Chapter 1

Introduction

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Cultural heritage could be a key driver of socio-economic development, and taxation may play an important role in its enhancement. Nevertheless, internationally, there is no homogenous awareness of such potential. In some countries, the lack of resources to properly protect cultural heritage is the most important issue. Other countries face the problem that even if tax incentives prompt massive funding mechanisms – either public or private – they are not always efficiently structured and targeted.

In June 2019, the Chieti – Pescara University hosted a 2-day conference, where speakers from all over the world shared their views on tax incentives for cultural heritage and presented national experiences regarding measures addressing cultural heritage taxation and promotion. This conference represented the peak of a research project, coordinated by Prof. Lorenzo del Federico, as part of a Project of Relevant National Interest Research, funded for 70% by the Italian Ministry of Education, University and Research (MIUR) and for the remainder by the Universities of Chieti – Pescara, Florence, Venice Ca' Foscari and Teramo. It was the only Italian project in the field of law selected by the MIUR and recognized to be of valid scientific interest.[1] During the conference, the idea arose of publishing an international book to disseminate the results of the research project to a wider audience. Prof. Sigrid Hemels and Prof. José-Andrés Rozas Valdes actively joined the editorial plan and shared their expertise on the topic as co-editors of the book. Dr Silvia Giorgi was part of the editorial

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1. Projects of Significant National Interest (PRIN) are calls for proposals promoted by the Ministry of Universities and Research to allocate funds to research projects in any scientific field. The aim of the PRIN is to fund research projects freely proposed by universities and to encourage interaction between the various players in the national public research system and between them and other public and private, national or international research organizations.

team as a young researcher who had followed the research project from its beginning.

This book contains the papers written in connection with this conference, as well as further input that emerged during this academic exchange. It collects the results of 3 years of research, with a focus on international, European and comparative profiles. It is divided into three parts. In Part 1, international and European frameworks are analysed, with specific reference to the guidelines and constraints stemming from the OECD, UNESCO and European Union (chapters 2-9). In Part 2, selected national experiences in cultural heritage taxation are analysed in order to identify the best practices in the sector (chapters 10-18). Lastly, in the third part, some topical issues are developed, offering specific insight into the main issue of cultural heritage taxation (VAT regime for artwork, museum taxation, free ports for art, transfer in lieu, art cities and artists' tax regimes) (chapters 19-25). The book concludes with a summary of the most important findings (chapter 26).

This book provides an overview of legal frameworks and public policies for targeting tax incentives so as to finance and promote cultural heritage. It gives examples of how this can be done in a systematic and efficient way. Its function is to close the existing gap in international literature on cultural heritage finance and taxation, bringing together experts from different parts of Europe and the world to discuss different approaches and strategies.

Issues, methodologies and guidelines are discussed in chapter 2 by Lorenzo del Federico, who also focuses on the reasons why lawmakers intervene in the cultural sector through subsidies or tax relief.

Against this backdrop, the emphasis falls on the international framework, with special reference to OECD guidance. In chapter 3, Anna Mignosa addresses the main aspects of the role of the OECD regarding policies for culture and cultural heritage in particular, referring to cultural economic theories and explaining the contributions of international organizations to policy diffusion.

The role of UNESCO and the financial crisis it faces is analysed in chapter 4 by Marc Bourgeois, Yassin Hachlaf and Antoine Vandenbulke. They answer the question of whether the system set up by the 1972 Convention concerning the Protection of the World Cultural and Natural Heritage[2] can still be considered alive and effective.

The framework of EU policies and constraints follows in chapter 5, in which Edoardo Traversa analyses the EU policies and funding underlying the trend to incentivize private-sector involvement. In chapters 6 and 7, the State aid prohibition is analysed. In chapter 6, Marta Villar Ezcurra discusses whether it is the purpose of State aid regimes to interfere or prevent cultural protection and promotion and to what extent a State aid analysis is needed. In chapter 7, Carlo Eugenio Baldi identifies the uncertain boundary between State aid and non-State aid, analysing European Commission decisions.

In chapter 8, Ricardo García Antón deals with the constitutional traditions of the EU Member States of preserving cultural heritage. Part 1 of the book ends with chapter 9 on international tax treaties and cultural heritage, in which Sigrid Hemels analyses the main model tax conventions and evaluates whether the public policy rationale of confining tax incentives to domestic charities is still valid.

In Part 2 of the book, national experiences are investigated and compared. In each chapter, a similar structure is used, discussing the general context and systematic framework, analysing tax incentives for cultural heritage owners, patrons, museums, art cities and international investors and mentioning best practices.

Janet Milne opens Part 1 with chapter 10 on the United States, with special references to taxable income deductions for charitable contributions (including donations within the cultural sector). In chapter 11, French best practices are presented by Alexandre Maitrot de la Motte. Among them, some recent peculiar developments are the *Loto du patrimoine* (heritage lotto) for raising funds for the Heritage Foundation and monuments considered to be at risk, as well as the "Notre Dame de Paris" project. In chapter 12, Roberto Cordeiro Guerra discusses the Art Bonus for donations to the cultural sector in Italy (an Italian best practice).

In chapter 13, Juan Enrique Varona Alabern shows that there are many tax benefits related to cultural heritage in Spain. These include exemptions from real estate and property tax, reductions in the taxable base in respect

2. *UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage* (16 Nov. 1972).

of the gift and inheritance tax and deductions from individual and corporate income tax. The Spanish tax system can be considered quite efficient in encouraging taxpayers to carry out actions directed at protecting and promoting cultural heritage.

In chapter 14, Christine Osterloh-Konrad discusses Germany. Among the various German measures, the special deduction of 9% for expenses incurred for (unprofitable) cultural heritage preservation stands out. In chapter 15, Sabine Kanduth-Kristen mentions the Austrian accelerated depreciation as a best practice to encourage private investments in heritage-protected buildings.

In chapter 16, on Sweden, Björn Westberg, Cristina Trenta and Eleonor Kristoffersson underline that, although there are no particular provisions in Swedish tax law regarding cultural heritage, there are essential provisions mainly in income tax and real property assessment law.

Chapter 17 provides a Latin American overview, in which Betty Andrade, Jonathan Barros Vita and José-Andrés Rozas select examples from various Latin American countries. Part 2 of the book ends with chapter 18 by Menita Giusy De Flora, who focuses on Portugal, Switzerland, Turkey and the United Kingdom.

In Part 3 of the book, targeted topics are addressed. In chapter 19, Fabrice Pezet discusses the VAT regime for works of art, in which he analyses the concept of "artwork" for VAT purposes. In chapter 20, Antonio Leo Tarasco and Silvia Giorgi address, respectively, the financial and tax regimes for public and private museums, emphasizing the interdependence between the two and the importance of own income for museums, which is not common in all of the countries analysed in the chapter.

In chapter 21, Caterina Verrigni discusses philanthropy and sponsorship in the cultural sector, taking into account the 2020 OECD report on Taxation and Philanthropy[3] and four specific jurisdictions, namely Australia, Chile, Germany and the United Kingdom. Francesco Montanari, discusses free ports for art in chapter 22.

In chapter 23, Sigrid Hemels analyses various regimes that enable taxpayers to pay their taxes with cultural heritage transfers. In chapter 24, Loris

3. OECD, *Taxation and Philanthropy* (OECD 2020), available at https://www.oecd.org/ctp/taxation-and-philanthropy-df434a77-en.htm (accessed 10 Nov. 2021).

Tosi and Ernesto-Marco Bagarotto offer an overview of the taxation of art cities, discussing tourist taxes and a case study on Venice. Dick Molenaar examines tax incentives for artists and investments in contemporary art in chapter 25. He explores the rationale behind these incentives and discusses the regimes in Belgium, Ireland, Mexico and the United States.

In chapter 26, Sigrid Hemels and José-Andrés Rozas conclude the book and give an overview of the main findings.