey, *supra* n. 8 , at p. 713.
21. Id. at pp. 713-714.
22. Zelinsky (1993), *supra* n. 15 ; and Zelinsky (1985), *supra* n. 15 .
23. More broadly, this concerns any tax relief granted through tax system, including those that are not meant to incentivize behavior (e.g. deductions for health insurance).
24. R.A. Musgrave & P.B. Musgrave, *Public finance in theory and practice* pp. 218-219 (McGraw-Hill 1989); *see* the historical and theoretical overview of this principle in G. Lideikyte Huber, *Conceptual Problems of the Corporate Tax: Swiss-US Comparative Analysis* p. 231 et seq. (IBFD 2019).
25. B.H. Fried, *Why Proportionate Taxation?* , in *Tax Justice: The Ongoing Debate* p. 150 (J.J. Thorndike & D.J. Ventry, eds., The Urban Institute Press 2002); D. Yersin, *L'égalité De Traitement En Droit Fiscal* , Zeitschrift Für Schweizerisches Recht 111, p. 169 (1992); and Lideikyte Huber, *supra* n. 24 , at p. 232.
26. Musgrave & Musgrave, *supra* n. 24 , at p. 223; R.A. Musgrave, *Equity and the Case for Progressive Taxation* , in *Tax Justice: The Ongoing Debate* p. 9 (J.J. Thorndike & D.J. Ventry, eds., The Urban Institute Press 2002); *see* developments on those two principles in Lideikyte Huber, *supra* n. 24 , at pp. 235-237.
27. Musgrave & Musgrave, *supra* n. 24 , at p. 17; Lideikyte Huber, *supra* n. 24 , at p. 239.
28. Thuronyi, *supra* n. 11 , at p. 1159 (1988).

when adopting progressive income taxation.[29]Secondly, all tax incentives leave out the persons who are outside of the tax system (e.g. those who have a very low income and do not pay taxes due to their weak ability to pay).[30]Therefore, an extensive use of tax incentives destroys the equity of a tax system.[31]

To illustrate the extent of this inequality, certain authors suggest picturing tax incentives as direct expenditure programmes. When tax subsidies are converted to direct subsidies, their inequitable effects and irrational character become obvious and a legislator would very likely not be able to pass them.[32]For example, it would be impossible to pass a direct expenditure programme stipulating that for a charitable donation of CHF 10, individual A will receive from the government a direct subsidy of CHF 2.5, individual B will receive CHF 3.5 (solely because she has larger taxable income), whereas individual C will receive nothing (because she has no taxable income). Another example would be a direct expenditure programme of, for instance, CHF 100 million, which would stipulate that none of this amount will go to households with taxable income under CHF 40,000 and that CHF 80 million will go to households with taxable income of over CHF 300,000.[33]Thuronyi repeats Surrey's point, saying that "no such program would ever be proposed, let alone enacted".[34]Passing such subsidies in the form of tax incentives is possible because, as discussed in the following sections, their economic effects are less clear and less visible to the general public.

The critics of tax expenditure doctrine however advance several counterarguments related to the principle of ability to pay and equitable treatment of taxpayers.

Firstly, the proponents of tax incentives suggest that direct expenditures can – and often do – have a regressive distributional impact.[35]In this respect, one should analyse whether a specific direct subsidy provides an advantage to a particular high-income group. For instance, Zelinsky gives a number of examples concerning the US federal direct subsidies, such as the ones for aviation, which in his opinion benefits the most affluent taxpayers.[36]To a certain extent, it is a valid point and some direct subsidies could have regressive distributional effects in practice.

However, it could be argued that the difference, unlike some direct subsidy programmes, is that *all* tax expenditures in the form of taxable income allowances produce such effects.[37]In addition, this argument only recognizes that governmental spending is not always in line with the general principles of taxpayers' equality in a given legal system, but it does not itself justify the existence of regressive distribution mechanisms, whether in the form of direct subsidies or tax expenditures.

Another important criticism highlights that, as already mentioned above, it is not that easy to distinguish legal norms that contain expenditure provisions from those that do not. According to the theories of Surrrey and McDaniel, the income tax is composed of two distinct elements: structural provisions necessary for the implementation of a "normal" or "generally accepted" income tax structure and "special" preferences.[38]The structural provisions compose the revenue-raising aspects of the tax and include the definition of net income; the specification of accounting periods; the determination of the entities subject to tax; and the specification of the rate schedule and exemption levels.[39]Any allowances forming a part of the normal income tax structure would seek to implement a genuine tax policy goal and not another governmental programme. Their purposes should not be "extraneous to the purposes of the tax" and they should reflect "a refinement in our notion of an ideal personal income tax, rather than a departure from it".[40][41]The "special" preferences, i.e. tax incentives or tax subsidies, are departures from the normal tax structure.[42]However, certain authors note that this distinction between two types of tax law norms – "normal" and "special" – is artificial.[43]There is no scholarly consensus neither on the "normal" tax structure nor on the optimal definition of income.[44]This

29. Surrey, *supra* n. 8 , at p. 723 (1970). Surrey notes that in case of corporate income tax, tax incentives awarded at the corporate level produce effects that are more equitable because corporate income tax rates are in principle not progressive. Id., at p. 722. The author does not however agree with this point, arguing that corporate tax systems in their current structure are fundamentally incompatible with the basic principles of individual income taxation such as the ability to pay. As a result, the corporate tax deductions are also inequitable. Lideikyte Huber, *supra* n. 24 .
30. Surrey, *supra* n. 8 , at p. 720; S. Mettler, *Reconstituting the submerged state: The challenges of social policy reform in the Obama era* , 8 Perspectives on Politics 3, p. 806 (2010).
31. Surrey, *supra* n. 8 , at p. 723; Mettler, *supra* n. 30 , at p. 806.
32. Surrey, *supra* n. 8 , at pp. 721-722.
33. *See* other examples in Surrey, *supra* n. 8 , at p. 722.
34. Thuronyi, *supra* n. 11 , at p. 1160.
35. Zelinsky (1985), *supra* n. 15 . Other authors argue that certain expenditures must not be analysed as subsidies, but as an integral part of the tax system, *see* Thuronyi, *supra* n. 11 .
36. Zelinsky (1985), *supra* n. 15 , at pp. 1031-1032.
37. In a system where income tax is progressive.
38. S. Utz, *Ability to pay* , 23 Whittier L. Rev. 4, p. 925 (2001), with reference to Surrey & McDaniel (1978), *supra* n. 15 , at pp. 227-228; Thuronyi, *supra* n. 11 , at p. 1164.
39. Utz, *supra* n. 38 , at p. 925.
40. An example of "genuine" tax law norms following tax law purposes which is often put forward is a foreign tax credit. However, Thuronyi shows that even this example is far from clear and could be considered both as a tax subsidy or a "normal" tax law norm. Thuronyi, *supra* n. 11 , at pp. 1200-1201.
41. W.D. Andrews, *Personal deductions in an ideal income tax* , 86 Harvard Law Review 2, pp. 311, 312 (1972).
42. Utz, *supra* n. 38 , at p. 925.
43. Thuronyi, *supra* n. 11 , at p. 1200.
44. Id., at p. 1166. For instance, Surrey and McDaniel did not propose a definition of income in their work. Utz, *supra* n. 38 , at p. 925.

makes it very difficult in certain circumstances to distinguish norms that are replacing direct subsidies from the ones that embody the goal of the tax system itself in accordance with the principle of ability to pay.[45]

The author of this article however thinks that this argument does not invalidate the theory of tax expenditures, even though it raises valid points: it is true that theoretical discussions about the definition of taxable income are endless, which makes the analysis of tax law norms complicated. It could however be argued, following for instance Thuronyi, that no single definition of "tax expenditure" can serve all purposes, but this concept is useful in identifying tax-based subsidies and eliminating them, for multiple reasons identified by their critics, from the tax laws.[46]In particular, the legislator could analyse whether a specific tax incentive could also achieve its goals if it is implemented as a direct subsidy (i.e. identify "substitutable tax provisions").[47]In the field of charitable giving, this would mean that a legislator would need to reflect carefully what is the purpose of a tax law norm providing a tax allowance (e.g. boosting charitable giving, rewarding donors, etc.) and whether this purpose could be achieved by a direct subsidy.

Overall, legal authors suggest that although the question of fairness would not be a ground by itself on which to dismiss the use of tax expenditures (also because, as discussed below, the unequal effect might be mitigated or eliminated), the legislator must take them into account when enacting tax incentives.[48]The legislator must be aware of the consequences that lobbying activities can have for the division of the tax burden between citizens and companies and of the effects of the design of a tax incentive.[49]However, policymakers sometimes still underplay or overlook the question of fairness in enacting tax expenditures. Speaking about the US system, Surrey noted that "the existing tax incentives were never really carefully structured and in many instances just grew up, without serious thought ever having been given to the question whether they were fair in these terms".[50]A number of jurisdictions could relate to this remark.[51]

The unequal effect of tax expenditures can to a certain extent be eliminated or reduced. Different methods have been suggested, such as capping the amount of the deduction[52]or replacing tax deductions with tax credits.[53]However, the political will needed for such an action is often lacking. For instance, in 2009, US President Obama, with the intention of making the tax system more equitable, proposed to curtail the regressivity of some tax expenditures, including limiting the deductions for charitable contributions and mortgage interests of two top tax brackets (36 and 39.6%, which are particularly regressive) to the same value as the 28% tax bracket[54](this bracket still concerns the upper-half of the taxpayers, such as single filers with a taxable income between USD 82,251 and USD 171,550[55]). However, this proposal faced strong opposition from both the Republicans and the Democrats, which was very much related to strong lobbying activities of the real estate and philanthropy sectors.[56]

The political unwillingness to eliminate tax expenditures is related to some of their inherent characteristics, such as opacity and political suitableness, described in the following sections.

2.2.2. Difficulties in predicting, modifying and measuring tax expenditures

Certain critics highlight that it is difficult to predict tax expenditures' uptake as well as to modify them. For this reason, their effect on a country's budget may be much more uncertain than the effect of direct expenditures. Tax incentives are usually open-ended – they do not limit the tax benefits a taxpayer can receive.[57]In the case of direct expenditures, if the legislator considers that

45. In this context, the nature of deductions for charitable giving has always been subject to argument. Whereas certain authors, like Surrey, consider this deduction a tax expenditure, which is not a proper part of the income tax, others, like Andrews, argue that it could be considered as an "elaboration of an ideal personal tax base". Thuronyi, *supra* n. 11 , at p. 1198, with reference to S.S. Surrey, *Pathways to Tax Reform* (Harvard University Press 2013), available at https://doi.org/10.4159/harvard.9780674436503 (accessed 15 July 2020) and Andrews, *supra* n. 41 . According to Andrews, exempting charitable giving from tax could be justified by the fact that taxable personal consumption should be defined to include goods and services whose consumption by one household precludes enjoyment by others, but not collective goods whose enjoyment is non-preclusive or the non-material satisfactions that arise from making contributions. He argued that "there are substantial arguments in favor of both these personal deduction provisions that are intrinsic arguments of tax policy germane to the basic question of how to achieve a fair distribution of personal tax burdens". Andrews, *supra* n. 41 , at pp. 314-315.
46. Thuronyi, *supra* n. 11 , at pp. 1205-1206.
47. Id., at pp. 1186-1187.
48. S. Hemels, *Tax Incentives as a Creative Industries Policy Instrument* , in *Tax Incentives for the Creative Industries* p. 12 (Springer 2017).
49. Hemels, *supra* n. 48 , at p. 12.
50. Surrey, *supra* n. 8 , at p. 720.
51. For instance, in Switzerland, the courts regularly remind that tax deductions are exceptions to the existing tax system and must be interpreted in a strict manner. *See* for instance the case law of the *Cour de la justice* (Court of Appeals, CA) of the canton of Geneva: CH: CA of Geneva, 14 Nov. 2017, No. ATA/1470/2017, para. 5c; CH: CA of Geneva, 2 Dec. 2014, No. ATA/958/2014, para. 14b; CH: CA of Geneva, 26 Aug. 2014, No. ATA/668/2014, para. 3; CH: CA of Geneva, 17 Mar. 2009, No. ATA/132/2009, para. 5; CH: CA of Geneva, 24 Apr. 2005, No. ATA/380/2005, para. 3a.
52. For example, D.M. Schizer, *Limiting Tax Expenditures* , 68 Tax L. Rev. 2, pp. 276-277 (2014); M. Feldstein, D. Feenberg & M. MacGuineas, *Capping individual tax expenditure benefits* , No. w16921 (National Bureau of Economic Research 2011); M. Feldstein, *Raising revenue by limiting tax expenditures* , 29 Tax Policy and Economy 1, pp. 1-11 (2015).
53. Hemels, *supra* n. 48 , at p. 11.
54. Mettler, *supra* n. 30 , at p. 811.
55. *See* https://www.bankrate.com/finance/money-guides/2009-tax-bracket-rates.aspx (accessed 28 Jan. 2020).
56. For a more detailed description of President Obama's proposal and the opposition, *see* Mettler, *supra* n. 30 , at pp. 811-812.
57. Surrey, *supra* n. 8 , at p. 726.

certain budgeted costs in a given year are too high, it can cap them in advance. However, it is often impossible to apply such restrictions to existing tax incentives: they do not require annual approval from the legislator and remain valid as long as the tax law remains unchanged.[58]Therefore, tax reforms that include tax incentives may have unexpected budgetary outcomes. It is possible to prevent unexpectedly high costs of tax expenditures, but this should be kept in mind during the process of their design. For instance, the legislator may design them to phase out over time, like the tax incentives for investment in eastern Germany,[59]or to include income-based caps or floors.[60]Various authors have suggested different methods and rationales for limiting tax expenditures.[61]

In addition to their rather inflexible nature, it is also difficult to measure the exact extent of the existing tax incentives. Tax expenditure accounting is difficult because it always represents *estimated* expenditures. As tax expenditures often encourage certain behaviour, it is not possible to state with absolute certainty that after eliminating a specific expenditure, the budget will increase with a specific amount of revenue. In fact, without a tax incentive, certain revenue-generating activities might disappear.

Combining this absence of reported data with the fact that tax expenditures are not subject to the same regular degree of scrutiny as direct expenditures because they remain in effect as long as the tax law is unchanged, there is a risk that proliferation of tax expenditures can result in a loss of transparency.[62]Even though progress in tax expenditure reporting has been made in recent years, a number of areas still need to be improved, such as incorporating the estimated behavioural responses to the absence or to the removal of tax incentives.

Despite the recommendations from such bodies as the International Monetary Fund (IMF),[63]the Organisation for Economic Cooperation and Development (OECD)[64]or the European Union,[65]a number of countries do not keep tax expenditure accounting.

2.2.3. Opacity

The general public is rarely aware of the inequitable effects of tax expenditures discussed in the previous section. This opacity is another prominent flaw of tax expenditure. The effects of tax expenditures are often too complex to be understood by everyone and therefore they are more or less hidden from public view.[66]As a result, certain authors argue that this opacity is detrimental to democracy because the citizens lose sight of governmental spending and how its programmes affect everyone.[67]In addition, some programmes may be misunderstood due to the complexity of the related tax law provisions.[68]

These effects are however neither forgotten nor unknown to the legislator. On the contrary, the whole body of research on the salience of tax provisions[69]discusses the situations where legislators exploit taxpayers' ignorance or misguidance in policymaking.[70]In the field of tax incentives, authors observe that sometimes the legislator deliberately uses tax incentives instead of direct expenditure incentives, because the former are less visible and thus less scrutinized by the general public. For instance, citing the US example, Burman and Phaup suggest that a new tax credit or deduction is considered a "tax cut" and is therefore immune to the "tax and spend" critique that would apply to a similar spending programme, notwithstanding that the economic effect deployed by a new tax incentive is exactly the same. In other words, when the government introduces a tax expenditure, both taxes and spending – two criteria that are considered to be "bad" in a political discourse – are understated, and this sends an attractive message to the electorate.[71]For this reason, tax expenditures benefit from a privileged status in the US budget process.[72]For

58. Id., at p. 730; International Monetary Fund, *supra* n. 10 , at p. 76; Zelinsky (1985), *supra* n. 15 , at p. 1030.
59. International Monetary Fund, *supra* n. 10 , at p. 77.
60. Schizer, *supra* n. 52 , at p. 350.
61. To quote only a few recent authors, *see* Schizer, *supra* n. 52 , at pp. 276-277; Feldstein, Feenberg & MacGuineas, *supra* n. 52 ; and Feldstein, *supra* n. 52 .
62. International Monetary Fund, *supra* n. 10 , at p. 76.
63. Id., at pp. 76-77.
64. OECD, *Tax Expenditures in OECD Countries* p. 14 (OECD 2010), available at https://www.oecd-ilibrary.org/governance/tax-expenditures-in-oecd-countries_9789264076907-en (accessed 15 July 2020).
65. Mourre, *supra* n. 9 , at p. 11. Council Directive 2011/85/EU on requirements for budgetary frameworks for the Member States, OJ L 306 (23 Nov. 2011), that entered into force on 13 Dec. 2011 and should have been implemented in national regulation on 31 December 2013 at the latest, requires the EU Member States to provide information on their tax expenditures and the impact on revenues (art. 14(2)).
66. Burman & Phaup, *supra* n. 12 , at p. 20.
67. Id., with reference to Mettler, *supra* n. 30 .
68. Burman & Phaup, *supra* n. 12 , at p. 20.
69. The concept of salience originated in the field of cognitive psychology and has gradually found its place in other scientific disciplines, such as behavioural economics and law, including tax scholarship. As Faulhaber puts it, this concept of salience refers to " the prominence of an item: the more salient something is, the more aware individuals are of its effect". *See* L.V. Faulhaber, *The Hidden Limits of the Charitable Deduction: An Introduction to Hypersalience* , 92 Boston University School of L. Rev. 4, p. 1307 (2012). The first author to study this question in the tax context was E.J. McCaffery, *Cognitive theory and tax* , 41 UCLA L. Rev. 7 (1993). Since McCaffery's article in 1993, several authors have discussed the salience of taxes and the tax system in the mind of taxpayers; *see* Faulhaber, id., at p. 1308.
70. Faulhaber, *supra* n. 69 , at p. 1308, with reference to D.H. Schenk, *Exploiting the salience bias in designing taxes* , 28 Yale J. on Reg. 2 (2011); McCaffery, *supra* n. 69 .
71. Schizer, *supra* n. 52 , at p. 286.
72. Burman & Phaup, *supra* n. 12 , at p. 20.

this reason, lobbying groups are also taking advantage of pushing their specific agenda through tax expenditures.[73]According to numerous authors, tax expenditures clearly distort political behaviour.[74]

However, in recent theoretical works authors highlight that precisely for the reasons presented above, limiting tax expenditures has important political advantages over other ways of cutting deficit.[75]The average taxpayer is less aware of tax expenditure cuts than of rate increases.[76]In addition, as the cuts in tax expenditures could be presented either as tax increase or spending cut, they can provide a convenient "cover" for political actors.[77]In addition, such political move could attract interest groups who do not currently benefit from a specific tax expenditure (e.g. individuals who do not pay taxes dues to their low income) who, instead of being indifferent, would support such a policy.[78]Of course, in order to enact the cuts in tax expenditures, you would need to enact them in the first place.

2.2.4. Inefficiency

One of the major criticisms of tax incentives concerns various aspects of their efficiency.

Early on, scholars pointed out that to a certain extent, tax incentives are always wasteful, because they may provide financial benefit for taxpayers who did not need any additional incentive to behave in a desired way.[79]Therefore, when a tax incentive is awarded to a taxpayer in this situation, it is simply a loss to the state because it does not generate any additional activity.[80]However, even the critics of tax expenditures admit that this problem is not intrinsically related to tax expenditures themselves but more generally to all governmental spending, direct or indirect.[81]In addition to being wasteful, certain authors argue that tax incentives *distort market relations* .[82]Surrey noted very early on that tax incentives create anomalies in the marketplace because: "the tax incentive is … a method of reward and assistance that is just upside-down from the way the country decided – when it adopted a progressive income tax – that the rewards of the marketplace should operate in combination with the income tax".[83]

The question of efficiency of subsidies that incentivize *charitable giving* is one of the most hotly debated issues in legal and economic academia studying philanthropy. Scholars analysing tax expenditures have noted that their cost-benefit as well as cost-effectiveness should be studied using econometric techniques, as is the case for direct expenditures.[84]As a result, sophisticated methods were developed to tackle this question. In recent decades, researchers studying the efficiency of a given tax incentive use various methods and try to measure their *treasury efficiency* (this concept and related studies are described in section 3. of this article).

The critics claim that the administration of tax expenditures is also inefficient. Tax administrations might not be – and often are not – familiar with the substantive problems addressed by the tax subsidy.[85]They have a certain (and sometimes large) degree of discretion in deciding how to apply legal norms and often issue administrative documents in this respect. Without specific knowledge about the underlying problem, interpreting such tax incentives could be more complicated than for governmental agencies dealing with a specific direct subsidy for the same purpose. In addition, as tax administrations normally do not coordinate their activities with the governmental agencies responsible for direct spending, the exchange of information about the real-life scale of tax expenditures might be incomplete or non-existent – especially if the government does not have tax expenditure reporting. As a result, the state might end up over-financing certain public interests and under-financing others.[86]

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73. Id., at. p. 20.
74. Burman & Phaup, *supra* n. 12 at pp. 20-21; C. Heady, *Discussion of presentations by Pierre LeBlanc, Leonard E. Burman and Serena Fatica* , in *Economic, policy and budgetary aspects of tax expenditures* p. 29 (L.E. Burman & M. Phaup eds., European Commission 2014).
75. Schizer, *supra* n. 52 , at p. 285.
76. Id.
77. Id.
78. Id., at pp. 285-285.
79. Surrey, *supra* n. 8 , at p. 719.
80. Id.
81. Id., at p. 720.
82. Id., at p. 725.
83. Id., at p. 723.
84. Id., at p. 714.
85. Thuronyi, *supra* n. 11 , at p. 1161.
86. Criticizing the involvement of tax administrations, Thuronyi gives another example of US law where the government encourages certain activities with tax expenditures and simultaneously discourages them via direct subsidies. He describes the US subsidies to dairy farmers in 1980s, whom the Tax Code provided with incentives to increase production and encourage herd expansion, while, simultaneously, the Department of Agriculture was paying dairy farmers to curtail production and slaughter their herds. Thuronyi, *supra* n. 11 , at p. 1161. The author considers that in this case, the problem lies in the coordination between different bodies of the legislative agency rather than between the administration and the legislator. Once the legislator incorporates tax expenditures into tax laws, the tax administration cannot decide to modify their scope, even if it had information on parallel direct spending programmes in place.

2.3. Contemporary position

Despite the longstanding academic debate on this question, there is no consensus among scholars on the most optimal way for the government to incentivize behaviour. In addition, no clear agreement exists on the characteristics of tax expenditures that are truly undesirable. Notwithstanding, many academics argue that tax expenditures still present numerous concerns: it is difficult both to measure them and to compare them internationally, they clearly distort governmental decisions, reporting of tax expenditures is not clear (or even universal) and often does not consider behavioural responses to tax expenditures.[87]Despite these important criticisms, tax expenditure theory has not yet achieved its full potential.[88]International institutions such as the OECD acknowledge that tax expenditures are now a part of the tax systems of every developed country and their use by the government will very likely not be eliminated.[89]There has been no serious proposal to eradicate tax incentives and their use seems to proliferate[90]. However, due to the above-mentioned concerns, tax expenditures may have harmful effects on both budget and tax policies and thus remain one of the major issues in budget and tax analysis. As Hemels highlights, "it is acknowledged that tax incentives are not always controlled, accounted for, and evaluated in the same way as direct subsidies and that tax incentives are inferior to direct subsidies in that respect".[91]

As a result of all the drawbacks discussed above, lawyers and economists strongly suggest curtailing the use of tax expenditures,[92]and this advice has not radically changed in the last decades. Therefore, policymakers must consider the existing criticism and find the right balance between the drawbacks and the benefits of using tax expenditures as a policy instrument.

3. Economic research on the efficiency of tax incentives for charitable giving

The debate about the choice between tax expenditures and direct subsidies also thrives in the specific field of behavioural science studying donors' responses to the incentives for charitable giving. In general, researchers agree that governments' actions can support the provision of public goods and affect charitable giving behaviour. This can be done either directly, i.e. spending its resources directly through governmental agencies, or indirectly, encouraging the private sector through subsidies to produce public goods.[93]In terms of direct subsidies for charitable giving, the government uses such instruments as matching grants (e.g. "Gift Aid" in the United Kigdom[94]) or tax allocation[95](e.g. in Lithuania[96]). Concerning indirect subsidies, policymakers either opt for such methods as tax reliefs on taxable income (which historically established itself as the most popular method,[97]used in multiple jurisdictions, for instance in France, Switzerland, the United States, etc.) or tax credit[98](e.g. Canada, France and New Zealand). The question is, however, which method is the most efficient. Several economic studies provide this debate with important empirical data.

The following sections define the main economic concepts used while measuring the efficiency of tax incentives for charitable giving and empirical research methods. Furthermore, they present the synthesis of the latest and the most significant empirical studies related to the efficiency of governmental incentives for charitable giving.

87. Heady, *supra* n. 74 , at p. 29.
88. Thuronyi notes that "although Surrey's concept of tax expenditures has gained official recognition, it has not been fully integrated into the budget-making process and has largely failed to attain its goals". Thuronyi, *supra* n. 11 , at p. 1155.
89. OECD, *supra* n. 64 , at p. 14.
90. Id., at p. 14.
91. S. Hemels, *Introduction* , in *Tax Incentives for the Creative Industries* p. 4 (Springer 2017).
92. Burman & Phaup, *supra* n. 12 , at p. 22; Poterba, *supra* n. 10 .
93. T. Bönke, N. Massarrat-Mashhadi & C. Sielaff, *Charitable giving in the German welfare state: fiscal incentives and crowding out* , 154 Public Choice 1/2 , p. 39 (2013).
94. Gift Aid is a UK tax incentive that enables tax-effective giving by individuals to charities in the United Kingdom. Gift Aid was introduced in the Finance Act 1990 for donations given after 1 October 1990, but was originally limited to cash gifts of GBP 600 or more. This threshold was reduced in April 2000 when the policy was substantially revised and the minimum donation limit removed entirely. A similar policy applies to charitable donations by companies that are subject to the UK corporation tax.
95. A tax allocation mechanism is a direct subsidy enabling the taxpayer to give a portion of their income tax liability (e.g. 2%) to a charity, often from a specifically designated list on a tax bill or a tax declaration. As this incentive does not give any tax relief to a given taxpayer (tax liability is not decreasing), the allocation mechanism is a direct governmental expenditure and not a tax incentive.
96. LT: Law on Charity and Sponsorship of Republic of Lithuania of 4 June 1993, No I-172 [*Lietuvos Respublikos labdaros ir paramos įstatymas*], art. 4, para. 2(2), available at https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.5483/IDcgGhTiTH (accessed 28 Feb. 2020).
97. Surrey, *supra* n. 8 , at p. 720.
98. Hemels, *supra* n. 48 , at p. 8.

3.1. Theoretical approaches

3.1.1. Treasury efficiency, price elasticity and "crowding out"

When evaluating tax incentives for charitable giving, the main question that policymakers need to consider is whether subsidizing donations through the tax system is *worth the cost* to the government.[99]If a tax incentive does not increase charitable giving, that means that this policy is costing the state without benefiting the donee charities.[100]In contrast, if a tax incentive significantly boosts donations, it may be an effective tool to increase social welfare.[101]Policymakers would normally expect that the benefits related to the increase of donations due to the tax incentive are greater than the loss in tax revenues.[102]Researchers call this effect "treasury efficiency"[103] .

It is not easy to empirically measure the treasury efficiency of a given tax incentive. It depends on donors' response to tax incentives, which is not easy to predict or to measure. Many factors can influence charitable giving behaviour, for instance specific donor characteristics (e.g. the donors' income) or external factors and their perception by a donor (e.g. governmental activity: spending on the provision of public goods, tax incentives, etc.).[104]In this respect, certain academics[105]highlight that the treasury efficiency depends on three factors: (i) the *price* elasticity of charitable giving, (ii) the elasticity of charitable giving in relation to the effect of *crowding out* , and (iii) the comparative efficiency of the government in creating public goods as opposed to private activity.[106]However, not all researchers calculate all those parameters in studying donors' responsiveness to tax incentives. In fact, some of them use only the factor of price elasticity and make assumptions about the other two.[107]

Price elasticity of charitable giving is one of the most important factors for the prediction of donors' responses to tax incentives. This parameter helps to evaluate the effectiveness of tax reliefs and their eligibility to offset foregone tax revenues.[108]More precisely, it helps to determine whether taxpayers are responsive to tax incentives. In economic terms, the general term "price elasticity" measures the responsiveness of the quantity of a demanded or supplied good or service to a change in its price and is calculated by dividing the quantity of a *demanded* or supplied good or service by the percentage change in the price.[109]In charitable giving, the good is a charitable donation and the price of this donation is the sum of the charitable donation itself minus the tax savings resulting from this donation.[110]For example, for one Swiss franc donated, the price of a charitable donation for a taxpayer whose global tax bracket is 25%, is 1-0.25 = 0.75 centimes.[111]Overall, the price elasticity of charitable giving means the *percentage change* in charitable donations that is associated with a 1% increase in the price of donating to charity.[112]

The price elasticity is calculated by dividing the percentage change in quantity of donations by the percentage change in price.[113]For instance, if the price of donation increases by 1% (e.g. from 0.75 to 0.7575 centimes) and due to this increase, all other variables being constant, donations decrease by 2%, the price elasticity will be -2 (the percentage increase in donations, which is -2% because donations decrease, is divided by the percentage of decrease in price, which is 1%). In this example, the price elasticity is negative – which is always the case if increase in donations' tax prices cause reductions in the quantity of donations,[114]because the "increase" in donations in this case is always negative. However, the principal issue researchers try to measure is *how* negative it is. A price elasticity *more negative than -1* , such as in this example, means that the tax

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99. J. Andreoni, *Charity and Philanthropy, Economics of* , 3 International Encyclopedia of the Social & Behavioral Sciences 2, p. 360 (2015).
100. Id., at p. 360.
101. Id.
102. Id. *See also* Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 41.
103. R. Steinberg, *Taxes and giving: New findings* , 1 Voluntas: International Journal of Voluntary and Nonprofit Organizations 2, pp. 69 (1990).
104. While measuring whether and to what extent charitable giving behavior is responsive to those factors, researchers often refer use the concept of "elasticity" of charitable giving, which describes the change of donors' behavior in relation to changes of, for example, tax incentives, donors' income or governmental spending. *See* Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 39.
105. There is no consensus on the exact definition of treasury efficiency.
106. R. Steinberg, *Lecture on the Tax Treatment of Donations* (2014) (unpublished).
107. *See* for instance the conclusion of G. Fack & C. Landais, *Are Tax Incentives for Charitable Giving Efficient? Evidence from France* , 2 American Economic Journal-Economic Policy, p. 137 (2010).
108. *See* Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at pp. 39-40 ; and J. Bakija, *Tax Policy and Philanthropy: A Primer on the Empirical Evidence for the United States and Its Implications* , 80 Social Research 2, p. 559 (2013).
109. *See Price Elasticity of Demand and Price Elasticity of Supply* , in *Principles of Economics* , BC Open Textbooks, available at https://opentextbc.ca/principlesofeconomics/chapter/5-1-price-elasticity-of-demand-and-price-elasticity-of-supply/ (accessed 20 May 2020).
110. Bakija, *supra* n. 108 , at p. 559.
111. *See* id., at p. 559, for an example in USD. For a Swiss example, the hypothesis is that the suggested hypothetical 25% rate combines the federal, cantonal and communal direct income tax rates. Like in the US, the Swiss taxpayers can deduct the charitable donation from their taxable income under certain conditions that the author assumes here as fulfilled.
112. Bakija, *supra* n. 108 , at p. 559.
113. The author would like to highlight that this is a simplified explanation, which is sufficient for the purposes of this article, but which in reality is more subtle. In economics, while calculating price elasticity, instead of using simple percentage changes in quantity and price, economists sometimes use the average percentage change in both quantity and price, which is called the "midpoint method of elasticity"; *see Price Elasticity of Demand and Price Elasticity of Supply* , *supra* n. 109 for explanations on calculating the price elasticity of supply and demand.
114. Bakija, *supra* n. 108 , at p. 560.

incentives increase donations by more than they reduce governmental revenue (they are *treasury efficient*).[115]In other words, tax incentives significantly encourage charitable giving and abolishing them would cause a significant drop in donations. A price elasticity between -1 and 0 signifies that the tax incentives increase donations, albeit less than the amount with which they reduce governmental revenue.[116]Thus, in the latter situation the government is actually losing money because removing tax reliefs might have only small or no impact on the charitable giving. Nonetheless, in this latter case, it does not necessarily mean that tax incentives for charitable giving are an unsuitable policy option.[117]

Certain authors not only measure the price elasticity of the charitable giving, but also "donors' income elasticity". Income elasticity of charitable giving seeks to determine whether donors' charitable behaviour changes because of a change in their income. Income elasticity helps to disentangle the effects of tax incentives from the effects of income, answering for instance such questions whether the fact that wealthier people give more relates to tax subsidies (that are often more advantageous for the wealthier) or to their larger income.[118]

The second important factor for evaluating the treasury efficiency of a given incentive is the so-called *crowding out effect* of private charitable contributions.[119]This concept describes the situation where *direct* governmental spending on the provision of public goods causes a decline in private giving, because donors perceive the state's activities as sufficient for the provision of a specific public good. In general terms, "crowding out" may be zero if governmental direct spending does not have any effect on private giving, or, alternatively, it can be partial or complete, when the governmental spending partially or completely depresses private giving. In contrast, the " *crowding in effect* " describes the situation where governmental spending for a certain public good boosts private giving for the same public good (e.g. raises awareness about the case, offers prestige, enables the charity to use the grant as "seed money", allowing it to expand into a bigger operation, etc.[120]). In relation to charitable giving and charitable fundraising in general, a vast body of literature studies crowding out, often concluding that direct governmental spending at least partially decreases private giving.[121]This aspect is important in analysing tax incentives because the alternative to them is direct spending, and the latter might cause crowding out. If it is observed that direct spending not simply complements private donations in creation of public goods, but actually reduces them, meaning that direct spending is costlier because the State would also need to compensate for the reduction in private funding for public goods.

For this reason, the researchers, while studying the efficiency of tax incentives, also try to take into consideration the effect of crowding out.[122]In particular, if they estimate that the crowding out is zero, then the tax-price elasticity of charitable giving becomes particularly important, as only tax incentives with the price elasticity of less than -1 (i.e. the ones who very strongly encourage charitable giving) may be considered treasury efficient.[123]In contrast, if crowding out is complete, meaning that any governmental action in a given charitable sector will completely "scare off" all private donations, a tax incentive is efficient as long as the price elasticity of giving is negative (in other words, if a tax incentive at least slightly encourages charitable giving behaviour).[124]However, it could be argued that between those two theoretical extremes – zero and complete crowding out – the most common middle ground is where direct governmental subsidies cause partial crowding out (or sometimes even partial crowding in). In this case, the effects of crowding out and tax price elasticity must be weighed against each other in order to estimate the treasury efficiency of a tax incentive for charitable giving. Even tax incentives with a price elasticity between 0 and -1, i.e. the ones that generate less donations than the amount with which they reduce governmental revenue, may be considered treasury efficient.[125]

The final factor to take into account when defining treasury efficiency is the *comparative efficiency* of governmental actions in creating public goods as opposed to private activity. It is very complicated to study this element from the empirical perspective and requires comparing the work of charitable organizations in a specific field with the work of governmental agencies in the same field and having the same objectives. For this reason, sometimes an author analysing treasury efficiency simply highlights the assumption that the efficiency of governmental and private activities in a given field is the same, and then continues by analysing the remaining parameters.[126]

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115. Id.
116. Id.
117. Id., at pp. 560, 580.
118. Andreoni, *supra* n. 99 , at p. 360.
119. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 39.
120. Andreoni, *supra* n. 99 , at p. 361.
121. *See* the literature reviews by Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 40 and Andreoni, *supra* n. 99 , at pp. 361-362. The reasons for this decrease could be numerous: the charity could be perceived by givers as being less in need of their donations or, due to governmental grants, the charities could be less aggressive in fundraising (*see* Andreoni, *supra* n. 99 , at p. 361 and quoted references).
122. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 39; *see also* Bakija, *supra* n. 108 , at p. 580.
123. Steinberg, *supra* n. 103 , at p. 70.
124. Id., at p. 70.
125. *See* considerations in Bakija, *supra* n. 108 , at p. 580.
126. Fack & Landais, *supra* n. 107 , at p. 137.

3.1.2. Research design and data in empirical studies

Before analysing the selected literature, this section summarizes some technical aspects related to designing the research and types of data used in those studies. An empirical research design in the field of behavioural science takes the form of either an "experimental study" or a "correlational study", as those are the only ways for a researcher to demonstrate a relationship.[127]The papers reviewed in this article use both these study methods.

In an *experimental study* , a researcher actively changes or manipulates one variable, measures the scores on another variable and tries to keep all the other variables constant.[128]For instance, a researcher in her experiment may manipulate the after-tax price of the donation (the after-tax price being an independent variable) observing whether it produces any effect on the giving behaviour of her experimental subjects (the giving behaviour being the dependent variable). Experimental studies distinguish between lab and field experiments, the latter being done in naturally occurring settings.[129]In the field of taxation and philanthropy, the experimental research has produced some important studies in recent decades.[130]The disadvantage of the experimental studies is that policy makers may consider that their results are not generalizable to the population.[131]Seven papers in this review used experimental research design, studying mainly the responses to different forms of tax incentives.

In a *correlational study* , a researcher does not manipulate one variable but instead measures the research subject's scores on two variables and then determines whether there is a relationship.[132]Researchers can carry out correlational studies via a *survey* (e.g. asking selected subjects whether taxes influence their decision to give) or evaluation of a *natural experiment* (e.g. observing whether a change in tax legislation that increases or decreases a donation's after-tax price alters the giving behaviour).[133]Both policymakers and the scientific community consider the evaluation of natural experiments to be particularly valuable scientific evidence. Such an approach is for instance useful in identifying promising interventions in circumstances when decision-makers or jurisdictions implement innovative new measures that have not been tried or evaluated elsewhere.[134]Twenty-one papers in this review used correlational research design.

Lastly, the papers reviewed below use two types of data: panel and cross-sectional. The *panel data* follows the same people over time and is therefore supposed to be superior to *cross-sectional data* that provides information at a specific point of time.[135]

3.1.3. Methodology

This section describes the methodological approaches used to collect and classify the literature in relation to the efficiency of tax incentives. The review includes literature published in the domains of law, economics, sociology and public policy. In selecting the papers, the author searched the following databases: JSTOR, Google Scholar, Business Source Premier (BSP), International Bibliography of the Social Sciences (IBSS), OECD iLibrary, Kluwer Law Online, ScienceDirect Elsevier, Worldwide Political Science Abstracts and HeinOnline.

The selected time frame of the present literature review is from 2010 to 2019. The publications that appeared before this period are subject to several literature reviews regarding different aspects of tax incentives.[136]Thus, this paper seeks to present a follow-up of the rapidly increasing publications on this subject.

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127. G.W. Heiman, *Basic statistics for the behavioral sciences* pp. 32, 36 (2nd ed., Houghton Mifflin 1996).
128. Id., at p. 32.
129. The definition of a field experiment is however more complex than that: S.D. Levitt & J.A. List, *Field experiments in economics: The past, the present, and the future* , 53 European Economic Review 1, p. 2 (2009).
130. *See* the summary of the experimental contributions covering the period from 1990 to 2010 in S.X. Li et al., *Giving to government: Voluntary taxation in the lab* , 95 Journal of Public Economics 9/10, pp. 1190-1201 (2011).
131. K. Scharf & S. Smith, *The price elasticity of charitable giving: does the form of tax relief matter?* , 22 International Tax and Public Finance, p. 331 (2015).
132. Heiman, *supra* n. 127 , at p. 36.
133. An evaluation of a natural experiment is studying a particular intervention that has been implemented (e.g. by the state), but the circumstances surrounding the implementation are not under the control of researchers: S.T. Leatherdale, *Natural experiment methodology for research: a review of how different methods can support real-world research* , 22 International Journal of Social Research Methodology, pp. 19 (2019). For instance, the state implements a specific charitable giving tax reform and the researchers study the giving behavior prior and after the reform, trying to establish its effects. An evaluation of a natural experiment is essentially an observational study because researcher cannot manipulate its circumstances, even though certain researchers refer to the design of such an evaluation being "quasi-experimental"; id., at p. 23.
134. Id., at p. 20.
135. Andreoni, *supra* n. 99 , at p. 361.
136. For instance, Andreoni summarizes three generations of studies on tax incentives until the study of Bakija and Heim reviewed below. Andreoni, *supra* n. 99 , at p. 361. Bekkers and Wiepking offer an overview of the publications on this subject up to 2011: R. Bekkers & P. Wiepking, *A literature review of empirical studies of philanthropy: Eight mechanisms that drive charitable giving* , 40 Nonprofit and voluntary sector quarterly (2011). In 2005, Peloza and Steel published a substantial literature review covering several decades on the question of the price elasticity of charitable giving: J. Peloza & P. Steel, *The price elasticities of charitable contributions: a meta-analysis* , 24 Journal of Public Policy & Marketing 2 (2005). Bönke, Massarrat-Mashhadi and Sielaff provide a brief overview of the main findings up to 2008 related to the price elasticity and the effect of crowing out. *See also* Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 40. Li et al., *supra* n. 130 , describe the experimental study literature on the taxation and charitable giving. Fack and Landais provide an overview of empirical studies in relation to the price elasticity of charitable giving. Fack & Landais, *supra* n. 107 , at pp. 118-119.

The search criteria were defined seeking to select papers that deal with tax incentives and charitable contributions. Thus, the author has searched for articles that included the terms “philanthrop*”, “giving”, “charit*” or “donat*”, and “tax*”, “fiscal” or “subsid*” in the title and in the abstract. The results were filtered to include only peer-reviewed papers in the search engines that provided such an option. This search produced approximately 80 results.

The next step was reading the abstracts of the papers and identifying the ones that specifically address the topic of price elasticity of tax incentives. The review does not include papers containing purely theoretical discussions about the suitability of taxes in subsidizing charitable giving. In addition, it excludes the papers dealing with taxes that may potentially influence charitable giving but are not specifically encouraging it (for instance, inheritance taxes). While reading the selected papers, other researches that did not come up in the online search have been added to the review. In the end, 28 papers were selected.

During the process of coding, the author has classified the papers into the following four categories according to the *predominant* research question or result, even though several papers fall into two or more of those categories. The categories are as follows: (i) treasury efficiency of the existing tax incentives; (ii) the efficiency in relation to the form of a tax incentive; (iii) the efficiency of tax incentives by charitable sector; and (iv) the importance of the enforcement of tax incentives.

3.2. Literature review on the efficiency of tax incentives

3.2.1. Treasury efficiency of the existing tax incentives

3.2.1.1. General observations[137]

This section reviews the results of several economic papers that seek to estimate the efficiency of tax incentives for charitable giving in their respective jurisdictions (France, Germany and the United States). In other words, those papers seek to answer the question whether the taxpayers are *responsive enough* to the tax incentives in their jurisdictions or, on the contrary, their governments are losing money by providing tax reliefs.

It has to be highlighted that over the last few decades, the empirical estimations of the price elasticity of charitable giving, i.e. the donors’ responsiveness to financial incentives to give, produced mixed results.[138]Early studies suggested high taxpayer responsiveness to tax incentives,[139]whereas some later works showed much lower elasticities.[140]These later studies suggested that taxpayers might not be as responsive to tax incentives as previously imagined.

The review of recent literature confirms this point. In particular, all the researchers who have recently explored this question find that not all taxpayers are sensible to financial incentives for charitable giving. In fact, the majority of recent studies on tax-price elasticity in relation to donors’ income or the size of the donation provide two major conclusions. Firstly, taxpayers’ responses to tax incentives for charitable giving are *heterogeneous* , i.e. they vary significantly depending on the donor’s income (most of the studies)[141]or on the size of the donation.[142]Secondly, the majority of taxpayers are mostly or completely price-inelastic, i.e. do not respond to tax incentives at all. The authors conclude that the tax incentives studied in those works (German, French and US incentives) are “treasury inefficient”. As those results are very important in terms of their potential effect for policymaking, they deserve further elaboration.

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137. The limitation of the present review is that it focuses on journals published in English. However, it appears to be less of a problem in terms of variety of legal systems and tax incentives than a few decades ago. The period examined in this paper shows an increasing number of peer-reviewed publications concerning jurisdictions other than the US (although those remain the most numerous). German researchers produced the largest amount of publications on this topic in Europe (S. Borgloh, *What Drives Giving in Extensive Welfare States? The Case of Germany* , ZEW Discussion Papers, No. 08-123 (Zentrum für Europäische Wirtschaftsforschung (ZEW) 2008); Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 ; M. Adena, *Tax-price elasticity of charitable donations: Evidence from the German taxpayer panel* , WZB Discussion Paper, No. SP II 2014-302 (Wissenschaftszentrum Berlin für Sozialforschung (WZB) 2014); T. Bönke & C. Werdt, *Charitable giving and its persistent and transitory reactions to changes in tax incentives: Evidence from the German taxpayer panel* , Diskussionsbeiträge, No. 2015/2, Freie Universität Berlin, Fachbereich Wirtschaftswissenschaft (2015); research into other countries is catching up, however, e.g. for France (Fack & Landais, *supra* n. 107 ; G. Fack & C. Landais, *The effect of tax enforcement on tax elasticities: Evidence from charitable contributions in France* , 133 Journal of Public Economics (2016)), the UK (Scharf and Smith, *supra* n. 131) and the Netherlands (R. Bekkers et al., *When and why matches are more effective subsidies than rebates* , 18 Research in Experimental Economics (2015)). Outside of Europe, several Canadian studies stand out as well: e.g. B. Hossain & L. Lamb, *An assessment of the impact of tax incentives relative to socio-economic characteristics on charitable giving in Canada* , 29 International Review of Applied Economics 1, pp. 65-80 (2015)). Other works on this topic probably exist at national levels and in other languages.
138. Fack & Landais, *supra* n. 107 , at p. 118 (2010).
139. *See* the list of the German and the US authors in Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 50; for a later publication, *see* Borgloh et al., *supra* n. 137 . The results of Borgloh et al. are different from subsequent research into the matter. The author however wants to highlight that, compared to similar studies for the US, the results of Borgloh et al. suggest no significant differences between price elasticities in Germany and the US: Id., at p. 14.
140. Fack & Landais, *supra* n. 107 , at p. 118, with reference to, inter alia, M. Feldstein & A. Taylor, 44 Econometrica: Journal of the Econometric Society 6, pp. 1201-1222 (1976); W.C. Randolph, *Dynamic income, progressive taxes, and the timing of charitable contributions* , 103 Journal of Political Economy 4 (1995); and G.E Auten, H. Sieg & C.T. Clotfelter, *Charitable giving, income, and taxes: An analysis of panel data* , 92 American Economic Review 1 (2002).).
141. J. Bakija & B.T. Heim, *How does charitable giving respond to incentives and income? New estimates from panel data* , 64 Economic Analysis of Tax Expenditures: National Tax Journal 2, part 2 (2011)); Adena, *supra* n. 137 ; and P.G. Backus & N.L. Grant, *How sensitive is the average taxpayer to changes in the tax-price of giving?* , 26 International Tax and Public Finance (2019).
142. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 ; Bönke & Werdt, *supra* n. 137 .

3.2.1.2. Heterogeneous responses to tax incentives

In terms of the *heterogeneity of taxpayers' responses* , certain researchers find that donors that are more responsive to tax reliefs have either *larger income* or are making *larger donations* . There is no agreement as to which of the criteria is prevailing or whether both criteria influence donors' behaviour.

Several academics argue that the *size of the donations* is a determining factor. For instance, Fack and Landais (2010) studied the response of French households to two tax reforms (2003 and 2005) that increased the tax credit rate for charitable contributions from 50% to 66%.[143]The households that these researchers studied had similar income, but different taxable status due to differences in family size. They found that, overall, taxpayers' responsiveness to the reform (i.e. their after-tax price elasticity) was small, but tended to increase with the level of gifts.[144]Bönke et al. (2013)[145]studied German taxpayers and used the estimation techniques employed by Fack and Landais, and arrived at a similar conclusion regarding the heterogeneous responses that vary according to the size of the donation. In a subsequent publication, Bönke and Werdt (2015) confirm previous studies (Fack and Landais (2011), Bönke et al. (2013)), suggesting that tax incentives matter only at the very top and lower tail of the whole distribution of donors, by size of the donation. All the above researchers persist with the policy recommendation to differentiate tax incentives according to the amount given and not, as systems are currently designed, with income.[146]

Other authors focus on the changes in the efficiency of tax incentives depending on *donors' income* . For instance, a prominent research study by Bakija and Heim (2011) that used confidential government panel data from over 550,000 tax returns spanning the years 1979 through 2005[147]found that price elasticity is larger for high-income taxpayers and increases with their income.[148]Bakija and Heim also found evidence that people will increase their charitable giving in response to a predictable reduction in future tax liability arising from tax reform.[149]Likewise, Adena (2014) studied German income tax reforms implemented in 2004 and 2005, and found that different income groups reacted differently to tax incentives, high-income taxpayers being much more responsive to changes in the price of donation.[150]Her study also showed that donors from all income eclasss (except, interestingly, those from the highest income classes) adjust their donations gradually after changes in tax incentives and react to future predictable changes in price; and that donors' actual and to some extent future income (but not past income) also influenced their charitable giving.[151]Finally, in one of the most recent studies Backus and Grant (2019) found that an average US taxpayer (non-itemizers under the US tax system) tends to be inelastic, i.e. not responsive to tax incentives for charitable giving, and only the households in the top decile of income showed statistically significant and elastic price responses.[152]They therefore suggest that the government might consider amending the charitable deduction for those households below the top marginal tax bracket[153].

3.2.1.3. Treasury inefficiency

In terms of *treasury efficiency* , the studies of tax incentives aiming to encourage charitable behaviour produce mixed results in the recent economic literature. On one hand, a number of researchers estimating tax price elasticity both in terms of income and in terms of size of the donation find that *the majority of donors show little responsiveness to tax incentives* aimed at boosting giving. Those researchers conclude that despite the fact that this responsiveness seems to increase with income or size of donations, it is not sufficient to compensate for the loss of revenue due to those tax incentives and therefore the latter are inefficient. For instance, Fack and Landais (2011), whose work is based on a natural experiment, found that the overall effect of the French tax reform described in the previous section was small. The price elasticity was below the level that would make the actual French tax credit rate optimal, implying that the increase in charitable giving caused by higher tax credits was smaller than the foregone revenue for the state.[154]The authors conclude that the French credit cannot be justified unless crowding out between private and public contributions is large, or private funds are used much more effectively than public funds.[155]Similarly, the works of Bönke et al. (2013) who studied German taxpayers, challenged the overall effectiveness of tax incentives in boosting charitable giving if one considers only the price elasticity: they conclude that the majority of donors are not sensitive to them.[156]Interestingly, this

143. The effect of those reforms was that taxable households benefited from a 32% decrease in their price of giving whereas the incentives to give remained unchanged for non-taxable households: Fack & Landais, *supra* n. 107 , at p. 119.
144. Id., at pp. 120, 137.
145. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 40.
146. Bönke & Werdt, *supra* n. 137 ; Fack & Landais, *supra* n. 107 , at p. 137.
147. Heim was able to access this data because he was an employee of the US Treasury: Bakija, *supra* n. 108 , at p. 570, with reference to Bakija and Heim, *supra* n. 141 . The data was valuable not only because it was large-scale panel data, but also because it included very wealthy households; *see* Andreoni, *supra* n. 99 , at p. 361.
148. Ranging from -0.9 for those with incomes below USD 100,000 to -1.6 for those with incomes above USD 1,000,000: Bakija, *supra* n. 108 , at p. 571.
149. Bakija & Heim, *supra* n. 141 , at pp. 40-41.
150. Adena, *supra* n. 137 , at pp. 17, 30.
151. Id.
152. Backus & Grant, *supra* n. 141 , at p. 342.
153. Id., at p. 343.
154. Id.
155. Fack & Landais, *supra* n. 107 , at p. 137.
156. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at p. 50.

paper introduced for the first time the crowding out parameter in the econometric analysis.[157]Similarly, the article of Bönke and Werdt (2015) concluded that the German tax incentives are not likely to attract new donations.[158]One of the most recent studies carried out by Backus and Grant (2019) departs even more radically from those estimates. Their findings suggest that previous studies largely overestimated the price elasticity (and thus treasury efficiency) of charitable giving.[159]

On the other hand, a number of papers conclude that the tax incentives are treasury efficient in general, or at least neutral, even though not all the donors are responsive to them. In other words, while not all the taxpayers react to tax incentives, the overall effect of such incentives is still worth the cost (or produces equal cost) to the government. For instance, the research of Bakija and Heim (2011) and Bakija (2013) into US taxpayers indicated that previous studies might have greatly overestimated the taxpayers' responsiveness and still considered that, on average, incentives are treasury efficient.[160]Studying German taxpayers, Adena (2014) also found that the average weighted permanent elasticity is slightly below -1, meaning that tax incentives are effective in stimulating charitable giving.[161]

Finally, it is important to highlight that the studies described above concern cash donations. Only one study in the present sample of literature addresses *non-cash donations* , studying the effectiveness of tax incentives (deductions and credit) enacted in the US in an effort to increase living organ donations.[162]Venkataramani et al. (2012) compared the pre- and post-legislation change in living organ donations in states that passed legislation against the same change in those states that did not, and found no statistically significant effect of tax policies on organ donations.[163]

Overall, it appears that recent economic research leans towards the conclusion that existing tax incentives are treasury inefficient, as more researchers confirm those findings. Even the studies suggesting general treasury efficiency of tax incentives show that it is in general quite small, with the average price elasticity being just below -1 (and the behaviour of the taxpayers being very heterogeneous, as discussed in the previous section). However, in terms of policy recommendations, the authors of the researches discussed above do not suggest eliminating tax incentives for charitable giving. Certain researchers highlight that even treasury inefficient tax incentives might have other positive impact from the public policy perspective and other political arguments may speak for retaining them.[164]As highlighted in the previous section, a number of researchers recommend modifying the existing tax incentives, for instance differentiating them according to the amount given,[165]income tax bracket[166]or other factor of responsiveness.

The results of this research on cash donations are summarized in Table 1:

Table 1 – Tax price elasticity of charitable donations: comparison of the estimates of the research conducted between 2011 and 2019 (cash donations)[1]

Estimates based on income class[2]			
	Low	**Middle**	**High**
Bakija and Heim (2011) [3]	-0.47	-0.47	-1.287
Adena (2014) [4]	-0.26 to -0.17	-1.56 to −0.96	-1.38 to -1.07
Backus and Grant (2019)	-0.25	-0.25	-1.99

157. Id., at p. 41. In terms of crowding out effects, the study by Bönke et al. provides evidence that may be interpreted in favour of pure altruism. In particular, they suggest classifying small and lower-medium donors as pure altruists producing a complete crowding out effect. On the other hand, upper-medium and large contributors are impure altruists, deriving utility not only from the overall level of giving but also their individual contribution (i.e. even though they know that overall giving may be sufficient, they continue to give because they find personal satisfaction in giving).
158. Id., at p. 50.
159. Backus & Grant, *supra* n. 141 , at p. 342. The reason for the difference in their results that they applied a different estimation technique and found that a significant downward bias existed in the price elasticity of average taxpayers. From the public policy analysis perspective, the results are important as they indicate that if the price elasticity is less than 1, the deductibility of charitable donations may not be treasury efficient. Id., at p. 319.
160. Bakija & Heim, *supra* n. 141 ; Bakija, *supra* n. 108 .
161. Adena, *supra* n. 137 , at pp. 17, 30.
162. A.S. Venkataramani et al., *The Impact of Tax Policies on Living Organ Donations in the United States* , 12 American Journal of Transplantation 8, pp. 2133-2140 (2012).
163. Id. The authors note that several reasons could explain such a result: the lack of awareness about the existence of those incentives and the fact that the cash value of the tax deduction may be too low to defray costs faced by donors may explain this result. In addition, the states that were proactive enough to pass tax policy laws may have already depleted donor pools with previous interventions. For more explanation and the limitations of the study, *see* Venkataramani et al., *supra* n. 162 , at p. 2133.
164. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 , at pp. 52-53; Venkataramani et al., *supra* n. 162 . For instance, in a non-disaster context, tax subsidies for charitable donations could have positive spill-over effects on health: *see* B.K. Yörük, *Does giving to charity lead to better health? Evidence from tax subsidies for charitable giving* , 45 Journal of Economic Psychology (2014).
165. Bönke & Werdt, *supra* n. 137 ; Fack & Landais, *supra* n. 107 , at p. 137.
166. Backus & Grant, *supra* n. 141 .

Estimates based on income class[2]			
Estimates based on size of the donation [5]			
	Low	**Middle**	**High**
Fack and Landais (2010)		-0.2 to -0.6	
Bönke et al. (2013)	-1.439	-0.79 to −0.6	-1.14 to −0.85
Bönke and Werdt (2015)	-2.16 to -1.00	-1.33 to -0.83	-1.58

1. The table offers only an approximate comparison of the results on tax price elasticity studies. The authors quoted above did not use exactly the same income classes in their works, so for precise data and results, refer to their publications.
2. The classification of various income classes differs significantly between authors, therefore this is only an approximate comparison. The table indicates the highest and lowest elasticities in the given income class and not at the margins of it.
3. The authors divide their sample into two gross income groups: under USD 200,000 and over USD 200,000 per year: *see* Bakija and Heim (2011), n. 141 , at p. 39-40, 48.
4. The results differ not only in relation to income class but also depending on whether tax price elasticities are permanent, i.e. taxpayers know their future income and price when itemizing the donation (Bönke and Werdt (2015)) or transitory (i.e. anticipating future tax changes): *see* Adena (2014), n. 137 , at p. 19.
5. The table indicates the highest and lowest elasticities in the given donation size group and not at the margins of it.

3.2.2. Form of incentives: Tax reliefs or direct subsidies?

An important part of economic literature concentrates on the form of the tax incentives for charitable giving. In recent years, researchers have carried out a number of studies – usually experimental – analysing the different responses to matching and tax rebate incentives.[167]Even though a number of studies quoted below study fundraising mechanisms and do not directly relate to taxes, they provide useful indications about donors' reactions to other known donations.

The difference between a matching grant and a tax rebate (tax deduction or tax credit) is essentially that the former is a direct subsidy (to the charity) and the latter is a tax expenditure (available to the donor). Through matching, governments offer an additional sum of money on top of the charitable contribution, whereas tax incentives structured through rebate mechanisms offer a relief on donors' taxable income. For instance, in case of matching, for any CHF 1 given by a donor to a charity, the government gives an additional CHF 0.25 to the same charity, whereas in case of tax relief, the government indirectly "refunds" a certain sum to a donor through tax allowances. One example of a matching grants system is the UK Gift Aid scheme.[168]

While comparing the efficiency of matching grants and tax reliefs, the economic research identifies two points that may be of a particular interest for policymakers.

Firstly, a number of lab and field experiments concluded that offering donors *a matching grant has a bigger effect than an equivalent-value rebate* on the charitable contributions received by the charity.[169]For instance, Blumenthal et al. (2012) conducted an experiment examining both charitable giving and compliance behaviour under the regimes of matching and rebate. They find that match-inclusive gross contributions tend to be higher than under a rebate system. Interestingly, match incentives are also associated with better tax compliance than rebate incentives.[170]Huck and Rasul (2011) carried out a natural field experiment looking into the efficacy of matched fundraising schemes.[171]They found that announcing the mere presence of a significant lead donor substantially increased donations, although it did not raise response rates (i.e. the same donors simply give more).[172]Karlan et al. (2011) in their natural field experiment found only weak evidence that either of the matches (a match of USD 1 for every USD 3 given and USD 1 for every USD 1 given) help to increase donations. However, they observe heterogeneous effects: the donors who are actively supporting the organization show responses that are more positive in comparison with lapsed givers.[173]Eckel and Grossman (2017)[174]considered that matching grants induced greater giving because it is associated with a cooperation framework, which makes donors feel more generous, while the rebate is associated with a reward frame.[175]Gandullia (2019)

167. *See* the review of the literature up to approximately 2010 in S. Huck & I. Rasul, *Matched fundraising: Evidence from a natural field experiment* , 95 Journal of Public Economics 5/6, pp. 351-362 (2011); and D. Karlan, J.A. List & E. Shafir, *Small matches and charitable giving: Evidence from a natural field experiment* , 95 Journal of Public Economics 5/6, p. 344 (2011).
168. *See* the description in https://www.gov.uk/donating-to-charity/gift-aid (accessed 7 Feb. 2020).
169. Scharf & Smith, *supra* n. 131 , at p. 331; C.C. Eckel & P.J. Grossman, *Rebate versus matching: does how we subsidize charitable contributions matter?* , 87 Journal of Public Economics 3/4, pp. 681-701 (2003).
170. M. Blumenthal, L. Kalambokidis & A. Turk, *Subsidizing charitable contributions with a match instead of a deduction: what happens to donations and compliance?* , 65 National Tax Journal 1, p. 91 (2012).
171. The researchers conducted this experiment in collaboration with the Bavarian State Opera House. They sent 14,000 regular opera attendees a letter describing a charitable fundraising project organized by the opera house and the recipients were randomly assigned to treatments designed to explore their behavioural responses. *See* the description of the experiment in Huck & Rasul, *supra* n. 167 , at p. 352 (2011).
172. Id., at p. 360.
173. Karlan, List & Shafir, *supra* n. 167 , at p. 344.
174. C. Eckel & P.J. Grossman, *Comparing rebate and matching subsidies controlling for donors' awareness: Evidence from the field* , 66 Journal of Behavioral and Experimental Economics, pp. 88-95 (Feb. 2017).
175. L. Gandullia, *The price elasticity of warm-glow giving* , 182 Economics Letters, pp. 30-32 (2019).

studied the charitable behaviour of "warm-glow givers",[176]and found that on average, donations from this group are significantly higher under the matching subsidy.[177]

The researchers that use other methods, such as surveys, also confirmed the results of the above experimental research. For instance, Scharf and Smith (2014) used a survey to explore the responses of taxpaying donors to changes in the match and rebate elements of the UK Gift Aid scheme.[178]They concluded that total contributions responded more to changes in the match rate than to changes in the rebate rate, confirming the results previously demonstrated in lab and field experiments.[179]They concluded that match-style incentives are likely to be more (cost) effective than rebate-style tax incentives if the objective is to increase total contributions.[180]Bekkers (2015) reached a similar conclusion: by means of a survey-based field experiment, he confirmed that subsidies for charitable contributions of a rebate type are less effective than matching subsidies.[181]

The second important finding of the economic literature comparing match and rebate incentives is that matching grants may deploy *a partial crowding out effect* . This means that when donors know that someone – the government or another large donor – will top up their contributions, they reduce their donations. Huck and Rasul (2011) found that if the donors receive matching on their donations (by another lead donor), the amount of the total donations received including the match value rise, but the *actual donations* excluding the match decrease (ie. they observed a partial crowding out effect).[182]However, certain researchers offer solutions to this problem. Having conducted lab and field experiments exploring the crowding out effect, Adena and Huck (2017) suggested allocating the matched amount to a *different* project. They found that matching schemes that introduced a second charitable good towards which the matched amount is allocated can outperform standard matching. They noted nonetheless that carefully choosing a matching partner is important and, ideally, the projects should be complements.[183]In the framework of a field experiment involving individuals who are much poorer than the usual subjects in fundraising experiments, Adena et al. (2019) found that matching leads to a higher response *without* any crowding out, and that matching clearly improved fundraising among the poor.[184]

3.2.3. Efficiency by charitable sector

Another branch of the recent research explores the long-standing policy question on the donors' sensitivity to tax incentives in donating to *different charitable sectors* . In other words, the researchers seek to establish whether the effectiveness of tax incentives for charitable giving depends not only on donors' income, the size of the donation or the form of the tax incentive, but also on the charitable sector to which the gift or grants are made.

The results of those studies stand as a contrast to recent articles indicating that the majority of donors are (completely) unresponsive to tax incentives when classified by their income or the size of donation. In fact, the studies on charitable giving by sector find that donors giving to specific charitable causes are extremely sensitive to tax incentives.[185]For instance, the study by Hossain and Lamb (2012) concluded that tax incentives influence the decision to make a charitable donation and the effect of this influence varies across the four donation sectors that the researchers studied (religious, health, social services and international). In particular, they found that the price of donation is negative and significant for all but the religious sector.[186]In other words, in terms of the price elasticity criteria, tax incentives are not efficient in encouraging giving for religious causes, but are efficient for all other studied sectors. Zampelli and Yen (2017) examined price elasticity of donations to three types of organizations with different charitable goals: those helping people with necessities (food, shelter, etc.), the combined-purpose organizations and international organizations, and all other organizations.[187]In all cases, the researchers concluded that the tax incentives are treasury efficient, as the foregone tax revenue is more than offset by the greater amount of monetary donations to charity (i.e. price elasticities are below -1)[188]. Duquette (2016) also explored the price elasticity of charitable giving by sector, using data from non-profit tax filings

176. "Warm-glow givers" are donors that are driven by so-called "impure" altruism. In particular, such donors are not only motivated by a desire of more of the public good but derive some personal satisfaction from the act of giving. J. Andreoni, *Giving with impure altruism: Applications to charity and Ricardian equivalence* , 97 Journal of Political Economy 6, pp. 1448-1449 (1989).
177. Gandullia, *supra* n. 175 .
178. Scharf & Smith, *supra* n. 131 , at p. 331.
179. Id., at p. 346.
180. Id., at p. 347.
181. Bekkers et al., *supra* n. 137 .
182. Huck & Rasul, *supra* n. 167 , at p. 360.
183. M. Adena & S. Huck, *Matching donations without crowding out? Some theoretical considerations, a field, and a lab experiment* , 148 Journal of Public Economics, pp. 32-42 (Apr. 2017).
184. M. Adena, R. Hakimov & S. Huck, *Charitable giving by the poor: A field experiment in Kyrgyzstan* , WZB Discussion Paper, No. SP II 2019-305r (WZB 2020).
185. The studies described below considered treasury efficiency only in relation to the criteria of price elasticity (*see* the criterions of treasury efficiency discussed in section 3.1.1.).
186. B. Hossain & L. Lamb, *Does the effectiveness of tax incentives on the decision to give charitable donations vary across donation sectors in Canada?* , 19 Applied Economics Letters 15, p. 1489 (2012).
187. E.M. Zampelli & S.T. Yen, *The Impact of Tax Price Changes on Charitable Contributions to the Needy* , 35 Contemporary Economic Policy 1, p. 114 (2017).
188. Id., at p. 119.

and exploring a natural experiment of the effects of the 1986 US tax reform on charitable giving.[189]In general, Duquette found very large price elasticities, which however differed depending on the charitable subsector.

The summary of price elasticities by sector is set out in Table 2.

Table 2 – Price elasticity estimates by charitable sector

	Health	Arts and culture/education	Social/ human services or basic necessities	International/ combined purpose	Other	Religion
Hossain and Lamb (2012)	-0.78		-0.36	-0.16		0.12
Zampelli and Yen (2017)			-1.31	-1.33	-1.05	
Duquette (2016)	-4.6 to -5.9	-3.9 to -2.3	-5.0 to -3.62		-4.8 to -3.42	

Even though this article does not seek to make a methodological comparison between the studies, it is useful to draw readers' attention to the fact that studying the responsiveness of donors who give to different charitable sectors entails specific methodological difficulties. In particular, the data from tax returns that is often used in efficiency studies generally does not contain information on donations by sector, because usually tax incentives apply to all charitable donations.[190]Therefore, the researchers resort to other methods, such as surveys (e.g. Hossain and Lamb (2012) and Zampelli and Yen (2017)). However, for a number of reasons, the responses of a survey may be biased.[191]Zampelli and Yen suggest that one of the reasons why their results may be unrealistically high compared to the existing literature is that they used survey data rather than tax data (as well as the fact that cross-sectional studies reflect only short-term donor responses, which tend to be higher).[192]

In terms of policy proposals, the researchers suggest that changing the tax treatment of contributions can have substantial impacts on the amount contributed.[193]Duquette also proposed differentiating tax incentives for different sectors, creating more generous tax incentives for tax-price elastic charitable sectors and reducing the deductions for inelastic ones.[194]

3.2.4. Importance of enforcement of tax incentives

A number of researchers showed that the level of tax enforcement is very important in preventing the misreporting and thus ascertaining the efficiency of the incentives. In fact, they show that if tax enforcement is inadequate (for instance, reporting charitable contributions is completely uncontrolled by the authorities), tax misreporting increases.

For instance, Ackerman and Auten (2011) studied non-cash donations of vehicles, comparing the prices declared for tax (and thus deduction) purposes with the prices of similar vehicles sold at online auctions. They arrived at the conclusion that taxpayers most likely overestimate the true values of their donated vehicles.[195]Fack and Landais (2015) studied the reporting of all charitable contributions in France. They showed the drastic impact that simple reporting obligations may have on the amount of reported charitable donations. In 1983, France implemented a simple tax enforcement reform asking taxpayers claiming tax benefits related to a charitable donation to submit a related receipt to their tax returns. Prior to this reform, the taxpayers were only required to keep a record of their contributions. Fack and Landais show that one year after the reform, reported contributions dropped by more than 75% and even 25 years later never recovered half of their pre-reform level.[196]They provided evidence that this drop was directly related to the new reporting requirements and not to changes in giving behaviour. The researchers highlighted that studies on the price elasticity of giving behaviour can lead to misleading policy conclusions if researchers and policymakers do

189. N.J. Duquette, *Do tax incentives affect charitable contributions? Evidence from public charities' reported revenues* , 137 Journal of Public Economics, p. 68 (2016).
190. D. Hungerman & M.O. Wilhelm, *The Price Elasticity of Charitable Giving: Toward a Reconciliation of Disparate Literatures* , pp. 1 et seq. (Lilly Family School of Philanthropy 2016).
191. On survey bias, *see* Hossain & Lamb, *supra* n. 137 , at p. 78.
192. Zampelli & Yen, *supra* n. 187 , at p. 119. Some researchers suggest new methodological solutions for studying this domain. Studying matching grants, Hungerman and Wilhelm found that donors' price responses to the experimental research are very similar to the ones generated by tax policies. They noted that this may have potentially important implications for further studies on how donors respond to tax incentives related to specific sectors (education, health, etc.), that are impossible to define when studying tax policies that apply to all those areas at the same time. They suggest that researchers could use match-price experiments to identify price elasticities for giving to each of those areas: Hungerman & Wilhelm (2016), *supra* n. 190 , at pp. 1 et seq.
193. Zampelli and Yen, *supra* n. 187 , at p. 119.
194. Duquette, *supra* n. 189 , at p. 68.
195. D. Ackerman & G.E. Auten, *Tax Expenditures for Noncash Charitable Contributions* , 64 National Tax Journal 2, p. 683 (2011).
196. Fack & Landais, *supra* n. 137 , at p. 24.

not consider such factors as tax enforcement.[197]Marx (2015) studied the impact of the US regulations to curb tax avoidance and evasion, observing that after the Tax Reform Act of 1969 tackling this issue, donations sharply dropped. He suggested that the phenomenon could be explained by deterrence of abuses as well as by the increased cost of running a foundation. The regulation successfully deterred gifts for non-charitable purposes, however at the cost that the foundations were forced to spend a large amount of charitable giving on compliance with the regulations.[198]Serocki and Murphy (2013) found evidence of "secondary" tax evasion due to certain Internal Revenue Code substantiation requirements for the charitable contribution deduction for federal income tax.[199]Certain researchers noted that tax incentives on donations are potentially subject to both under-claiming, which is observed among higher rate donors, and over-claiming of tax rebates.[200]

4. Summary and Discussion

4.1. Principal results

When seeking to boost charitable giving, policymakers must first decide whether to use financial incentives for this purpose or to foster the culture of giving by other means. If the choice is to use financial incentives, the government must then decide how to design them. In general, there are two ways of financially incentivizing charitable giving: through direct subsidies or tax expenditures. Direct subsidies usually take form of matching grants or tax allocation, whereas tax expenditures take the form of different tax reliefs of taxable income (deductions) or tax credits. The theory reviewed in the present article tackles both questions: whether financially incentivizing charitable giving is a generally desirable policy option (theoretical perspectives) and which of the financial incentives are the most efficient (empirical studies).

From the theoretical perspective, the author shows that the use of tax expenditures in policymaking as opposed to direct subsidies has long been a target of acute criticism. The grounds for this are numerous. The inequitable effects of tax expenditures as opposed to direct subsidies are the most important point. Tax deductions deploy the most inequitable effects, as their benefits rise with the progressivity of the tax system and produce the results that are contrary to the fundamental principles of this system, such as ability to pay. A tax credit is a more equitable option in this respect. Nonetheless, it is still not perfect because all tax expenditures exclude individuals or entities that do not have taxable income. Other important drawbacks of tax expenditures are their opacity (causing democratic concerns), difficulties in predicting and measuring their scope as well as difficulties in modifying them as they are usually anchored in statutes that do not undergo annual scrutiny. Even though, if properly structured, tax expenditures present certain advantages, they currently remain less desirable than direct subsidies, especially due to the fact that they are often uncontrolled, unaccounted for, and not evaluated.[201]The fact that their low salience is sometimes advantageous (and desirable) for the legislator, must not be exploited. Those concerns have recently been shared by certain international organizations, such as the OECD.[202]As a result, tax scholars suggest curtailing the general use of tax expenditures in policymaking.

In addition to the theoretical arguments against the extensive use of tax expenditures, the empirical economic research seems to favour direct expenditures over tax subsidies in encouraging charitable giving. In particular, the majority of recent works studying tax data conclude that the existing financial incentives in the studied countries are *treasury inefficient* , even though there is no scientific consensus on this question. In other words, they are not worth the cost to the respective governments. The majority of the researchers reviewed in this article conclude that the existing tax incentives in France,[203]Germany[204]and the US,[205]at least in their present form, are inefficient. Certain studies into US[206]and German[207]data suggest general treasury efficiency of tax incentives. However, this treasury efficiency is not very marked, with those studies showing that the average price elasticity is just below -1 and the behaviour of the taxpayers is very heterogeneous. These studies concern the most common types of tax incentives for charitable giving, i.e. such instruments as tax credits (France) or tax deductions (the US, Germany).

In terms of the *design of the financial incentives* , numerous recent studies carried out experiments or surveys to analyse donors' responses to matching and tax rebate incentives. Those works usually studied the differences between a matching grant, which is a direct subsidy, and a tax relief, which is a tax expenditure. The majority of those works indicate that a *matching grant has a bigger effect than an equivalent-value tax rebate* on donors' behaviour. Thus, certain researchers suggest that direct subsidies through matching grants could be a more optimal policy option. The important downside of this policy instrument is that it is likely

197. Id., at pp. 23-24.
198. B.M. Marx, *Has regulation of charitable foundations thrown the baby out with the bath water?* , 129 Journal of Public Economics, pp. 63-76 (2015).
199. J.S. Serocki & K.J. Murphy, *The effect of the US federal income tax appraisal requirement on noncash charitable contributions for individuals* , 39 Journal of Economics and Finance 1 (2015).
200. Scharf & Smith, *supra* n. 131 , at p. 347.
201. Hemels, *supra* n. 48 , at p. 4.
202. OECD, *supra* n. 64 , at pp. 33-34.
203. Fack & Landais, *supra* n. 107 .
204. Bönke, Massarrat-Mashhadi & Sielaff, *supra* n. 93 ; Bönke & Werdt, *supra* n. 137 .
205. Backus & Grant, *supra* n. 141 .
206. Bakija & Heim, *supra* n. 141 ; Bakija, *supra* n. 108 .
207. Adena, *supra* n. 137 .

to cause crowding out, i.e. when private donors withdraw, totally or partially, due to the governmental activity. However, some authors suggest solutions, such as assigning the “matched” amount (i.e. direct governmental subsidy) to a different charitable goal. Such a subsidy would then depart from “pure” matching schemes, as the “matched” amount would not be transferred to the charity receiving the donation.

4.2. Gaps in the existing research

This review of the recent economic literature shows two important gaps in current studies related to the efficiency of subsidies for charitable giving. To begin with, studies on the *efficiency of non-cash donations* are virtually inexistent. One paper arrives at the conclusion that tax incentives have no effect on taxpayers’ behaviour in the very specific field of living organ donations.[208]However, much further research is needed to draw more general conclusions concerning the effect of tax incentives on non-cash donations. In addition, there are no recent studies on the effect of financial subsidies – tax incentives or direct grants – on *corporate philanthropy* . In contrast to a large body of publications on individual philanthropy, the small amount of scientific literature studying corporate behaviour has already been noticed by other researchers several years ago.[209]To date, the studies have not advanced much and our knowledge about the links between corporate giving behaviour and taxation is very incomplete.

There are very few scientific studies on *tax allocation mechanisms* , where the taxpayer has an option to give a portion of his income tax liability to a charity (often from a specifically designated list). Several experimental studies could however be of a particular interest for policymakers in this respect. In particular, lab experiments tend to show consistently that *individuals responded positively to taxation* when the tax proceeds were directed to the programmes they valued.[210]In other words, people are willingly giving to the government when they know that the funds are to be allocated to the public good of their choice. The policy implication of such a conclusion supports the allocation taxation mechanisms that already exist in some jurisdictions, for instance Lithuania.

The author has not found studies about jurisdictions other than France, Germany and the US in English assessing the efficiency of their respective tax incentives or direct subsidies for charitable giving using tax filing data (the author has found experimental and survey-based studies from more jurisdictions). This gap in scientific publications at an international level, apart from language limitations, may be related to such basic issues as insufficient measuring and reporting of tax expenditures. In a number of jurisdictions, the scope of tax expenditures is unknown due to non-existent tax expenditure accounting. For instance, as has been noted, Switzerland does not report or collect data on tax expenditures neither for cantonal nor federal tax expenditures and the access to tax filing data is extremely restrictive due to tax secrecy provisions. Therefore, in the absence of data, it is very hard to study the tax price elasticity of donors in a number of jurisdictions.[211]

4.3. Applying the results of this research to tax incentives

Policymakers could draw some valuable conclusions from the existing economic literature in order to improve the existing tax incentives. One very relevant observation from a public policy perspective that resulted in all recent studies analysing tax data is that the *donors’ responses to tax incentives are variable* .

Firstly, they vary according to the *donors’ income and/or size of the donation* . In particular, high-income donors (or the ones making larger donations) are in general much more responsive to tax incentives than lower-income donors, who show little response, or no response at all. This aspect could play a role in redefining different aspects of tax incentives. However, the fact that donors respond differently to tax incentives does not necessarily mean that their sensitivity to financial incentives is different. The differences in responses could also be related to other factors, such as information asymmetry between different donors related to the knowledge about tax law provisions and tax filing (higher-income donors often using tax specialists for filing and tax planning). Nonetheless, the fact that taxpayers react differently to tax incentives is already relevant in the policymaking process.

208. Venkataramani et al., *supra* n. 162 .
209. A. Gautier & A.-C. Pache, *Research on corporate philanthropy: A review and assessment* , 126 Journal of Business Ethics (2015).
210. Li et al., *supra* n. 130 , at p. 1191.
211. For instance, the substantial amount of recent German research may relate to the fact that since 1989, the German Federal Statistical Office provides public access to detailed tax data. This anonymized data is referred to in all German studies quoted in this paper. It contains detailed information on income and taxes and numerous demographic taxpayer characteristics (age, state of residence, religion, the number and age of children). Nevertheless, it has its limitations – for instance, high-income taxpayers are strongly overrepresented. *See* Adena, *supra* n. 137.The data is available for every third year since 1989, and for every year since 2012: https://www-genesis.destatis.de/genesis/online/data;sid=BBB397AFE81A476659CAC0C7FCD19DC7.GO_1_4?operation=statistikenVerzeichnisNextStep&levelindex=0&levelid=1559572446646&index=35&structurelevel=2 (accessed 3 June 2019). Researchers from other countries rarely use panel tax data, which is very valuable but usually unavailable information due to tax secrecy considerations. The exception is the study of Bakija & Heim, *supra* n. 141 , where researchers could access taxpayer panel data as Heim was an employee of the US Treasury: Bakija, *supra* n. 108 , at p. 570. In the absence of available tax data, researchers have used surveys or non-profit financial statements, as well as the data collected through experiments. Experimental data is useful for some research questions, but policymakers are sometimes sceptical whether the results are applicable to the whole population: Scharf & Smith, *supra* n. 131 .

In addition, researchers have found that donors' responses to incentives *when giving to different charitable sectors* are also heterogeneous. In particular, the results show that donors giving to specific charitable causes are very sensitive to tax incentives (e.g. giving to the welfare sector). Regrettably, there seems to be no consensus between authors which sector is the most tax sensitive. In addition, the quoted research concerns only the US and Canadian tax systems. As a result, policymakers could explore this path, but country-specific studies would need to be carried out to study the exact responses of donors in a specific jurisdiction as the current literature is incomplete.

When considering all those possibilities of creating different tax incentives for different taxpayers, policymakers should keep in mind the fundamental principles of taxation, especially the one of taxpayers' equality and the ability to pay. For instance, differentiating tax incentives according to the size of a taxpayer's income even further (in a jurisdiction where, due to the progressive income taxation and the incentive in form of a tax deduction, higher-income taxpayers already receive more generous tax incentives than lower-income taxpayers, such as Germany, Switzerland, the US, etc.) would be problematic. In this respect, focusing on the size of the donation rather than on taxpayers' income might be a more equal policy option, as well as creating different tax incentives for various charitable sectors. In addition, the researchers show that proper law enforcement is also essential to ascertain the efficiency of tax incentives. They urge policymakers to consider tax enforcement factors – and in particular, the overreporting of charitable contributions – in evaluating donors' responses to tax incentives for charitable giving. If tax enforcement is inadequate or non-existent (for instance, in France prior to the 1983 reform), tax misreporting increases and tax incentives for charitable giving become exploited.

5. Conclusions

The present article shows that the use of tax expenditures (deductions or credits) to encourage charitable giving behaviour could be questioned both on theoretical and empirical grounds.

The longstanding theoretical criticism of the use of tax expenditures in policymaking, as opposed to direct subsidies, has remained relevant, especially considering such criteria as taxpayer equality and system transparency. For instance, multiple authors agree that the regressive distributional effect of tax deductions in the systems of progressive income taxation is clearly problematic in light of the principle of ability to pay. The counterargument of the tax expenditure doctrine relating to the complexities in distinguishing the "real" tax expenditure provisions from other tax law dispositions does not overall invalidate it, though it raises some valid points.

Concerning the empirical research, an important part of the recent economic papers has found that income tax incentives are overall treasury inefficient in encouraging charitable giving when considering the criterion of tax price elasticity. The majority of donors have low tax price elasticities, i.e. their response to tax incentives is insufficient to compensate governments for lost revenues. Analysing additional criteria such as the crowding out effect or comparing the efficiency of governmental and private interventions would give a fuller public policy picture. However, those aspects are difficult to measure and are subject to little or no empirical studies. At present, it seems that direct subsidies, such as matching grants, are more successful than tax incentives at incentivizing taxpayers to donate.

Should tax incentives however remain governments' preferred policy tool to boost charitable giving, there might be ways to make them more effective. For instance, certain economists recommend differentiating incentives according to taxpayers' income, size of the donation or a specific charitable sector, because several studies show heterogeneous responses to those criteria and in particular stronger responses to tax incentives from more affluent donors or the ones giving larger donations. From a legal perspective, such a policy choice must however be very carefully weighted in the framework of the fundamental tax principles such as the ability to pay. Whereas incentivizing donations to only specific charitable sectors could be justified from the tax theory standpoint, introducing more generous tax incentives for donors that have higher income would be incompatible with the principle of ability to pay and the concept of vertical equity. Such incentives would amplify the highly criticized regressive distributional effect, which tax expenditures (mainly in form of tax deductions) already deploy in progressive tax systems. Perhaps a more equitable and thus a more viable policy option recommended by certain scholars as well as international organizations would be switching from deductions to tax credits. Nonetheless, one must keep in mind that tax credits may also have a certain regressive effect as they exclude taxpayers who do not have any tax liabilities (for instance, due to their low income).

Overall, policymakers should carefully consider both legal and economic arguments when seeking to implement new tax incentives to encourage charitable giving behaviour. The existing tax expenditures should also be subject to regular scrutiny by the legislator, even though identifying them may in certain cases not be easy. Lastly, the empirical research confirms that tax enforcement provisions are crucial for the efficiency of tax incentives.