

Article

Nick Dimitrievski*

Swedish Societal Transformation and the Question of Tax Incentives for Charitable Contributions to Civil Society¹

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Abstract: The issue of how the Swedish welfare system should be organized in an increasingly market-driven economy has become an urgent one. The public sector's retreat from its previous commitments through deregulation and new public management reforms, as well as the state's ambition of highlighting non-profit actors as potential providers of welfare, can be understood as an illustration of two ongoing processes of transformation in Swedish society. The aim of this article is to place a legal doctrinal research methodology of the Swedish Income Tax Act's incentive scheme for corporate and private donations to civil society at the intersection of these transformations (welfare and civil society). At the same time, it is in the understanding of the tax legislation and the advantages it can offer individuals, nonprofits or commercial actors, that changes can be brought about in both the patterns and our understanding of charity and giving. A question that arises in this context is whether it is meaningful to speak of a shift in the state's control of the financing of civil society. The term *nonprofit tax shift* is introduced in the study to discuss this issue. The article also addresses how ideas,

stances and policy initiatives are shaped and articulated in Swedish contemporary politics, including tax policy. The paper argues for the existence of a resentment driven discursive frontline, running parallel to the public dialogue on welfare and the role of nonprofits. Additionally, it examines whether these developments in tax policy have affected the notions of justice that were previously a significant consideration in designing the income tax system in Sweden.

Keywords: Swedish Income Tax Act, Charitable Deduction, Legal Doctrinal Method, Philanthropy, Civil Society, Nonprofit Tax Shift.

1 Introduction

Civil-society researchers in Sweden note that the “Swedish model,” which traditionally relies on a strong welfare state in collaboration with a broad, popular movement-based civil society, is in a process of transformation (Rothstein and Trägårdh, 2007; see also Wijkström and Einarsson 2010). One way to articulate this societal development is through the organizing concept of the “social contract.” Sacharias Votinius explains that the concept can be used metaphorically in the execution of various thought experiments within political philosophy (2001, 43–48). He distinguishes the metaphor from fiction as being rooted in reality, and describes the ability for metaphorical thinking as “the capacity to creatively reconceptualize empirically known fact so that they appear in a different light and generate new knowledge in thought experiments” (45).

The concept is similarly utilized by Filip Wijkström, who also views the “social contract” as a kind of “thought figure,” meaning a “more or less well-developed and variously codified contract at the societal level” (2014, 225). Describing it in this manner, Wijkström (2014, 225 f.) employs the concept to understand how foundational institutions are intended to function and be organized in society, but also to frame the

*Corresponding Author: Nick Dimitrievski: Assistant Professor of Tax Law, Karlstad University, Sweden; Email: nick.dimitrievski@kau.se

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direction of the ongoing changes.” I will understand and use the concept in the same way.

As the Swedish welfare state began to unravel in the mid-1990s due to deregulations and New Public Management reform, non-profit alternatives partially filled the void (Lundström and Wijkström 2012, 265–6). However, the real essence of the transformation lay in its emphasis on scale and efficiency, rather than on the nature of governance. This inevitably favored commercial enterprises, which saw a much more robust growth in the domain of public welfare (Trägårdh 2012, 305).

In recent years, the political elite has begun to encourage, even welcome, various contributions from both nonprofits and commercial entities. Many scholars argue that what we are witnessing may well be described as the “resurgence of the bourgeois society,” with a sort of aristocratic public ethos devoted to philanthropy and charity (Trägårdh 2012, 302 ff.). Wijkström (2017), Trägårdh (2012), Reuter (2012) and Johansson (2011) all trace the lineage of the paradigms inspiring these ongoing transformations in Swedish society to the liberal frameworks for welfare administration, which are particularly dominant in the United States and the United Kingdom. Yet, paradoxically, this new vision of welfare produced by nonprofits encounters significant resistance among the Swedish populace (Falk 2020); the image of the traditional Swedish model still profoundly influences the Swedish collective sense of national identity (Reuter 2012, 239).

The factual account of societal developments – at a time when many of the popular movements and traditional welfare arrangements of the 20th century are being challenged – need not, in my view, be called into question here (Wijkström 2011 and Trägårdh 2011). The fact that a number of leading scholars in the research field of civil society are discussing the issue using the same foundational premises suggests that my description of current developments is accurate. Such an *affirmative stance* toward the ongoing societal transformation can serve as the basis for further discussion.

I concur with Wijkström’s assessment that the overreaching renegotiation of the social contract is complex and consists “of ‘multiple parallel processes, many of which are interconnected’” (2014, 225). The state’s efforts in facilitating *dialogue*, culminating eventually in *agreement* between the state and nonprofits or ideologically driven organizations within the social sector, can be seen as an illustration of such a complex process. It paves the way for welfare production by nonprofits as a

complement or even alternative to public actors (Reuter 2012, 239–40).

An important cornerstone in the analysis of this emerging terrain of philanthropy and voluntary action is observing that the patterns of our understanding of charity and giving are changing (Wijkström 2017, 396). Another pivotal element is the recognition that this evolving landscape is not passively transforming, but is actively maintained and advanced through a public lexicon that Wijkström calls “*filantropiskan*” or “philanthro-speak” (2017, 408). Many entrepreneurs in Sweden are both willing and able to contribute solutions to major societal challenges, and companies now take more active roles and positions in various social policy development issues. Thus, an increasingly evident trend of philanthropy has begun to emerge, where entrepreneurs seek to operate through business ideas that lie between the purely commercial and the non-profit, embodying a kind of *social branding* (Braunerhjelm and Palmberg, 2017). Some organizations in Sweden that popularize and disseminate policy-relevant research have highlighted that philanthropic donations in this context enable the release of public funds when private capital is used to build collective goods,² simply arguing that philanthropic efforts contribute to societal economic development and create prosperity.³

At the same time, I share Marta Reuter’s approach to the agreement itself. In Reuter’s view (2012, 238 f.), the agreement also becomes a public discursive arena

² For example, see Entreprenörskapsforum. Their website states that they are an “independent research foundation whose main task is to initiate, conduct and communicate policy-relevant research in entrepreneurship, innovation, business dynamics and growth.” Entreprenörskapsforum, accessed on April 12 2023, www.entreprenorskapsforum.se.

³ Philanthropic Forum, for example, is an independent platform within the framework of Entreprenörskapsforum whose main task is to explain and debate new trends and ideas in philanthropy, social entrepreneurship, and civil society. Entreprenörskapsforum, accessed on April 10, 2023, www.entreprenorskapsforum.se.

In this context, research focusing on the philanthropist as an individual rather than on the phenomenon of philanthropy itself (i.e., how the money is used) should also be highlighted. Economist Zoltan Acs, for example, is not particularly interested in rich people who have inherited their wealth and then engage in philanthropy, but rather in entrepreneurs who engage in philanthropy. Another researcher who should be highlighted in this context is social historian Olivier Zunz, known for his work on 20th-century American society and the development of modern philanthropy. See Acs (2013) and Zunz (2012). See also Acs and Philips (2002) and Harris (1993).

that enables a process of renegotiation concerning the role of nonprofits and other ideologically-driven societal actors. I concur with the analysis of civil society scholars like Reuter, but in this study, I sketch out the broader context in which I believe societal changes are occurring. With this line of reasoning, it is possible to trace the contours of how ideas, positions, and policy proposals within the realms of contemporary and tax politics are formulated and packaged. I argue the premise that within this landscape, one can discern a sort of resentment-driven discursive forefront, unfolding in a process parallel to the public dialogue concerning welfare and the role of civil society (see Section 6).

It is at the intersection of these ongoing transformations in both welfare and civil society that I want to place this legal doctrinal examination of the Swedish income tax rules for corporations, as well as private donations to charitable purposes.

Swedish tax law stipulates a prohibition of deduction for charitable contributions, as these are considered to be part of the taxpayers' living expenses.⁴ In my opinion, it was not until the 2020s that Sweden had in place a politically sustainable incentive scheme, from an income tax perspective, for monetary giving by private individuals to various forms of charity.

The regulations regarding tax reductions for private individuals in exchange for monetary donations to various charitable purposes are located, together with other provisions on tax reduction, in Ch. 67 of the Income Tax Act. These provisions came into force on July 1, 2019.⁵ The regulations on who can be approved as an eligible recipient of deductible contributions is detailed in a specific law, The Act on approval of gift recipients for tax reduction on donations.⁶ The reductive amounts have recently become more generous.⁷ Previously, the

maximum limit for gifts was SEK 6,000 per year, with a tax-reduction limit of SEK 1,500. Today, the maximum tax reduction has been raised to SEK 3,000 when the gift amount reaches SEK 12,000.⁸

Switching our focus to corporations, it can be stated there is no prohibition on charitable contributions, but there are also no direct provisions in the Income Tax Act that allow for general deductions. There is, however, a statutory right to deduct donations to the Foundation of the Swedish National Museum of Science and Technology, under the income category of "business activities."⁹ In the text of the provision, it is explicitly stipulated that charitable contributions to the foundation shall be deductible. In the preparatory work, it is stated that the provision has replaced the Law on deduction for contributions to the Foundation of the Swedish National Museum of Science and Technology.¹⁰ Normally, contributions to the foundation would not fall within the deductible area of research and development. This foundation has, however, been considered by the legislator to have such a connection and importance to Swedish industry that contributions to it should still be tax deductible in the corporate area.¹¹

The provision that allows for a general deduction in the income category of business activities is formulated to convey that what is deductible is "expenses attributable to acquiring and retaining income."¹² Expenses in general are presumed to meet the conditions for tax deductibility – that is, it is assumed that they are economically motivated for business. At the

that the committee's initiative, based on M, SD, and KD's joint proposal, was approved by the Riksdag.

Against this background, the new approved state budget is based on the government's budget proposal. In this way, the state budget also comprises the legislative changes concerning an expanded tax reduction for contributions to eligible recipients.

It may seem that the left-wing government was in a paradoxical political situation, considering that it was forced to govern on a state budget decided by the opposition in the Riksdag. From a constitutional and procedural perspective, however, such a decision is in line with the Instrument of Government and The Riksdag Act. See, *Regeringsformen* [RF] [The Instrument of Government] and *Riksdagsordningen* [The Riksdag Act] (Swed.).

⁸ IL 67:26 (Swed.).

⁹ IL 16:10 (Swed.).

¹⁰ Lag (1990:696) om avdrag för bidrag till Stiftelsen Sveriges Tekniska Museum (Swed.).

¹¹ Proposition [Prop.] 1989/90:110 En reformerad inkomst- och företagsbeskattning p. 612 [government bill] (Swed.).

¹² IL 16:1 (Swed.).

⁴ *Inkomstskattelag* [IL] [Income Tax Act] 9:2 (Swed.).

⁵ Proposition [Prop.] 2018/19:92 Återinförd skattereduktion för gåvor till ideell verksamhet [government bill] (Swed.).

⁶ Lag om godkännande av gåvomottagare vid skattereduktion för gåva [GML] (Swed.).

⁷ See *Finansutskottets betänkande 2021/22:FiU1 Statens budget 2022 – Rambeslutet* pp. 79–80 and 253 [government report] (Swed.).

It should be noted that the decision to change the basis for tax reduction emanates from budget motions of the Moderate Party (M), the Swedish Democrats (SD), and the Christian Democrats (KD). In connection with their revision of the Social Democratic Party's (S) budget proposal for 2022, M, SD and KD modified their respective budget proposals into a joint committee initiative on the framework for the state budget. The budget vote in the Riksdag at the end of November 2021 meant

same time, however, expenses may also have different causal connections with the business activities. Only in exceptional cases, when it is obvious that an expense is not intended to contribute to acquiring and retaining income, can a deduction be denied. Thus, if an expense is economically motivated, a determination must be made as to whether the tax deduction will be denied due to the fact that the expense (contribution) is covered by the prohibition on tax deduction for gifts.¹³

In Sweden, it has become more common for company owners to donate their right to dividends not yet decided upon in listed Swedish companies to charity. Transferring the right to dividends to a charitable organization or foundation is advantageous from an income-tax perspective. There is no tax on the shareholder level or for the receiving charity so long as it meets the conditions for tax-exemption in Ch. 7 of the Income Tax Act. This creates the possibility of transferring untaxed income, in the form of expected dividends or future value appreciation on assets, to charitable organizations or foundations (cf. Melz, 2008). However, it is also worth noting that the legislator in Sweden has not yet made charitable deductions available to corporations.

2 Aim, Questions and Methodology

The aim of this article is to describe and analyze, with a legal doctrinal method (Peczenik 1990 and 2001), the incentive scheme for corporate and individual donations to civil society, as outlined in the Swedish Income Tax Act. The term “perspective,” in my opinion, can serve as an illuminating metaphor for broadened understanding that arises when a legal scholar complements a legal doctrinal presentation with other disciplines. The distinction between internal and external perspective will be employed in this article.

According to Olsen (2004, 109), the internal perspective focuses on the viewpoint of those who enforce and interpret the law, while the external perspective encompasses all other ways of discussing the legal system and its content. A question that then arises is whether other sciences, such as theories rooted in the social sciences, philosophy, or economics, can offer valuable insights when debating the merits and mechanisms of tax incentives designated for individual or corporate

contributions to charitable activities. Can they add something to the internal perspective?

There are two reasons why I operationalize the legal doctrinal method with an external perspective. First, I want to be able to cross-reference the rule analyses conducted with the viewpoints of other sciences (Olsen 2004, 131). Secondly, I perceive and consider the law as an open and dynamic phenomenon (Gunnarsson and Svensson 2023, 173 f.). The external perspective thus serves to contextualize the legal framework within a broader normative landscape (Gunnarsson and Svensson 2023, 144–45).

Among the more fruitful ways to address such methodological challenges is Thomas Wilhelmsson’s approach (2001, 134–61). Central to his theoretical schema is the notion that the crisis of the welfare state – under which previously important societal functions have been privatized – has increasingly placed judges in the role of society’s micro-politicians.

Gräns follows a similar intellectual trajectory when she discusses the ways in which the shifting political and economic landscapes of a society affect a judge’s deliberations. These become increasingly difficult, complex and multifaceted and, in Gräns’s words (2006, 64), can “hardly always be included in the judge’s or the legal scholar’s body of knowledge due to legal education, general life experience, or general education otherwise.” Ongoing societal transformation at large means that judges’ considerations require ever-greater knowledge about different decision alternatives and their assumed consequences from various perspectives (Gräns 2006, 65).

As elucidated in the first section, the overreaching transformation of the Swedish societal structure consists of multiple complex parallel processes. The invocation of an “external perspective” serves more than a decorative purpose; it aims to widen the realm of the law’s rationality. It encourages us to pose questions that reach beyond the often-limiting confines of formal jurisprudential sources and within the legal system. The aim is to challenge us to define problems in the context of law, society and social change (Gunnarsson and Svensson 2023, 173). An important question that arises from such thinking is why Sweden is moving towards a welfare state where the need for private donations and closer cooperation between the state, philanthropists, charities, and civil society is increasing. This allows me to trace how ideas, positions, and policy initiatives are shaped and presented in Swedish contemporary and tax politics. I assert the existence of a resentment-fueled discursive frontline, unfolding in parallel to the public

¹³ IL 9:2 (Swed.).

dialogue concerning welfare and civil society. I also discuss whether these developments have influenced notions of justice that have been historically important in shaping income tax law in Sweden.

Employing an external perspective alongside the legal doctrinal method also provides the opportunity to reflect upon whether, from an affirmative stance towards ongoing societal transformation, it is meaningful to talk about a shift in the state's financial control of Swedish civil society. A leading question in this context is how such development relates to the incentive structure of the income tax law for corporate and private donations.

The fact that findings from other sciences are used means that knowledge is accumulated in conjunction with the legal doctrinal method. A methodological issue in such context is highlighted by Olsen (2004, 130 f.), who argues that the legal scholar needs to decide on the extent of integration (see also Bergström, Norberg and Pålsson 2004, 740-5). Olsen discusses three levels: 1) a comprehensive review of research that includes theory formation, method, and results; 2) in-depth studies of one or more theories; and 3) a general overview of theory and research findings in the field. Both Olsen (2004, 130-1) and Gräns (2013, 427) contend that the choice among these levels is ultimately a reflection of the legal scholar's particular interest in knowledge.

In the use of other sciences in this study, given the purpose and problem formulation, I have settled on the third level of integration. The aim of this part of the study is thus to explore – from a limited part of the social science, philosophical, and economic research fields – the possibilities for the production of knowledge about the rationality of the law that such a broad perspective offers.

3 Outline

The study is further structured in such a way that in Section 4, I describe and analyze the provisions of the Income Tax Act and the case law that regulate charitable contributions. The aim of section 4 is to provide a more in-depth understanding of the issue of tax incentives for charitable contributions and the legal status of donations in Swedish tax law. Both corporate and individual giving to charitable purposes is addressed.

Then, in Section 5, the *dialogue work* between the state and certain nonprofits within the social-welfare field is described and discussed. As a result of this

analysis, a pattern emerges in Section 6 of how ideas, positions and policy initiatives are shaped and presented in Swedish contemporary and tax politics. Here I argue for the existence of a resentment-fueled discursive frontline, which unfolds in parallel to the public dialogue concerning welfare and civil society. In this Section, I also discuss whether this development has influenced notions of justice that have previously been important in shaping income tax law in Sweden.

In the next step, section 7, this insight is combined with a discussion of the motives behind the tax incentive scheme that is now in place, in particular the aspects regarding private individuals' reductive monetary donations to eligible recipients in the civil society.¹⁴ In my discussion, I point out that the structure of the tax reduction focuses on the donating individual, thereby encouraging a more direct relationship with civil society. Given the study's affirmative stance on ongoing societal transformation, is it meaningful to speak of a shift in the state's control over the funding of Swedish civil society? I confront this intricate question in Section 8, where I introduce and discuss the term *nonprofit tax shift*.

By understanding tax legislation and the benefits it can offer to individuals, nonprofits or commercial actors, we can make changes in our apprehension and behaviors of charity and giving. Therefore, I conclude the study in Section 9 by discussing primarily substantive issues in income tax law, offering reflections and conclusions about the incentive structure that guides corporate and individual donations to civil society.

4 On the Legal Status of Charity and Donations in Swedish Tax Law

Regarding the fiscal favoring of donations, it should be noted, from a legal history perspective, that certain actors within the nonprofit sector were previously exempt from gift tax – such as religious organizations and foundations aimed at promoting religious, charitable, social, political, artistic, sports or other comparable cultural or other public-benefit purposes – under the Act on inheritance and gift tax (repealed).¹⁵

¹⁴ IL 67:20–26 (Swed.).

¹⁵ Lag (1941:416) om arvsskatt och gåvoskatt [AGL] (Swed.). Regarding the repeal of AGL, see, Proposition [Prop.]

Although the AGL has been repealed, Martin Berglund argues that the legal precedent that was developed within the framework of the legislation remains significant, especially regarding “how the view during the 20th century has been on dispositions with individually determined beneficiaries” (2021, 232). In my opinion, it is a principled and interesting question what legal significance precedent from a repealed tax legislation actually has. Christer Silfverberg (2005, 19), for instance, has noted that certain valuation issues in estate inventories had previously been adapted to the provisions of the AGL, but that, with the repeal of the act, it cannot be “reasonable to uphold this case law.”

Today the IL [*Inkomstskattelag*] allows a taxpayer (i.e., a taxable private individual) to reduce income tax liability by taking reductions for charitable contributions to certain organizations or foundations who are approved in advance under the Act on approval of gift recipients for tax reduction on donations.¹⁶ Eligible recipients of reductive charitable contributions include Swedish foundations, a Swedish non-profit organization, and Swedish religious communities promoting *social charity* or *scientific research*.¹⁷ The recipient, however, can also be a foreign counterpart to a non-profit entity like the aforementioned.¹⁸ The tax reduction on every donor occasion is connected to the Tax Agency’s approval of the recipient, so the donor must check if the recipient has been approved.

It is important to note that only non-profit actors that are limited taxpayers in the IL can be approved as gift recipients.¹⁹ The law concerns foundations that provide some kind of public benefit and meet the criteria of engagement in public interest activity.²⁰ However, it also includes non-profit organizations and registered religious communities which, in addition to the requirements above, have to meet the requirement of transparency.²¹ In the preparatory work of GML, the issue of broadening the definition of a non-profit entity was discussed. However, the legislator states that they are not prepared to allow the proposal to include non-profit actors other than those mentioned above.

Also, there are certain foundations and non-profit organizations that are tax-favored under separate regulations from the general tax exemption clause of the IL.²² According to GML, these entities may be approved as gift recipients provided that they would have become, and would continue to be, partially tax-exempt under the general exemption provision of the IL.²³

An important requirement for approval of a foundation, non-profit organization, or religious community’s status as a recipient of charitable contributions is that it must be – according to the general regulation of the IL – tax-exempt at the time of the final tax decision for the year preceding the year in which its application is submitted.²⁴ The Tax Agency (Skatteverket 2012, 300) has interpreted this part of the regulation in GML²⁵ as a kind of inertia rule, meaning that a newly started non-profit entity cannot apply for approval but must wait until its first tax return has been submitted and approved.²⁶

In addition to the requirement of restricted tax liability for the period prior to the actual application for approved gift recipient is submitted, the Swedish Tax Agency shall carry out a prognosis regarding whether the foundation, non-profit organizations and religious communities—at the final tax decision for the two upcoming years—will continue to meet the requirements for tax exemption according to the general regulation of the IL.²⁷ When discussing both the issue of the non-profit entities’ use of the gift and the Swedish Tax Agency’s assessment of the entities future restricted tax liability, the law’s text uses a particular word: “probable.”²⁸ The preparatory work states that this is not a question of regulating the burden of proof, but rather a quality marker of the decision, indicating the sufficiency of the Swedish Tax Agency’s statement that the restricted tax liability is probable.²⁹

The preparatory work also discusses limiting the charitable purposes that the gift recipient can fulfil. According to the legislator, there are many more charitable purposes listed in the general regulation of the

2004/05:25 Slopåd arvsskatt och gåvoskatt [government bill] (Swed).

¹⁶ Lag (2019:453) om godkännande av gåvomottagare vid skattereduktion för gåva [GML] (Swed.)

¹⁷ GML §6 (Swed.).

¹⁸ Ibid. §8 (Swed.).

¹⁹ IL 7:3 (Swed.).

²⁰ Ibid. 7:4–6 (Swed.).

²¹ Ibid. 7:10 (Swed.).

²² Ibid. 7:3 (Swed.).

²³ See Proposition [Prop.] 2011/12:1 Budgetpropositionen för 2012 pp. 453–54 [government bill] (Swed.).

²⁴ IL 7:3,7 or 14 (Swed.).

²⁵ GML §6 (Swed.).

²⁶ See also Prop. 2011/12:1 (Swed.) p. 457.

²⁷ IL 7:3, 7 or 14 (Swed.).

²⁸ GML §6 (Swed.).

²⁹ Prop. 2011/12:1 (Swed.) p. 458.

tax exempt conditions of the IL than just the two stated in the GML.³⁰ The limitation in this law is primarily justified by the fact that, as far as foundations are concerned, no other charitable purpose should be considered except for those that can lead to exemption of such entities according to the general regulation in the IL.³¹ The GML stipulates that the purposes should be kept limited for reasons of cost, abuse, and control.³² The issue is complicated by the fact that this legislation also allows a foreign counterpart to a Swedish foundation, non-profit organization or registered religious community to apply for approval as a gift recipient.³³ Herein lies the Tax Agency's difficulties in verifying foreign organizations or foundations for their eligibility to receive deductible charitable contributions while also preventing fraud.

The Tax Agency's handling of decision cases is considered in the assessment. A decisive reason for the legislator's restrictiveness, however, seems to be the fundamental structure of the tax system regarding the non-deductibility of personal living expenses.³⁴ The conditions are explained through a hypothetical example, worth quoting at length:

Consider the situation that a member of a limited tax liable non-profit organization gives a gift to the organization. A number of such gifts create increased financial conditions for the organization in a completely different way than when the state refrains from taxing the organization's incomes. This in turn increases opportunities for a donor to take advantage of the strengthened economy through better opportunities to be involved in the activities that the organization aims to promote. The donation can therefore, at least in certain cases, for example, when the organization offers more extensive services to its members, be seen as a way of financing what in reality is the donor's own living costs. These costs are not deductible, and that is why it is, in principle, erroneously to admit tax reduction for the donation.

The difficulties are particularly clear if we imagine if such an organization lowers membership fees, which so far have financed activities, and replaces them with what is denoted "gifts."³⁵

In conclusion, however, the legislator downplays the issue because the donor's own benefit from the reductive charitable contribution in most cases is very minimal, and thus the argument that the charitable contribution is a kind of personal living expense does not apply in the same way.

The fundamental issue remains, however, particularly in view of the fact that both the structure of the tax system regarding the non-deductibility of personal living expenses, and the Tax Agency's assessment according to the GML, fail to distinguish between these situations. According to the legislator, it is not possible to solve the problem through restricting the right of reductivity for cash donations to an eligible recipient where the donor is a member of the recipient organization or foundation. This would lead to uneven (unfair) taxation, but could also easily be bypassed.³⁶

As mentioned, there are only two charitable purposes that are accepted within the framework of the GML, namely *social welfare activity* or *scientific research*. The legislator's choice of these two specific purposes seems to be indirectly motivated by the fact that a broad charitable orientation creates problems for the Swedish Tax Agency in terms of control and administrative burdens. Additionally, it challenges a fundamental principle of the Swedish tax system – namely, the non-deductibility of personal living expenses.

The image of the charitable purpose selection is, however, somewhat deepened by the special investigator who was tasked with developing the 2012 legislative proposal. Regarding *scientific research*, the investigator simply states that the directives of the commission advocate that this purpose should be chosen.³⁷ No such decisive guidance is provided regarding donations to the NGO sector in general; the investigator instead references the public benefit norm in the IL.³⁸ However, the special investigator does not develop the concept, but instead focuses on the circumferential problem of the limited reduction right arising when a donor donates funds to an eligible recipient of reductive charitable contribution in a way that can lead to "double dipping" benefitting the donor. The argument is therefore generally focused on the term "charity." The

³⁰ IL 7:4 and GML §6 (Swed.).

³¹ IL 7:4 (Swed.).

³² GML 6 §(Swed.).

³³ IL 9:2 (Swed.). See also Prop. 2011/12:1 (Swed.) pp. 459–61 with reference to Article 63.1 Treaty on the Functioning of the European Union [TFEU] and the cases *C-386/04 Centro di Musicologia Walter Stauffer* as well as *C-318/07 Hein Persche*.

³⁴ See Prop. 2011/12:1 (Swed.) pp. 454–55.

³⁵ *Ibid* 455.

³⁶ *Ibid*.

³⁷ See Statens offentliga utredningar [SOU] 2009:59 Skatteincitament för gåvor till forskning och ideell verksamhet [government report] (Swed.) p. 97.

³⁸ For a more detailed investigation of the public benefit norm as a principle of income taxation, see Dimitrievski (2010). See also Berglund (2021).

purpose of *social welfare activity* is then chosen, on the argument that the problems of membership fees and living expenses are significantly less salient for eligible recipients in this proposed charitable area.³⁹

One way for companies to donate funds for charitable purposes is to have the company make monetary donations of reductive charitable contributions in the name of its employees to an eligible recipient.⁴⁰ The donation is taxable for the employees and tax-deductible as salary for the company, with additional employer social-security contributions for the company.⁴¹ At the same time, employees can benefit economically from the donation being made in their names through the possibility of obtaining a tax reduction for charitable contribution.⁴²

As mentioned initially, it has become more common for company owners in Sweden to donate their right to dividends not yet decided upon to charity. The strategy has been developed in a tax planning context and confirmed by case law.⁴³ More recent case law has also established that a transfer of the right of such future dividends also applies in cases where the shares in a close company are qualified according to the rules in Ch. 57 of the IL.⁴⁴ One variation of this tax setup has, however, been rejected by the Council for Advanced Tax Rulings.⁴⁵

³⁹ SOU 2009:59 (Swed.), p. 97. The charitable purposes of *scientific research* and *social welfare activities* have also been analyzed by Berglund (2021, 513–632).

⁴⁰ GML 6 §(Swed.).

⁴¹ IL 11:1 and IL 16:1 (Swed.) Regarding employer social security contributions, see *socialavgiftslag* [SAL] [Social Security Contribution Act] 2:1 (Swed.). Important research that increases the understanding of the relationship between taxes and social security contributions based on wage income in Sweden has been conducted by Cejje (2020). See also Erhag (2002).

⁴² IL 67:20–26 (Swed.).

⁴³ See *Regeringsrätten* [RÅ] [Supreme Administrative Court], RÅ 2006 ref. 45 (Swed.).

⁴⁴ RÅ 2009 ref. 68 (Swed.). See also *Högsta förvaltningsdomstolen* [HFD] [Supreme Administrative Court], HFD 2011 ref. 24 (Swed.). These precedents on the transfer of the right to future dividends have been extensively addressed by Kleist (2015); Berglund (2022) and Kristoffersson (2022).

⁴⁵ The role of *Skatterättsnämnden* [SRN] [The Council for Advanced Tax Rulings] (Swed.) in a ruling procedure is to provide guidance on the tax implications of a proposed transaction. While a ruling is usually binding on the tax authority, it is not binding on the taxpayer and can be appealed to the Supreme Administrative Court.

Also see HFD 2013 ref. 43 (Swed.), where a business owner who considered establishing a foundation, which would not be exempt from taxation under chapter 7 of the Income Tax Act,

The legal question has been brought up for assessment by the Council by an application from the person AA, who was the sole shareholder in a closely-held company. The advanced ruling of SRN 39-22 (2022-09-20) shows that AA's intention was to let the shareholders, at a meeting of the company, decide on a donation to one or more charitable organizations.⁴⁶ According to AA, the value transfer in question could thus be equated with the transfer of the right of future dividends, and they would therefore not be subject to dividend taxation.⁴⁷

The question in the case, then, was whether a donation made in this way would make the company's owner subject to dividend tax. The Council dismissed the idea that the circumstances of the case would be similar to the conditions considered in RÅ 2006 ref. 45 and RÅ 2009 ref. 68. Instead, the Council argued that the situation was more akin to the circumstances in RÅ 2007 not. 161. This judgement concerned the tax consequences when a shareholder (A), who ran a securities business in the form of a corporation (AB X), made a donation to a newly formed foundation that met the requirements for tax exemption under Ch. 7 of the IL. The value of the donation was estimated to be SEK 200 million and was made in the form of cash and shares. Some of the shares were business-related, while others were not part of the securities business. The Council here assessed the issue of withdrawal taxation for AB X,⁴⁸ as well as dividend tax for A.

was subject to taxation due to the transfer of capital (SEK 40 million) from his closely held company to the foundation. The case has been subject to significant academic interest and commentary from various tax law perspectives. See Samuelson (2013), Arvidsson (2014), Tjernberg (2014), Kleist (2015) as well as Tjernberg (2016).

⁴⁶ According to *aktiebolagslagen* [ABL] [Companies Act] 17:5 (Swed.).

⁴⁷ IL 42:12 (Swed.).

⁴⁸ The non-deductibility of personal living expenses in IL 9:2 (Swed.) has been supplemented with special rules at the company level regarding withdrawal taxation. These rules have been added to Ch. 22 of the Income Tax Act, where the "withdrawal" requirement is defined as the taxpayer benefiting from an asset from the business for private use, or transferring it to another business (IL 22:2) (Swed.). According to IL 22:3 (Swed.), a withdrawal may also occur if the taxpayer transfers an asset without compensation, or for compensation that is less than the market value, without it being commercially justified. The tax effect of withdrawal taxation is regulated in IL 22:7–8 (Swed.), meaning, in brief, that a sale at market price should be simulated.

The Council notes that the transfer of cash does not trigger withdrawal taxation, and that transfers of business-related shares at underpriced rates should be treated similarly. However, the transfer of non-business-related shares triggers withdrawal taxation because a foundation, regardless of whether it meets the conditions for tax exemption in Ch. 7 of the IL, is not allowed to be the acquirer in an underpriced transfer.⁴⁹ The next step of the Council's assessment was to clarify whether the underpriced transfer would result in dividend taxation for A (the owner of the transferring company AB X). The Council's reasoning deserves a long quote:

The question is whether the legal situation has changed through the system for taxation of underpriced transfers

A simple example can illustrate the significance of the rules: let's say a furniture dealer who runs a business allows their best friend to purchase an exclusive furniture set at SEK 50,000. If the market value of the furniture is SEK 150,000, the furniture dealer must report an income of SEK 100,000 corresponding to the withdrawal, but also the SEK 50,000 of actual income from the sale.

In Ch. 23 of the Income Tax Act, there are rules regarding exceptions from withdrawal taxation. The rules cover special underpriced transfers and mean that withdrawal taxation should not occur. The purpose of these provisions is primarily to facilitate conversions of activities that the legislator considers necessary for Swedish businesses to function optimally. The legislator has also expressed a desire for a codification of the rich case law that has developed in this area regarding the special exceptions from withdrawal taxation. See, for example, Prop. 1989/90:110 (Swed.); Proposition [Prop.] 1998/99:15 Omstrukturering och beskattning. Proposition [Prop.] 1999/2000:2 Inkomstskattelagen Proposition [Prop.] 2004/05:91 Överlåtelse av näringsbetingade andelar till underpris [government bills] (Swed.).

49 IL 23:14 (Swed.). It should be noted that the preparatory works for the regulations state that tax-exempt foundations and organizations cannot be acquirers in underpriced transfers, as such regulation may conflict with the deduction prohibition for donations in IL 9:2 (Swed.). Berglund has discussed the question of whether foundations should be able to be acquirers in underpriced transfers under similar conditions as, for example, a limited company (2022, 518). Berglund emphasizes that when an entire business or a branch of business is transferred to a foundation, tax on withdrawals could be avoided, provided that the assets “do not end up in the tax-exempt area of a tax-exempt foundation.” However, a difficulty here is, in my opinion, clearly and unambiguously defining the meaning of the term “tax-exempt area.” Even for the Swedish Tax Agency, the situation would likely become difficult to manage due to assessment and control difficulties. See also Statens offentliga utredningar [SOU] 1998:1; Omstruktureringar och beskattning [government report] (Swed.) p. 181; and Prop. 1998/99:15 (Swed.) pp. 157–158.

that was introduced in 1998, and which is now found in Ch. 22 and 23 of the Income Tax Act and the case law that has developed in the area (RÅ 2004 ref. 1). According to the Supreme Administrative Court, a transfer of assets that is not commercially motivated from one company to another shall be considered as a disposition of the transferred value, and shall be treated as a dividend to the shareholders in the transferring company. Therefore, the transfer shall result in dividend taxation unless it is an underpriced transfer (cf. IL 23:11) (Swed.)

From this it follows that a transfer of wealth that is not commercially motivated from a company to a foundation and which is not an underpriced transfer according to Ch. 23 of the Income Tax Act shall lead to the shareholders of the company being subject to dividend taxation. This means in the present case that the company's transfer to the foundation without compensation for the shares entails that A, as the owner of the company, shall be subject to dividend taxation. There is no reason to treat the transfer of cash in the same way.

Peter Melz has extensively discussed RÅ 2007 not. 161 (2008, 227–8). He has, among other things, stated that the judgement is materially correct (see also Melbi 2008, 330–1), but has also criticized the Swedish Supreme Administrative Court's choice to refrain from writing its own grounds for the decision. According to Melz (2008, 235), it is positive for the precedent-setting court to write its own grounds because this can demonstrate “development opportunities for the reasoning.”

Compared with the Council's advanced ruling in SRN 39-22 (2022-09-20), it can first be said that the conditions are not entirely similar to RÅ 2007 not. 161. Importantly, RÅ 2007 not. 161 does not concern a dividend for charitable purposes decided at a company's shareholders' meeting. Another difference is that the precedent-setting court in RÅ 2007 not. 161 confirmed the Council's advanced ruling without writing its own grounds for the decision. SRN 39-22/D (2022-09-20) has also been appealed and recently examined by the Supreme Administrative Court in case no. 6077-22 (2023-04-04). In the judgement, HFD confirmed the Council's advanced ruling, but chose to write its own grounds for the decision. The question, then, is whether HFD's reasoning provides further guidance in the delimitation of the dividend taxed core area, as expressed in RÅ 2004 ref. 1 and RÅ 2007 not. 161.⁵⁰

50 RÅ 2004 ref. 1 has been analyzed by a multitude of Swedish tax researchers. It is not necessary in this context to go further than to refer to these. See for example Burmeister and Tivéus (2004), Wiman (2004) and Pålsson (2005). See thereafter Berglund (2022).

This is how the precedent-setting court justifies its position:

According to the Supreme Administrative Court, it is not possible to equate a value transfer according to Ch. 17 sect. 5 of the Companies Act with a situation where a shareholder transfers his or her right to dividend. In the case at hand, it concerns a direct transfer from the company to the gift recipient, and it is irrelevant that AA, as a shareholder, cannot dispose of funds that are transferred.

According to Patrik Emblad (2020, 305–307), the tax-law treatment of the dividend concept in RÅ 2004 ref. 1 and RÅ 2007 not. 161 differs from the civil-law treatment. The civil law definition of a dividend only includes profit distributions decided at a general shareholder meeting. The interpretation of dividends in tax law thus mainly includes other types of payments that do not need to be decided upon at a shareholders' meeting. And from HFD's latest judgment in case no. 6077-22 (2023-04-04), one can, in my opinion, conclude that the tax-law concept of dividends now also includes value transfers decided upon at a shareholders' meeting.⁵¹ I can do nothing but agree with Melz's earlier observations of the case law in this field: that the court, without having to cross the line for an *obiter dictum* statement, could have stated some fundamental reasons why a transfer of value in this manner to charitable purposes could not be equated with the situation where a shareholder transfers their right to dividend to charitable purposes.

5 A “New Deal” for Swedish Civil Society?

Though debaters, investigators and economists discuss whether inequality is increasing more in Sweden than in most other countries,⁵² or if Sweden (irrespective of measuring method) is still one of the most equal

⁵¹ It should be noted that the Supreme Administrative Court alternates between the terms “transfer of wealth” and “transfer of value,” suggesting that it interprets the expressions as synonyms. See the Supreme Administrative Court's judgment case no. 6077-22 (2023-04-04) paragraphs 8 and 10. I share Melz's view (2008, 225 footnote 2) that the term “transfer of value” is more appropriate in this tax-law context.

⁵² See for example Statens offentliga utredningar [SOU] 2019:65; Långtidsutredningen 2019; and SOU 2020:46 En gemensam angelägenhet [government reports] (Swed.). See also Therborn (2019), Bengtsson (2020), Suhonen, Therborn and

countries in the world,⁵³ the Alliance government had already decided in 2007 to invite the Swedish civil society regime into a cooperation process, with the goal of formulating a written joint agreement on the relationship between civil society and public welfare.⁵⁴

In the dissertation titled “In the Name of Dialogue,” Mairon Johansson (2011) writes insightfully and problematically about trends concerning the non-profit sector's new role in welfare. With the help of public print, observations and interviews, and other documentation, Johansson clarifies why the idea of an agreement was conceived, and how the cooperation process between the government and the non-profit sector has been carried out.

The author contrasts the understanding of the agreement process with the ideological context of the influential market logic and New Public Management (NPM) on Swedish (administration) politics (See Johansson 2011, 63 ff.).⁵⁵ Johansson focuses on the

Weithz (2021), Nordin (2021), Cervenka (2022), Nordin (2022), Nordin and Hammarlund (2022).

⁵³ See for example Waldenström (2020), Björklund and Waldenström (2021a), Björklund and Waldenström, (2021b), Björklund och Waldenström (2022) and Lanryd (2023).

⁵⁴ “Alliance” denotes the political cooperation that the national right-wing parties, i.e., the Moderate Party, Center Party, Liberals, and Christian Democrats, initiated before the Swedish election in 2006, in which they won Parliamentary majority. The Alliance has been declared dissolved at the national level after the Centre party and the Liberals entered into the January Agreement with The Social democrats and the Green Party in 2019.

⁵⁵ NPM according to Agevall (2005, 11) is an umbrella term for ideas/models based on the principle that the public sector should resemble the private business sector – a kind of “supermarket state” where tax resources would be used more rationally and efficiently. Citizens become “customers” who choose “services” in the public sector's competing “shops” (welfare pluralism).

NPM as a control system for Swedish welfare sector should, in an ideological perspective, be seen as a political response to the problems of its time. At the end of the 1980s, with the declining national economy, the public sector was criticized for being too extensive, bureaucratic, and inefficient. Left-wing as well as right-wing parties perceived the state as part of the problem during the social and welfare policy reprioritizations made during the 1990s. On the subject of political consensus, Bornemark (2018, 30) observes: “The left-wing wants to democratize the public sectors while the right-wing seeks downsizing and efficiency optimization. The solution for both wings was the same: the state should retreat, and the market should offer solutions...”

Recently, the NPM model has also been criticized, possibly mostly by professional groups such as physicians and teachers, but also by researchers and politicians (see Statens offentliga

interest of the state regarding what the non-profit sector can contribute to the Swedish welfare production in the role of provider, such as increased client quality and innovations, but cannot produce evidence that the allied right-wing government, the Alliance, radically changed the Swedish social security system in the same government term.⁵⁶

This raises the question if the cuts occurring constitute an *alternative image* to the agreement between the government and the non-profit providers. Such a statement should be weighed against Johansson’s assertion that the Alliance made efforts during the process to make the non-profit sector act as a unified party in the agreement (2011, 197). Furthermore, the timing of the agreement and the implementation of the cuts show that concurrent measures were taken during the political course of events. Although Johansson remarks the idea of a written agreement was borrowed from a similar set-up in England (i.e., the Compact) and that the standpoints of some NGOs in the matter led to active efforts to influence the government (Johansson, chapter 5–6), the investigation also shows that the organizations in the non-profit sector were far from all being in agreement. This dilemma is captured in Johansson’s thesis when the focus is on how non-profit actors participating in the consultation procedure, in spring

2008, responded to the agreement (Johansson, chapter 9). Many expressed a concern that the government would retract from previous welfare goals, and of the ca. 80 invited participants, only 40 signed the agreement in October 2008. To illustrate, I provide the following statement by a non-profit actor in Johansson’s study:

We are doubtful about some issues in the proposed agreement /.../In our view, the content is too much defined by highlighting idea-based organizations as providers of social services commissioned by public authorities and as competitors in the present ‘competitive market system’. Equivalence and competitive neutrality seem to be important aspects to regulate. From the point of view of RSMH, we would like to point to, which we also did during the preparatory work, what is here called the advocacy function – which for us is the unparalleled most important task. We think that this function has been given a secondary role in the proposed agreement and in terms of formulations seems ‘tacked on’. RSMH wants to emphasize that we are not an idea-driven organization in general – we are an advocacy organization.⁵⁷ (Johansson, 167)

Here is a further example of a critical view that Johansson cites:

We find that the proposal breathes too much of charity. At times, the government’s purpose of the proposal comes across as a wish to renounce their responsibility so we would have ‘diversity’ and options within the social sector. The result is that the vulnerable person becomes dependent on benevolence and the economic situation. Is that a society we want?⁵⁸ (Johansson, 170)

utredningar [SOU] 2019 Tillitsdelegationens betänkande [government report] (Swed.)). Bornemark argues that NPM’s main features, such as goal fulfilment and detail management, have resulted in an erosion of the importance of professional knowledge in core activities. Bornemark argues that the organization of the welfare sector must change from NPM to a more confidence-based management so that staff (physicians, teachers, midwives etc.) can focus more on their duties (see Bornemark 2018, 217 ff.).

Gustafsson (2021) treats related issues similarly when he describes the consequences of how the state-customer model puts pressure on or rather erodes democracy: “A similar approach has invaded nearly all societal institutions and communities expected to support democracy. And it is not something that simply happened, but something introduced consciously during the past 40 years: democratic communities and institutions have been transformed into staged markets whose missions are understood in terms of selling And even if these measures have often been described as necessary, they were, of course, not; they were based on substantial positions, backed by specific political and economic interests. Saying that this development has significantly contributed to democracy’s problems today is hardly an original claim.”

56 See Proposition [Prop.] 2013/14:100 Redovisning för regeringens reformer 2006–2014 för tillväxt och full sysselsättning. Attachment 4 [government bill] (Swed.).

Johansson’s line of reasoning suggests that the reasons for the agreement should be regarded as a socio-political clarification, based on the economic situation (111). However, the support for this argument is not particularly strong. In my view, there were no rational fiscal or financial reasons for the cutbacks made in the social insurances after the Alliance election victory in 2006.⁵⁹ The motive was rather ideological as the government

57 Italics in original. RSMH stands for the National Association for Social and Mental Health.

58 Italics in original.

59 In the Budget Bill submitted before the change of government in 2006, the Minister of Finance, Nuder, states that “[t]he Swedish economy is developing successfully”: public sector savings, from the introduction of excess goal in 2000 and up till 2005, amounted to ~1.6% of the GDP; public sector net debt had been turned into a net fortune; growth in 2005 was expected to be 2.4% and 3.1% in 2006; in comparison with the EU and OECD, Sweden had a well-functioning labor market and the open unemployment was expected to be 5.9%, according to the Swedish Central Bureau’s new definition. See Proposition

shifted costs from the social insurance systems to tax incentives (driving forces for work).⁶⁰ This *social tax shift* was justified, among other things, through hyperbolic descriptions of consequences for marginalized people, who are represented as follows in the Alliance's Budget Bill:

A different way to illustrate the problem is provided by the share of working age people in the population who are financially supported via the social insurance systems and financial assistance. The number of persons receiving financial support in 2005 corresponded to more than 1 million, or just over 21 percent of registered people aged 20–64. . . . In 2006, just over 12 percent of the working age population received health- related assistance (sick pay and rehabilitation support and activity and sickness benefit), nearly 8 percent received labor market related assistance and around 1.5 percent financial assistance. . . . The further away from the labor market that the different insurance systems move people, the more difficult it is to return. It is therefore a matter of great concern that the trend of activity and sickness benefits has increased for such a long time. The number of people with such benefits is now more than 550 000, which constitutes 10 percent of the population aged 20–64 registered as residents.⁶¹

The link is even clearer to the ideological perspective when the position of people with foreign backgrounds on the labor market is described:

The situation on the labor market is particularly worrisome for people with foreign background. The average rate of employment is lower, long-term unemployment is higher

and the proportion of fixed-term employment bigger among the foreign born than among people born in Sweden.⁶²

A description of the causal effects of these changes on inequality is provided by Martin Nordin (2022). In Sweden's most immigrant-dense areas, which house 5% of the population, relative income has dropped nearly 30%, reaching a low of 65% of the national average. Disposable income is at 35% of the national average for the unemployed in the same areas (76). The biggest changes occurred between the years 2006 and 2012. As Nordin explains:

For this group, income has not only fallen in relative terms, compared with the period before the Alliance's election victory in 2006, but also in absolute terms with 13 percent. . . . These changes largely depend on drastic cuts in the social security systems which in turn made possible tax cuts to the working population. The subsidy systems were tightened in the 20th century, but the greatest changes took place in the period 2006–12. [...] Earned income tax credit and downgraded compensation systems resemble the case illustrated by the fourth column in Figure 1, where lower assistance reduced absolute income for the unemployed in immigrant-dense areas, while the income tax credit increased income for the gainfully employed. In other words, as in this case a change can mean reduced inequality at the expense of the most disadvantaged. (76–77)

Nordin's analysis calls for reflection for several reasons. Not least, it represents a breakaway attempt from a relativizing description of the accelerating Swedish inequality.⁶³ Here, the discussion revolves around the American studies on the negative effects of income segregation (concentrated poverty in residentially segregated areas), such as reduced financial mobility, lower levels of education, and poorer labor market outcomes (78).

Nordin's research on Swedish conditions in Malmö reaches similar conclusions. In Nordin's words there are also traces of *ressentiment-fueled* Swedish contemporary politics, when we, for example, are informed that the changes taking place in the welfare system during the

[Prop.] 2005/06:1 Budgetpropositionen för 2006 [Government bill] (Swed.) p. 19.

These statements in the government's Budget Bill were supported by the ESV (Swedish National Financial Management Authority)'s budget prognosis in 2006, which noted that the budget surplus was estimated to be SEK 14 billion, and that the labor market has "significantly improved during the year with employment increase as well as decrease in unemployment." See Ekonomistyrningsverket [ESV] 2006:4 Budgetprognos p. 5 (Swed.).

It is also possible to find similar positive statements after the change of power in 2006. In the Alliance's document "Sveriges handlingsprogram för tillväxt och sysselsättning 2006–2008," the Swedish GDP growth is judged to be "very strong", and unemployment is expected to drop to 5.6 percent of the workforce. See Regeringens skrivelse [Skr.] 2006/07:23 Sveriges handlingsprogram för tillväxt och sysselsättning 2006–2008 [government report] (Swed.) pp. 6–7.

⁶⁰ See Prop. 2013/14:100. Attachment 4. See also Proposition [Prop.] 2006/07:1 Budgetproposition för 2007 [government bill] (Swed.).

⁶¹ Prop. 2006/07:1 (Swed.) p. 28.

⁶² *Ibid.* See also Prop. 2006/07:1 (Swed.) pp. 36–37.

⁶³ Kallifatides and Sjöberg (2023) make the same counterclaim as Nordin when examining the real income and prosperity development of different population groups in Sweden.

See also the SCB's latest statistical report showing that income in Sweden is the most unevenly distributed it has been since 1975. In 2020, 10% of Swedes owned 95% of all capital income. See Statistikmyndigheten [SCB] 2022-06-07 Svenskarnas kapitalinkomster ojämnt fördelade and SCB 2023-01-25 Inkomstskillnaderna ökar i Sverige [government reports] (Swed.).

past years may have reduced inequality at the expense of the most disadvantaged.⁶⁴

6 Ressentiment as a Motivating Factor in the Evolution of Swedish Contemporary Politics and Tax Policy

So, what are we talking about when we talk about *ressentiment-fueled* contemporary Swedish politics? Cultural geographer Mekkonen Tesfahuney and political scientist Magnus Dahlstedt (2008, 14) have paid attention to the nihilism in the political landscape when “the political is removed from the political.” They define this as when the political sector is managed like a business, where each requirement, complaint, and dissatisfaction is a private matter between customer and seller/producer. These researchers call the process post-political and claim that it ultimately contributes to transforming the relationship between the demands on the individual in the area of administrative law and the political system. According to Tesfahuney and Dahlstedt (2008, 28–29) it is a policy that appears to be powerless in the face of the future and that, based on risk and management theories, only has the ability to offer an economization of different public sectors.

Tesfahuney and Dahlstedt (2008) are undeniably on to something essential in their post-political reflection. Still, I think that there is more to be said about the intertwining of nihilism with the conditions for political exercise of power. Žižek (2010 and 1997) discusses how the post-political condition has erased the conflict between different ideological visions materialized in parties competing for power. Instead, there is collaboration between a technocratic elite and liberal multiculturalists who, in tacit agreement, block demands for justice from those who are imbued with a sense of bitterness;

⁶⁴ It should be noted that the condition of employment in Sweden does not necessarily preclude poverty; one can indeed be employed and yet subsist in indigence, a condition often termed as “working poor”. The proportion of working poor in Sweden has remained at approximately the same levels for some time, at about 1.5–2% of the population. Historically, it has been single women aged 30–39 who are poorest despite working. A new research study (see Broström and Jansson 2023) now indicates that it is married foreign-born men, aged 30–49, who are living on the margins despite being employed.

trapped within the political social structure in which the injustices emerged.

In the Swedish GAL–TAN scale of political values,⁶⁵ which was created to describe the ideological differences between political parties, there is a broad *ressentiment-driven* identity politics. Within the TAN end point, for example, the neoliberal political project is, in simple terms, characterized by an inability to articulate the meaning of capitalism. Instead, political actors here end up in identity issues, which are politicized in the form of the restoration of the nuclear family, the Swedish “work line” principle, and the notion that different groups in society are singled out and set against each other.⁶⁶ From a psychoanalytical perspective and in a Nietzschean spirit (Nietzsche, 2002; see also Brown, 1993), *ressentiment* in Swedish contemporary politics simply involves condemnation of others in the absence of something to believe in, when politics fails to formulate a “real policy” that can guide citizens.

This discovery leads to a deeper focus on ideological convergence, where traditional Swedish political divides are becoming increasingly blurred to maintain a liberal consensus. By studying and comparing the production of ideas among the Moderates and the Social Democrats from the late 1970s to 2010, Matilda Millares pinpoints the liberal consensus on the market adaptation of public services that has emerged between these main adversaries in Swedish politics. In Millares’s analysis of Swedish politics (2015, 16–9), this convergence becomes a point of critique as it risks undermining democracy by making it more difficult for voters to differentiate political alternatives.

⁶⁵ Swedish politics has traditionally been analyzed in terms of a left-wing/right-wing scale. However, political science researchers have, at least since the mid-2010s, started to regard politics in Sweden from a new opinion dimension relating to issues of identity and culture rather than of economic distribution. In the political science literature, the dimension is denoted GAL–TAN (Green-Alternative-Libertarian vs Traditional-Authoritarian-Nationalist). See Ohlsson, Oscarsson, and Solevid (2016).

⁶⁶ It should be noted that two out of three Swedes at the end of the 2010s thought that the Swedish economic system was “basically fair since all Swedes have the same opportunities to succeed.” One in three thought that the poor were poor for not having made enough effort. To these measured attitudes, it can be added that over 40% stated that they were rich because they had worked harder. In my opinion, these value-based starting-points should not be underestimated in understanding how the *ressentiment* has gathered momentum in a broad movement between Swedish social classes and political actors. See further, Alesina, Stantcheva, and Teso (2018).

Niklas Altermark has drawn attention to the consequences of the Social Democrats' rightward shift in Swedish politics. He argues that the party is characterized by contradiction around welfare issues, writing about "the gap between the policies they implement – which over the last forty years have often involved administering existing systems or making cutbacks – and a rhetoric that suggests the party's politics aim to defend or even expand the welfare systems" (27).

Much appears to indicate that social democracy, particularly after the Swedish property market collapse in the 1990s, has been navigated by way of an errant cartography that is consequently destabilizing redistributive issues and the Swedish model. Altermark argues that social democracy has understood the economic and welfare policy reality based on an economic theory that fundamentally criticizes redistribution and makes an offensive welfare policy impossible. His argument deserves an extended quotation:

The conception that major public investments crowd out private investments impeding economic development was made popular in Sweden by neoclassical economists inspired by Friedrich von Hayek and Milton Friedman [...]. When the financial crisis hit Sweden, the Social Democratic leadership largely accepted these explanations. The problem was said to be that the Swedish economy had structural problems. The public sector was too big. In this way the social democratic politics built on problem images that made it possible to describe austerity measures in defense of the welfare state. (33)

Social democracy has thus contributed to creating a new form of Swedish statesman-like self-image, where budget balancing and financial restraint have become a virtue. In the policy debate, this has led to an argument that Sweden often does not have enough resources and therefore must make cuts. At the same time, the country's relatively high tax rates have remained, increasingly failing to correspond to the quality of the Swedish welfare system. This is also where resentment in Swedish politics becomes visible in a broad GAL-TAN perspective. Altermark explains:

For those who wish, conflict lines between different vulnerable groups can be mobilized. In fact, both Fredrik Reinfeldt ... and Magdalena Andersson on different occasions have confirmed exactly this type of conflict by putting forward that increased immigration may lead to cutbacks in the welfare state. (37–38)

Žižek (2010, 60) argues that it is important to understand that the ultimate consequence of the post-political suspension of the political is a reduction of the

state to a "pure police function, satisfying market forces and the needs of multiculturalist tolerant humanism (determined by consensus)."

In line with the sociologist Loic Wacquant (2009), I would like to slightly elaborate on Žižek's argumentation. In *Punishing the Poor: The Neoliberal Government of Social Insecurity*, Wacquant studies how the state, primarily in the case of the United States, has been renegotiated on the basis of two parallel political reform processes (welfare downsizing and boosted grants to the judicial system). Wacquant rejects the idea that the post-political project exclusively involves reducing the power of the state.⁶⁷ In the theoretical and philosophical (Marx and Engels, as well as Bourdieu and Durkheim) context, it is rather a state divided in two. Wacquant (310) coins the term *centaur-state* as a metaphor for the symbiotic relationship between the divided state's different parts: receding and libertarian (head, arms, and torso), directed to middle- and high-income earners, but intrusive and authoritarian (lower body and legs) to low-income earners and recipients of welfare benefits. The strong state of the market economy is thus embodied in repressive methods such as surveillance, control, and punishment, which have gradually come to envelop the welfare institutions of the United States.

Although Sweden has stronger welfare institutions than the United States, it is possible to see it harboring similar post-political developments. In 2021, Sweden was the country in Scandinavia allocating the smallest proportion of its GDP to public transfers (social insurance, unemployment benefits, and financial assistance).⁶⁸

In Sweden, there have been rising costs for criminal policy-related activities.⁶⁹ In addition, the Swedish

⁶⁷ The legal scholar Mirjam Katzin provides a more nuanced answer from a Swedish perspective in her dissertation "Taking Care of Business" (2020). Katzin studies how three municipalities with a Care Choice System in Home Care address quality issues in their privatized activities. The Care Choice System was introduced as part of a deregulation of Swedish welfare, but Katzin's study shows that it is rather a transformation of Swedish welfare, which for the public administration represents a new way of controlling, maneuvering, constructing, and supporting markets. See also Katzin (2022).

⁶⁸ See Försäkringskassan, Socialförsäkringen i siffror 2021, 2021 p. 18 [government agency report] (Swed.).

⁶⁹ See Kriminalvården, Budgetunderlag 2022, 2021-02-22 [government agency report] (Swed.). Hörnqvist (2022) has analyzed the criminal debate in Sweden for some years and remarks that the discourse is marked by "dystopic resignation and morally

Contribution Crime Act was introduced in 2007 for the main purpose of reducing incorrect payments and strengthening reliance on the welfare systems.⁷⁰ The Contribution Crime Act aims to create effective criminal law protection of the welfare system so that it can be sustained in the long run.⁷¹ Since the introduction of the law, the state has gradually intensified investigations into incorrect payments and contribution crimes.⁷² In 2019, the public prosecutor's office reported a steady increase of notifications of suspected contribution crimes, with more decisions (16,893) than incoming reports (16,377).⁷³

The erroneous payouts from the Swedish welfare systems do indeed amount to billions each year, around SEK 14.6 billion according to the latest measurement (2021). It is nonetheless essential to contextualize these figures. Only half of these payments are under suspicion for fraudulent activity. To grasp the magnitude – or perhaps the limits – of this issue, one must compare this sum to the total expenditure on social benefits and support, which in 2021 stood at SEK 728 billion. It is therefore probably only 2% of the payments that are estimated to be incorrect. These erroneous payments are equally due to intentional factors (i.e., suspected benefit fraud) as they are to unintentional mistakes (regulatory complexity). The government investigation tasked with analyzing how to prevent and combat benefit fraud has written:

charged outrage.” The tendency has been to downplay long-term prevention efforts and issues of inequality and social vulnerability, and expand the repressive options through proposals for harsher punishment and greater state powers.

70 Bidragsbrottslag (2007:612) (Swed.).

71 See Proposition [Prop.] 2006/07:80 Bidragsbrottslag p. 1 and p. 57 [government bill] (Swed.).

72 See Statens offentliga utredningar [SOU] 2011:3 Sanktioner på trygghetsområdet; SOU 2013:38 Vad bör straffas?; SOU 2017:37 Kvalificerad välfärdsbrottslighet – förebygga, förhindra, upptäcka och beivra; SOU 2018:14 Bidragsbrott och underrättelskyldighet vid felaktiga utbetalningar från välfärdssystemen – en utvärdering; SOU 2019:59 Samlade åtgärder för korrekta utbetalningar från välfärdssystemen; SOU 2020:35 Kontroll för ökad tilltro – en ny myndighet för att förebygga, förhindra och upptäcka felaktiga utbetalningar från välfärdssystemen; and SOU 2022:37 Stärkt arbete med att bekämpa bidragsbrott – Administrativt sanktionssystem [government reports] (Swed.).

73 Statistics on contribution crimes are sourced from the website of the Swedish Prosecution Authority, accessed 23 February 2023. www.aklagarmyndigheten.se.

About 2 percent of these payments . . . are incorrect based on the studies of erroneous payments that the decision-making authorities have conducted. The actual extent of erroneous is likely even higher. Applicants caused 90 percent of the total estimated amount that was incorrectly paid out. For the majority of the errors caused by applicants, 56 percent or about SEK 7,4 billion, there were suspicion that crimes were behind the erroneous payments.⁷⁴

The provisions of Contribution Crime Act have also been supplemented with the Act on Obligation to Notify in Case of Erroneous Payments from the Welfare systems.⁷⁵ The purpose of this law is to facilitate agencies' ability to discover and prevent incorrect payments. It facilitates certain authorities notifying other authorities when there is a reason to believe that an economic benefit has been decided or paid out incorrectly, or at an excessively high amount.⁷⁶ The obligation to notify is broad:

It is important to emphasize that the issue here is an obligation to provide information not only regarding incorrect payments due to a crime committed by the recipient, but also regarding unintentional errors made by the beneficiary or the paying agency.⁷⁷

According to the legislator, erroneous payments must decrease, otherwise not only will public trust in the welfare system be at risk, but compliance with the rules of the welfare system will also be weakened.⁷⁸ Here, erroneously paid-out benefits emerge as a fiscal threat to the state, where in the long run, the government may not be able to maintain the benefit levels in its welfare system. In the state's view, criminality is rampant in this area:

Extensive criminality not prevented or prosecuted efficiently may result in reduced rule compliance. It is therefore an urgent matter of public interest to prevent crime against the welfare systems. It is also a matter of importance

74 Statens offentliga utredningar [SOU] 2023:52 Ett stärkt samlat skydd av välfärdssystemen p. 24 [government report] (Swed.).

75 Lag (2008:206) om underrättelskyldighet vid felaktiga utbetalningar från välfärdssystemen (Swed.).

76 Lag (2008:206) om underrättelskyldighet vid felaktiga utbetalningar från välfärdssystemen: 3 §(Swed.).

77 Prop. 2007/08:48 p. 20 (Swed.).

78 See Proposition [Prop.] 2007/08:48 Underrättelskyldighet vid felaktiga utbetalningar från välfärdssystemen p. 16 [government bill] (Swed.).

to maintaining long term public trust in our welfare systems.⁷⁹

In a post-political context, Sweden and the United States also display similarities concerning the concentration of wealth. Credit Suisse Research Institute stated in their *Global Wealth Report 2022* that there are approximately 620,000 Swedish USD millionaires, far more than in neighboring Nordic countries (2022, 26–7). The number of ultra-rich people is rising in Sweden. According to Knight Frank's database sources in the 2021 *Wealth Report*, Sweden and the United States both rank in the top ten in the list of countries with an increasing number of UHNWI (Ultra-high-net-worth individuals), defined as having wealth exceeding a net worth of \$30 million. The share has risen 4% in the United States and 10% in Sweden (2021, 11).

Even where Credit Suisse Research Institute measures the Swedish concentration of wealth with the Gini coefficient, the comparison with the USA is relevant. The Gini coefficient is a measure used by economists to express the level of inequality in a country. Regarding wealth, a Gini coefficient of 1 roughly means that an individual owns all assets, and 0 means that all inhabitants in a country own exactly the same amount. According to Credit Suisse estimates (2022), Sweden stands at 0.881, which is more comparable to the uneven distribution of wealth in the USA (0.85) than for example in Norway (0.794), Finland (0.744) or Denmark (0.739) (52).

A potentially illuminating angle on wealth distribution in Sweden can be acquired by examining the income tax regulations that establish the framework for the Investment Savings Accounts [ISK] (Swed.). A highly sporadic investigation could provide a general depiction of how such standardized taxation on savings compares with the traditional taxation of capital income.

The Investments Savings Account is a regulated savings mechanism where individuals can invest in certain directly-owned financial instruments (stocks and funds on the stock exchange).⁸⁰ The account holder does not pay tax on capital gains or dividends pertaining

to the asset holdings.⁸¹ Instead, the assets in the account are taxed based on an annual tax on notional income [*schablonintäkt*] (Swed.). For example, the notional income for the fiscal year 2022 was 1.25% of the capital basis [*kapitalunderlaget*] (Swed.).⁸² The capital basis is calculated by adding the market value of the account's assets at the beginning of each quarter to the sum of the deposits and withdrawals made on the account during the year.⁸³ The capital base consists of one-fourth of the sum of the market value of the assets in the ISK. The notional income is taxed at 30%.⁸⁴ Thus, the annual tax amounts to 0.375% of the market value of the assets on the ISK, i.e., 30 percent of 1.25%.

The regulations defining the traditional system for taxing capital income are scattered across various chapters of the Income Tax Act,⁸⁵ but, in this framework, dividends and capital gains on stocks and funds are usually taxed at 30%.⁸⁶

A straightforward example can provide a general illustration on the effects of the co-existing capital taxation frameworks in the Swedish taxation system. At the beginning of the year, Nils Svensson had SEK 1,500,000 in assets (stocks) on his ISK. At the start of the second quarter, he bought stocks for SEK 200,000. At the end of the third quarter, he sold some of his stocks for SEK 600,000 (acquisition value: SEK 100,000). Nils withdrew the money from the stock sale of SEK 600,000 from his ISK during the third quarter. No other deposits have been made during the year.

Taxation of investments on ISK

First, the capital base is calculated: At the start of the year (quarter 1), Nils owns stocks with a value of SEK 1,500,000. During the second quarter of the year, Nils purchases additional stocks at a market value of SEK 200,000. Therefore, the capital base for quarter 2 is 1,500,000 + 200,000 = 1,700,000. Towards the end of the third quarter, Nils sells a part of the stocks with a capital gain of SEK 500,000. Capital gains do not affect the capital base,⁸⁷ however, deposits and withdrawals from the ISK do affect the capital base. Since the capital base is based on the value of the assets on the account at the beginning of each quarter, the fact that Nils's stock sale occurs late in the third quarter will affect the capital base for the quarter following the sale, i.e., the fourth quarter. Thus, the value of the assets decreases

⁷⁹ Prop. 2007/08:48 p. 16 (Swed.). In the Swedish media, the erroneous payments have been portrayed as a “ooting of the welfare system.” See for example: Cantwell, Vålfärden plundras av gangsters och terrorister, *Aftonbladet* 09-06-2023. Accessed 6 September 2023.

⁸⁰ Lag om investeringssparkonto [Law on Investment Savings Account] and IL 42:35 (Swed.).

⁸¹ IL 42:42 (Swed.).

⁸² IL 42:36 (Swed.).

⁸³ IL 42:37 (Swed.).

⁸⁴ IL 65:7 (Swed.).

⁸⁵ IL 41:1–2, IL 42:1, IL 44:13, IL 48:1 and IL 41:12 (Swed.).

⁸⁶ IL 65:7 (Swed.).

⁸⁷ IL 42:42 (Swed.).

as follows during the fourth quarter: $1,700,000 - 600,000 = 1,100,000$. In summary, the capital base is: $1,500,000 + 1,700,000 + 1,700,000 + 1,100,000 / 4 = \text{SEK } 1,500,000$.

The notional income is calculated on the capital base as follows: $\text{SEK } 1,500,000 + 1.25\% = \text{SEK } 18,750$.

The notional income is taxed at 30%: $\text{SEK } 18,750 * 30\% = \text{SEK } 5,625$.

Taxation of investments outside of ISK

Under the standard taxations rules outside of the ISK-model, the focus is primarily on taxing actual returns. In this context, the realized capital gain would be calculated as: $600,000 - 100,000 = 500,000$. A tax rate of 30% is applied to this capital gain, resulting in a tax payment of $500,000 * 30\% = \text{SEK } 150,000$.

An investigation of the kind just conducted becomes particularly intriguing when considering various statements made in the preparatory work associated with the introduction of the ISK. An example of this is the comment by the Ministry of Finance that the difference in effective tax rate between the ISK and traditional capital taxation is not particularly significant.

In summary, the effective tax rate for assets expected on the investment savings account is therefore calculated to be 28.7 percent under conventional taxation, compared to an estimated 22.2 percent under flat-rate taxation.⁸⁸

Though I tread lightly here, without the sturdy ground of empirical evidence to guide my steps, the illustrative case I've created does suggest that the main tax advantage of the ISK system lies in its favoring of individuals endowed with greater resources for investment.

One must also note that the preparatory work lacks functional and informative archetypal cases to illustrate the fundamental mechanisms and effects of the tax levy in the ISK-system. Here, the absence of such cases raises the question of whether it hampers the ability to assess and discuss tax justice – for example, the opportunity to reflect on the legitimacy of the tax system through theory and rule analysis (cf. Gunnarsson 1995, 53). Should capital income for private individuals be taxed at all? Do the tax provisions defining the ISK contribute to increasing or decreasing economic inequality in society? How can we understand arguments for and against economic inequality in a context where financial instruments are taxed uniformly based on market value in a parallel capital-taxation model?

⁸⁸ Finansdepartementet, Schablonbeskattat investeringssparkonto och ändrad beskattning av kapitalförsäkring, 2010 [government report] (Swed.), s. 128.

When one considers these forms of critical perspectives and inquiries, it's important to note that both the Confederation of Swedish Enterprise (one of the leading commercial organizations in Sweden) [Svenskt Näringsliv] (Swed.) and the Swedish Trade Union Confederation (the largest labor union confederation in Sweden) [LO] (Swed.), as reviewing entities, actively chose to reject the entire legislative proposal for ISK.⁸⁹

Svenskt Näringsliv asserted that the ISK operates akin to a wealth tax, given that it is levied based on magnitude of wealth rather than actual earnings. Consequently, it would be detrimental to the economy as a whole.⁹⁰ On the other hand, LO argued that the ISK constitutes a deviation from uniform taxation and that as a legislative proposal was highly complex, or rather “incomprehensible.”⁹¹ Both these lines of reasoning were dismissed by the legislator.⁹²

A pivotal point seems to revolve around the extent of tax inaccuracies in the area of capital. The legislative authorities contend that the conventional rules for taxing financial instruments are overly complex, leading many private individuals to inaccurately document their transactions in their tax returns.

These inaccuracies result in certain cases where taxpayers pay less tax than they should, and in other instances, they pay more tax than required.⁹³

It was primarily the requirements that the average cost method [*genomsnittsmetoden*] (Swed.) places on individuals to keep track of acquisition costs that the legislator found particularly troublesome.⁹⁴ The question of the “lock-in effect” is also raised. However, the rationale becomes murkier considering that the legislator's considerations do not appear to be aimed at the average saver, seeming rather to favor a more investment-savvy group of individuals.

In today's capital taxation, the principal rule is that each disposal of stocks and other financial instruments should be subject to taxation. This can lead to “lock-in-effects”, as investors may avoid selling financial instruments with latent profits because it triggers taxation.⁹⁵

⁸⁹ Proposition [Prop.] 2011/12:1 Budgetpropositionen för 2012 [government bill] p. 278 (Swed.).

⁹⁰ Prop. 2011/12:1 p. 279 (Swed.).

⁹¹ Prop. 2011/12:1 p. 278 (Swed.).

⁹² Prop. 2011/12:1 p. 280 (Swed.).

⁹³ Prop. 2011/12:1 p. 277 (Swed.).

⁹⁴ IL 48:7 (Swed.).

⁹⁵ Prop. 2011/12:1 p. 278 (Swed.).

In the eyes of the legislator, ISK should not be perceived as a wealth tax. Instead, this form of saving should be seen as an alternative model for taxing capital income that carries advantages for both the individual and the state.⁹⁶

This form of taxation could become more efficient as it reduces as tax losses due to misreported capital income and capital losses decrease. Moreover, the flat-rate taxation implies that tax is levied on an ongoing basis, thus reducing the individual's tax credit compared to the current system where profits are taxed only upon realization. Furthermore, the tax base for flat-rate savings tends to be more stable than the tax base for conventionally taxed assets.⁹⁷

However, an audit conducted by the National Audit Office [Riksrevisionen] (Swed.) a few years after the introduction of the ISK system demonstrates that its negative impacts on the state's tax revenues are significant.

According to Riksrevisionen, the introduction of ISK may have resulted in a tax shortfall of SEK 23 billion accumulated over the period from 2012 to 2017. Furthermore, capital gains generated during this period that were not realized before the end of 2017 will lead to a future tax shortfall of an additional 19 SEK billions accumulated over all subsequent years.⁹⁸

Riksrevisionen recommended that the Ministry of Finance should begin calculating tax losses associated with ISK, which it now has done. The results from these expenditure forecasts have been presented in a report that the government submits to the Parliament annually. The losses for the state remain substantial, even when presented in the calculations of the Ministry of Finance. For instance, in the 2021 report, the cost was estimated to be nearly SEK 73 billion.⁹⁹

Even the data that the Swedish daily newspaper *Svenska Dagbladet* has had access to supports this point. Wealth statistics from ISK accounts are not the easiest material to analyze because the data sources are very incomplete. It should also be noted that the credibility of the material is dependent on the quality of the associated journalistic work. However, my assessment is

that the news articles contribute important information to the discussion about the effects of the ISK-system. For instance, it is reported by Magnusson (2021) that the richest tenth of the population had about SEK 700,000 in their accounts on average, the top 1 percent had about SEK 12,6 million, and the top 0.1 percent had SEK 203 million. At the time of measurement, the top tenth controlled about 73% of all assets in ISK, and the top 1% controlled 35% of the assets.

A research report that offers a more in-depth analysis of the size and significance of Swedish capital taxation is the 2018 Economic Council report by the Centre for Business and Policy Studies [SNS] (Swed.). It shows that Sweden is the OECD country that has most reduced its taxation of wealth and assets since the early 1990's (Waldenström, Bastani and Hansson 2018, 109).

In 2020 income from capital amounted to SEK 342 billion, according to the Swedish Statistical Authority [SCB] (Swed.). The top ten percent of the population with the largest capital incomes owned 95% of this total sum, i.e., SEK 325 billion. SCB (2022) has divided the Swedish population into different percentiles (a statistical measure often used to compare individual values with a larger population). SCB (2022) has found that the 100th-percentile group, i.e., the group with the highest income, had 59% of the total capital income.

According to Kallifatides and Sjögren (2023, 9), the wealthiest percentile's share of wealth is now at the same level as in the United States. This is how the researchers write about the number of Swedish USD billionaires and their accumulation of wealth:

Presently, there are more than 500 Swedish USD billionaires with an estimated accumulated fortune of over 3,500 billion SEK, which is more than what the six million Swedes with the lowest wealth have together. Sweden ranks twelfth in the world in terms of wealth concentration measured by the Gini coefficient. (30)¹⁰⁰

100 Author and economic journalist Andreas Cervenka (2022) has also focused on issues related to the activities that yield the most wealth to individuals, and how this has changed over time. Even if the answers to these questions are made available in science-journalistic form, it is clear that Cervenka provides a thought-provoking perspective on Swedish economy. Like few others, Cervenka has managed to highlight that Sweden, for example, now has five individuals with fortunes corresponding to that of the American oil magnate and philanthropist John D. Rockefeller – that is, over 1.6 percent of their country's GDP. At the same time, Cervenka's Billionaire Rich List identifies 82 ultra-rich individuals who together own SEK 2.418 billion – that is, approximately 49 percent of Sweden's GDP.

⁹⁶ Prop. 2011/12:1 pp. 280–281 (Swed.).

⁹⁷ Prop. 2011/12:1 p. 281 (Swed.).

⁹⁸ Riksrevisionen [RIR] 2018:19 Investeringsparkonto. En enkel sparform i ett komplext skattesystem [agency report] p. 8 (Swed.).

⁹⁹ Regeringens skrivelse 2020/21:98 Redovisning av skatteutgifter 2021 [government report] p. 24 (Swed.).

Between what on the surface appears to be a well-justified introduction of a parallel savings form for financial instruments and the billions in lost tax revenues it has in fact caused, a gray zone of unclear motives and driving forces opens up. Uniformity has not been the guiding star in the design of the Investment Savings Account (ISK), but rather the pursuit of optimal taxation.

In Swedish tax law, the theory of optimal taxation has not been the subject of extensive study. It is only in recent years, particularly in connection with discussions about the development of income tax law after the 1991 tax reform, that the theory has begun to receive attention. This may be due to the fact that other principles and values, such as neutrality, uniformity and horizontal fairness, have been presumed to have been expressed in the design of income tax legislation.

In Sweden, it is primarily Gunnarsson and Eriksson who have mapped out the new tax policy terrain. The theory of optimal taxation has played a central role in the various departures from a uniform tax system since the turn of the millennium. Gunnarsson and Eriksson (2019, 11–2) argue that today's tax policy largely follows a narrow interpretation of the theory of optimal taxation (economic efficiency), without regard to a broader set of societal goals (income distribution and social justice).

Robert Pålsson, partly based on other premises, has drawn similar conclusions in his study on the diminished significance of deductible expenses for employee taxation. His research (2023, 442) offers valuable clarification on this topic:

Income tax law is no longer tied to legal principles and notions of justice, even though these may still be present in day-to-day political discourse. The focus on efficiency, which gained its definitive foothold in 1992, is now completely dominant.

Against this backdrop, one can convincingly argue that Sweden has not only experienced a new focal point

in its income tax system. When tax policy follows an interpretation of the theory of optimal taxation that contends political regulation of the market economy through taxation is inefficient and hinders economic growth, but in practice favors the financial interests of the wealthier segments of society, this can also be viewed as an expression of a sort of resentment from those who have the power to shape tax policy.

Social justice and uniformity no longer influence the way Swedish income tax bases are designed. This tax policy's reorientation is particularly evident in the way it indirectly pits the sustainable financing of welfare through income tax bases that favor economic growth against a renegotiation of the Swedish social contract. The social contract that previously relied on a strong welfare state and broad popular movements is today subject to renegotiation, moving towards a welfare state in collaboration with philanthropists, private donations, charities, and the non-profit sector (cf. Wijkström and Einarsson 2018).

It is in the pursuit of the meaning of a post-political development that a borderland between philanthropy and addressing social problems opens up. Here emerges the need for tax incentives for donations to the voluntary sector, both in terms of financial support, but also as a significant factor from a societal point of view. In American philanthropy it is wealthy individuals, more or less, who account for 75% of the country's donations, while this category of donors is negligible in a Swedish context (Braunerhjelm and Acs 2004, 103). In the Swedish tax incentive scheme for private individuals' monetary donations to eligible gift recipients, we can detect the embryo of new welfare conditions,¹⁰¹ and at the heart of such a societal transformation process we may perhaps position a singularly rooted "industry of goodness" rather than a civil society based on popular movements.

7 On Tax Incentives for Private Individuals' Monetary Contributions to Civil Society

A system based on tax reduction for private individuals' monetary contributions to civil society was introduced by the *Reinfeldt* government on 1 January 2012 and,

Björklund and Waldenström have a different opinion on the matter, as the following makes clear: "The number of billionaires seems to have risen according to the journalists' plutocrat rankings, but in relation to all households in the population, the ultra-rich are a very small proportion, and the increase in value of homes and pension saving owned by the broader population has meant that wealth inequality measured according to top shares or the Gini coefficient has not increased significantly in the population as a whole." See Björklund and Waldenström (2021b, 21).

101 IL 67:20–26 (Swed.).

as mentioned, encompassed two purposes.¹⁰² However, during the *Löfven I* period of government, the right to tax reduction was repealed, not only as part of a revenue-enhancing budget measure (SEK 0.25 billion),¹⁰³ but also on the basis of fundamental principles in the design of the tax system, such as uniformity, simplicity, and consistency.¹⁰⁴

The government argued that tax reduction for contributions increased the complexity of the tax system because the tax reduction for charitable contributions under Ch. 67 is not compatible with the deduction restriction for living expenses according to Ch. 9 Subsection 2 Second Paragraph IL.¹⁰⁵ At a first glance, the government's argument seems reasonable, but upon closer examination, it can easily become erroneous; according to Pålsson (1997, 49–53), the prohibition on deduction for living expenses has almost always, since the inception of the Municipal Tax Act, been supplemented with various exceptions.¹⁰⁶ Such exceptions have made certain living expenses tax-deductible through specific provisions that have been designed with fairly concrete and exact limitations.¹⁰⁷ The government also specified administrative burdens for the Tax Agency. Normally, the Tax Agency makes tax assessments based on past events, but the application process to become an eligible (approved) gift recipient

under the reduction system could not be designed on this principle. Decisions would instead have to be based on “projections” or “considerations” of the recipients’ future circumstances, which the appointed investigator argued would give the Tax Agency a role that was not particularly operationally relevant, while also creating a demand for extensive knowledge and insights about the civil society’s structure and conditions.¹⁰⁸ These reasons were also voiced in the legislative proposal to abolish the regulatory system. This three-part structure of arguments (revenue-enhancing, breakthrough of the non-deductibility principle on living expenses, and administrative burdens) also aligns with the left-wing ideology when tax incentive priorities are to be decided by democratically elected bodies and their representatives (the state), rather than by private individuals’ ability and willingness to contribute to charitable purposes.¹⁰⁹

In 2018, a parliamentary right-wing majority decided that the *Löfven I* government could present a legislative proposal on the reinstatement of tax reduction according to the version in the 2012 Budget Bill.¹¹⁰ It is also possible to detect an ideological perspective in the parliamentary decision, but here the emphasis is that state support to civil society should be receding, libertarian, and aimed at enhancing people’s individual charitable commitments and support of such eligible organizations. This prioritization of tax incentives by the state is intended to reduce dependence on funding from the public sector and facilitate non-profits’ initiative in collecting funds from private individuals to strengthen civil society:

The societal benefits of civil society activities cannot be stressed enough. Important initiatives concerning refugee reception, activities for children in vulnerable families, and support of the homeless are taken by committed volunteers and contributions to such organizations. The Moderate Party and the Christian Democrats take a very serious view of the former government’s abolishment of tax deduction for contributions to charitable purposes. The tax deduction had a good effect as such donations increased charitable giving. The design of the application procedure ensured that the organization and purposes of the donations met the requirements of the legislation. However, several aid organizations have testified that the application fee posed a barrier for smaller nonprofit organizations to apply for approval as gift recipients. ... Beyond this, the Moderate

102 See, for example, Direktiv [Dir.] 2008:102 Skatteincitament för gåvor till forskning och ideell verksamhet [government commission guidelines] (Swed.), but also SOU 2009:59 and prop. 2011/12:1 (Swed.). The *Reinfeldt* government (2006–2014) was a right-wing coalition between the Moderate party, the Center Party, Folkpartiet, the Liberals, and the Christian Democrats.

103 The *Löfven I* government (2014-10-04–2019-01-21) was a minority and coalition left-wing government between the Social Democrats and the Green Party. See Proposition [Prop.] 2014/15:1 Budgetpropositionen för 2015 p. 36 and p. 232. See also Proposition [Prop.] 2015/16:1 Budgetpropositionen för 2016 [government bills] (Swed.).

104 See Prop. 2014/15:1 p. 232 (Swed.). See also Finansdepartementet, Slopåd reduktion för gåvor, 2015 [government report] (Swed.) and Prop. 2015/16:1 Attachment 8 [government bill] (Swed.). The abolition of tax reduction for donations to nonprofit organizations was estimated to increase the government’s tax revenue by SEK 250 million. See Finansdepartementet, Slopåd reduktion för gåvor, 2015 p. 16 (Swed.).

105 See Prop. 2014/15:1, p. 232 (Swed.).

106 Kommunalskattelag [KL]. See also Proposition [Prop.] 1928:213 [government bill] (Swed.). Repealed through the Swedish Code of Statutes. See Svensk författningssamling [SFS] 1999:1230 (Swed.).

107 See for example IL 12:27 (Swed.). The section regulates the deductibility for commuting by car to and from work.

108 See SOU 2009:59 p. 175 (Swed.).

109 See Prop. 2014/15:1 p. 232 (Swed.).

110 See government reports [bet.] 2018/2019:FiU1 Statens budget 2018 Rambeslutet and [rskr.] 2018/19:62 Riksdagskrivelse (Swed.).

Party and the Christian Democrats want to remove the application and annual fees for organizations applying for and being approved as gift recipients in order to strengthen a vibrant nonprofit sector.¹¹¹

In the light of both these developments, I want to pick up the thread from Altermark regarding political convergence of the left–right positions. On the one hand, there appears to be an ideological divide between the *Reinfeldt* and *Löfven I* governments regarding the handling of tax incentives for private individuals' donations to civil society. On the other hand, all Social Democratic governments, from *Löfven I* to *Andersson*, have actively sought agreements with the non-profit sector to promote increased civic engagement in the welfare systems.¹¹²

The structure of the tax reduction focuses on the giving individual, offering them both an economic benefit and the opportunity to financially support selected (eligible) actors of the civil society. In this way, the provisions make the giving individual visible and encourage in them a more direct relationship with civil society through a sense of civic participation and community.

8 A Future Scenario of the Nonprofit Tax Shift as a Financial Base for Swedish Civil Society

Every year, Giva Sverige, the sector association for secure giving in Sweden, compiles certain data about the conditions for the financing of civil society. In their report, *Givandet i siffror 2021*, the organization refers to statistics from the Swedish Tax Agency indicating that the cumulative tax reduction for donation that year had reached slightly more than SEK 368 million. That is equivalent to almost about SEK 1,5 billion in donations from the public.

Giva Sverige's statistical valuation of gift-giving places it at a lower cost level than the estimations made by the Gift Incentive Investigation, which concluded

that the reduction provisions would weaken the state budget by around SEK 615 million per year.¹¹³ In the 2012 proposal for legal regulation, the cost of tax reduction was estimated to be more in line with Giva Sverige's figures. In this context, the government acknowledged that the tax reduction would weaken public finances, with a total of SEK 264 million in 2012 and SEK 274 million in 2013.¹¹⁴

To this we can add the Ministry of Finance's estimates from 2015 and 2019, showing that over 626,000 individuals donated money and barely 195,000 of these reached the minimum threshold for a tax reduction. In total, state tax revenues in this area decreased by SEK 160 million between those years. In 2013, donations were made by over 760,000 individuals, of whom over 255,000 reached the minimum threshold for a tax reduction. In total, tax revenues decreased to over SEK 220 million.¹¹⁵

Within the scope of his research on civil society, Vamstad (2015) has commendably highlighted how people in Sweden have moved towards a more civic-minded approach to their giving. He makes the general conclusion that Swedish giving is grassroots-oriented, i.e., small-scale and widespread (36). Vamstad then compares income with giving, and finds that it is among the Swedish middle-income earners that giving is most widespread (12). Patterns in giving have also changed in relation to the causes currently demanding donations. Vamstad (2015, 4) and Vamstad and von Essen (2012) argue that there is an ongoing shift in the traditional donor model's focus, from international aid and medical research to purposes encompassing social welfare in Sweden. Many might argue that charity focusing on this last group is justified by new social needs no longer met by the welfare state. However, according to Vamstad's intricate explanation (2015, 4), one also needs to consider factors such as the division of responsibility between citizens and public institutions, as well as, possibly, the general public's waning trust in these institutions' ability to solve social and economic problems.

Changes are also taking place within the operations of Swedish aid organizations, resulting in increased

¹¹¹ See bet. 2018/19: FiU1 p. 131 and then Prop. 2011/12:1 pp. 447–449 (Swed.).

¹¹² See Direktiv [Dir.] 2018:46 En tydlig definition av idéburna aktörer i välfärden [government commission guidelines], Statens offentliga utredningar [SOU] 2019:56 Idéburen välfärd [government report] and Proposition [government report] [Prop.] 2021/22:135 Idéburen välfärd [government bill] (Swed.).

¹¹³ See SOU 2009:59 p. 149 (Swed.).

¹¹⁴ See prop. 2011/12:1 p. 481 (Swed.).

¹¹⁵ See SOU 2009:59 p. 149 and Prop. 2011/12:1 p. 481. See also Finansdepartementet, Slopade reduktioner för gåvor, 2015 p. 15 (Swed.).

professionalization of fundraising. As Vamstad points out:

Fundraising campaigns have become increasingly similar to advertising campaigns for goods and less like grassroots movements. They are carried out by PR agencies and specially trained fundraisers. (2015, 5)

The extent of state support and funding for civil society has long been uncertain in Sweden.¹¹⁶ It wasn't until the end of the 2010s, in connection with the Democratic Conditions Commission's investigations, that the concepts of "support" and "grants" were defined, and an estimate was made of the public funds directed toward civil-society activities.

State funding primarily consists of economic grants distributed by state agencies or organizations entrusted with the task of distributing grants. Sometimes the government uses the terms "support" and "grant" interchangeably. But usually, in this context, the term "grant" refers to a financial transaction, i.e., when

116 According to the Democratic Conditions Commission, state subsidies are elusive. There are more than 100 different state subsidies, distributed by a number of grantors. Sometimes the government decides on a subsidy directly to a civil society actor. However, it is more common for subsidies to be handled and decided upon by authorities. The inquiry estimates that subsidies are distributed by about 40 authorities under the government's different ministries. In addition, some organizations are authorized to distribute state subsidies themselves, such as Folkbildningsrådet, Stiftelsen Svenska Filminstitutet, SISU Idrottsutbildarna, Sveriges Riksidrottsförbund and Svenskt Friluftsliv. The state's control of organizations' subsidy assignments is regulated by legislation such as the Act on the Delegation of Administrative Tasks to the Swedish Sports Confederation. At the same time, the Democratic Conditions Inquiry notes that by the end of the 2010s, the government was distributing subsidies to civil society with the support of around 80 state-subsidy regulations.

The state grants are primarily designated in the budget proposal and can also be specified through regulatory letters to authorities or in special government decisions. This means that authorities can decide on grants not only based on law, but also based on received regulatory letters or through special government decisions. According to the commission, such grant activities take place at several authorities such as Socialstyrelsen, Naturvårdsverket, Trafikverket, Svenska institutet and Kulturrådet. Only a few grants are regulated by law, such as support to religious communities, party grants parties, and the Swedish Inheritance Fund. See Statens offentliga utredningar [SOU] 2019:35 *Demokrativillkor för bidrag till civilsamhället* pp. 232–233 [government report] (Swed.) and Proposition [prop.] 2009/10:55 *En politik för det civila samhället* p. 138 [government bill] (Swed.).

money is exchanged for a task or service. The term "support" is defined more broadly, and can include grants, tax incentives, knowledge support, or the use of certain services and infrastructure provided by the state. State-aid-eligible religious organizations can, for example, use the Swedish Tax Agency free of charge to collect their membership fees. At the municipal level, non-profit organizations can often receive support by being offered various meeting places or cultural and sport facilities free of charge.¹¹⁷

Regarding the scope of government grants, the Democratic Conditions Commission notes that, in 2017, they amounted to around SEK 14.2 billion:

Of these SEK 4.5 billion were allocated to adult education (i.e., folk high schools and study associations), over SEK 3 billion to aid organizations in Sweden and SEK 1.9 billion to the national study associations. Other major appropriations include grants to road associations totaling SEK 1.2 billion, to disability and social work organizations received SEK 500 million, and to youth organizations for SEK 240 million. The state's support for religious communities, which amounts to approximately SEK 90 million, is also included in the total amount of allocated state grants. In addition, the Party Funding Board, an agency under the Swedish parliament, allocates about SEK 170 million to political parties.¹¹⁸

The Democratic Conditions Commission has had difficulty accurately assessing the Swedish grant system. With each new government, policy issues and allocations of funds are reorganized. The distribution of some grants through regulatory letters and special government decisions also complicates the estimation process. Furthermore, it is not only civil society organizations that may receive grants, but also municipalities and companies. However, it should be noted that in 2017, the Swedish Inheritance Fund (*Allmänna arvsfonden*) distributed SEK 597 million to over 2,000 development projects through the Legal, Financial and Administrative Services Agency (*Kammarkollegiet*).¹¹⁹

It is within this environment of state grants and support that new legislative steps can be taken to shape and promote a more developed Swedish culture of giving, possibly in the form of a *nonprofit tax shift*. Nonprofit tax shifting could be implemented as a combined civil-society and tax-policing measure in which the cost of government grants is exchanged to a greater extent for

117 See SOU 2019:35 pp. 228–229 (Swed.).

118 SOU 2019:35 p. 230 (Swed.).

119 SOU 2019:35 p. 232 (Swed.).

various forms of tax incentives benefiting the nonprofit sector.

In an essay titled *Destra e sinistra* (1994), legal philosopher Norberto Bobbio argues that the fundamental conflicts in the political spectrum's division into left and right revolve around views on equality. There is not a single path to take in this context but many, and the choice is conditioned by whose interest's politics represent. In a left-wing perspective, inequality is to be combated because it results in a range of social problems. In a right-wing perspective, inequality is a natural and necessary part of society, as it creates incentives for people to move from low-yielding to high-yielding activities. According to Bobbio, the real conflicts in society and politics stem from these opposing views of equality. Equality as a political goal leads to one kind of society; increased inequality leads to another.

Bobbio's analysis of left and right assumes that these concepts should be interpreted figuratively, in the form of spatial metaphors that express relationships and diverse attitudes towards humans, society, and politics. This means that the content of the concepts is influenced by the surroundings, which change over time, and that positions in left and right-wing perspectives can be part of coalitions. Even if there is no developed Swedish policy for *nonprofit tax shifting*, I agree with Bobbio that such measure is worth discussing. Various rationales could be put forth for anticipating a future shift in how civil society is financially supported.

The tension between freedom of choice, in the form of increased tax deductions or reductions to nonprofits and political control through state subsidies, has been shown to be ideologically-based (see Section 7). This conflict has previously been firmly rooted in the differing views of the right and the left on the relationship between the state and the individual (see Section 7).

My review of academic research in political science has, however, revealed compelling evidence suggesting that Swedish social democracy has, in several respects, misinterpreted its political landscape. Various key policy decisions appear to have either backfired or, more accurately, caused gravitation towards a right-wing point of view. To a large extent, social democracy has accepted increased non-profit participation in the welfare system (see Section 6–7). At the same time, however, freedom of choice in the Swedish welfare systems seems, from a conservative standpoint, to be a prioritized area of improvement. The right-wing perspective thus advocates for additional alterations that would enable more nonprofits to participate in the production of

welfare in Sweden.¹²⁰ On top of all this, the current Swedish resentment-fueled political climate accepts a greater amount of societal inequality. Over time, these dynamics are likely to alter the balance between state subsidies and tax-based incentives for the non-profit sector.

9 Some Final Observations

As I've demonstrated in Sections 5 and 6, the transformation of Swedish society consists of several complex and parallel processes. It is my contention that Sweden is gradually shifting toward a welfare construct that relies on private donations and closer cooperation with philanthropists, charitable organizations and the non-profit sector. The nuanced alterations in both political, rhetoric and statutory enactments have been discussed and elaborated upon in Sections 5, 6 and 7. To exemplify the potential implications of an affirmative stance toward this transformative trajectory, I have coined the phrase *nonprofit tax shift* (Section 8).

A nonprofit tax shift, in the context of the ongoing transformation, could clarify the relationship between what is in civil society research is referred to as society's "four spheres": households, the public sector, the business sector and civil society. From an external perspective, a dilemma in the dialogic arrangements between the state and civil society becomes noticeable. If state-sponsored dialogic agreements grant ideologically-driven organizations and nonprofits a more central role in welfare system, it simultaneously strains democracy, as society's advocacy groups run the risk acting as tools for governmental agencies and their need/interest in having various types of services performed and delivered. A nonprofit tax shift that fails to account for social policy taxation principles, jurisprudential considerations of horizontal and vertical justice, and perspectives on inequality and democracy will likely accelerate the alteration and fraying of Sweden's social fabric.

It is also in the quest for post-political development that the boundary between philanthropy and addressing societal issues becomes apparent, and the need for tax

¹²⁰ See, for example, Direktiv [Dir.] 2023:87 Skatteincitament för juridiska personer gåvor till ideell verksamhet p. 2 [government commission guidelines] (Swed.).

incentives for donations to the nonprofit sector becomes relevant. It is quite feasible for the Tax Reduction for Private Individuals' Charitable Contributions to be expanded in IL.¹²¹ Two ways of achieving this would be by raising the maximum amounts for monetary donations, and broadening the charitable purposes of eligible recipients. Companies donating money to charity should be allowed to make tax deductions based on the same principles as those recognized by the legislature in GML.¹²²

A discussion of whether a company should donate funds to charity must address the principle of double taxation. This is when a company's profits are taxed twice, first in the company and then also at the shareholder level (Wiman, 1987 and 2002). The shareholder's taxable base normally includes the distributable profit, i.e., the profit after corporate tax.¹²³ The taxable corporate base, however, also includes profit before tax (taxable income).

The following principled example can illustrate the meaning (see Melz et. al, 2023): If the corporate tax rate is 20.6% and the company's taxable income for business activities is SEK 100,000, the corporate tax will be SEK 20,600. The distributable profit of the company will then be SEK 79,400, with tax also levied on the shareholder at 30% of SEK 79,400,¹²⁴ i.e., SEK 23,820. The total tax on corporate profits thus becomes SEK 44,420 (20,600 + 23,820), or 44.42% (20.6 + 23.82).

At a first glance, the Swedish structure of double taxation (taxation of both corporate profits and shareholder taxes) seems to incentivize companies donating funds directly, instead of individuals donating privately. However, the company pays a proportional state corporate tax based on a profit estimate where only the expenses for acquiring and maintaining of corporate income are deductible.¹²⁵

According to case law, the company's expenses are subject to the deduction prohibition, unless the recipient provides some type of *quid pro quo*.¹²⁶ A deduction may still be possible even if there is no direct consideration. In that case, however, there must be a strong connection between the company's operations

and the activity it is supporting, meaning that it is a cost for acquiring income.¹²⁷ While an expense that a company has incurred in order to improve its goodwill may be commercially motivated, it does not necessarily mean that the expense is no longer a gift.¹²⁸ Even a cursory examination conclusively reveals that established case law has, on several occasions, refused deductions for sponsorship-like expenses.¹²⁹

It is possible that a company may have an alternative option to incorporate the donation as part of a marketing measure and thereby obtain a tax (cost) deduction, according to the principle established by the Supreme Administrative Court in the so-called Arla case.¹³⁰ However, in my opinion, the legal situation should be considered uncertain.

When discussing the issue of the Swedish deduction prohibition for gifts within the framework of business income, one should be aware that, as shown above,¹³¹ there are other opportunities to achieve tax effects similar to that of a deduction (Melz 2008, 236). However, the space that has gradually opened up in practice through relatively advanced tax arrangements is narrow, especially considering the government's retreat from its previous welfare commitments.

On the other hand, allowing an expansive deduction for companies can have its drawbacks from a common-good perspective. For example, it may cause wealthy donors, in the long term, to have a disproportionate influence over the purposes and financing of civil society, without any form of accountability for this imbalance (see Rushton 2008, 298). Tax deduction of that kind runs the risk, from a *de lege ferenda* perspective, of potentially metamorphosing – to borrow the phraseology of Trägårdh and Vamstad (2009, 58) – into a mechanism catering to “special interests” and “the needs and preferences of wealthy individuals.”

In addition to what is stated above, it should be noted that the income tax system in Sweden does not have any built-in incentive structures allowing individual companies (*enskild firma*) or trading companies (*handelsbolag*) to donate funds to charitable purposes. Those who run business operations in the latter cases

¹²¹ See IL 67:20–26 (Swed.).

¹²² GML §6 (Swed.).

¹²³ IL 65:10 (Swed.).

¹²⁴ IL 65:7 (Swed.).

¹²⁵ See IL 65:10 (Swed.). Then see IL 16:1 and 13:2 (Swed.).

¹²⁶ RÅ 1976 ref. 127 I–II, RÅ 1977 Aa 4 and RÅ 2000 ref. 31 II (Swed.).

¹²⁷ RÅ 2000 ref. 31 I and II (Swed.).

¹²⁸ RÅ 1976 ref. 127 II (Swed.).

¹²⁹ HFD 2014 ref. 62 (Swed.). Comprehensive studies of the concept of sponsorship have been conducted by Pålsson (2000), Bjuvberg (2007), Ceije (2014) and Bjuvberg and Ceije (2018).

¹³⁰ HFD 2018 ref. 55 (Swed.).

¹³¹ See Section 4 with reference to case law.

are referred to regulations on tax reduction for private individuals' monetary contributions to charity.¹³²

Companies, however, may donate non-monetary gifts to charity.¹³³ For example, a company may have a sales range of articles useful for humanitarian aid relief, such as medical supplies, food, clothing, hygienic articles, or products to keep people warm. It can involve items that are no longer saleable and/or subject to disposal. However, when goods are donated in this way, the issue of withdrawal taxation becomes relevant.¹³⁴ When making such withdrawals from business operations, the company runs the risk of being taxed as if the goods had been sold at market value.¹³⁵ There are exceptions from withdrawal taxation in the form of promotional or representation gifts,¹³⁶ but these exceptions are not applicable when the gift has more than "less value."¹³⁷

Persson Österman (2020) has thoroughly discussed the issue of whether a company donating products not suitable for sale (rejection) can lead to withdrawal taxation. Österman emphasizes that it is the valuation of the donated items that is significant to the tax consequences. For this, the value must not only have left the company to benefit another person, but have also reduced the donor's wealth (see also Persson Österman 1997, 170–190; Emblad 2020, 217–245). The subjective (personal) value of a rejected product from a recipient's perspective makes no difference. According to Österman (2020, 6), the tax assessment of the value rests on "the company's unique business position." Even if its legal

status is uncertain, Österman predicts that a rejected product cannot have any value for a company; it is rather of negative value, as its rejection may incur costs for the company: "it is irrelevant for the tax consequence that the company, instead of rejecting the product, transfers it to another person without compensation." I share Österman's view on the legal situation in this matter.

Other related issues analyzed in the Swedish tax-law literature are the taxation consequences of contributions (cash, shares, or other assets) that are connected to a company when forming or capitalizing a foundation. Martin Berglund (2022) is somewhat ambiguous about the relevance of the reduction rules in Ch. 67 IL to contributions. Initially, Berglund seems to suggest that they "generally" lack significance to the founder (a private individual) in the context of the contribution made during the formation process. Then he notes that "[i]t is not possible to obtain tax reduction in connection with a formation of a foundation, since a foundation during formation is not an approved gift recipient" (517). Berglund (*Ibid.* footnote 10) then upgrades his assessment of the reduction rules' importance with an argument referring to the tax consequences of the founder's later "contributions," i.e., when the Tax Agency has assessed the already-formed foundation as an approved gift recipient.

In my opinion, Berglund's reasoning requires clarification. Nowhere in the preparatory works was it expressed that it was the legislator's intention to create an income tax incentive scheme for a founder (private individual) who is forming or strengthening a foundation through the use of the reduction provisions. However, even when the very low reduction amount is set against the fact that forming a foundation requires considerable asset bases – which may be subject to taxation – the question of the application of the reduction provisions becomes essentially meaningless.

In private banking, high deposit requirements are typically imposed for forming a sustainable foundation – specifically, around SEK 10 million (see, for example, Sparbanken Rekarne – Private Banking 2019). This includes compensation for advisory services in connection with foundation formation and thereafter, compensation for board and accountant fees, and other expenses. The assets must simply be substantial enough for returns to cover important future costs, which will enable the foundation to endure over time. In the light of this practical aspect, tax consequences in connection with such contributions are of the utmost significance to the founder in the formation process, while the

132 IL 67:20–26 (Swed.).

133 For a detailed account of the income tax issue regarding when business-related contributions (cash, shares or other assets) with company ties are made to establish or capitalize a foundation, see Berglund (2022).

134 IL 22:3 (Swed.) See also Proposition [prop.] 1998/99:15 Omstrukturering och beskattning pp. 165–166 and p. 292 [government bill] (Swed.).

135 IL 22:7 and IL 61:2 IL (Swed.). See also case law: RÅ 2008 ref. 57, RÅ 2010 ref. 63, RÅ 2014 ref. 31 and HFD 2017 ref. 14 (Swed.).

136 IL 16:1–2 (Swed.) See also Prop. 1963:96 p. 23 (Swed.).

137 Deduction for advertising gifts and representation gifts are allowed with a reasonable amount, but not exceeding SEK 300 or alternatively 350 plus VAT per gift. In case law, the deduction for advertising gifts has not been seen as a violation of the prohibition on deduction for gifts if it has involved simpler articles of relatively low value. The assessment of what may be considered acceptable amount must, according to case law, be based on the circumstances of the individual case. See RÅ 1967 fi 437, RÅ 1970 Fi 16, RÅ 1982 1:9, RÅ 2000 ref. 31 I and RÅ 2010 ref. 33 (Swed.).

purpose of the reduction provisions in Ch. 67 IL rather encourages spontaneous or regular “popular” giving (see Section 7 and 8). In this respect, the founder can choose to donate money (like any other member of the public) to their own eligible foundation, and utilize the maximum prescribed tax reduction of SEK 3,000.

In conclusion, it is important to emphasize – which has also as has been part of the purpose of this study – that legal doctrinal research regarding tax incentives for individual and corporate charitable contributions to civil society can be successfully conducted in a normative context, based on an thorough reflection on theory and method (see Section 2).¹³⁸ During the time this article has been under peer review, the Swedish government has announced an inquiry into tax incentives for corporate contributions to civil society. The need for new rules is justified in the following manner:

By increasing the incentives to donate to non-governmental organizations, we have the opportunity to advance public good in manifold ways, from the fortification of social fabrics to enhancement of education and cultural undertakings, or even aiding marginalized populations. However, gifts made by corporations or economic associations do not currently qualify for a tax reduction. The implementation of a tax relief mechanism for corporate philanthropy could act as a catalyst for increased charitable giving from a wider range of organizations. This would, in turn, amplify the resources available to nonprofits and bolster various activities beneficial to society at large. The government believes that a tax incentive designed to inspire charitable giving from legal entities should be further investigated with the aim of being implemented.¹³⁹

In the press release published on June 15, 2023, it is stated that the directives for the inquiry have been formulated as part of an agreement between the Swedish government and the Sweden Democrats.¹⁴⁰

Nick Dimitrievski is assistant professor in Tax Law and has been part of the co-creative and innovative process of designing, quality-assuring, and launching the law program at the School of Business, Karlstad University.

¹³⁸ Regarding comparable methodological premises in Swedish tax law research, see Gunnarsson (1995), Pahlsson (1997 and 2008), Dimitrievski (2010) and Emblad (2020).

¹³⁹ Dir. 2023:87 p. 3 (Swed.).

¹⁴⁰ The Sweden Democrats, founded in 1988, is a nationalist and right-wing party in the Swedish Riksdag. They describe their own political platform as socially conservative and grounded in nationalism.

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