



This document has been provided by the International Center for Not-for-Profit Law (ICNL).

ICNL is the leading source for information on the legal environment for civil society and public participation. Since 1992, ICNL has served as a resource to civil society leaders, government officials, and the donor community in over 90 countries.

Visit ICNL's **Online Library** at
<http://www.icnl.org/knowledge/library/index.php>
for further resources and research from countries all over the world.

Disclaimers

Content. The information provided herein is for general informational and educational purposes only. It is not intended and should not be construed to constitute legal advice. The information contained herein may not be applicable in all situations and may not, after the date of its presentation, even reflect the most current authority. Nothing contained herein should be relied or acted upon without the benefit of legal advice based upon the particular facts and circumstances presented, and nothing herein should be construed otherwise.

Translations. Translations by ICNL of any materials into other languages are intended solely as a convenience. Translation accuracy is not guaranteed nor implied. If any questions arise related to the accuracy of a translation, please refer to the original language official version of the document. Any discrepancies or differences created in the translation are not binding and have no legal effect for compliance or enforcement purposes.

Warranty and Limitation of Liability. Although ICNL uses reasonable efforts to include accurate and up-to-date information herein, ICNL makes no warranties or representations of any kind as to its accuracy, currency or completeness. You agree that access to and use of this document and the content thereof is at your own risk. ICNL disclaims all warranties of any kind, express or implied. Neither ICNL nor any party involved in creating, producing or delivering this document shall be liable for any damages whatsoever arising out of access to, use of or inability to use this document, or any errors or omissions in the content thereof.

Explaining Percentage Philanthropy: Legal Nature, Rationales, Impacts

Nilda Bullain¹

Introduction

The central idea of percentage philanthropy is that taxpayers may designate a certain percentage of their income tax paid to a specific non-profit, non-governmental organization (NGO), and in some cases to other organizations, mainly churches. Percentage philanthropy laws generally have the following characteristics:

- Taxpayers themselves decide on the use of a portion of the taxes paid;
- Consequently, only a taxpayer may take advantage of the legislation (depending on the country, students, retired people, or citizens who pay their taxes in another country may not be eligible);
- The use of the designated funds is restricted to supporting certain non-profit organizations (usually those that conduct public benefit activities), public institutions, state objectives, or churches; and
- The implementation of the law, and therefore its impact, will vary according to:
 - the level of percentage that may be designated,
 - the criteria for entitlement of the beneficiaries, and
 - the administrative procedures prescribed in the laws and regulations.

With this in mind, we are going to examine the roots and history of this type of legislation, along with its relationship to philanthropy and “conventional” tax incentives for philanthropy. In addition, we will look at the underlying rationales for such legislation as well as its impact based on experience to date.

Historical Context

European Roots

The concept of “percentage legislation” originates in policies established during the 19th century to resolve dilemmas of church financing after the separation of state and church. Legislative efforts in European countries to separate the powers of the state from those of the church (mainly the Catholic Church) started after the French Revolution in 1789 and lasted until the middle of the 20th century. In this process, the issue of church financing was also addressed.

Under one model, the law essentially imposes a compulsory church tax on all members of the church. Church tax was introduced in Germany during the 19th century as a law of the church that later became authorized by the state. Today the state collects the tax, in addition to personal tax, from registered church members in the name of the churches (four registered major denominations) and transfers it to them. In Germany such taxes may amount to 8-9% of the income tax. Similar arrangements exist in Austria, where such taxes represent 1.25% of gross income.^[1]

Another type of law permits a voluntary contribution by the taxpayer and accommodates contributions for secular aims as well as religious ones. Currently, there are laws in Italy and Spain that allow for “percentage mechanisms” similar to the model followed by Hungary and other CEE states, albeit with significant differences in terms of the amount of the designation allowed and the permissible beneficiaries. In fact, when the idea of 1% legislation first emerged in the Hungarian Parliament (within the context of a debate on church financing), the Italian law was specifically referenced as a model.^[2]

In Italy, the Parliament adopted an Act in 1985^[3] that established a new system of financing for the Catholic Church effective from January 1, 1990. According to this law, 0.8% of the personal income tax of taxpaying physical persons due in each year may be transferred to the Catholic Church or to the state, to enable performance of socially important activities. In 1998, a Presidential Decree expanded the permissible beneficiaries to include other registered churches.

Where taxpayers designate funds for state objectives, the designations are transferred to a special fund. All not-for-profit legal entities may apply to this fund, including local churches as well as local authorities and their related institutions. Even government departments and institutions are eligible.

From the experience of Western Europe, we can draw the conclusion that “percentage legislation” has essentially served the purpose of a specific, non-political way of financing the Catholic Church and other churches. In Spain and Italy, an additional objective has been to provide some citizen-allocated funds to finance state-determined objectives of public interest. In a way, this second function of the legislation may be viewed as a concession made to provide a fair choice to non-religious taxpayers. In the case of Italy, which is the closest example to the Hungarian model, while the intent behind the law may have been to channel funds to NGOs, in practice this does not seem to happen.

The CEE Model of Percentage Legislation

In the case of CEE, the intent behind introducing percentage legislation has been somewhat different. In these countries--and specifically in Hungary, where such legislation was first introduced--the intent of the laws to support the so-called civil sphere, i.e., non-profit, non-governmental organizations, has been clearly articulated. Political, economic, social, and cultural factors all contributed to the creation of this distinct legal product.

In Hungary, the initial idea of the “one percent law” was brought into the political debate in the context of church financing, when in the early 1990s the restitution of churches required a solution regarding their public support. In 1991, liberal politicians proposed abandoning direct state support to churches in favor of a scheme that resembled the Italian and Spanish systems described above (a portion of tax revenues designated by citizens towards churches). At that time, Parliament was not ready to make a decision on the proposal, but the idea of tax income redirected to finance churches was included in the programs of parties that formed the government in 1994.^[4]

However, an additional dimension to the political debate concerned the financing of NGOs. In the post-communist revival of civil society, each successive

government in Hungary found it important to stress its genuine commitment to the strengthening of this sector. In other words, the subject of the debate extended beyond the separation of church and state: it came to include issues that lie at the heart of governance in all democratic countries, including the definition of the public good and the desired or acceptable extent of state redistribution in support of the public good.

NGOs in Hungary received proportionately less foreign support than in many other CEE countries. With the exception of the Soros Foundation, no major donor organizations would have been willing or able to finance a good portion, much less the majority, of the more than 40,000 NGOs created in the five short years after the political changes. At the same time, state support for NGOs never ceased, and the biggest drawback of such funding had been that its distribution was over-politicized. Under these circumstances, Hungary, perhaps more than any other country in the region at the time, had an incentive to devise an innovative solution to help finance the Third Sector without exposing its organizations to the political implications of government financing.

This incentive was particularly strong in the case of the liberal party (Alliance of Free Democrats), the smaller member of the governing coalition. During 1995-1996, based on a suggestion from the Ministry of Education and Culture, headed by a minister from the liberal party, the tax designation scheme was again discussed in Parliament.^[5] The central notion of Act CXXVI of 1996 on the Use of a Specified Portion of the Personal Income Tax (hereinafter the "one-percent law") thus became the possibility for party-neutral public financing of NGOs through a tax-designation mechanism.

Between 1998 and 2003, Slovakia (1999-2001), Lithuania (2002), Poland (2003), and Romania (2003) adopted similar legislation. In these countries, the initiative came from the NGO sector and was based on the positive impacts that the Hungarian legislation had on the development of the sector.

While the systems differ slightly, the focus in these countries has clearly been on *the advancement of civil society through support of its organizations*. In Slovakia and Poland, which adopted "percentage legislation" based on the Hungarian example, the church is not even a permissible beneficiary, except in the form of NGOs established by the church.^[6] In addition, the mechanism of the tax designation has changed from the Italian model. Taxpayers can support a *specific* organization with one percent of *their own* taxes. In the Italian system, by contrast, the taxpayers "vote" on which *theme* to support with 0.8% of *all taxes*, and the concrete support of the beneficiaries is then executed by government committees.

We can observe further changes in the laws adopted later that followed from this shift in focus. The proportion of tax revenue "passed on" by the state to the taxpayers for allocation has grown beyond the Hungarian one percent, reflecting in part the increased need in civil society. For example, in Lithuania 2% of personal income tax paid may be designated to a wide range of beneficiaries, while in Slovakia from 2004 onwards both individual and corporate taxpayers may designate 2% of their income taxes to an NGO. At the same time, because this legislation is seen as sufficient public support to NGOs, some governments have been terminating other benefits. As an example, in both Lithuania and Slovakia, tax benefits for

donations to NGOs have been abolished following the introduction of percentage legislation.

In short, through building on a mechanism that already existed in Western Europe but giving it a new purpose, a new form of legislation has evolved in CEE. In this respect, the CEE percentage model is unique in Europe and internationally.

The Legal Nature of the Designation Mechanism

It is important to spend some time clarifying the legal nature of the percentage mechanism. There have been great expectations in all the countries that have enacted percentage laws, on the parts of both NGOs and governments, as to the impact of the law. In order to more clearly see the potential of the law and its effects on taxpayer behavior, one must understand the legal nature of the system itself.

Most of the expectations regarding the impact of such a system are related in some way to the issue of philanthropy. Among the reasons for introducing percentage legislation, NGOs and governments alike have emphasized two primary objectives: to increase resources flowing into the non-profit sector, and to develop a philanthropic culture among taxpayers.

In order to understand the real potential of this law in fulfilling those expectations, we are going to examine three main aspects:

Is the percentage designation a form of philanthropy?

Is the percentage designation a donation?

Is the percentage designation a tax benefit or a tax incentive?

Answering these questions will help guide our thinking as to the reasons to enact such laws and their expected impacts.

Is the Percentage Designation a Form of Philanthropy?

Perhaps the most fundamental question about the nature of the percentage mechanism is this: To what extent is it related to traditional forms of philanthropy? Put more simply, is it an incentive for philanthropy?

The answer depends on what we understand as "philanthropy". Philanthropy is not usually a legal term, but a sociological one. A commonly accepted definition is "voluntary private giving for public purposes"^[7]. We can break down this definition as follows:

Voluntary: intended (with the purpose of making a gift) and uncoerced (which rules out legal penalties for not giving).^[8]

Private: giving one's own money and time, as opposed to government spending that gives public money.

Giving: donating resources without expectation of receiving comparable economic compensation.^[9]

For the public: intended for public purposes, which encompasses virtually all social aims beyond helping one's family and friends.

The act of tax designation in the percentage mechanism would not satisfy all of the above criteria. Most of all, it does not involve giving one's own money and time--instead, it is disposing of money that belongs to the public. In addition, its status as voluntary may be debatable. It is true that there is no legal penalty for not making the designations; however, people only "give" because they have to pay the taxes anyway. On the other hand, the designation mechanism does meet several elements of the philanthropy definition as understood above. The designations are made for a public purpose, and they produce no economic advantage to the "giver".

Conscious, planned, and ongoing philanthropic behavior has been missing from the countries in CEE, where the 1% system was introduced. In these countries the culture of philanthropy is as yet underdeveloped, and few have the wealth to allow them to engage in philanthropy. With the individual tax allocation, the government enables people to act as though they were engaging in philanthropy. In fact, many people consider it philanthropy, which can be seen from the fact that the designations are often called donations (see below).

The designation mechanism is not philanthropy based on the classic definition, but it does show a range of elements similar to philanthropy. Since there is no single definition of philanthropy, it may even be considered a philanthropic activity. However, this is a special form of philanthropy, which we may call "transitional philanthropy" or philanthropy in transitional countries.^[10] If we accept this argument, we may conclude that along with volunteering and giving, a new form of philanthropy has emerged in CEE through percentage legislation.

Is the Percentage Designation a Donation?

Philanthropy encompasses a wide range of activities, which in turn are often subject to legislation and therefore usually have a legal definition as well. The most concrete element of philanthropy that is relevant from our point of view is the issue of donations. We reasoned that because the culture of philanthropy is not yet developed in CEE, and because NGOs look at the percentage designations as an additional source of income, the actual designations are most often understood as a philanthropic act. Since giving a donation is the most widely known expression of philanthropy, the percentage mechanism is also often called a donation. Can we say, however, that the percentage designation actually is a type of donation?

The use of the term "one percent donation" is questionable. There are several reasons why the term *donation* (usually interpreted as a gift) may not be appropriate here.

One reason is that the tax designation mechanism does not mean transfer of money or property owned by the "donor". According to the dictionary, "donation" is "to give (property or money) without receiving consideration for the transfer."^[11] Donation is equal to a "gift"^[12], which in turn is defined as "1. The act of voluntarily transferring property to another without compensation; 2. A thing so transferred."^[13]

From these definitions, it can be derived that a donation or a gift is made from the property of the donor, whereas in the case of the percentage designation, the "donation" is made from the tax liability, which is the property not of the donor but of the state.

Moreover, in some countries, a "donation" or a "gift" is defined by law in a specific way that would not apply to the percentage mechanism. For example, in Slovakia, the "deed of gift" is a bilateral legal act through which one side donates property without consideration and the beneficiary accepts this donation.^[14] Therefore, to give a gift, the donor and the recipient have to be in mutual agreement. This is not possible in the case of the percentage allocation, as the recipient does not even know its donors.

In the case of the percentage transfer, the taxpayer needs to make a conscious decision about (a) whether to make the designation, and, if so, (b) to whom to make the designation. This two-step thought process is similar to the process when people decide (a) whether to give, and, if so, (b) to whom to give. Especially in considering the second question--the identity of the beneficiary--the debate on the decision will likely be strikingly similar in both cases.

One's choice in the case of charitable giving is "whether to give financial support to an organization with the consequence of a decrease in my own property". In designating a portion of one's income tax, by contrast, the choice is "whether to have a say over what this part of my taxes will be used for".

Despite the fact that the percentage mechanism may be considered a form of philanthropy, we can conclude that the tax designation itself is not a donation.

Is the Percentage Designation a Tax Benefit or a Tax Incentive?

What is the place of this mechanism in the system of tax benefits and tax incentives? Is the opportunity provided by this law an incentive for people to make a designation and thereby increase the flow of resources to the NGO sector?

Most legal systems acknowledge the contribution of non-profit organizations to the public good and recognize this contribution by providing a range of tax benefits related to their activities.

Traditionally, because of the loss of tax revenue, these tax benefits are viewed as indirect government subsidies to the organizations and their donors. Tax revenue foregone constitutes an indirect means of support from the state, and can be contrasted with direct government support involving transfer of funds to NGOs. The 1% law from this point of view is a *special form of indirect support*. Like other tax incentives, it deprives the state of tax revenue through a foregone opportunity to collect taxes. Funds are designated to NGOs not by the state but by taxpayers directly. The fact that in most cases the tax authority itself actually delivers the transfer is only a technical issue; indeed, in Poland taxpayers must transfer the tax designation directly to NGOs.

Such indirect support is frequently seen as an incentive to encourage NGO activity and private philanthropy. Black's Law Dictionary defines tax incentives as "a

governmental enticement, through a tax benefit, to engage in a particular activity"^[15]. Traditionally, two main forms of tax benefits are seen as incentives for philanthropic behavior:

- tax deductions
- tax credits.

Tax deductions on charitable donations mean that the donor can deduct all or part of the money s/he contributed to an NGO from his/her taxable income, thus diminishing the tax base upon which tax will be calculated. Tax credits for charitable donations, by contrast, let the donor deduct part of the donated amount from his/her tax liability (i.e., the tax to be paid). In other words, a tax credit reduces the amount of tax owed, whereas a deduction reduces the amount of income subject to tax.^[16]

In this respect, the designation is not a tax benefit, as it does not reduce the tax base or the tax liability. The taxpayer who designates his/her one or two percent of income tax to an NGO will still have to pay the tax calculated according to the general tax rules. (S/he may, however, decide on how this tax will be used.)

Thus, the only question that remains is this: If not a tax benefit, can the designation still be considered an incentive to get people to engage in philanthropic activities in support of NGOs? Based on the limited evidence available in CEE and internationally^[17], percentage laws might be considered incentives in a broad sense, assuming the taxpayer will indeed choose to donate his/her property or designate his/her tax percentage to an NGO based on an awareness of the benefit of such action to the NGO. This leads us back to the definition of philanthropy--in these cases, taxpayers "donate" because of the intangible benefits they derive from the "good deed".

The Percentage Designation as a Form of Tax Allocation

As seen above, in the strictly legal sense, the tax designation mechanism is not a donation, a tax benefit, or a tax incentive. What is it, then?

It is essentially a special form of tax allocation. In other words, Parliament confers a limited right on each individual taxpayer to decide how to use (where to allocate) a certain percentage of the public budget. This right is limited, because the options as to how to use the tax revenue are limited. Taxpayers may decide to transfer this portion of the tax to a qualifying organization or beneficiary as defined by law (either a separate law or the tax law). Should they decide not to transfer the funds to one of these beneficiaries, the funds will be channeled into the overall public budget and used as determined by the annual Budget Act of Parliament.

Consequently, the percentage mechanism is less a "donation" than a "designation", "allocation", "assignment", "dedication", or "transfer." All of these terms embrace the intentional act of supplying something addressed to someone or somewhere, but without implying that this thing belongs to the supplier.

As a special form of redistributing public funds, percentage designation is clearly a mechanism that affects democratic decision-making and civic responsibilities.^[18] Its function, therefore, especially in societies where taxpayer

awareness is not so strong, is a significant one, in that it reinforces the notion of taxpayer control over public funds.

The Importance of Percentage Legislation

We have concluded that the percentage designation is not a donation, a tax benefit, or a tax incentive in the strict sense of these concepts, but that it may, nevertheless, have a significant effect on philanthropic behavior in transitional societies. We have additionally concluded that the percentage designation in the legal sense is a special form of tax allocation and therefore has an effect on the redistribution of public funds as well as on the understanding of citizen responsibilities.

In fact, this multifunctional nature of the percentage mechanism is what makes it unique. It has several intended impacts, and governments and NGOs have used a range of arguments in campaigning for its adoption. Let's examine this idea in light of the possible rationales that support it.

Policy Rationales for Introducing Percentage Laws

One rationale is "*taxation self-determination*"^[19], i.e., letting tax-paying citizens make autonomous decisions on the use of a portion, however small, of their income tax, thereby exercising direct democracy. Hungarian researchers examining the impact of the law gave their paper the title "Citizens' Votes"^[20] as a reflection of this principle. In the context of this rationale, the mechanism is actually a tool for strengthening democratic values--specifically, citizen participation and taxpayer control of spending public funds--in transition societies.

Another rationale is "*civil society development*", i.e., strengthening civil society by (a) providing new resources to NGOs, (b) raising public awareness about NGOs, and (c) increasing the skills of NGOs in communication and community outreach. In this argument, the mechanism helps educate the general public about the role and importance of NGOs, and at the same time it motivates NGOs to communicate with the public. These functions are crucial in societies where people are ignorant of or hostile towards NGOs. Also, importantly, the percentage designation provides an income source that organizations can use with relative freedom, such as for their core activities (as opposed to project funding, the use of which is restricted).

A third rationale is "*development of a philanthropic culture*". This focuses on the importance of citizen support to NGO endeavors. According to those emphasizing this rationale, transition societies lack a tradition of philanthropy (private giving); this mechanism may be a good first step toward developing such a culture, as it encourages individuals to think about reasons for supporting particular NGOs. In addition, it serves as an indicator of the level of public support for NGOs.

A fourth rationale is "*government outsourcing*", in that the system can provide decentralized and depoliticized government support to activities that benefit the public. At least in Hungary, government funding is generally viewed as too centralized, politicized, and subject to favoritism. In fact, recent reports revealed that 80% of government funding to NGOs in Hungary, in contrast to many Western European countries, is provided by the central government^[21], and 80% of this

central government funding is distributed via sole-source solicitation (i.e., without a tender or bidding procedure).^[22] Under the “government outsourcing” rationale, the beneficiary organizations are conducting public benefit activities, so the government is subsidizing important public tasks, but in a decentralized and depoliticized way that constitutes a needed alternative to centralized and bureaucratic decision-making.

Impacts of Percentage Legislation

In Hungary, seven years have passed since the introduction of the one percent law. A number of studies have been conducted to examine and measure its impact. In Slovakia, 2002 was the first time taxpayers could use the designation option, and there has been some research on the outcomes. In the other two countries, the law has been implemented this year (2004) for the first time. Consequently, most of the understanding of how this type of law works in practice--specifically, its potential impacts related to the rationales described above--will be based on the Hungarian experience and, to some extent, the Slovakian one.

As for the intended effects of the *taxation self-determination* rationale, we suggest that the percentage mechanism has a very good potential to increase citizen participation and taxpayer control over public funds. By giving taxpayers an opportunity to designate a percentage of their taxes, it makes them conscious of the fact that they can actually have a say in how their taxes are used. This kind of “taxpayer consciousness” is still generally weak in CEE countries. The law has some limitations in this regard, especially related to the tax returns filled out by employers for their employees and the ability of citizens to monitor the execution of their designations by the tax authority^[23]; nonetheless, this potential is important for transition societies.

In terms of *raising resources* for the non-profit sector, based on the data from Hungary and Slovakia we can conclude the following: while the one percent income has not represented a major source of funding for the sector as a whole^[24], it has played an important developmental role in the composition of the sector. It has increased access to unrestricted funding and channeled public support for organizations that would otherwise have little or no chance to gain such access.

The percentage mechanism has also helped in *raising public awareness about the civil sector*, which is a critical element in the development of civil society. The relevance and strength of voluntary organizations depends largely on public recognition and support. Simply because information about this opportunity is delivered to every taxpayer, the one percent provision has the potential to raise awareness about these organizations in almost every household in the country^[25]. This represents an unprecedented opportunity and probably one of the biggest benefits of the law. It takes decades of education and several generations to change culture and attitudes in a society. The percentage law offers a unique chance to accelerate such change in relation to non-profit organizations and their importance.

In terms of its impact on the *development of NGOs themselves*, through the experience in Hungary we could observe that the 1% Law has helped increase the responsiveness, transparency, and accountability of the NGO sector. Efforts by NGOs to seek citizens' support strengthened communication between the non-profit sector and society. By receiving contributions from their stakeholders, NGOs became directly

accountable to them in terms of how funds were spent. In addition, because the law subjects NGOs to reporting requirements, it increased the transparency of NGOs and reduced possibilities for the misuse of funds.

The mixed nature of the percentage mechanism, however, limits its potential to develop a *philanthropic culture*. The main reason is that it costs the donor nothing except the time and effort needed to make the designation. If we regard philanthropy as private investment in the public good, involving a personal stake, there is a clear tension between treating the designation arrangement as a tax allocation and treating it as a form of philanthropy. Taxes as such are not considered a form of philanthropy but a civic obligation, and therefore not a voluntary choice of the individual.

As for the government outsourcing rationale, based on the Hungarian experience this is perhaps the weakest justification. While the mechanism itself guarantees decentralized and non-political decision-making by the taxpayers, the funds involved are not significant enough to alter the culture of government funding. The portion of public funds distributed in this way is minuscule compared to the scale of non-transparent and political subsidies.

Erzsebet Fazekas addresses the failure of this rationale from another perspective, writing, "The state was not fully successful in realizing its other purpose: to ease the negative outcomes of transformation to a market economy through a citizen-headed redistribution of wealth. (...) A major portion of the donations went to purposes that do not respond to the most acute and pressing social needs."^[26]

Unwanted Impacts: Curbing Traditional Incentives for Philanthropy

Unfortunately, there have been unwanted impacts as well, stemming from a misinterpreted relationship between percentage legislation and philanthropy. In particular, governments view this legislation as satisfying the demands for both public and private support to the sector. As a result, traditional tax incentives (tax-deductible donations) have been abolished in Lithuania and in Slovakia, and the same was planned in Poland following the adoption of percentage legislation.^[27] This is both regrettable and extremely dangerous. The multifaceted purpose of the law has become a double-edged sword: it seems as though percentage legislation could substitute for philanthropic support.

Whether as a direct "exchange", as in Lithuania, or as part of a larger tax reform, as in Slovakia, governments have been keen on curbing traditional tax incentives based on fiscal arguments. However, NGOs lose a great deal. To illustrate this, take the example of a fictional country where the tax regime is progressive and a person can deduct charitable donations up to 10% of his/her tax base. An annual income of 1000 monetary units (let's call them crowns) will fall into the tax bracket of a 30% tax liability, which would require 300 crowns without any deductions. When a person with an annual income of 1000 crowns donates 10 crowns, an NGO receives 10 crowns and the tax office "loses" 3 crowns as a result of deducting the donation from the tax base (30% of 990 crowns is 297 as opposed to 300). In contrast, when the same person makes a tax designation of 1% of his/her tax liability, the tax office "loses" the same 3 crowns (1% of 300), but the NGO receives only 3 crowns, not 10.

Naturally, there is the argument that the percentage mechanism in post-communist countries is likely to be exercised by more people than traditional philanthropic giving. Initially, this may be true. However, in the long run, and assuming that it is an important goal for the non-profit sectors in CEE to increase the personal involvement of citizens in their communities, it is desirable to maintain traditional tax incentives, as much from a financial point of view as from a moral one.

* Nilda Bullain, nbullain@icnl.org.hu, is Program Director at the European Center for Not-for-Profit Law in Budapest. This article is based on a paper published as part of the Percentage Philanthropy Study conducted by the Nonprofit Information and Training Centre (NIOK), Budapest. The article originally appeared in the Summer-Autumn 2004 issue of the *Social Economy and Law (SEAL) Journal*, published by the European Foundation Centre. We are grateful to SEAL for permission to reprint it.

The author would like to extend special thanks to partners who provided valuable information for this study: Árpád Lőrincz and Jana Kadlecová (Slovakia), Igor Goliński (Poland), and Vaidotas Ilgius (Lithuania).

[1] John Allen, "In Europe 'Church Taxes' Not Unusual", 35 (13) *National Catholic Reporter* 5 (1999), available at: www.natcath.com/NCR_Online/archives/012999/012999f.htm.

[2] István László Mészáros, MP, Speech on the 158th Session Day of the Hungarian Parliament (December 17, 1991), available in Hungarian at: www.mkogy.hu/naplo34/158/1580095.html.

[3] Act No. 222 of May 20, 1985.

[4] See Tamás Bauer's article in this issue of SEAL: "Hungary's 1% Law: A Brief History".

[5] The Minister of Culture wanted to compensate for necessary cuts in the budgets of cultural institutions, and the designation of 1% of tax paid by the citizens was proposed as a possible means to achieve this.

[6] Hungary's one percent law did not include churches as beneficiaries when first adopted in 1996, but a year later they were added.

[7] Martin, Mike W.: *Virtuous Giving – Philanthropy, Voluntary Service, and Caring*, Indiana University Press, Bloomington and Indianapolis, 1994, p. 8.

[8] Voluntarily is not a synonym for "willingly". Loyal citizens may pay taxes willingly – but taxes are not voluntary. *Id.*

[9] However, some engage in philanthropy to gain economic benefits – such as in the case of corporate philanthropy (which expects PR and marketing benefits). *Id.*

- [10] Based on input from Kuba Wygnański.
- [11] *Black's Law Dictionary Seventh Edition*, Bryan A. Garner, editor-in-chief, West Publishing Company, St Paul, Minnesota, USA, 1999, p. 503.
- [12] *Id.* p. 504.
- [13] *Id.* p. 696.
- [14] Based on relevant provisions in the Civil Code and the Income Taxes Act.
- [15] Black's *supra* note 24, p. 1474.
- [16] Section 9.2: Income tax deductions or credits for donations, in *OSI Guidelines for Laws Affecting Civic Organizations*, ICNL 1997, pp. 78-79.
- [17] Especially the Gift Aid scheme in the UK. For more information, see: www.inlandrevenue.gov.uk/pdfs/ir65.pdf. See also the full version of this article, "Percentage Philanthropy and Law", p. 12, at www.onepercent.hu.
- [18] Even the constitutionality of the law has been challenged on that basis in Hungary. See the full version of this article, "Percentage Philanthropy and Law", p. 13, at www.onepercent.hu.
- [19] Erzsébet Fazekas, "The 1% Law in Hungary: Private Donation from Public Funds to the Civil Sphere", *The Journal of East European Law* Vol. 7, Nos. 3-4, Columbia University (2000), e.g. on p. 447.
- [20] Eva Kuti and Agnes Vajda, *Citizen's Votes for Non-Profit Activities in Hungary*, Nonprofit Information and Training Center – Non-Profit Research Group (2000); available at: www.niok.hu/1/indexe.htm, or at <http://www.onepercent.hu/documents.htm#SIStudies>.
- [21] Központi Statisztikai Hivatal: *Non-profit szervezetek Magyarországon*, 2000 (Central Statistical Office, *Non-Profit Organisations in Hungary*, 2000), p. 105.
- [22] Állami Számvevőszék: *Jelentés a társadalmi szervezeteknek és köztestületeknek juttatott költségvetési támogatások ellenőrzéséről* (State Audit Bureau, *Report on the Control of Budget Support to Social Organisations and Public Societies*), September 2002, p. 9.
- [23] In three out of the four countries taxpayers cannot or cannot easily check whether their designations were delivered as intended.
- [24] In Hungary the total amount designated through the 1% mechanism has not reached 1% of the income of the non-profit sector in any given year.
- [25] According to a study done in Hungary in 1999, 94% of the adult population and 98% of taxpayers had already heard about the 1% opportunity. In Slovakia, after the first year of implementation of the law, 71% of the respondents of a representative sample of the population were aware of the opportunity.

^[26] *Supra* note 38, p. 502.

^[27] As this study goes to print, the Polish Sejm has postponed abolishing the tax-deductible donations but has not taken it off the agenda.