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Alternatives to taxation when combating the Wealth Gap and Poverty

Compiled and ordered notes from interviews including cross-checks with publicly accessible material, prepared for future use. Language check and German quotes translated into English thanks to Dr. Sue Berning.

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1 Introduction

1.1 Evaluation criteria

Wealth can be distributed in many ways: Not only taxes, but also via donations, investments following social justice and ecological criteria combined with higher wages (resulting in less profits), foundations or donations...

The question in this chapter is, whether those alternatives are indeed more fruitful and down to the point when it comes to the question what reduces more/most inequality and poverty and benefits most those who are disadvantaged under the presently dominating financial-economic paradigm?

A set of principles and criteria has to be used to evaluate and assess those questions, for example:



In order to illustrate and provide those different approaches with a face, some examples shall be given next:

1.2 *The Philanthropist: Andrew Carnegie*

An informative book to read here is Andrew Carnegies “Gospel of wealth” because it reflects the mindset of somebody who is confident that he can do better than the state, which is an important motivation behind those advocating philanthropy towards taxation. The worst thing, Carnegie argues, a wealthy person can do is to pass on his fortune after death to his children who might not be able to handle it well or who are even spoiled by them, the second best is paying Estate Tax to the state. The third is putting it to use himself, because it is the entrepreneur who knows best how to invest and handle money for the larger common good since his success demonstrates his skills.

Even the poorest can be made to see this, and to agree that great sums gathered by some of their fellow-citizens and spent for public purposes, from which the masses reap the principal benefit, are more valuable to them than if scattered among themselves in trifling amounts through the course of many years. (p.12)

In bestowing charity, the main consideration should be to help those who will help themselves; to provide part of the means by which those who desire to improve may do so; to give those who desire to rise the aids by which they may rise; to assist, but rarely or never to do all. ... Thus is the problem of rich and poor to be solved. The laws of accumulation will be left free, the laws of distribution free. Individualism will continue, but the millionaire will be but a trustee for the poor, intrusted for a season with a great part of the increased wealth of the community, but administering it for the community far better than it could or would have done for itself. (p.17f.)

Carnegie is religiously convinced that this is the best way not only to combat the gap between the poor and the wealthy, but that this is equally the best way to follow the Christian Gospel:

The highest life is probably to be reached, not by such imitation of the life of Christ as Count Tolstoi gives us, but, while animated by Christ's spirit, by recognizing the changed conditions

of this age, and adopting modes of expressing this spirit suitable to the changed conditions under which we live, still laboring for the good of our fellows, which was the essence of his life and teaching, but laboring in a different manner.(p.14)

In Christ's day, it is evident, reformers were against the wealthy. It is none the less evident that we are fast recurring to that position to-day; and there will be nothing to surprise the student of sociological development if society should soon approve the text which has caused so much anxiety: " It is easier for a camel to enter the eye of a needle than for a rich man to enter the kingdom of heaven." Even if the needle were the small casement at the gates, the words betoken serious difficulty for the rich. It will be but a step for the theologian from the doctrine that he who dies rich dies disgraced, to that which brings upon the man punishment or deprivation hereafter. The gospel of wealth but echoes Christ's words. It calls upon the millionaire to sell all that he hath and give it in the highest and best form to the poor by administering his estate himself for the good of his fellows, before he is called upon to lie down and rest upon the bosom of Mother Earth. So doing, he will approach his end no longer the ignoble hoarder of useless millions; poor, very poor indeed, in money, but rich, very rich, twenty times a millionaire still, in the affection, gratitude, and admiration of his fellow-men, and — sweeter far — soothed and sustained by the still, small voice within, which, whispering, tells him that, because he has lived, perhaps one small part of the great world has been bettered just a little. This much is sure: against such riches as these no bar will be found at the gates of Paradise. (p.43)

Quite a number of Carnegies “projects” were endowments where he no longer exercised control over the assets, i.e. he gave back and he gave away almost in a way of donations.

1.3 The contested: Bill Gates, Mark Zuckerberg

Different from Carnegies approach are Bill Gates and Mark Zuckerberg, whose foundations nourish doubt whether they really give back and give away or whether they merely change their “quality” of ownership and continue to exercise control over both the administration of assets and the spending of proceeds (see below, 14.4+5). Also in Germany doubts are justified that setting up of foundations reflect a pure altruistic mind.

Moreover: In both cases are doubts whether their donations are not primarily a tax saving exercise or whether the way assets are generated administered are not creating more overall damage as the distribution of proceeds are able to cure and counterbalance.

1.4 The structuralists: Nick Hanauer, Henry Ford

A third approach to wealth are those who recognize that philanthropy can amount to a fig leave, i.e. a distribution of charitable acts financed by acts of exploitation and advocate instead for a more structuralist approach along the lines that it is better to earn less money/to reap less profits for the few, but pay higher wages and spread wealth more evenly among the many.¹

A similar idea was underlying Henry Ford's attitude, which is made visible in the famous conflict between Henry Ford and his financiers, the Dodge-brothers. While Henry Ford considered his business to be of service primarily to his worker, whom he paid good wages,

¹ <http://www.theatlantic.com/magazine/archive/2016/01/a-plutocrats-case-for-raising-the-minimum-wage/419130/>
<http://www.spiegel.de/wirtschaft/unternehmen/mindestlohn-in-den-usa-superreicher-nick-hanauer-unterstuetzt-kampagne-a-983183.html>

and customers, whom he offered good value products, the financiers were dissatisfied with the profit they received out of their investment. When dragged to court, the Michigan Supreme Court indeed ruled in favour of the financiers. The court argued ‘that Henry Ford owed a duty to the shareholders of the Ford Motor Company to operate his business to profit his shareholders, rather than the community as a whole or employees. It is often cited as embodying the principle of "shareholder value" in companies.’²

2 Fight rent seeking “Financial industry”

2.1 Present dangers

As has been demonstrated in I/IV5, financial globalization and financial capitalism have their fair share in the increase of inequality and poverty insofar rent-seeking behavior profits top earner, while investment in real economy profits low and middle earner. Therefore, also the FFD3 conference also talked about financial market regulation in Goal 10 (“reduce inequality within and among countries”), which is a goal of social sustainability, not primarily an economic category. In his article, Hecker briefly sums up major shortcomings leading to the 2007 World Financial and Economic Crisis, most importantly, that Wertschöpfung got more and more detached from the real economy because those acting in the financial sector were no longer liable for damage created by them: Personally responsible partnerships were replaced by capital businesses and funds so that, eventually, the public had to jump in when systemic risks were created by those institutions too big to fail. The knowledge lead to Moral Hazard, potentially increased by short-term boni which increased willingness to take risks. Hecker also emphasizes in the manner of Stiglitz and Piketty that it is the wealthy profiting more of this system than small owner of capital, because they have larger sums to invest, more diversified portfolios against risk and better counselors regarding investment choices.

As Nick Hanauer, Stiglitz and Piketty (see GW/I/8.3.3.5) also senior member of Federal Banks (Hecker, 2016) warn that distributional imbalances always result in social instability which, in the end, damages society as such and all its citizens.

As history regularly shows, a violation of basic conceptions of distribution and opportunity equality can have fundamental impacts on society. This was referred to already by Gustav Schmoller, one of the protagonist of the Historical School of national economy towards the end of the 19th century, in drastic words. ...“The coffin nail to every existing distribution of property is the expanding belief (...) that there is a disharmony too big, too unjust between the performance of single persons and their economic results – their income. ... In that way, the probability declines that norms, like the protection of legally acquired property are respected if the norm addressees for the most part cannot expect that they ever will belong to the beneficiaries of these norms. That is why the public perception that in the financial sector profits are made at other economic sectors’ and public community costs while at the same time the future perspectives of less wealthy citizens are worsening has a socially highly explosive potential. So sinkt die Wahrscheinlichkeit, dass Normen wie der Schutz rechtmäßig erworbenen Eigentums respektiert werden, wenn die Normadressaten zum großen Teil nicht damit rechnen können, jemals selbst zu den Nutznießern dieser Normen zu gehören. Aus diesem Grund birgt die öffentliche Wahrnehmung, dass im Finanzsektor Gewinne auf Kosten anderer Wirtschaftssektoren und zulasten der öffentlichen Hand erzielt werden, während sich

² See http://en.wikipedia.org/wiki/Dodge_v._Ford_Motor_Co.

gleichzeitig die Zukunftsperspektiven weniger gut ausgestatteter Mitbürger verschlechtern, einen brisanten sozialen Sprengstoff.³

As has been demonstrated in I/IV/5, the power of financial markets over the “real economy” distorted profitability of investment and lead to the neglect of investment into infrastructure and real businesses, e.g. because the margin of profit was higher in the financial sector than anywhere else. Structures emerging in this regulative vacuum also enabled the increase of aggressive tax avoidance, tax evasion and other international illicit financial flows.⁴

2.2 The wrong approach

Conversation partners among the wealthy admit that there need to be lessons from the 2007 World Financial and Economic Crisis. However, the way it is done is counterproductive. First of all, because it hits all banks the like, those creating those problems and those operating solidly. Here the state has to watch out that he does not achieve something he does not want to achieve. Literally, the person said:

In Germany, there are way too many regulations and controls. After the Financial Crisis, a true regulation rage for the financial sector started, where e.g. reports now have to be written in English what is very time-consuming. Additionally, the supervising authorities are competitive but employ too many civil servants. This is nonsense for a bank that is only regionally active. It would be better to write less reports and have unannounced controls which of course would also cost money – but this would be easier to organize for a company and otherwise they could do their job.

2.3 The right approach

Hecker recommends as major improvements for the prevention of negative impact of financial sector on income, opportunities and inequality of wealth

- Re-establishment of the principle of liability in the financial sector, removal of all incentives for Moral Hazards.
- Curtailing short-timed incentives (bonus system).
- Taking care that the financial sector is no longer ruling, but serving real economy: ‘Combating sustainability threatening momentum also means that the functioning of the financial sector as service provider for the real economy must be secured.’⁵ (p. 6)

Something similar is already known from Helmut Schmitt since 2009:⁶

³ So zeigt die Geschichte regelmäßig, dass eine Verletzung elementarer Vorstellungen von Verteilungs- und Chancengerechtigkeit gravierende gesellschaftliche Auswirkungen haben kann. Darauf hatte bereits Gustav Schmoller, einer der Protagonisten der Historischen Schule der Nationalökonomie Ende des 19. Jahrhunderts, mit drastischen Worten hingewiesen... Der Nagel zum Sarg jeder bestehenden Eigentumsverteilung ist der um sich greifende Glaube, (...) dass zwischen den verschiedenen Leistungen der Einzelnen und ihren wirtschaftlichen Resultaten – ihrem Einkommen eine zu große, zu ungerechte Disharmonie sei... So sinkt die Wahrscheinlichkeit, dass Normen wie der Schutz rechtmäßig erworbenen Eigentums respektiert werden, wenn die Normadressaten zum großen Teil nicht damit rechnen können, jemals selbst zu den Nutznießern dieser Normen zu gehören. Aus diesem Grund birgt die öffentliche Wahrnehmung, dass im Finanzsektor Gewinne auf Kosten anderer Wirtschaftssektoren und zulasten der öffentlichen Hand erzielt werden, während sich gleichzeitig die Zukunftsperspektiven weniger gut ausgestatteter Mitbürger verschlechtern, einen brisanten sozialen Sprengstoff. (Hecker, 2016, p. 4)

⁴ This finds also support by (UNIAPAC, 2015)

⁵ ,Die Bekämpfung nachhaltigkeitsgefährdender Eigendynamiken im Finanzsektor bedeutet zudem, dass die Funktion der Finanzbranche als Dienstleister für die Realwirtschaft gesichert werden muss.’

1. All private financial institutions (including investment banks, mortgage banks, investment and pension funds, hedge funds, equity trusts, insurance companies et.) and all marketable financial instruments are put under the same banking and financial supervision.
2. The banking and financial supervision determines for all sectors of the private financial institutions minimum standards of equity capital.
3. For financial institutions all deals outside their own balance sheet (and profit and loss account) are forbidden and penalized.
4. All financial institutions are forbidden and penalized to trade with such financial derivatives and certificates which are not admitted and listed at an acknowledged stock exchange.
5. All financial institutions are forbidden and penalized to sell shares and financial instruments as future trades which they do not possess at the time of sale. Hence, shortselling will be impeded.
6. Financial deposits and credits are forbidden and penalized which benefit corporations and persons that are legally registered as tax havens.

Other aspects, especially linked to illegal and criminal misuse of the present “Offshore Capitalism” such as the prohibition of certain derivatives or more transparency regarding trusts and offshore companies are dealt with in GER/VII.

3 Advance “Real economy”

3.1 Inequality and growth

Consensus is growing that inequality and growth are linked with each other, e.g. by studies commissioned by/taking place within IMF and OECD. Inequality, they argue, in the end is damaging all in a society and not just some.

Frederico Cingano in his study “Trends in Income Inequality and its Impact on Economic Growth” (Cingano, 2014) and Piketty, for example, see the declining spending power of all other households than the super-rich to be one of the major reasons behind the volatility eventually triggering off of the 2007/2008 crisis.⁷ This makes a lot of sense because: If net

⁶ Alle privaten Finanzinstitute (inklusive Investmentbanken, Hypothekenbanken, Investment- und Pensionsfonds, Hedgefonds, Equity Trusts, Versicherungsgesellschaften et cetera.) und alle marktgängigen Finanzinstrumente werden derselben Banken- und Finanzaufsicht unterstellt.

Die Banken- und Finanzaufsicht legt für alle Branchen der privaten Finanzinstitute Eigenkapital-Minima fest. Den Finanzinstituten werden jegliche Geschäfte außerhalb der eigenen Bilanz (und der Gewinn-und-Verlust-Rechnung) verboten und unter Strafe gestellt.

Allen Finanzinstituten wird bei Strafe der Handel mit solchen Finanzderivaten und -zertifikaten verboten, die nicht an einer anerkannten Wertpapierbörse zugelassen und notiert sind.

Es wird allen Finanzinstituten bei Strafe verboten, per zukünftigen Termin Wertpapiere und Finanzinstrumente zu verkaufen, die sie zur Zeit des Verkaufes nicht zu eigen besitzen. Damit wird die Spekulation auf fallende Kurse (»Shortselling«) erschwert.

Finanzeinlagen und Finanzkredite zugunsten solcher Unternehmen und Personen werden bei Strafe verboten, die rechtlich in Steuer- und Aufsichtsöasen registriert sind.

Schmidt, H. (2009, January 15) Wie entkommen wir der Depressionsfalle. In: Die Zeit. Retrieved from <http://pdf.zeit.de/2009/04/Wirtschaftskrise.pdf>

⁷ ‘In my view, there is absolutely no doubt that the increase of inequality in the United States contributed to the nation’s financial instability. The reason is simple: one consequence of increasing inequality was virtual stagnation of the purchasing power of the lower and middle classes in the United States...’ (Piketty, 2014a, p. 297).

wages are declining and hardly anything is left for consumption, then indeed there is too much power left for the whims of the very few. And even more the (OECD, 2015a) study. In the Executive Summary, second paragraph, it says

Beyond its impact on social cohesion, growing inequality is harmful for long-term economic growth. The rise of income inequality between 1985 and 2005, for example, is estimated to have knocked 4.7 percentage points off cumulative growth between 1990 and 2010, on average across OECD countries for which long time series are available. The key driver is the growing gap between lower-income households – the bottom 40% of the distribution – and the rest of the population. (OECD, 2015a, p. 15)

All this is spelled out in more detail in chapter 2 (“The impact of income inequality on economic growth”).

Close to the IMF are the following publications: Inequality impacts negatively upon growth and, subsequently, jobs and poverty reduction. ‘Inequality has a statistically significant negative relationship with the duration of growth spells. A one-Gini-point increase in inequality is associated with a 6 percentage higher risk that the spell will end the next year’, i.e. there might be growth, but it might be short, erratic or otherwise unsustainable, unpredictable or less suitable for reliable planning and revenue. For that reason, it would be ‘a mistake to focus on growth and let inequality take care of itself.’ (Ostry, Berg, & Tsangarides, 2014, p. 23+25) This means that policies addressing the economy have to go alongside with policies addressing inequality.

Similar the paper by (Dabla-Norris & al., 2015, p. 4)

Widening income inequality is the defining challenge of our time. In advanced economies, the gap between the rich and poor is at its highest level in decades. Inequality trends have been more mixed in emerging markets and developing countries (EMDCs), with some countries experiencing declining inequality, but pervasive inequities in access to education, health care, and finance remain....Our analysis suggests that the income distribution itself matters for growth as well. Specifically, if the income share of the top 20 percent (the rich) increases, then GDP growth actually declines over the medium term, suggesting that the benefits do not trickle down. In contrast, an increase in the income share of the bottom 20 percent (the poor) is associated with higher GDP growth. The poor and the middle class matter the most for growth via a number of interrelated economic, social, and political channels.

...

Policies that focus on the poor and the middle class can mitigate inequality. Irrespective of the level of economic development, better access to education and health care and well-targeted social policies, while ensuring that labor market institutions do not excessively penalize the poor, can help raise the income share for the poor and the middle class.

It is interesting, however, that they include recommendations regarding taxation into their package: ‘advanced economies should focus on reforms to increase human capital and skills, coupled with making tax systems more progressive.’

Also the International Christian Union of Business Executives or UNIAPAC, an ecumenical organization for Christian businesspeople, confirm that inclusive market economy is the best way to combat poverty they admit that two problems have not yet been resolved despite of all dynamism triggered of by international labor division in times of globalization: a growing gap

between winner and loser of this process and the separation of a number of countries worldwide from those processes, especially in Sub-Saharan Africa. One reason for this is seen in inequality and a concentration of power which distorts market based competition and tries to exploit economic activities via forms of lobbyism or crony capitalism. This is most visible in states of Sub-Saharan Africa and one reason why national economic development is not taking off (including the unwillingness of businesses to invest), but elements of influence of powerful interest groups trying to dominate over a common goods oriented governance approach can also be detected in other parts of the world (UNIAPAC, 2015).

The problem is: What kind of growth? If growth affects requirements of social and ecological justice it may be beneficial under a short term perspective, but damaging in the longer term.

3.2 Different level of distribution

A first major effort and success prior any debate about taxation needs to see whether markets still serve their proper role or whether they are getting distorted. And, if the latter, it is even more important to push back their influence. Because: Whatever distortion exists on the market level because of some player controlling the game and setting the rules, cannot really be balanced by those still adhering to the rules or those trying to compensate inequality via taxation. Here, Martin Wilde, Executive Secretary of the German Federation of Catholic Business-Owner argues that inequality can best be tackled when three levels of distribution are considered:⁸

1. Primary distribution: How are goods produced and “marketed/sold” to consumers, i.e. the dealing between producers and consumers?
2. How are proceeds divided within a business between business/capital owner and laborer?
3. How is inequality balanced via taxes and transfers?

This theory is interesting, since it puts the “power of the consumer” into the picture, whose decision regarding “what to buy” also influences the decisions of businesses regarding what they produce and under what circumstances and conditions.

⁸ „Die Verteilung am Markt ist ja nun mal die erste - primäre - Verteilung, die stattfindet. Der Konsument als Souverän des Marktgeschehens ("Der Kunde ist König!") verteilt sein Geld an die Anbieter auf dem Markt(platz). Das ist der primäre Vorgang. Und je mehr Anbieter es gibt, desto breiter ist die Verteilung. Und je offener der Markt ist, desto mehr Anbieter können auf den Markt(platz) kommen. Nur so kann man Ludwig Erhards Satz verstehen: "Je freier eine Wirtschaft ist, desto gerechter ist sie auch!" Denn in seinem Verständnis ist das Gegenteil von freien Märkten die Vermachtung von Märkten. Wenn auf der primären Verteilungsebene etwas schief läuft (wenige Anbieter haben eine uebergrosse Marktmacht), dann wird man das auf der zweiten und dritten Ebene nie wieder ausreichend korrigieren können. Insofern ist ein freier, intensiver und von vielen Anbietern getragener Wettbewerb die unerlässliche Voraus-Setzung einer gerechten Verteilung. Klar, das ist eine notwendige, und noch keine hinreichende Bedingung. Aber wenn sie nicht erfüllt ist, können Sie alles andere vergessen! Das kann in allen Ländern dieser Welt besichtigt werden, in denen Oligarchen, Crony-Kapitalisten, Kartellbrüder ihr Unwesen treiben.“ Siehe auch schriftliches Statement für Podiumsdiskussion bei Vorstellung von „Reichensteuerbuch“.

The problem is that in standard terminology “Primärverteilung” is linked with the second level, i.e. the relationship between Capital and Labor, while “Sekundärverteilung” refers to the distribution via taxes and transfer.⁹

3.3 Social Market Economy: Competition and Rules

A crucial conviction of this research is, that market mechanisms, especially competition, invaded into many areas not proper to him, tax policy included (see E/I). Accordingly, after many years of neoliberal deregulation and privatization, after the advance of many market-categories in state acting it is time to achieve a new balance between markets and competition on one side, and state and regulation on the other. No market-conform democracy, but a democracy-conform market is needed.

If states regain control which is proper to their realm, many problems of poverty and inequality can be addressed and resolved on a more equal playing field by social actors without the state needing to intervene or to raise taxes. For a better understanding of the needed balance between markets and states, concepts of social market economy, as conceived by ordo-liberals and Ludwig Erhard could be helpful, as also Chancellor Merkel proposed at Davos in 2009.

However, conversation partners among the wealthy argue that the social market economy in Germany is not really in need of reforms since it is still working well. Changes had to be done, of course, due to global developments, but the good core elements are still in place:

In what condition is the social market economy? If one would introduce it somewhere else and make it work people would not have to continue coming to us. “German nature as world’s convalescence?” No, he does not think that one should actively promote the export of the German success model. He also would not know how one could do it elsewhere – that is over his head. But everyone is welcome to have a look how Germany is doing it. Did the quality of the market economy in Germany suffer from the reunification? He does not think so. It adapted but the good core is still there.¹⁰

Others contradict this optimism. Even conversation partners from TNCs admit that there is a crisis:

Less profit, more investment domestically and abroad, better salaries (see positive consequences of minimum wages). ‘The main problem with current developments are influences from America which corrupt the good German system. On the one hand, one wants to be like the Americans (“shareholder value”), on the other hand one has little choice when you want to keep up. This destroys our system and the values of those managing our companies. Their attitude is again “motivated” by the bawdy growing wages and bonuses.’¹¹

⁹ <http://www.wirtschaftundschule.de/lehrerservice/wirtschaftslexikon/e/einkommensverteilung/>

¹⁰ Wie steht es um die soziale Marktwirtschaft? Wenn man die anderswo einführen und zum Funktionieren bringen könnte müssten Leute nicht mehr zu uns kommen. „Am Deutschen Wesen soll die Welt genesen?“ Nein, er glaubt nicht, dass man das deutsche Erfolgsmodell aktiv exportieren sollte. Er wüsste auch nicht, wie man das anderswo machen könne – da ist er überfragt. Aber jeder wäre willkommen zu schau, wie man es in Deutschland eben macht. Hat die Qualität der Marktwirtschaft in Deutschland durch die Wende gelitten? Kann er so nicht sehen. Sie hat sich angepasst, aber der gute Kern ist nach wie vor da.

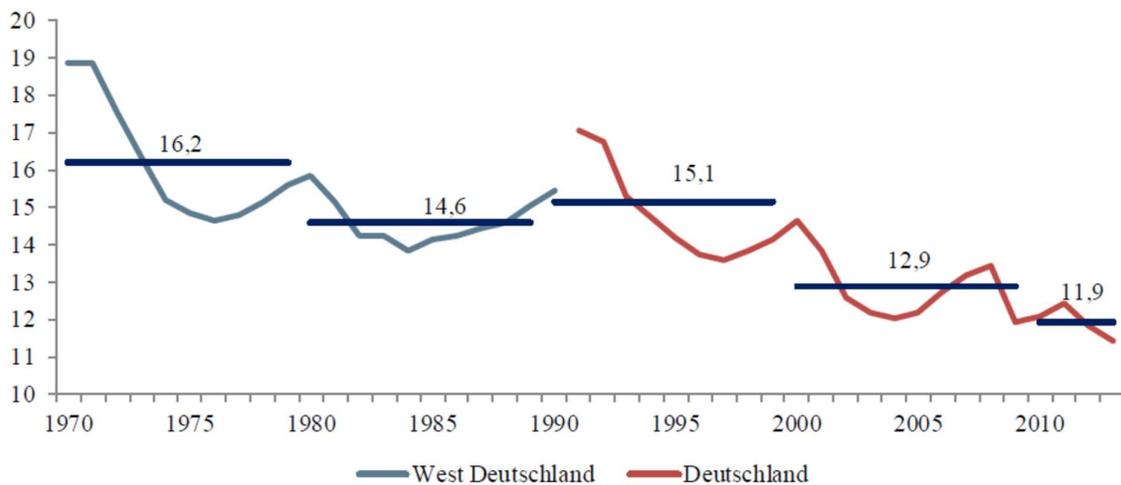
¹¹ Weniger Profit, mehr Investitionen im In- und Ausland, bessere Gehälter (siehe positive Folgen des Mindestlohns). „Hauptproblem an den aktuellen Entwicklungen sind Einflüsse aus Amerika, die das gute deutsche System korrumpieren. Einerseits will man so werden wie die Amis („Shareholder Value“), andererseits bleibt einem wenig übrig, wenn man mithalten will. Das zerstört unser System und die Werte derer, die unsere

3.4 Reduce profits, increase investment

3.4.1 Status and development of private investment

The Handelsblatt Research Institute and the DIW (Handelsblatt Research; DIW, 2014) conducted a thorough study into the status and development of private investment in Germany, combining macroeconomic and statistical analysis with interviews of stakeholders. The finding: Private investment in Germany is low, both in absolute terms and comparatively with other states. Excluding construction, Net-Investment (i.e. investment including writing-off and depreciation) is sinking since the 1990s and the capital stock (Kapitalstock) losing substance (pp. 17+8). Particularly worrying is the situation in the producing segment. There is general agreement by all consulted, business leader included, that this development is worrying on the background of a declining workforce and ageing population.

Abbildung 2: Bruttoanlageinvestitionen ohne Wohnungsbau, nominal in % des BIP



When 676 business leader were asked why this is the case, replies were ambiguous (pp. 35ff.): Insecurity, bureaucracy, or risks were listed, also the lack of investment into infrastructure on part of the state. Regarding international businesses, it is openly admitted that investment is made where it makes most sense to them, which is abroad.¹² From a Catholic Social Teaching point of view this would be fine if it is advancing the global common good. All this would merit a closer examination, however, whether the driving force is not rather higher profitability.

When asked, what would motivate private investment, among the most frequently mentioned desires were tax related issues: 21% ask for changes in the taxation system, another 20% are calling for tax related or other public (i.e. tax funded) incentives from the state, followed by better regulation and less bureaucracy (p.35).

Firmen leiten. Deren Einstellung wird durch die obszön steigende Gehälter und Boni nochmals im schlechten Sinne „motiviert“.

¹² ‚International tätige Unternehmen investieren dort, wo die Nachfrage nach ihren Produkten und Dienstleistungen am stärksten wächst, also meist im Ausland. Solche Unternehmen können durchaus zu Recht mit ihrem Investitionsniveau zufrieden sein, auch wenn sie in Deutschland weniger investieren als in früheren Jahren.‘ (p.36).

All in all, there is the feeling that private investment is guided by the short-term expectation of profit and profitability rather than criteria related to social and ecological justice or the common good.

3.4.2 Invest into the social and ecological

One example for how democratic rule setting would aim for a more balanced and healthy relationship between markets and other factors determining the common good is (Hoffmann, 2016a), who suggests specific steps on how to reduce profits and increase investment into the social and ecological sphere. By relativizing the dominance of private property and capital via changing the framework of production and competition he argues, possible financial profits for investments will decline (and, accordingly, taxable income will decline), but the community as such will win via better paid jobs, working conditions and more sustainability for the environment. In particular, for Germany he recommends to link private property or competition to the obligation to also respect sustainability and social stability via changes in the following laws:

- Bürgerliches Gesetzbuch
- Gesetz gegen den unlauteren Wettbewerb
- Gesetz gegen Wettbewerbsbeschränkungen (Absprachen erlauben für jene, die Umweltkosten nicht mehr externalisieren sondern tragen)
- Aktiengesetz
- Kreditwesen- und Investitionsgesetz.

The extent to which a business is adhering to those suggestions can be measured by a process of an Ethical and Ecological Rating which, Hoffman argues, is compatible with EU and WTO rules.

A combined approach is also suggested by other experts, e.g. when looking at the present laws and incentives governing the global financial system. Here taxes have their place, e.g. a Financial Transaction Tax, also conditions which benefit the collection of taxes, (e.g. more transparency regarding what is being done or earned with investment), prohibitions (e.g. speculation with food and land) and the encouraging of alternatives, e.g. in ecological investment via Bonitätsrating or regional finance system.

The range of potential supporters and cooperators is wide: The Gemeinwohlökonomie (Felber, 2016), people with a green-alternative background,¹³ but also Christians and adherents to Catholic Social Teaching.¹⁴

3.4.3 Reviewing tax exemptions & laws

Regarding profits it is also worthwhile to review sense and nonsense of tax exemptions, subsidies and generally legal provisions which might be misused for IFFs.

¹³ Loske, R. (2016, January) Von der Energiewende zur Geldwende. In: Klimaretter. Retrieved from <http://www.klimaretter.info/meinungen/standpunkte/19734-von-der-energiewende-zur-geldwende>

¹⁴ Regarding a “catholic” discussion of economic policy see (Bund Katholischer Unternehmer, 2012) and (UNIAPAC, 2015)

In a working market, of course the capital owner determines what makes most sense to do when investing his money. But: By offering incentives, exemptions, subsidies and taxation the state influences the deliberation of the individual. If, for example, Abschreibungsbedingungen for investment are less worthwhile than speculation with that money in the hope of capital gains, then, of course, speculation is more profitable and will be done rather than investment for jobs. Or: If the state burdens capital income from certain products more heavily than income from other products then, of course, investment tends to go to the more profitable product, even if it is more risky.

Here one way out would be a uniform, equal taxation of all products. At the same time, merely privileging “investment” is not necessarily pushing up jobs, since, at the same time, investment could go into mechanization and automatization and make jobs redundant by, in turn, increasing profitability of this investment.

Another worthwhile review in the context would be the review of the VAT system under social and ecological criteria.

3.5 Implementing the “good life”

Yet another set of criteria for reviewing the present economic and social system are insights from the “happiness research”.

At the latest since the last World Financial and Economic Crisis the insight is growing that there is more to happiness than economic growth. This insight is supported by the growing awareness in the exploitation of natural resources. So there are choices to be made regarding taxation, health and education, because policies in all three areas reduce inequality and there are not always obvious Win-Win-situations. As an OCED study points out for example, taxes that are less intrusive into economic growth, e.g. indirect taxes, are advancing inequality (Keely, 2015, p. 84). But somewhere, money has to come to finance health and education. This indicates the importance that not everything can be reduced to the laws of economics, market forces or competition.’ Many of the key policy decisions have less to do with economic decisions and more to do with politics – or, the way in which power is exercised in societies and collective decisions made.’ (Keely, 2015, p. 85).

If one looks at the results of surveys, important issues of happiness regard the area of work, e.g. the balance of work and free time or time for family and friends. This does not only concern jobs and payment, but also working time and/or the quality of work and a number of anthropological characteristics since work does not equal job: The latter is needed to earn money for a living, the former is a dimension of human existence and expression. Accordingly, in order to obtain better working condition, working time for jobs could be reduced and jobs at hand could be redistributed with new timelines and, perhaps, less pay if compensation via free time is acceptable. It is also here where the Basic Income Grant has its rightful place.

3.6 Social partnership

The best approach for good wages, but also the policy of businesses regarding trade and investment, is the direct contact between “Capital” and “Labor”, also an approach long advocated by Catholic Social Teaching (E/V)

3.6.1 Jobs, consumption and growth

Following reports of a German billionaire donating parts of his fortunes to the community a commentator entered into a blog: “If the wealthy want to do something for the community, they should pay decent wages for honest work.”

This is also seen by some of the powerful and influential: It is telling, for example, when the OECD Secretary General, Angel Gurría, has to sideline with trade unions, reminding the German elite of a famous insight by German industrialist Robert Bosch, which is very similar to that of Henry Ford (see I/IV/5.4.4): ‘He said: “I don't pay good wages because I have a lot of money. I have a lot of money because I pay good wages.” Now it is time to apply this maxim also to those closer to the bottom of the labour market.’ (Gurría, 2014)

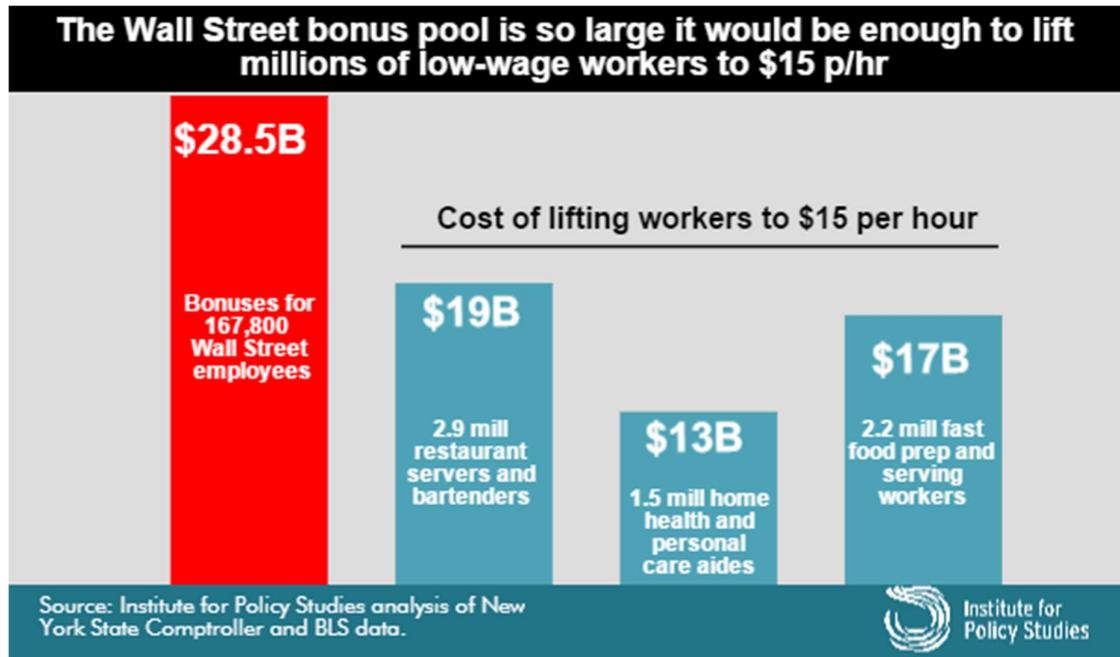
Obviously, inequality impacts similarly upon tax revenue, i.e. a concentration of income and revenue upon the shoulder of few will be more volatile and less dependent than a shared burden on the shoulder of many (see I/IV).

To consider this is even more urgent since studies, e.g. by the Institute for Policy, demonstrate that bonuses for top jobs are rising much faster than salaries for the ordinary worker:¹⁵

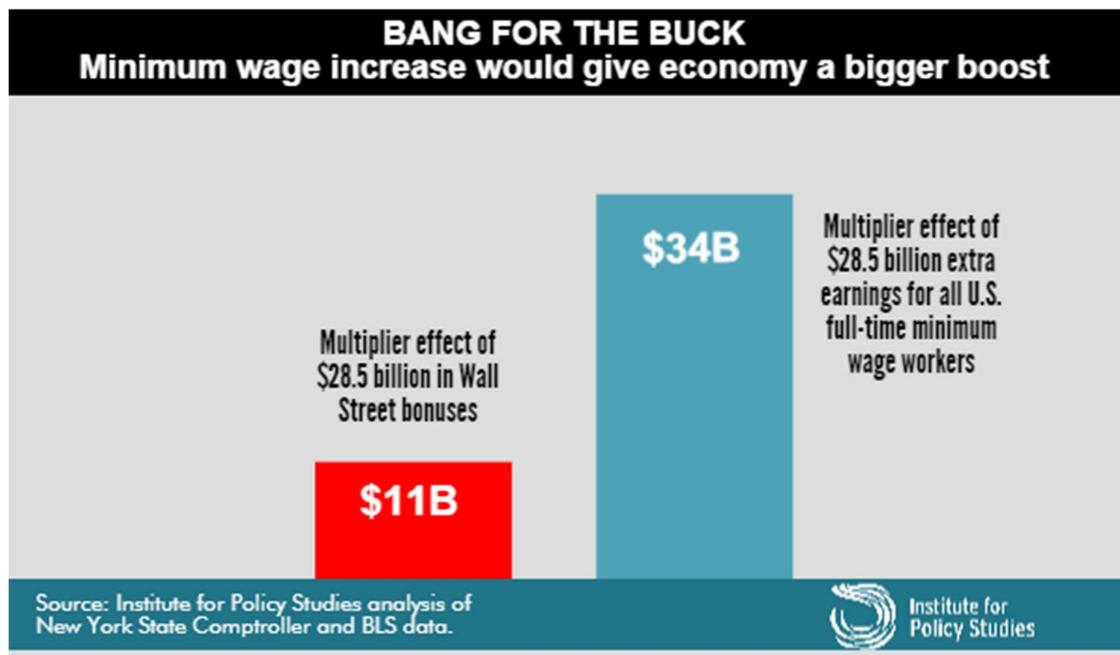


If bonuses would be redistributed in order to increase minimum wage, this could be done:

¹⁵ Anderson, S. (2015, March 11) Three charts that show just how much Wall Street bonuses swamp Low-Wage worker pay. In: Alternet. Retrieved from <http://www.alternet.org/labor/3-charts-show-just-how-much-wall-street-bonuses-swamp-low-wage-worker-pay#.VQGJmYqyH3M.twitter>



And: If this would be done, the benefit for the economy as a whole would be much larger since low income households would spend more on consumption than top income holder:



3.6.2 Share power over „means of production“

Beyond social bargaining for wages, also sharing in the „means of production“, e.g. via shares, is called for. Far more than a merely Marxist idea, it also has strong backing in Catholic Social Teaching or Ludwig Ehrhard's (see von Rosen in (Druyen, Lauterbach, & Grundmann, 2009)).

More currently, it is even advocated by writer at the FORBES Magazine, advocating it as a recipe against wealth concentration: Referring to today's Startups, the author argues:¹⁶

Startups have been willing to distribute equity to employees. Sometimes such equity distribution is done to make up for less than competitive salaries, but more often it's offered as a financial incentive to motivate employees toward building a successful company. According to *The Economist*, today's startups are keen to incentivize via shared ownership:

The central difference lies in ownership: whereas nobody is sure who owns public companies, startups go to great lengths to define who owns what. Early in a company's life, the founders and first recruits own a majority stake—and they incentivise people with ownership stakes or performance-related rewards. That has always been true for startups, but today the rights and responsibilities are meticulously defined in contracts drawn up by lawyers. This aligns interests and creates a culture of hard work and camaraderie. Because they are private rather than public, they measure how they are doing using performance indicators (such as how many products they have produced) rather than elaborate accounting standards.¹⁷

3.6.3 Supersalaries & “atypical jobs”

A third way to address the existing inequality focuses on income-inequality, where some supersalaries rise into stellar heights (see I/IV/5.4.3), whereas wages at the bottom are decreasing and social welfare and benefits are cut. As (Piketty, Saez, & Stantcheva, 2013) demonstrated: Those supersalaries have nothing to do with market related performance, but the misuse of power. There are several ways to deal with this:

Transparency works in Japan,¹⁸ but embarrassment on part of those earning more than USD 1 million is certainly also part of the Japanese culture, intentionally aiming for close relationships between CEOs and worker. When, in such situation, “Supersalaries” are being

¹⁶ Hansen, D. (2016, February 9) Unless It Changes, Capitalism Will Starve Humanity By 2050. In: Forbes. Retrieved from <http://www.forbes.com/sites/drewhansen/2016/02/09/unless-it-changes-capitalism-will-starve-humanity-by-2050/#2715e4857a0b71bd87e64a36>

¹⁷ This trend hearkens back to cooperatives where employees collectively owned the enterprise and participated in management decisions through their voting rights. Mondragon is the oft-cited example of a successful, modern worker cooperative. Mondragon's broad-based employee ownership is not the same as an Employee Stock Ownership Plan. With ownership comes a say – control – over the business. Their workers elect management, and management is responsible to the employees.

REI is a consumer cooperative that drew attention this past year when it opted out of Black Friday sales, encouraging its employees and customers to spend the day outside instead of shopping.

I suspect that the most successful companies under this emerging form of capitalism will have less concentrated, more egalitarian ownership structures. They will benefit not only financially but also communally.

The hierarchical organization of modern corporations will give way to networks or communities that make collaboration paramount. Many options for more fluid, agile management structures could take hold.

For instance, newer companies are experimenting with alternative management models that seek to empower employees more than a traditional hierarchy typically does. Of these newer approaches, holacracy is the most widely known. It promises to bring structure and discipline to a peer-to-peer workplace.

Holacracy “is a new way of running an organization that removes power from a management hierarchy and distributes it across clear roles, which can then be executed autonomously, without a micromanaging boss.”

Companies like Zappos and Medium are in varying stages of implementing the management system.

Valve Software in Seattle goes even further, allowing employees to select which projects they want to work on.

Employees then move their desks to the most conducive office area for collaborating with the project team.

These are small steps toward a system that values the employee more than what the employee can produce. By giving employees a greater say in decision-making, corporations will make choices that ensure the future of the planet and its inhabitants.

¹⁸ Pay check – Bosses salaries in Japan (2016, August 6). In: Economist. Retrieved from <http://www.economist.com/news/business/21703430-japanese-bosses-still-find-it-hard-ask-more-pay-check?fsrc=scn/fb/te/pe/ed/paycheck>

paid, it is offending traditional customs. But elements have been practiced also in Germany, when the Federal Constitutional Court permitted publication CEOs of social insurance companies by indicating that knowledge of them is in the public interest (see GER/VII/5.9.5)

Democratic vote was tried in Switzerland when a campaign tried unsuccessfully to cap the CEO-worker ratio at 12:1. Equally this is a question of “changing social mores”, decency and self-reinforcing: ‘Top executive pay is set in a very imperfect market in which norms, benchmarks and comparators play a major role. The more that chief executives are paid on average, the more it seems reasonable to pay each chief executive.’ (Turner, 2014, p. 3)

If there are strong labor unions and if social bargaining is working, there will be no more supersalaries and “atypical jobs” anymore.

3.6.4 Conclusion

To achieve this, two options are at hand: First, action by the legislator or legislative procedures. The state could cap the absolute amount of top salaries and bonuses by law and/or determine by law how many times more a top jobs payment can exceed average income. Similarly, the legislator could fix a minimum wage and order employer to pay it, as did the German government.¹⁹ Interesting enough, there is evidence that the German minimum wage has not been a job and growth-killer, as its opponents asserted ahead of its implementation, but it had either no tangible negative impact or is perhaps even a growth boosting mechanism due to increasing consumer options – depending on the author of analyses read.²⁰

Second, there are market compatible mechanism outside state competence and regulation which could be used more intensively. For example, via bargaining procedures of the partners in the economic process a minimum wage for all workers could be negotiated in order to improve the situation regarding inequality of outcome. Following the principle of subsidiarity, this is a good approach, but outside the focus proper of this paper.

The problem is that the second needs a framework within which strong trade unions are able to do their job in the first place. Here, Germany may still be in a good situation, but other parts of the world are not.

3.7 Education, qualification, “ethics”

An important point in I/IV made for the explanation of inequality was the hypothesis that the decreasing income and social mobility could be reversed with better education and other ways of qualification and the obtaining of skills for people so that once more gift and skills are important, not the family into which somebody is born. This is also a point made not only by philosophers (Höffe, 2016a), but also the OECD. Most importantly, therefore, here is the question how to promote equity among students and to increase the number of “resilient” students, i.e. children who ‘perform better than their family background might predict.’

¹⁹ http://de.wikipedia.org/wiki/Mindestlohngesetz_%28Deutschland%29

²⁰ Zu Beginn 2016 in der Bewertung des ersten Jahres Mindestlohn: Arbeitgeber: Mindestlohn zwar kein Jobkiller, aber es liegt an der guten Konjunktur insgesamt, die die Nachteile ausbalanciert. <http://www.wochenblatt.de/nachrichten/regensburg/ueberregionales/Mindestlohn-Keine-Verwerfungen-am-Arbeitsmarkt-aber-nur-wegen-guter-Konjunktur-:art5578,344632> . Mindestlohn als Konjunkturmachine: Ministerin Andrea Nahles http://www.focus.de/finanzen/news/wirtschaftsticker/konjunktur-nahles-sieht-nur-vorteile-im-mindestlohn_id_5185832.html

(Keely, 2015, p. 87). Of course there are fewer students from poor families in tertiary education. But this is not so much due to financial constraints but the absence of necessary qualifications, which is why early options for affordable quality education, beginning from pre-school, should be provided. Here, OECD provides a number of insights due to its involvement in the PISA assessment scheme.

Likewise, (ongoing) professional and vocational skill training for workers is important, to adapt them for a fast changing professional environment. Here, too, opportunities need to be created which can be combined with jobs or enable people to take a break from jobs without suffering disadvantages. Here perhaps also changes might be worth considering which do not support people in unemployment but invest rather in their qualification so that they can grow into new jobs (Keely, 2015, p. 90ff.).

This is also supported by wealthy conversation partners. They, however, also emphasize that besides skills knowledge and acquisition of “ethics” is of importance because the attitude is decisive for progress in live:

What is needed in Germany is an ethic of working and saving, not an improved shifting of money allocation. My girl-friend wanted a credit for buying the son a car. This was denied: the son should work. Children neither learn the value of working nor saving. They neither learn it from the family, nor at school. Why is there a budget for school excursions? Children should learn to work for school excursions, then there would be enough entrepreneurs who would donate to each of that way earned Euro an additional one. This would advance the country. There is no need of further public investment: There are enough teachers and an excellent health system.²¹

If, however, for better education private initiatives are rejected, as GER/IV/3.5.2 does, more and better targeted public investment is called for, ideally, for obtaining educational institutions of a quality that even wealthy people no longer search for private-exclusive options: ‘A politics of the common good would take as one of its primary goals the reconstruction of the infrastructure of civic life. Rather than focus on redistribution for the sake of broadening access to private consumption, it would tax the affluent to rebuild public institutions and services so that rich and poor alike would want to take advantage of them.’ (Sandel, 2010, p. 267).

3.8 Public investment, public employment

As has been mentioned above (3.4.1), private investment and public investment is interrelated. However, if private investment is lacking and when there is a time of crisis and reluctance within the private sector, e.g. prompting savings and austerity, then – following Keynesian wisdom – this should be counterbalanced by an increase in public investment and

²¹ Was es in Deutschland braucht ist eine Arbeits- und Sparethik, keine verbesserte Umverteilung mit Geldverteilung. Meine Freundin wollte Kredit um Sohn ein Auto zu kaufen. Den verweigerte er: Der Sohn solle arbeiten. Kinder lernen weder den Wert von Arbeit noch von Sparen. Weder bringt einem das die Familie bei, noch lernt man es in der Schule. Warum gibt es einen Etat für Klassenfahrten? Die Kinder sollten für die Klassenfahrt arbeiten lernen, dann gäbe es genügend Unternehmer, die auf jeden so verdienten Euro einen weiteren draufspenden würden. Das würde das Land voranbringen. Es braucht nicht mehr öffentliche Investitionen: Es gibt genügend Lehrer und es gibt ein hervorragendes Gesundheitssystem.

employment.²² One example being the Stabilitätsgesetz, another the Erste Konjunkturprogramm of 5 December 2008 with duration of two years.²³

This, of course, can only be done if there is money: This, in turn, can be obtained by making debt or collecting taxes.

Looking at statistics, the situation of investment has improved both regarding public investment and improving the situation and profitability for private investment.²⁴

In 2014, the state contributed with Euro 63.3 bn 10.8% of all German gross capital investment. More than half of these investment (Euro 30 bn) went into construction. These serve for maintenance and development of public infrastructure (roads, airports, passages, environmental protection).

Investment in education – construction or research – secure reproduction of education capital in the long term. Investitionen im Bildungsbereich – bauliche Maßnahmen oder beispielsweise Investitionen in die Hochschulforschung – sichern langfristig die Reproduktion des Bildungskapitals. In 2014, the majority of state investment was with Euro 23.3 bn on local level. In 2014, the state invested Euro 18.1 bn and was therefore only the third biggest investor after the municipalities and provinces.

The investment of manufacturing and services are quite stable over a longer period of time. In 2000, the investment of manufacturing industry was at 24.2%, in 2014 at 23.7%. The investment of services was between 2000 and 2014 relatively constant at almost 75%. Agricultural sector has a share of 1.6% in 2014.

The Financial and Economic Crises from 2008/2009 lead to a heavy decline in investment in 2009 by 10.1% compared to 2008. Regarding the sectors, the decline in the manufacturing was with -12.1% a bit more than that of services with -8.7%.

Among the service sectors some are in close connection to manufacturing, especially the service provider or transportation and warehouses. These sectors have reduced their investment likewise in 2009 – with 21.5% respective 17.2% compared with the previous year.

²² <http://www.bpb.de/nachschlagen/lexika/lexikon-der-wirtschaft/19777/keynesianismus>

²³ <http://www.steuerberaterin-berlin.com/steuerdatenbank/dw20090303.htm>

²⁴ Der Staat selbst erbrachte im Jahr 2014 mit 63,3 Milliarden Euro 10,8 Prozent der gesamten Bruttoanlageinvestitionen aller in Deutschland getätigten Investitionen. Mehr als die Hälfte dieser Investitionen (36,0 Mrd. Euro) entfiel auf Bauten. Diese dienen unmittelbar der Erhaltung und dem Ausbau der öffentlichen Infrastruktur (Straßenbau, Flughäfen, Kanäle, Umweltschutz). Der größte Teil der investiven Ausgaben des Staates erfolgte 2014 mit 23,3 Mrd. Euro auf kommunaler Ebene. Der Bund investierte im Jahr 2014 rund 18,1 Mrd. Euro und war damit nach den Kommunen und den Ländern (21,1 Mrd. Euro) nur der drittgrößte öffentliche Investor.... Die Investitionstätigkeit des Produzierenden Gewerbes und der Dienstleistungsbereiche ist über einen längeren Zeitraum hinweg betrachtet recht stabil. Im Jahr 2000 lag der Anteil des Produzierenden Gewerbes an den Investitionen in neue Anlagen bei 24,2 Prozent, 2014 bei 23,7 Prozent. Der Anteil des Dienstleistungsgewerbes lag im Zeitraum 2000 bis 2014 relativ gleichbleibend bei knapp 75 Prozent. Die Landwirtschaft hatte als dritter Sektor einen Anteil von 1,6 Prozent (2014). Die Wirtschafts- und Finanzkrise von 2008/2009 hat zu einem gravierenden Rückgang der Anlageinvestitionen im Jahr 2009 von 10,1 Prozent im Vergleich zu 2008 geführt. Die Ausrüstungen waren dabei mit einem Rückgang von 22,2 Prozent sehr viel stärker betroffen als die Bauten (- 3,4 Prozent). In Hinblick auf die Wirtschaftsbereiche war der Rückgang im Produzierenden Gewerbe mit - 12,1 Prozent bei den neuen Anlagen etwas stärker als bei den Dienstleistungsbereichen (- 8,7 Prozent). Unter den Dienstleistungsbereichen stehen einige Zweige in engem wirtschaftlichen Zusammenhang mit dem Produzierenden Gewerbe, insbesondere der Bereich der "Unternehmensdienstleister" oder der Bereich Verkehr und Lagerei. Diese Bereiche haben ihre Investitionstätigkeit im Krisenjahr 2009 mit - 21,5 Prozent bzw. - 17,2 Prozent im Vergleich zum Vorjahr ebenfalls erheblich zurückgefahren. Wirtschaftliche Zukunftsvorsorge (2016, January 7). Retrieved from <https://www.bundesregierung.de/Content/DE/Newsletter/Nachhaltigkeit/8-KW1/1-Textbausteine/Bundesregierung-und-N/1-indikator-wirtschaftliche-zukunftsvorsorge.html>

Looking at alternative options this research maintains when looking at the German experience (GER/IV/3.5) that in many areas public investments are preferable to Public Private Partnerships.

A lot of questions raise the spectrum of wages and salaries paid within the public and private sector – not only because a CEO earns many times that which a top politician, parliamentarian or Supreme Court judge receives. Good wages and salaries are certainly the best protection against corruption and bribery (which is probably an even more important point in African than in Germany): Conversation partners admit that one reason for the resilience of German public employees towards bribery is the fear of losing not just the job, but also perks attached to it such as health care or retirement packages.

Such jobs are, however, rather the minority among public jobs. Too many publicly employed are not only underpaid, but at the same time overworked, e.g. in schools, Kindergarten, police, firemen, old citizen homes....

3.9 Conclusion

A number of insights arising from the previous have arrived by now also at the top of world leadership: The final declaration of the G20 meeting of Finance Ministers in July 2016 in Chengdu mentions in number two already that ‘the benefits of growth need to be shared more broadly within and among countries to promote inclusiveness’ and number three also puts the link to taxation when saying ‘We are using fiscal policy flexibly and making tax policy and public expenditure more growth-friendly’.²⁵ These issues are also adopted in the G20 Leaders Communique, e.g. in number 6, in September 2016.

When looking what fiscal and tax policy implies one finds also thoughts about how to raise more tax, e.g. by fighting tax evasion or generally IFFs with greater tax transparency and tax cooperation.²⁶

All the previous is good and right, but the question is whether taxation is the best instrument to induce all these changes. Certainly, taxation may have its part in a reform package, but most certainly taxation alone would complicate things, deviate from its original purpose to raise revenue and would still be in need of complementation by other reforms.

4 International Context issues

Since this is an international cooperation project, some thoughts are also in place regarding international implications of inequality, poverty, taxation and the wide range of IFFs. In the following, too, the above applied divide between market distribution and state-directed distribution is observed: Trade and other forms of engagement to market actors can, if done properly (4.1-4.4), diminish inequality and poverty as good as state organized distribution (4.5-4.8).

²⁵ 29 July 2016, retrieved from http://www.g20.org/English/Documents/Current/201607/t20160728_3091.html

²⁶ http://www.g20.org/English/Documents/Current/201609/t20160906_3395.html

4.1 Free Trade, Fair Trade, Customs, EPZs...

International trade is a wide field for paying or saving taxes, especially, since, depending on the number of TNCs incorporated in the calculation, something between 60% and 80% of global international trade takes place within TNCs and their “dependent entities” worldwide.²⁷ In this context one has also to be aware that a lot of this “intra-trade” has to do with accounting tricks for the sake of tax avoidance, without any real value is created or any real service is provided. As UNCTAD observes:²⁸

A growing share of traded services (particularly services deriving from intangible assets with no determined geographical location, such as financial loans or IPR licensing) represent intra-firm trade, much of which used for tax optimization strategies of firms. Unlike regular trade between distinct firms, such trades often do not generate any production, employment and labour income in the low-tax jurisdictions where they are recorded, even as they siphon capital income and profit out of higher-tax jurisdictions. These distortions are most visible in offshore financial centres, but they also occur in a less perceptible manner in much larger countries....

(In a similar manner) The measurement of some services, such as tourism, may not be affected by this problem, but only because it involves the travel of a natural person, who needs to physically pass through a customs checkpoint to cross a border. Many internationally traded services, however, do not involve international travel, and in an increasing share of cases, they do not even involve natural persons but only intangible exchange between companies. Such international transactions often represent fictitious intra-firm accounting techniques aiming at avoiding taxation, which biases the measurement of the “actual” amount of international trade in services. Contrary to a widely shared belief, almost no trade in goods is taking place within multinational firms, whose boundaries are increasingly determined by the use of a common set of intangible inputs, knowledge and the transfer of capabilities rather than by the transfer of goods (Ramondo et al., 2016; Atalay et al., 20...)

One solution for disentangling growing flows of fictitious intra-firm trade in services from genuine trade in services would be for national statistical offices to produce accounts based on ownership rather than residency. Such accounts would net out the effects of phantom intra-firm transactions and provide a more accurate picture of trade in services. So far, the Bureau of Economic Analysis (BEA) of the United States is the only statistical office that regularly publishes an ownership-based current account for that country. There have been several attempts by civil society to push for country-by-country reporting of TNCs accounts, and the United Nations has also called for this in the discussions on financing for development (UNCTAD, 2017b). These proposals are very important not only for more transparency about intra-firm trade flows, and better knowledge about the true nature of trade in services, but also for raising the fiscal resources required by governments to meet the Sustainable Development Goals.

More commonly known, however, are other tax-avoidance practices of global TNCs:

First and foremost, tax dodging is possible via transfer pricing and other legal practices within BEPS, which, of course, could still be attributed to the misbehavior and greed of individual CEOs, Boards and Shareholders. However: there is also a structural imbalance, i.e. the privileges of Europe (and therefore European private and corporate wealth holders), are secured by international trade agreements, profiting Europeans and disadvantaging Africans.

²⁷ For example the transfer pricing expert of the elite tax advisor corporation Fick Gocke Schaumburg, Baumgartner on p. 4 of his presentation operates with the figures 70% and claims it to go back to OECD calculations http://www.ifa-deutschland.de/Hubertus_Baumhoff.pdf

²⁸ TRADE AND DEVELOPMENT REPORT 2018- POWER, PLATFORMS AND THE FREE TRADE DELUSION, see https://unctad.org/en/PublicationChapters/tdr2018ch2_en.pdf

And: All those agreements have implications for customs and excise, tariffs and taxes, the former being a substantial part of government revenue for many Sub-Saharan states: According to common wisdom and the country reports to the research, customs and excise contributes a large share of revenue to the annual governmental budget: In Kenya and for 2013/2014, Customs services provided 34.4% of the governments annual revenue, in Zambia and in 2013 it was 7.9%. (At the same time, of course, advocates of free trade argue that developing countries would gain most from abolishing customs and tariffs).

This is the also the context between negotiations between the EU and developing countries, for example regarding economic trade and partnership agreements between Europe and African states (EPAs). The position is shared that those negotiations will be to the disadvantage especially of Least Developed Countries (LDCs), who benefitted so far from the “Everything But Arms” (EBA) strategy in the trade with the European Union. The principle is that, as long as a country is classified as “LDC” by the UN, they were allowed free access to EU markets for all goods except arms. In 2014 this applied to 34 Sub-Saharan States, Zambia included, Kenya not.²⁹

Those agreements shall now be replaced by the EPA agreements, which are more orientated along WTO standards. One big bone of contention is the fact that African partner states have to open their markets for up to 83% for European imports while at the same time removing customs and excises on those goods, which make up a considerable part of government revenue in many African states. At the same time it is obvious that within this “partnership” Sub Saharan economies would not be able to compete within this context with strong European economies at eye level. In other words: While it is still open what they will gain by signing to those agreements, it is certain that they will lose a lot of revenue needed to finance public good. In particular LDCs would lose out because right now they have access to EU markets and are still entitled to keep custom and excise revenue.

An example in case is Kenya, one of our research partners, where it was predicted that it would not benefit from the EBA agreements since it is not classified as an LDC, Kenya was reluctant to sign EPA which lead to the EU imposing special taxes upon Kenyan goods which finally brought Kenya to agree.³⁰

Some assert that Kenya alone will lose out USD 197.8 million every year because taxes and tariffs are being scrapped. Trade gains are seen at USD 121.8 million, far less than losses. At

²⁹ http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152839.pdf and https://en.wikipedia.org/wiki/Everything_but_Arms

³⁰ ,Viele afrikanische Staaten sträuben sich jedoch gegen die Unterzeichnung von EPA, weil sie unter anderem fürchten, den Handelswettbewerb gegen europäische Unternehmen zu verlieren. Auch Kenia verweigerte die Unterschrift. Daraufhin verhängte die EU zum 1. Oktober dieses Jahres Einfuhrzölle auf mehrere kenianische Produkte. Das führte laut Medienberichten zu zahlreichen Entlassungen in mehreren Betrieben. Unter dem Druck knickte Nairobi schließlich ein – vor rund zwei Wochen setzte es seine Unterschrift unter das Freihandelsabkommen. Der zuständige UN-Wirtschaftsexperte für Ostafrika, Andrew Mold, sieht durch das Abkommen die afrikanische Wirtschaft langfristig bedroht. "Die afrikanischen Länder können mit einer Wirtschaft wie der deutschen nicht konkurrieren. Das führt dazu, dass durch den Freihandel und die EU-Importe bestehende Industrien gefährdet werden und zukünftige Industrien gar nicht erst entstehen, weil sie dem Wettbewerb mit der EU ausgesetzt sind." Retrieved from <http://www.euractiv.de/section/entwicklungspolitik/news/merkels-afrika-beauftragter-eu-freihandelsabkommen-epa-macht-entwicklungshilfe-zunichte/>

the same time the country had to open up for cheap goods from the EU, endangering local production. As one reads articles reporting the eventual conclusion and signing of the EU-EAC-EPA one gets the conclusion that the EU bullied the agreement into place when it says 'Signing of the EPA deal was partly delayed because East Africa states wanted a provision for special export taxes to protect certain sectors they consider sensitive and to discourage export of raw materials to Europe in favour of value addition by local industries.'³¹

The EU-EAC-EPA is, by now, signed, ratified and in place.³²

Regarding the other research partner, Zambia, we asked the Zambian Embassy in Berlin about Zambias stance towards EBAs and EPAs and its negotiation lines towards European governments. The reply is that Zambia wishes to get out of its EBA status and obtain EPA status. In the name of the Zambian Ambassador to Berlin, a staff member wrote as follows:

We are of the view that a comprehensive Economic Partnership Agreement that takes into account the development needs would be more favourable. This is premised on the knowledge that the EBA is meant for LDCs. Zambia does not wish to remain an LDC forever. Our development aspirations would therefore not allow us to perpetually be confined to being classified as an LDC. In that regard, while we are grateful for the EBA Initiative, we have no intention to remain in that configuration accessing the European markets or any other under that classification. (Mail from 22 July 2016)

Accordingly Zambia, which belongs to Eastern and Southern Africa Group (ESA), is in the process of negotiating its EPA with the EU, while some members of this group, namely Madagascar, Mauritius, the Seychelles and Zimbabwe signed already an Interim EPA with the EU in 2009.³³

The German government seems to be split in its assessment of EPAs. While Ministries with good links to business and other groups representing producers, e.g. in agriculture, are obviously pleased,³⁴ the Africa Commissioner of Chancellor Merkel at the Federal Ministry for Economic Development and Economic Cooperation, Günter Nooke, warns that economic agreements will endanger and undermines all that which is tried to build up by development efforts.³⁵

³¹ Group warns Kenya of tax losses in EU trade deal (2012, December 10). In: Business Daily. Retrieved from <http://www.businessdailyafrica.com/Group-warns-Kenya-of-tax-losses-in-EU-trade-deal/-/539546/1641128/-/qlvinnz/-/index.html> . Relief for exporters as Kenya signs new trade deal with EU (2014, October 14). In: Business Daily. Retrieved from <http://www.businessdailyafrica.com/Kenya-signs-new-trade-deal-with-EU/-/539546/2486754/-/r1yrp/-/index.html>

³² <https://ec.europa.eu/trade/policy/countries-and-regions/regions/eac/>

³³ <http://ec.europa.eu/trade/policy/countries-and-regions/regions/esa/>

³⁴ Siehe Freihandelsabkommen der Europäischen Union. Von: Bundesministerium für Ernährung und Landwirtschaft. Retrieved 26 November 2015 from https://www.bmel.de/DE/Landwirtschaft/Markt-Handel-Export/_Texte/BilateraleFreihandelsabkommen.html

³⁵ Mit entwicklungspolitischen Schwerpunkt werden Wirtschaftspartnerschaftsabkommen mit den Afrikanischen, Karibischen und Pazifischen Ländern und Regionen (AKP) verhandelt. Diese umfassen auch Freihandelsabkommen. Wegen der traditionell engen Beziehungen dieser Länder zu EU-Staaten wird ihnen als Entwicklungsbeitrag vollständiger zoll- und quotenfreier Marktzugang in die EU gewährt. Trotz des Ansatzes "Freihandel" können sich die AKP-Staaten aber bei sensiblen Produkten, vor allem im Agrarbereich gegen EU-Importe schützen. So können sie ihre eigene Landwirtschaft weiter entwickeln. Die Abkommen sind weitgehend fertig verhandelt und teilweise schon in Kraft. Zuletzt wurden ab Mitte des Jahres 2014 Einigungen mit den Ländern des südlichen (SADC), westlichen (ECOWAS) und östlichen (EAC) Afrikas erzielt. Die Abkommen müssen jeweils noch von den einzelnen Staaten ratifiziert werden, sind aber bereits vorläufig in Kraft getreten.

Imminently, in 2020, a number of regional EPAs are due to come on-stream in East Africa, West Africa, Central Africa and Southern Africa. However, 20 years down the line, many African stakeholders remain skeptical about the compatibility of EPAs with the EU's poverty reduction pledges and commitments. The main concern is that these unfair trade deals have exposed African countries to loss of revenue where EPA have involved far-reaching import tariff dismantling. Where there has been a stress on competitiveness, the competitiveness of this export-oriented sector, however, depends upon the continued availability of low-cost labour and preferential tariff access to Europe. Midway the implementation of the EPAs, this state of affairs raised concerns about the quality of jobs on offer. For example, on quality of jobs, it is worth noting the Kenyan Women Workers' Association who highlighted continuingly low rates of pay. As of 2012, monthly salaries remained around US\$43 – little over \$1 a day for women labourers engaged in intensive work (often) within oppressive greenhouse conditions.³⁶

In cases where EPAs and other private sector development initiatives have been aligned to trade liberalisation, they have exposed African infant industry and agro-processing to unfair competition from EU producers, leading to the collapse of vital sectors such as dairy, poultry, horticulture, for example. As the Cotonou Agreement which ushered in the EPAs comes to its term in 2020 it makes sense to consider debates about the marriage of the EPAs to overarching development pledges. What many African stakeholders remain skeptical about is the notion of free market opening altogether. The concern is that EPA in their current form close down the possibility of value-addition and industrialisation in Africa by opening up local producers to competition from EU producers at a stage in their development when they are simply not ready.

Other areas of losses arise where with taxpayers money subsidized agricultural products hit the African markets and there create unemployment that way costing states revenue in income tax.

First an example addressed in an interview by GRAIN (a small international non-profit organisation that works to support small farmers and social movements in their struggles for community-controlled and biodiversity-based food systems) with Justus Lavi Mwololo, National General Secretary of [Kenya Small Scale Farmers' Forum](#) (KESSFF) was found to be very revealing

“I will give the case of meat from EU, and milk. Let's say the milk and meat from Denmark. When it comes to Africa, and specifically let me now talk about Nairobi supermarkets. You go to the supermarkets to buy it, you find that it is packed tinned, in a nice tin, and it is well labelled. It has been cooked. It has struggled all the way from Europe into Africa. And when you compare the price of beef coming from Europe to Nairobi with ours, ours you buy from a butchery, it has not been value added like the one you are getting from Europe. You have to

Die am wenigsten entwickelten Länder erhalten in der EU unabhängig davon vollständig zoll- und quotenfreien Marktzugang für ihre Waren. (2014, November 6). Retrieved from <http://www.euractiv.de/sections/entwicklungspolitik/afrika-beauftragter-nooke-freihandelsabkommen-epa-macht> Weitere Zitate aus der Meldung: „Man sollte mit Wirtschaftsverhandlungen nicht kaputt machen, was man auf der anderen Seite als Entwicklungsministerium versucht aufzubauen“, kritisierte Nooke im Interview mit der ARD.“

³⁶ Wafula 2012: Wafula, C., 2012. MPs to discuss wage rise for flower farm workers. The Daily Nation, 26 December 2012

take it home raw, wash it, cook it. So finally, ours becomes uncompetitive in our own domestic market. The production costs of beef from the cow in Europe to the butchery and to the packaging etc, all that process is subsidized by European Union. Ours has no support at all. Farmers have got to pay from their own pockets.”³⁷

Similar in West Africa: In Ghana’s poultry sector, producers have always been concerned and protesting that the EPA will lock their governments into a low tariff model of trade. In the sector there is concern that there will be more chicken imports flooding of frozen chicken from EU member states such as Germany and poultry farms will close in Ghana. Another example is from Cameroon where the Civil Association for the Defence of Collective Interests (ACDIC), led a local campaign entitled ‘chickens of death’ which influenced consumer opinion in favour of consumption of locally sourced poultry products and not frozen meat emanating from the EU member states. The success of the ACDIC-led was bolstered by the fact that the local NGO association allied itself with European church NGOs, including the Church Development Service (EED) in Bonn, the Interchurch Association for Development Co-operation (ICCO) in Utrecht, and the Association of World Council of Churches related Development Organisations in Europe (APRODEV) whose headquarters are in Brussels.

And: Rightly so. Free trade “comparative advantages” according to theory would work between partner who specialize on that which they can produce best. Exchanging those good, everybody wins. In the real world, this does not work between Europe and Africa: Europe does not specialize on cars, and Africa on agriculture. Europe continues with agriculture, dumping its surpluses on African markets, destroying their own industry. And: Increasing the production of cars indeed results into a positive economy of scales. Increasing the production of agriculture results in negative economy of scales because best soil will be overutilized at some stage, costs of production on soil with lower quality will increase, eventually the own population will suffer.³⁸

Last not least the question of EPZs belongs in this context, but cannot be examined in depth. But here, too, it is assumed that the benefit for investors is over-proportionate to the host states and workers employed.

4.2 Forms of business ethics

But what about business ethics and self-imposed obligations? Would this not be the good compromise between different business needs and yet some sort of obligation to do an extra bit beyond the payment of taxes which profits a local population and a host-country? First of all, this research has little problems with SMEs, especially, if they are family owned and locally anchored and bonded with their customers. Here we find a lot of responsible thinking and acting, perhaps, not the least, because they do not have options for cheating on taxes and mandatory social security contributions and/or they lack weight and bargaining power. The

³⁷ 22nd February 2018. See <https://www.grain.org/en/article/5898-trade-agreements-impact-kenyan-farmers-an-interview-with-justus-lavi>

³⁸ Europa-Afrika-Freihandel: Wie die EU die Entwicklungsperspektive afrikanischer Staaten verbaut (2015, December 14). In: Zebralogs. Retrieved from <https://zebralogs.wordpress.com/2015/12/14/europa-afrika-und-der-freihandel-wie-die-eu-die-entwicklungsperspektiven-afrikanischer-staaten-verbaut/>

problem we encounter are capital- and market driven MNEs, who, at the same time, control an increasing share of the Global Value Chain and trade.

4.2.1 Saving tax to increase investment?

A frequent narrative of MNEs is that they argue for tax exemptions, privileges and/or tax funded subsidies resp. that they exploit all means of tax planning or tax optimization because they use this money for investment. It is difficult to prove that:

First of all, a recent pilot study by the Tax Justice Network (2019) gives further proof that tax presents to MNCs have, at best short-term benefits and that investment stays in the country as long as the tax presents can be exploited. If they expire, the “investment” moves to places where other/better tax presents wait. This applies especially for investment in Export Processing Zones since there is no link and (need for) loyalty towards local populations and customers.

Second: Yes, evidence is consolidating about the ways and means MNCs apply for base erosion and profit shifting and since not all jurisdiction cooperate in the OECDs attempt to combat these practices there are always ways around even those fledgling attempts of an international response. Two thorough studies based on data by the South African Tax Administration support the view that some do not stop of over-exploiting legal provisions.

They report: "Among the largest two percent of firms, the haven-owned firms had six percent higher wage bills, six percent higher turnover, and 22% more fixed assets – but 72% lower taxable profits." This suggested that a haven-owned firm in this category was reporting earnings of U.S. \$70 million dollars a year less than one not owned by a company based in a tax haven. The study also documents in detail for the first time how a small a number of the largest companies is responsible for most profit-shifting: "The combination of high profits and more aggressive profit shifting implies that the largest 10% of foreign-owned firms account for 98% of all profits shifted to tax havens," it says. ... They said the financial industry was responsible for 19% of profit-shifting and mining for 28%, despite mining companies making up only two percent of foreign-owned firms. "This is alarming," they said, "given the large share of total economic activity resource extraction constitutes in developing countries." Identifying tax havens to which profits are shifted, the study lists Bermuda, the British Crown Dependencies, Liechtenstein, the Cayman Islands, Mauritius, Singapore and – especially – Switzerland, where parent firms are responsible for half of the "profit gap" between haven-owned companies and others. The detail provided by the study enabled the researchers to open what they called the "black box" of earlier international studies on profit-shifting across the wider world. Applying their findings to the earlier studies, they suggested that internationally "80% of the income of haven-owned subsidiaries is lost to tax havens."

What do these findings mean in relation to other parts of Africa?

One of the authors, Dr. Ludvig Wier of the University of Copenhagen in Denmark, told AllAfrica: "South Africa has, in comparison to the African region, a very strong tax authority and has already implemented a series anti-profit shifting policies. That is why we expect this phenomenon to be only worse in the rest of the region, where tax authorities are often severely constrained in their resources."³⁹

³⁹ Allen, J. (16 January 2019) Africa: How Multinationals Avoid Paying Their Taxes. In: AllAfrica <https://allafrica.com/stories/201901160689.html>

Third: Even if money saved that way is invested somewhere else, it does not profit the local worker and populations, even more, if they are poorly paid and/or if their natural resources are exploited and their environment is polluted.

Hence: Nobody knows for sure, except if revealed by data leaks, where IFFs leaving a country via aggressive tax avoidance, tax evasion or other forms of tax dodging is ending up. And if it is true that Kenya still renounces as much as 1.1 billion US per year due to tax presents given to MNCs, at a national budget of around 12 billion USD one wonders why this status continues and pledges to go against it are not implemented.⁴⁰

But in view of those places where production takes place apply, after all, a number of initiatives such as the UN Global Compact with associations in all major states, Germany, included,⁴¹ or the European Councils Code of Conduct Group on Business Ethics.⁴² Well, as always, one needs to look at the implementation of those good ideas and one needs to strike a balance to see how profit and damage is portioned and who, in the end, profits more and who profits less.

4.2.2 Corporate Social Responsibility

A high-profile area, which can be discussed in this context is the area of Corporate Social Responsibility. Here, businesses themselves are voluntary becoming active towards local populations by improving infrastructure of roads, schools or hospitals or promise to do otherwise good. At the same time one has to be aware of Milton Friedman's famous saying "There is one and only one social responsibility of business-to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."⁴³ This may increase some suspicion about what the real interest behind such voluntary "breadcrumbs" may be.

Here, the partners in the research project are rather skeptical for several reasons: First, voluntary charity often outbalances that which is otherwise done in ills, e.g. via resettlement or environmental pollution. Second, there is only insufficient orientation towards the local

⁴⁰ Even the KRA admits "Studies have shown that Kenya foregoes about Kshs. 100 billion annually in tax expenditures, primarily as a result of tax exemptions and investment incentives. Currently, tax expenditures in Kenya stand at 3.5% of GDP compared to an estimated 1.4% in Mauritius. Reducing tax expenditure to Mauritian levels will realise additional revenues of at least Kshs 75.2 billion per annum. To achieve this, KRA will review and propose appropriate tax policy amendments as the Income Tax Act is reviewed." (Kenya Revenue Authority, 2015, p. 50)

⁴¹ <http://www.globalcompact.de/de/>

⁴² <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/code-conduct-group/>

⁴³ (Friedman, 1982, p. 112). Similar 13. September 1970 im New York Times Magazin, Titel: "The Social Responsibility of Business Is to Increase Its Profits". Abstract: "When I hear businessmen speak eloquently about the "social responsibilities of business in a free-enterprise system", I am reminded of the wonderful line about the Frenchman who discovered at the age of 70 that he had been speaking prose all his life. The businessmen believe that they are defending free enterprise when they declaim that business is not concerned "merely" with profit but also with promoting desirable "social" ends; that business has a "social conscience" and takes seriously its responsibilities for providing employment, eliminating discrimination, avoiding pollution and whatever else may be the catchwords of the contemporary crop of reformers. In fact they are — or would be if they or anyone else took them seriously -preaching pure and unadulterated socialism. Businessmen who talk this way are unwitting puppets of the intellectual forces that have been undermining the basis of a free society these past decades." https://link.springer.com/chapter/10.1007/978-3-540-70818-6_14

population and serious dialogue in projects. Third, good things done via voluntary engagement are by no means living up to that which could otherwise be done if companies and businesses would pay adequate taxes to the state within which they produce and do business. Fourth, it needs to be exposed that CSR while embedded in other business activities involving aggressive tax planning and tax evasion, conflicts with the concept of Corporate Citizenship.

Therefore, CSR is welcomed, of course, since everything done for the poor is welcomed in principle. However, it should not be used as an excuse for not paying taxes. Charles Chilufya , the author of the Baseline Study into CSR in the Solwezi Province (Chilufya, 2015), writes in a mail to the Tax Justice project project, that the findings in his study are far too positive due to the Terms of Reference by the organizations commissioning the study. From his own observation and expertise, he argues, there us need to be much more outspoken about the situation:

I must however mention that there is a very strong feeling among key stakeholder including government who feel that the mining companies are not doing enough or rather doing very little. This came out strongly when we presented the findings of the study in a public forum. There are still big gaps that need to be addressed. However, as you know laws alone and prescriptions won't do the trick, we need to advocate for and promote a strong ethic and morality for these corporations that should shame them or make them realize their real obligations to go beyond 'green-washing' CSR, which is currently the practice.

At the same time, even though the current models may be failing to deliver the best that we need, I am of the view that it is possible to develop CSR models that can offer good redistribution mechanisms; a model that is more participatory and also takes into account the best way to answer the fundamental question of economics: "how do we best allocate resources?". There is research and practice that is struggling with this question and I know one of our students working on this question. In short, for the moment CSR is proving to be not a very efficient redistributor and better models are being called for. The situation is worsened by the fact that most CSR in developing countries is very instrumental in nature and mostly in pursuit of corporations' self-interests; as you rightly point corporations are seeking their own legitimacy rather than being Mother Teresa!

Finally, with regard to the redistribution power of tax. In theory tax has that power. However, in practice, in the Zambian context, tax on its own, will not be the answer to this quandary. The biggest challenge is that all the big TNCs that operate in Zambia are owned by foreigners who were given incentives to repatriate 100% of their profits out of Zambia. As you know the biggest earnings of any corporations or profits are what are shared as dividends among shareholders. So if these shareholders are all in Europe and Asia and Canada, there will be little left to cascade benefits even if we keep the profits and tax them.

Members of an African Church Organization, which was often invited into "friendly talks" with investors in natural resource extractive industries eventually, were fed up with the soft talk by their counterparts. "We are fed up to provide the church-washing to those guys petty plans!", the argued and refused invitations from then on.

Hence, with CSR it is the same as with other self-imposed obligations arising from Business Ethics: It is certainly a good thing, most certainly much better than having none of them. And probably there are businesses who are living up to the commitments to the full. But on the whole, the entire idea lacks transparency and a mandatory character, which is why it cannot be considered to be an alternative to a fair and just taxation.

4.2.3 Corporate Citizenship, Corporate Social Accountability, prizing externalities

This research therefore favours the concept of Corporate Citizenship which implies the obligation to pay its fair share of tax (Eichinger, 2016b) and/or the concept of Corporate Social Accountability., which implies that TNCs are no longer accountable primarily to their own “shareholder”, but rather towards all “stakeholder”, those included on the spot where production takes place.⁴⁴

Corporate Social Accountability includes transparency in corporate accounting (e.g. What is produced where? How many people are employed? How much tax is being paid?...), it also calls for mandatory steps regarding the inclusion of non-financial aspects when planning and doing investment. To specify the latter: “externalizing” environmental costs should no longer be possible, that way leaving it to local communities or local taxpayers to either cope with the situation or finance the cleanup. Rather, such externalities should be included into investment calculation and production, thus also impacting upon the final sales price of the product.

Those issues can be included in commendable initiatives at EU level such as the non-financial reporting initiative,⁴⁵ the EU initiative towards sustainable finance,⁴⁶ initiatives aiming for public Country by Country Reporting and/or the Common Consolidated Corporate Tax Base⁴⁷ etc. Those avenues are worth following along. It may also be considered to change the laws of competition accordingly, punishing those who achieve an unfair competitive advantage as opposed to those who adhere to and observe defined standards of social justice and ecological sustainability (WBGU, 2016).

Of course thoughts need to be spent thought to how protect national or regional businesses (say, within the EU Single Market), who are obliged to pay all those levels, from unfair competition by those from jurisdiction not applying those instruments, e.g. USA or China. Here, if such standards would be introduced within the EU or AU, a Border Adjustment Tax could be used to counterbalance this disadvantage (Alt, 2018f).

4.2.4 Increase tax to increase investment

Last not least one may think analogous to the impact which Estate Tax has on the willingness of private wealth-holder to donate more to philanthropy and charity (see E/I/13.6): If higher taxation on business profits, capital gains (and better checks against IFFs) etc. leads to more investment into social just and ecological sustainable businesses, this is fine with this research. Then, of course, there is less to tax and less tax revenue to be spent, but the increased investment will, in the end, profit local communities, workers (and their ability to pay tax) and the environment.

⁴⁴ The concept explained by (Kaboré, 2018) und (Owoeye, 2015).

⁴⁵ See Bundesministerium für Arbeit und Soziales (ohne Datum) <http://www.csr-in-deutschland.de/DE/Politik/CSR-national/Aktivitaeten-der-Bundesregierung/CSR-Berichtspflichten/richtlinie-zur-berichterstattung.html>

⁴⁶ Results of the High Level Working Group as well as the Action Plan of the EU Commission see their website “Sustainable Finance” https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en

⁴⁷ See the EU Commissions Website regarding public Country by Country reporting at https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/public-country-country-reporting_en and on the Common Consolidated Corporate Tax Base https://ec.europa.eu/taxation_customs/business/company-tax/common-consolidated-corporate-tax-base-ccctb_en

To conclude on this chapter: while there is still a lot of work to be done until taxation and CSR is complementing each other in combining the best from both concepts, another issue shall be looked at:

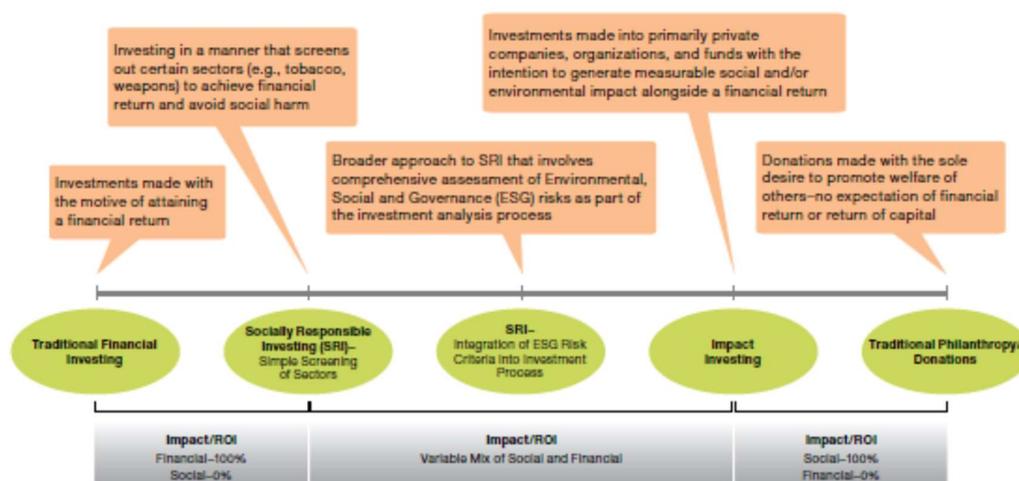
4.3 Development/Socially Responsible/Impact investment...

“Ethic Investment” in Germany and Social Responsible Investment in the Anglo-Saxon Context are other much discussed approaches trying to combine profit and social and ecological benefit. It is guided by the so-called ESG issues, i.e. Environment, Social Justice and Corporate Governance. It aims not only to avoid investment in damaging areas such as weapons, businesses disrespecting social and ecological minimum standards, but rather aims to have positive impact and change in the communities where they are engaged.

The Capgemini Wealth Report states with some surprise that in its survey of mechanisms of choice to drive social impact “investment choices” rank on place one, ahead of “giving to charitable organizations”. The authors perceive here a generational trend: While older HNWI internationally are more inclined to donate money or time, the younger generation of wealth holder is ‘more inclined to adopt the newer approach of tying social goals into business decisions. Of HNWIs under 40, 14.2% make business decisions this way, compared to only 9.7% of HNWIs over 60’ (p.30). This is because young HNWIs no longer see a contradiction between social impact and (long term) financial gains. ‘More than ever, there is a growing realization that it is simply best practice for firms to manage their business sustainably and efficiently and that socially, environmentally responsible business practices also lead to long-term profitability’ (p.31).

Here, wealth managing firms see a new area of business for themselves and spell out the areas where social impact investment could occur as follows:

Abbildung 1 Social Impact Continuum



Note: We define “driving social impact” as an investment of time, money and/or expertise with the goal of generating positive social impact
Source: Capgemini Financial Services and RBC Wealth Management Analysis, 2014

Among the categories listed, the following is hiding behind these expressions:

- Socially Responsible Investing (SRI) has the aim of achieving financial return along with social good by encouraging upstanding corporate practices. Here, for example, capital is withdrawn from some publicly traded corporations (e.g. arms, tobacco) and invested in others who promote ecological standards or diversity. It can also be undertaken through comprehensive assessment of Environmental, Social and Governance (ESG) issues related to the investment analysis and decision-making process.
- Impact Investing is made in companies, organizations and funds with the intention to generate measurable social and environmental impact alongside a financial return. Sub-categories are Venture philanthropy, private equity funds with a social purpose, social impact bonds and green bonds.
- Traditional Philanthropy/Donations is focused primarily or solely upon social impact and not on financial return, but it often serves estate planning and tax planning purposes.

Capgemini state a change in attitude, behavior and long term goals: UNHWIs ‘in their desire to effect long-term, systemic change are increasingly moving away from making gifts to singular institutions to driving progressive alliances between cross-disciplinary stakeholders focused on similar causes’ (p.33). In such a scenario, experts from governments, universities, hospitals and private philanthropies pool resources to effect social good much faster and better than it would be the case unilaterally.

Another form of investment relevant for this project is **Development Investment**, which is defined as ‘Capital mobilized to perform for-profit investments in developing countries and development-related sectors of society that have traditionally had a strong public sector presence but where private capital has been used to scale them up and expand their reach.’⁴⁸

This is a new area and not really transparent whether some areas do not rather serve financial or tax planning interests than social and ecological purposes and whether it is not rather window-dressing or the pursuit of business interests than real conversion and change.

4.3.1 Examples

A first example for this booming “business idea” in this context is the Swiss based “responsAbility” which accumulated in their 15 years of existence nearly US\$ 3 billion in funds. According to their creed, profit and benefit (Profit und Wohltat) does not need to exclude itself. In their mission statement it reads: ‘responsAbility will help to create a world in which capital is used with maximum efficiency to promote shared prosperity and progress. We believe that solid investment returns drive sound economic growth and sustained social progress – and vice versa.’ The mutual benefit for both investors and targeted groups is further illustrated in their 2014 Annual Report, when they compare the advantages of their investment as opposed to investment in financial products and their trading at volatile financial markets as follows:

⁴⁸ responsAbility Perspectives 2015/2016, p. 10

The solidity of our investments is attributable, among other things, to the sharp contrast between the volatile capital flows to which many emerging market investments are exposed and the developments in the respective real economies. This applies, in particular, to the segments that we target through our investment activities: Low-income households and micro, small and medium enterprises. 2013 also demonstrated that capital flows tend to be focused on a small number of larger countries (e.g. BRIC nations), while a large proportion of the frontier markets in which responsAbility is mostly active were unaffected by these trends. Another factor is that direct investments in the real economy – such as those made by responsAbility – are not made via the stock market and are therefore not directly exposed to speculation and volatility in the global capital markets.⁴⁹

Hence, profit via assets managed by responsAbility might not as large as they might be when trading in financial products at financial markets; but there, losses might be enormous as well. By investing into low income segments and small businesses, a large segment of producers and consumers are targeted who are seen to be reliably growing over the next years, hence securing a reliable profit also for those investing there.

A second example is “The Entrepreneur’s Pledge”. The website tells the reader: ‘The Entrepreneur’s Pledge is a commitment by sustainable thinking entrepreneurs to dedicate their entrepreneurial gift to found at least one business that will reduce environmental & social harm to a minimum and invest at least 50% of the profits into a social or environmental cause.’⁵⁰

4.3.2 International findings

The international Capgemini Wealth Report states, regarding the desire to do good to society:

Age plays a strong role in the desire of HNWIs to strive for social good. While 75.0% of those under 40 cite driving social impact as either extremely important or very important, the tendency declines about 10% with each age segment, reaching a low of 45.4% for those 60 and older.... ‘Younger HNWIs are more inclined to adopt the newer approach of tying social goals into business decisions. Of HNWIs under 40, 14.2% make business decisions this way, compared to only 9.7% of HNWIs over 60.’ (Capgemini; RBC, 2014, p. 26+30).

In GW/I/4.2 and later it has been said that family values are very important to keep a fortune together and pass it on to children. Other studies illustrate that a major factor behind those forms of philanthropy is also truthfulness to family values and the effort to introduce the next generation into a responsible handling of wealth – a finding which is also supported by German studies⁵¹

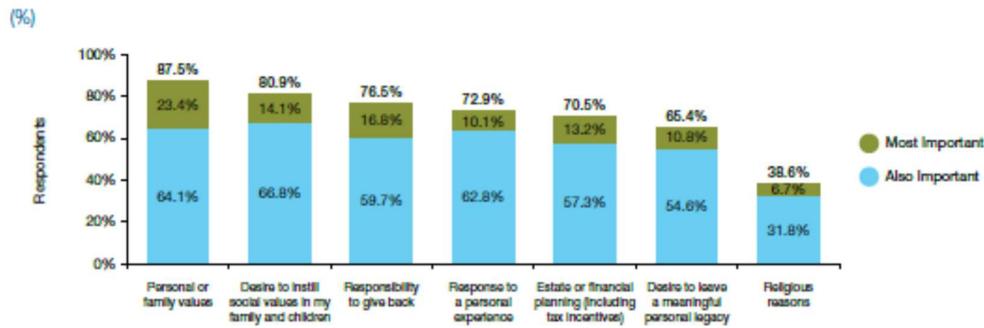
⁴⁹ Perspectives 2014, p.4

⁵⁰ <http://www.entrepreneurspledge.org/profiles>

⁵¹ 213 Von Bedeutung wird die Familie sein, die ihren Nachwuchs kultiviert und so Familiendynastien entstehen lässt.

Abbildung 2 Importance of Key Drivers of Social Impact

FIGURE 21. Importance of Key Drivers of Social Impact for HNWIs, Q1 2014

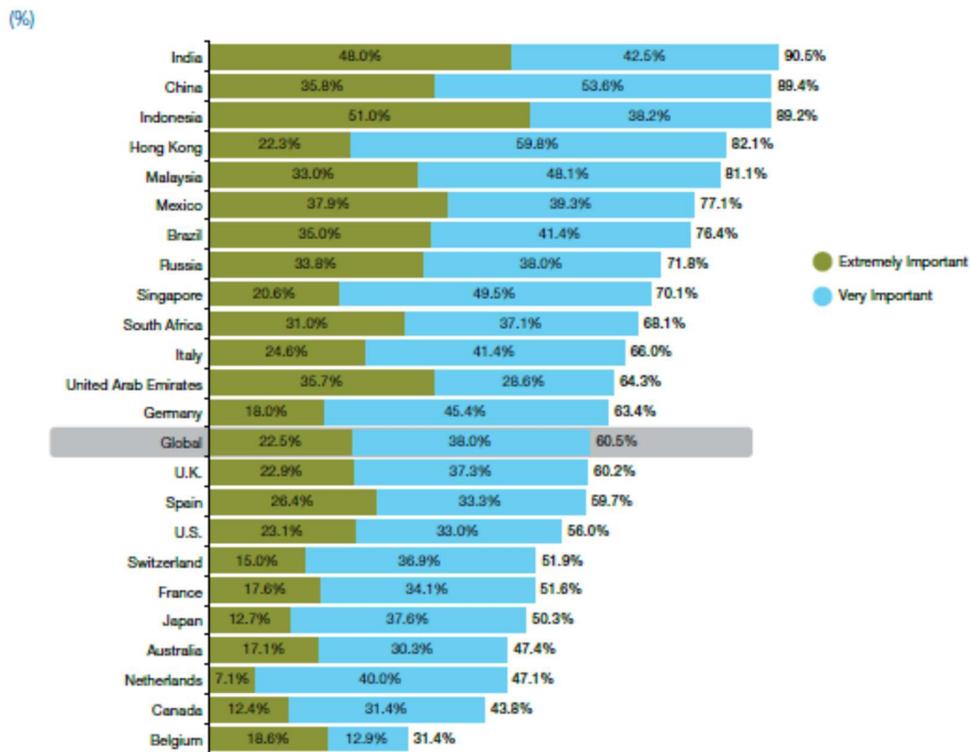


Note: Question asked: "What most drives you to allocate a portion of your wealth, time or expertise to make a positive social impact?" Respondents were asked to rate among 3 levels of importance: (1) This is most important; (2) This is also important; and (3) This is not important at all; Chart numbers and quoted percentages may not add up due to rounding.
 Source: Capgemini, RBC Wealth Management, and Scorpio Partnership Global HNW Insights Survey, 2014

Source 2 (Capgemini; RBC, 2014, p. 27)

Interesting enough, when looking at the importance of Social Impact for the wealthy internationally, German wealth-holder are not leading the ranking, but only slightly above the global average of those thinking that social impact is very important (22.5%) or important (37.3%) (Capgemini; RBC, 2014, p. 27)

FIGURE 20. Importance of Social Impact for HNWIs, Q1 2014



Note: Question asked: "How important is it to you to give time, money and/or expertise with the goal of generating positive social impact?" Respondents were asked to rate among 5 levels of importance: (1) This is extremely important (i.e. critical); (2) This is very important; (3) This is important; (4) This is somewhat important; and (5) This is not important at all.
 Source: Capgemini, RBC Wealth Management, and Scorpio Partnership Global HNW Insights Survey, 2014

➔ interesting enough, here is Germany better than the US

4.3.3 Conclusion

Regarding this form of “doing-good” instead of paying taxes has not been commented by the colleagues in Africa since they lack positive examples of this practice. To their knowledge and expertise both by reading newspapers or working in the field they do not really perceive notable differences among foreign investors, apart from those offering Microfinance to individuals or small businesses. As to that practice, they acknowledge action without necessarily expecting full or high return for their assistance. In other cases, the impression persists that whatever is being done is in the first place in the interest of the investor rather than the local population and therefore deserves the same kind of criticism as CSR above.

Somehow, suspicion seems to be justified. When looking at the SRI Annual Review Results 2014 of the Johannesburg Stock Exchange, one finds there companies such as Ilovo Sugar or Lonmin.⁵² Ilovo Sugar was the head of a network of Offshore Companies with which a multi-million tax avoidance scheme for Zambia Sugar had been organized, depriving Zambia of a lot of revenue (Lewis, 2013). Lonmin, itself a mining company and major supplier of platinum to the German company BASF, is world famous for bad pay and bad working conditions. A strike against that had been quenched by police and resulted in 34 dead in 2012.⁵³ Since then, further dead among Lonmin's workforce are on record.⁵⁴ All that does not really nourish trust in “ESG” honesty of those reviewed and/or impartiality on part of those doing the review.

4.4 The case of Ferrostaal

The research project became aware of the German company Ferrostaal's investment in Zambia (GER/IX), which illustrates a number of dubious issues arising in the field of corporate engagement: Ferrostaal Germany, which has a murky reputation as “bribery awarding” door opener for German big business, received via its subsidiary, Ferrostaal Zambia Ltd, in 2009 a 192,000 hectare real estate in the Mpika District in Zambia with the promise to invest, together with the South African company Deulco Renewable Industries USD400-500 million into the production of *Jatropha* plants, creating up to 800 jobs. Interesting enough, Ferrostaal Zambia is registered for the sector “trading and repair of automobiles”, as “nature of business” is given “equipment, general trading” – which gives no obvious link to the planting of *Jatropha*. Nevertheless: The population was resettled, the area fenced and guarded, the company in all its activities entitled to a number of tax privileges and presents.

In the end, not much happened. Ferrostaal Zambia Ltd. failed to hand in tax returns for two consecutive years even though the company has not been liquidated. At a field visit in 2014,

⁵² Media Release. (2014, November 27) Retrieved 10 May 2016 from

<https://www.jse.co.za/content/JSEPresentationItems/2014SRIAnnualResultsPressRelease.pdf>

⁵³ Buchen, St. (2016, April 28) Ausbeutung in Afrika: Welche Verantwortung hat BASF? In: Report. Retrieved from <https://daserste.ndr.de/panorama/archiv/2016/Ausbeutung-in-Afrika-Welche-Verantwortung-hat-BASF,basf102.html>

⁵⁴ ‘Since August last year, the Lonmin mine, about 60km from Implats in the North West Province, has been issued with 23 section 54 notices for a fatality and other safety concerns. In October, 55-year-old father of five Zilindile Ndumela, a locomotive driver at the mine’s Rowland shaft, was killed in a mudslide there.’ Mine tragedies are not a number game. (2016, February 26) In: Mail & Guardian. Retrieved from <http://mg.co.za/article/2016-02-25-mine-tragedies-are-not-a-numbers-game> Lonmin investigates death of a mineworker. In: Eyewitness news. Retrieved from <http://ewn.co.za/2016/05/09/Lonmin-investigating-death-of-mineworker>

the Zambian partner in this study found an empty area, still fenced and guarded and nothing going on. The suspicion of other NGOs seems confirmed that this is a case of landgrabbing, combined with the effort to secure tax privileges for other business operations, to the disadvantage of the local population. When Ferrostaal Germany was asked to comment our research findings, the company did not reply.

4.5 DTAs and the question “Cui Bono?”

Another area of bilateral-international relevance in the field of tax justice are Double Taxation Agreements. They are originally

designed to avoid or to mitigate the effect of double taxation have resulted in many instances of double non-taxation, and many developing countries with weak tax collection capabilities have seen limits imposed on the use of a relatively effective tax collection mechanism (withholding taxes). In both situations, to obtain treaty benefits, investors have resorted to treaty shopping and the indirect routing of investments through conduits. About one third of global FDI stock has been routed through investment hubs before arriving at its destination.⁵⁵

These findings of UNCTAD have been substantiated by more recent examinations of DTAs by Tax Justice Network Africa⁵⁶ and (Action Aid, 2016a).

Germany has a large number of DTAs, among which are DTAs with Kenya from 1979 and Zambia from 1975.⁵⁷ Not surprising, Germany prefers the OECD template for DTAs.

As evident from a 2013 template for tax treaties released by the Federal Ministry of Finance, Germany’s treaties generally draw on the OECD model, although elements of the UN model can be included.⁵⁵⁷ According to the Ministry, the template is used for negotiations with all countries, regardless of whether they fall into the categories of developed or developing nations, even though there can be certain modifications with the latter. Notably, the 2013 template includes not only the objective of preventing double taxation but also double non-taxation and tax avoidance. It also includes various counter measures against tax avoidance. The German government in 2014 reported that it was not planning to carry out an impact assessment of its tax policies to calculate the potential spillover effects on developing countries. There are no indications that this position has changed. (Eurodad, 2015a, p. 63)

With ten DTAs rated to be “very restrictive”, Germany ranks on third place among countries with the highest number of “troubling tax deals” with African and Asian countries behind the UK and Italy with 13 treaties each (Action Aid, 2016a, p. 15). Treaties analysed by Action Aids research are rated in accordance to the extent to which poor countries are deprived of their rights to tax, (a.) capital gains, (b.) corporate profits and in its options to collect (c.) withholding taxes. Among those 10 treaties, Action Aid also counts the one between Germany and Zambia. Applying its criteria⁵⁸ Action Aid suggest that within the German-Zambian

⁵⁵ P. 212 of UNCTAD. (2015). World Investment Report – Reforming International Investment Governance. Retrieved from http://unctad.org/en/PublicationsLibrary/wir2015_en.pdf

⁵⁶ Tax Justice Network Africa (2015, February) Tax Treaties in Sub-Saharan Africa under Review. Retrieved from <http://www.taxjustice.net/2015/11/23/new-report-tax-treaties-in-sub-saharan-africa/>

⁵⁷

http://www.bundesfinanzministerium.de/Web/DE/Themen/Steuern/Internationales_Steuern/Staatenbezogene_Informationen/staatenbezogene_info.html

⁵⁸ ‘The Action Aid Treaties dataset looks at 26 key rules in each of the treaties and combines the content of each treaty into an overall estimate of its impact. Each treaty has been given a score of between 0 and 100, where a higher number indicates that the lower income country has kept more taxing rights in the settlement.’ The score

treaty Zambia has no rights to tax capital gains (Score 0) and only few rights to tax corporate profits (Score 18) or applying withholding taxes (Score 40).

Some states, coming to the conclusion that DTAs are unfair, are entering processes to review their DTAs, for example the Netherlands. Minister Ploumen, Minister for Foreign Trade and Development Cooperation praises this initiative to benefit poor countries: ‘By making use of loopholes in tax treaties in combination with differences between national tax rules, internationally operating companies can avoid paying tax. It means that poor countries miss out on tax revenues, funds they clearly need for matters such as infrastructure and education.’ Elsewhere, however, one finds also statements suggesting that those outdated treaties contain risks for the Netherlands as well and need therefore to be reviewed: ‘The tax treaty with Zambia, stemming from 1977, is outdated, and most treaties comprise no anti-abuse clauses. This, among other things, means that their unintended use continues to be a risk in the Netherlands.’⁵⁹ Accordingly, the observation of Action does not come as a surprise: ‘in some respects the renegotiations have further restrained the tax rights of the lower income treaty partner. For example, the new Dutch treaty with Zambia caps withholding taxes on dividends and royalties at a rate lower than the old treaty did’ (Action Aid, 2016a, p. 28).

Regarding Germany, there is not even willingness to review outdated tax deals, even though activists, e.g. from the Tax Justice Network, would be in favor (Meinzer 2015a S. 136). On the other hand, and looking at treaties which have been reviewed, it suggests that the advantage is rather on part of German business than the poor countries: See, for example, the DTA revision with the Philippines, which contains tax breaks and other investor friendly concessions at the cost of the tax administration – as PriceWaterhouseCooper rejoices.⁶⁰

One more point on Kenya: While in Germany all DTAs are online for easy access, the NGO Tax Justice Network Africa had to sue the Kenyan government over a DTA between Kenya and Mauritius because the government refused to reveal details of the agreement to parliament and/or the public. The agreement permits companies registered in the two states to pay tax only in one state, one of which is a well known secrecy jurisdiction. The government holds the position that, since it is an agreement and not a treaty, parliament does not need to be

has been established by a specifically commissioned research. More detailed information is available under <http://www.actionaid.org/2016/02/mistreated-how-shady-tax-treaties-are-fuelling-inequality-and-poverty>

⁵⁹ Netherlands to review tax treaties with 23 least developed countries. Retrieved from <http://www.government.nl/news/2013/08/30/dutch-government-to-tackle-international-tax-avoidance.html>

⁶⁰ ‘Salient features of the modified tax treaties include significant tax breaks as well as tightening of certain thresholds that would constitute a taxable presence in either country (or what is technically called a permanent establishment [PE]). Some of these amendments are provided below....Under the Renegotiated Philippines-Germany Tax Treaty:

- The 10% withholding tax rate on dividends was lowered to 5% if paid to a company which owns directly at least 70% (formerly 25%) of the capital of the company paying the dividends.
- Unless otherwise exempted, all interest shall now be taxed at a uniform withholding tax rate of 10% (formerly 15%) of the gross amount of interest received. Financing charges in connection with sale on credit shall not be subject to withholding tax, but shall only be taxable in the country of the seller.
- Royalties are now to be taxed at a uniform rate of 10% of the gross amount received regardless of the nature of the royalty payments.

... With more friendly tax rates accorded to foreign investors, we can expect a better churning machinery to generate needed investments for the economy.’

Tsang, J. (2013, September 19) More treats from the treaty front. In: PriceWaterhouseCooper. Retrieved from <http://www.pwc.com/ph/en/taxwise-or-otherwise/2013/more-treats-from-the-treaty-front.html>

involved for ratification. TJN Africa holds against it the suspicion of unconstitutionality since it would deprive Kenya of urgently needed resources, especially as far as income from capital, dividends, interest or royalties are concerned.⁶¹

4.6 The question of the Corporate Veil

Given the importance of TNCs in global production and trade the next question to consider is how easy it is for tax administrations to check on their intentions and honest. To put simple: How to judge FDI and business behavior when TNCs promise to open up dependencies in a country to create jobs, preferably after they received some tax presents and other privileges at the beginning to get their business started in the first place, as can be demonstrated at the Ferrostaal case which this research has followed up in Zambia (see GER/IX)

Once the business got started, it is difficult for governments and public to judge what good it does to a country or whether, on balance there is not more profit for the business, its owner and shareholder than there is for the local population or the host state. Especially for developing countries, the question of corporate aggressive tax avoidance and tax planning is very crucial since it is here, where a lot of money leaves the country untaxed. To come to an adequate judgment here is difficult since it is difficult for all to look behind the “Corporate Veil” which is in place to hide business activities and especially the flow of money from the eyes of tax administration, both within the country (bribery, corruption) and out of the country.

Interesting enough, Wikipedia has no article to explain this important concept. The business dictionary defines it as follows: The Corporate Veil is

a legal concept that separates the personality of a corporation from the personalities of its shareholders, and protects them from being personally liable for the company's debts and other obligations. This protection is not ironclad or impenetrable. Where a court determines that a company's business was not conducted in accordance with the provisions of corporate legislation (or that it was just a façade for illegal activities) it may hold the shareholders personally liable for the company's obligations under the legal concept of lifting the corporate veil.⁶²

Problems are obvious: First of all, getting a well-founded suspicion under the given circumstances which would justify to approach a court, second, getting that court decision, normally not without lengthy, complex and expensive procedures, third living with the risk that all traces of wrongdoing are removed until tax inspector are granted access.

Under the existing legal regulations, it is possible to pierce the corporate veil also for tax purposes, but here, too, to the extent determined by the law and the courts which vary, of course, from country to country. Via internet research, an interesting ruling by the Supreme Court of the Philippines was found which ‘upheld...administrative application of the piercing doctrine.’ Where tax administration ‘finds that a corporation is merely an adjunct, business conduit or alter ego of another corporation, or when there is fraud to deny the government of

⁶¹ Guguyu, O. (2016, February 4) Treasury keen to evade Parliament in Mauritius Tax row. In: Daily Nation. Retrieved from <http://www.nation.co.ke/business/Defends-controversial-Mauritius-tax-agreement/-/996/3061760/-/97qif4/-/index.html>

⁶² <http://www.businessdictionary.com/definition/corporate-veil.html>

its lifeblood' the agency 'may disregard the separate entity.' But even then, such administrative determination is subject to judicial review.⁶³

For that reason, the following proposed changes in existing legal regulation impacting on the ability of administration and the wider public to discover aggressive tax avoidance, tax evasion or other forms of tax related fraud are important.

First, transparency regarding a nations budget, so that people could see on what taxpayers' money is spent – tax privileges of TNCs included. Here only two Sub Saharan states have such transparency, namely South Africa and Uganda.⁶⁴

Second, regarding the mining and logging industry, the European Union implemented already far reaching transparency via Country by Country reporting in its Accounting and Transparency Directive. Regarding other states, the standards of EITI should be applied. It would be important to extent those provisions beyond the extractive industry and include other natural resources in it.⁶⁵

Third, and following Panama Papers, one should consider to extend Country by Country Reporting obligations for TNCs as a whole, i.e. that all corporations would be obliged to published what they produced where and how much taxes they paid. This should be published in publicly accessible registers, i.e. not only those to whom access is restricted e.g. by tax administrations or other with a "justified interest".

Fourth and finally, it is essential to publish beneficial owners of Offshore Constructions. This would be the most efficient way to expose aggressive tax avoidance and evasion, increase the leverage of tax administrations to determine who owns what and has the corresponding obligation to pay taxes. This transparency would also diminish IFFs of all sorts and thus link with corresponding initiatives in the field of money laundering, capital flight and other flows damaging developing countries.

4.7 Developing countries' need of funds

4.7.1 Sustainability and the exploitation of resources

Exploitation of natural resources, creating pollution and, after withdrawal, the need of states for cleaning up (Mwambas example).

4.7.2 Addressing rural and urban poverty

Inequality is only secondary to poverty: Poverty is the real problem at hand and in need of mitigation, inequality might be one obstacle of addressing poverty effectively. Here one needs to see that in today's world the largest challenges arise from the (still existing) rural poverty as opposed to urban settings with its access to employment and the (emerging) urban poverty arising from the fact that all too many people leave rural setting in the hope to find jobs in urban settings, ending up in slums, separated from traditional solidarity structures and without the assistant of modern welfare systems. Given present trends of rural-urban migration, the

⁶³ Tizon, A. Piercing the Corporate Veil for Tax Purposes. In: Business review. Retrieved from http://www.bdbl.com.ph/index.php?option=com_dms&task=doc_download&id=258&Itemid=170

⁶⁴ http://www.huffingtonpost.de/daniel-wegner/panama-papers-armut-entwicklungslaender_b_9883532.html

⁶⁵ http://www.huffingtonpost.de/daniel-wegner/panama-papers-armut-entwicklungslaender_b_9883532.html

situation is deteriorating at an alarming pace. Here the question is legitimate whether taxation and tax related incentives are one way of preventing rural-urban migration (as it is considered in Kenya)⁶⁶ or whether a public redistribution is more promising. Here, more revenue and, perhaps, some sort of Financial Equalization Scheme similar to the one in Germany might be needed.

4.7.3 Establishing social security systems

Crumbling of traditional forms of social solidarity due to migration, non-existence of modern Social Security and Social Welfare systems and/or their emergence (Andebo, Synthesis Report).

4.8 Tax cooperation between developed and developing states

Traditionally, developed countries base their cooperation on the framework provided by the OECD, while developing countries prefer the UN regime. In both frameworks exist Master Treaties and Handbooks, e.g. on Transfer Pricing, but that which is provided by the OECD contains provisions more beneficial to developed states while the UN regime is more beneficial towards the developing countries. And: Since developed countries are sitting at the longer leverage, they push OECD documents upon their counterparts, starting from Double Taxation Agreements to more complex frameworks of cooperation.

4.8.1 Visible split between OECD and G77 in Addis Ababa

How unequal the influence and balance of power is when it comes to define the rules of the playing ground has been demonstrated ahead and during the 3rd Conference on Financing For Development (FFD3) at Addis Ababa from 13-16 July 2015. In the Outcome Document,⁶⁷ a number of nice intentions and declarations have been passed ahead of the September 2015 Summit on the Sustainable Development Goals, most importantly the Social Compact, assuring the everybody's right (e.g.) for free education and health care. The problem is: Who will finance all that? Here, not surprisingly, is some insight that combating Illicit Financial Flows, aggressive tax avoidance and tax evasion might be a solution and that Domestic Resource Mobilization for developing countries is much more sustainable than continued dependence on ODA. On balance, therefore, the CSO community argues that the FFD3 Conference was a step back towards earlier conferences and agreements, most notably those Financing For Development Conferences at Doha (2008) and Monterrey (2002). Most importantly, the CSOs missed "actionable deliverables" and applicable "Means of Implementation".⁶⁸ One example is given by Caliari⁶⁹ regarding the goal to

⁶⁶ Tax incentives and exemption regime in Kenya: Is it working? (2012) Institute of Economic Affairs. Retrieved from http://www.ieakenya.or.ke/publications/doc_download/246-tax-incentives-and-exemption-regime-in-kenya-is-it-working.

⁶⁷ http://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.227/L.1

⁶⁸ Obviously, also the authors of this report support the CSOs points of view as expressed e.g. in the Civil Societies Response to the Addis Ababa Action Agenda on Financing for Development of 16 July 2015, which has been co-signed by JCTR and can be retrieved from <https://csoforffd.files.wordpress.com/2015/07/cso-response-to-ffd-addis-ababa-action-agenda-16-july-2015.pdf>. A German analysis, equally critical, is given by VENRO (2015, August) Aktionsplan fast ohne Aktion – Enttäuschende Ergebnisse der Dritten Internationalen Konferenz für Entwicklungsfinanzierung. Retrieved from http://venro.org/uploads/tx_igpublikationen/Stellungnahme_FfD-Konferenz_2015.pdf Equally of interest is the

“redouble efforts to substantially reduce illicit financial flows (IFF) by 2030.” But the AAAA’s pledge is just slightly stronger than similar ones present in Doha and Monterrey. However, a key instrument to make that happen which was a commitment in the Monterrey Consensus to take measures in source and destination countries to increase transparency of capital flows, was dropped from the text this time around after a number of Northern countries and the IMF objected to the feasibility of gathering such data.

The entire process, CSOs argue was dominated by the interests of powerful states and pushed through by a non-transparent and undemocratic methodology both ahead and during the conference. Regarding the topics of concern of this research, the following can be said:

Already ahead of the conference it was obvious, that there will be two camps: The G77 (in fact nowadays uniting 134 countries), with the growing weight of India and China⁷⁰ and civil society organisations⁷¹ asking for new Global Taxation Rules and an increasing role of the UNs Tax Committee of Experts on the one side, and OECD states preferring the their own co-operation and harmonization framework on the other. As has been exemplified already in GER/VII/3.9+4.3, developing countries are not really partners in OECD processes, and African newspapers commented like that in the context of the Addis conference.⁷² Instead, developed states – e.g. Germany, Netherlands, UK and USA promoted two initiatives in Addis Ababa:

4.8.2 Addis Tax Initiative/International Tax Compact

The Addis Tax Initiative in the context of the International Tax Compact is a side-initiative to the FFD3 Addis conference, ca. 30 developed and developing states cooperate in the attempt to both strengthen tax administrations and fight IFFs with the goal to improve domestic resource mobilization and sustainable development and includes the program Tax Inspectors without Borders.⁷³

Of course, it is highly necessary that, as the Addis Tax Initiative pledges, developing countries receive assistance from developed countries for making their tax administration and tax law enforcement capacities more effective. If, however, relevant laws are still being determined and defined by developed states and it is those laws which are being enforced, poor countries are reduced to a merely assisting role which perhaps and by chance overlaps with their own interests, but not necessarily so.

concluding view of the G77 stated at the closing session on 16 July 2015, retrieved from

<http://www.g77.org/statement/getstatement.php?id=150716>

⁶⁹ Caliarì, A. (2015, July 19) FFD 3 Outcome: Fishing for Crumbs of Hope in a Sea of Lost Ambition. In: Centre of Concern. Retrieved from <https://www.coc.org/rbw/ffd-3-outcome-fishing-crumbs-hope-sea-lost-ambition>.

⁷⁰ Statement on tax cooperation from 29 May 2013, retrieved 13 June 2015 from

<http://www.g77.org/statement/getstatement.php?id=130529>

⁷¹ Oxfam, Tax Justice Network et.al. (2015, July 13): A Universal, Well-Resourced, UN Intergovernmental Tax Body is in Everyone’s Interest: A briefing for government delegations. Retrieved 21 July 2015 from

<http://www.apmdd.org/our-programs/global-and-public-finance/resources/304-a-universal-well-resourced-un-intergovernmental-tax-body-is-in-everyone-s-interest>

⁷² E.g. the Kenyan Standard Digital paper reported ‘Tax authorities in poor countries, like Kenya, have often found it difficult to win such disputes against multinational firms under OECD guidelines.’ Michira, M. (2015, July 17) Rich nations reject inclusive tax rules body. In: Standard Digital, retrieved 20 July 2015 from http://www.standardmedia.co.ke/m/?articleID=2000169548&story_title=rich-nations-reject-inclusive-tax-rules-body

⁷³ International Tax Compact: <http://www.taxcompact.net/> Addis Tax Initiative Declaration:

<https://www.addistaxinitiative.net/>

4.8.2.1 *Tax Inspectors without Borders (TIWB)*

The TIWP program exists already since 2013 and is by now jointly operated by OECD and UNDP – what seems like a good effort to bridge the gap between rich and poor. Strange enough, however, there is little practical experience known with this program; also a thought which (Eurodad, 2016) had, which is why they launched an investigation. They had three focus projects (UK Ruanda, NL Ghana, F Senegal) and tried to collect as much other published or unpublished information they could. The result is sobering:

The internal OECD documents on the TIWB deployments indicate that neither Rwanda, Ghana nor Senegal were leading the processes when the TIWB pilot projects in their countries were initiated.... This not only seems to be contrary to the aid effectiveness principle on developing country ownership and leadership, it also indicates a clear contradiction to one of the main characteristics of the initiative as stated in the TIWB Toolkit.

Serious conflicts of interest seem to have occurred, and there is a clear risk of further conflicts. In the case of the UK and Rwanda, PricewaterhouseCoopers (PWC), a company which provides advice to multinational corporations on their tax planning, played a central management role in the pilot project. Furthermore, in all three cases, the donor countries - which are in these cases also providing experts to be deployed into the tax administrations of the recipient countries – have substantial corporate interests in the recipient country.

Despite a number of changes having occurred since the pilot phase, today the TIWB still does not seem to have a clear mechanism for avoiding similar problems in the future.

Only very limited information is publicly available about the TIWB process itself and the design of the projects, deployments, actors involved and funding. This is despite the fact that taxation is a highly political issue in which the public has a strong interest. (p. 4)

While it is conceded that developing country should not necessarily in the lead (which would, since developing countries are supposed to benefit, be logical), at least some partnership at eye level should rule this sort of cooperation. Since this is not the case, it seems to indicate that indeed there is no real willingness on part of rich countries to adjust to poor countries need.

4.8.3 *Status Quo*

There are some nice declarations contained in the Addis Ababa Action Agenda, for example N. 22+23

22. We recognize that significant additional domestic public resources, supplemented by international assistance as appropriate, will be critical to realizing sustainable development and achieving the sustainable development goals. We commit to enhancing revenue administration through modernized, progressive tax systems, improved tax policy and more efficient tax collection. We will work to improve the fairness, transparency, efficiency and effectiveness of our tax systems, including by broadening the tax base and continuing efforts to integrate the informal sector into the formal economy in line with country circumstances. In this regard, we will strengthen international cooperation to support efforts to build capacity in developing countries, including through enhanced official development assistance (ODA). We welcome efforts by countries to set nationally defined domestic targets and timelines for enhancing domestic revenue as part of their national sustainable development strategies and will support developing countries in need in reaching these targets.

23. We will redouble efforts to substantially reduce illicit financial flows by 2030, with a view to eventually eliminating them, including by combating tax evasion and corruption

through strengthened national regulation and increased international cooperation. We will also reduce opportunities for tax avoidance and consider inserting anti-abuse clauses in all tax treaties. We will enhance disclosure practices and transparency in both source and destination countries, including by seeking to ensure transparency in all financial transactions between Governments and companies to relevant tax authorities. We will make sure that all companies, including multinationals, pay taxes to the Governments of countries where economic activity occurs and value is created, in accordance with national and international laws and policies.

But: There is little which made its way from Addis to be entered in the end into the decisive document declaring the Sustainable Development Goals,⁷⁴ i.e. the framework replacing the Millennium Development Goals, outlining the marching order of nations up to 2030. Only three passages are of interest, namely 12c, 16.4 and 17.1:

Goal 12.c Rationalize inefficient fossil fuel subsidies that encourage wasteful consumption by removing market distortions, in accordance with national circumstances, including by restructuring taxation and phasing out those harmful subsidies, where they exist, to reflect their environmental impacts, taking fully into account the specific needs and conditions of developing countries and minimizing the possible adverse impacts on their development in a manner that protects the poor and the affected communities

Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. ...

16.4 By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime.

Goal 17. Strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development. 17.1 Strengthen domestic resource mobilization, including through international support to developing countries, to improve domestic capacity for tax and other revenue collection.

But here, too, the declarations are nice, while clear and verifiable criteria to measure progress or failure are as rare as are commitments of governments around the globe how exactly this cooperation should be implemented.

Here, the UN Statistics Office was in charge to develop indicators, criteria and methods of measurements with which to measure that progress. In their preliminary progress paper published in March 2016⁷⁵ the situation is best regarding Target 12.1: As indicator they propose ‘Amount of fossil-fuel subsidies, per unit of GDP (production and consumption) and as a proportion of total national expenditure on fossil fuels.’, the proposed custodian agency is the UNEP, there is a suggested methodology (which has not been tested yet) and beyond that ‘UNEP can support the World Bank with the definitions around this indicator.’ (p.45)

The situation is much worse in the two other areas: As an indicator capturing illicit financial flows they proposed in 16.4.1 “Total value of inward and outward illicit financial flows (in current United States dollars)”, as Custodian Agencies the proposed the IMF and UNODC, but regarding everything else they had to admit regarding Target 16.4:

⁷⁴ <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>

⁷⁵ <http://unstats.un.org/sdgs/files/meetings/iaeg-sdgs-meeting-03/Provisional-Proposed-Tiers-for-SDG-Indicators-24-03-16.pdf>

There is no methodology for this indicator and work is ongoing towards the development of an international standard. The concept of illicit financial flows has not been explicitly defined in the international normative framework dealing with crime, corruption, transnational organized crime, money laundering and financing of terrorism. UNODC is currently working, together with other international agencies, towards the formulation of an agreed definition that can be used for international monitoring purposes. The methodological approach to measure IFF will make use of a number of tools, including those recently developed to measure illegal economy. (p. 53)

Regarding Target 17.1. they propose as indicators (1) ‘Total government revenue as a proportion of GDP, by source’ with the correlated Custodian Agency World Bank, and (2) ‘Proportion of domestic budget funded by domestic taxes’, with the Custodian Agency IMF. Regarding a more detailed information, e.g. as to methods of measurement or data availability the paper simply states “No information provided”.

While improvement on target 17.1 can be expected, the research has a skeptical view regarding any sensible progress on Target 16.4.

Of course, from an NGO point of view it makes sense to go back to the FFD3/AAAA paper, namely No. 22+23 with all those issues that have been cut out in the SDG paper. Here, more indicators and criteria could be developed and implemented, if acceptable. For example, the promises to

- Improve fairness in existing regimes (waiting time of taxpayers for service, dealing with arrears)
- Increase assistance of poor countries (share of ODA devoted to tax matters)
- Increase transparency and exchange of information especially in view of Beneficial Ownership (progress on negotiations involving public registers of BO, automatic exchange of information)⁷⁶

At the time when work to this book stopped, there were no binding agreements both on content and ways/extent of support for poor countries on part of the developed countries within a binding UN framework.

4.8.4 Evaluation

Why was the Addis Conference so important? One member of the institutions carrying this research summarizes as follows:

We (=Southern CSOs) were very disappointed that the proposal to set up a UN intergovernmental tax body to control tax dodging by multinational companies was rejected and not adopted by the UN conference in their outcome document. FFD is the only global process where all the countries in the world have their own voice to review international economic and financial rules with the explicit mandate to promote the development of the South. So it was highly expected that the outcome will favor developing countries but disappointingly not. The current concentration of discussion in international tax practices in the hands of only 34 rich countries members of the Organization for Economic Cooperation and Development is not helpful as developing countries have no access to the OECD. A

⁷⁶ Mothe Karoubi, E./Espy, J. (2016, February) Indicators and a Monitoring Framework for the FFD. In: Sustainable Development Solutions Network. Retrieved from <http://unsdsn.org/wp-content/uploads/2016/03/Final-FfD-Follow-up-and-review-paper.pdf>

negative balance therefore is very correct and the voices of the few Southern CSOs that attended such as Tax Justice Network Action Aid Zambia resonate with this analysis.

The bitter question remains: Why initiating so many initiatives, but not listening to the unanimous desire of the G 77 in their plea to transfer tax regulations to a UN body rather than leaving it de facto with the exclusive body of the 34 most developed states in the world? Does it not smack of “Divide and rule”? And what about the role of India and China: On the one hand, they are, via the G20, part of the OECD-BEPS story, on the other hand, they sideline with the G77?⁷⁷ Experts argue, that India and China are, at the least, difficult to understand and follow, if not contradictory in their approach.

Joseph Stiglitz probably puts his finger to the point when saying “The difference between tax evasion and tax avoidance is very small, because those who benefit from tax avoidance write the law” – meaning, that powerful interest groups in developed countries simply try to preserve their profits and prerogatives from outside interference. But: The west could only win because the rest is not united on the issue. The South African newspaper Daily Maverick, who also quoted Stiglitz, concludes: ‘In breath-taking display of self-interest’, developed countries, most importantly the UK and USA,

shut down negotiations around the subject ... And as they did so, it became clear that this conference, as perhaps they all are, was nothing to do with development, and everything to do with power. ... And there’s not much we can do about it. Individual countries don’t have enough clout to change the system, and achieving concerted action on a global scale is almost impossible. Game theory comes into play: yes, if all developing countries sang from the same hymn sheet, all are likely to prosper in the future. But if just a few of them choose to stick with the status quo, they’d be in line for a foreign aid windfall (this, perhaps, was Ethiopia’s thinking when it tried to persuade South Africa to tone down its rhetoric during the Addis Ababa talks).⁷⁸

UN Secretary General Ban Ki Moon played an ambiguous role. Some report, that he did support the G77 in their call for a body on tax matters (Eurodad, 2015a, p. 13), others emphasize that he spoiled everything by eventually calling for “flexibility” and “compromise”. Others were more unambiguous: Jose Antonio Ocampo, former Under-Secretary-General, was more outspoken in his criticism and his vision of hope:

Despite the disappointment in Addis Ababa, the call for reform of the international tax system is not likely to be silenced. Instead, it will grow louder on all sides, as the developed countries’ counter-productive resistance to any give and take on international cooperation results in a tsunami of unilateral tax measures beyond OECD control.⁷⁹

Last not least one should not overlook that there was not only conflict in Addis, but also agreement: Regarding FATF and STAR a lot of common ground emerged and discussions surrounded mainly areas of practicalities and implementation.

⁷⁷ Sethi, A. (2015, July 15) Row over Tax Loopholes threatens to derail Development Accord. In: The Wire. Retrieved from <http://thewire.in/2015/07/15/row-over-tax-loopholes-for-mncs-threatens-to-derail-development-accord-6446/>

⁷⁸ Allison, S. (2015, July 20) Analysis: Long live foreign aid – whether we like it or not. In: Daily Maverick. Retrieved 20 July 2015 from http://www.dailymaverick.co.za/article/2015-07-20-analysis-long-live-foreign-aid-whether-we-like-it-or-not/#.Va0E5_mIVzU

⁷⁹ Ocampo, J. M. (2015, August 4) A defeat for international tax cooperation. In: Project Syndicate. Retrieved from <http://www.project-syndicate.org/commentary/addis-ababa-international-tax-cooperation-initiative-failure-by-jose-antonio-ocampo-2015-08>

4.8.5 OECD or UN?

This brings back the permanent question of what should be the legal and institutional framework for cooperation between developed and developing countries? Here the position of developing countries and most of development NGOs is clear: It should NOT be the OECD framework since this is biased towards the interests of developed countries because. Even though OECD is offering developing countries access to its deliberation (but no right to contribute or even to vote!) and even though developed countries offer administrative assistance (resources and training) to tax administrations of developing countries, the problem remains that the rules of the game are still determined by OECD member states.

This was captured in a report adopted by the 54 African Union heads of state, which states: “it is somewhat contradictory for developed countries to continue to provide technical assistance and development aid (though at lower levels) to Africa while at the same time maintaining tax rules that enable the bleeding of the continent’s resources through illicit financial outflows.”⁸⁰

Even worse: Developing countries might be tempted to turn into secrecy jurisdictions themselves. Eurodad is writing:

Since it is becoming clear to developing countries that the EU and other developed countries are not going to let them be part of the solutions on offer against tax avoidance, some are considering ways they can have a share of the benefits of being an offshore jurisdiction instead. Kenya announced in April 2015 that it is close to finalising legislation that could turn it into an international financial centre, modelled after the City of London.⁸¹

4.8.6 “Independent” opinions?

In complex situations like those one desperately looks for “independent”, i.e. unbiased advice. This, however, is difficult, if not impossible, to obtain. The Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, submitted a report⁸² on the links between taxation and human rights with many good propositions, but, not surprisingly, many of those are close to UN-positions. Or: The Independent Commission for the Reform of International Corporate Taxation.⁸³ Looking at its members, representing a wide range of countries and cultures, one may guess that those recommendations reflect the views of churches and NGOs and do most certainly not find sympathy with pro-business groups. All this suggests great care when looking at “expert statements” on the background of interest guided positions and deductions, as will spelled out in more detail in E/I.

4.9 Conclusion

The previous suggests that market based mechanisms with the potential to diminish poverty and inequality profit capital owner over proportionate and not workers employed or host states: Deregulation put capital in a comparatively powerful position which it is difficult,

⁸⁰ (Eurodad, 2015a, p. 25) Endnote 170 says: See UNECA. (2014). Illicit Financial Flows: report of the high level panel on illicit financial flows from Africa, op. cit., p.60.

⁸¹ (Eurodad, 2015a, p. 16). Endnote 105 besagt ‘See The Africa Report. (2015). Kenya gets Qatari help for financial centre plan. Published 24 April 2015: <http://www.theafricareport.com/East-Horn-Africa/kenya-gets-qatari-help-for-financial-centre-plan.html>’

⁸² Zayas (2016, October 5) Report of the Independent Expert on the promotion of a democratic and equitable international order to the UN General Assembly. Retrieved from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/248/82/PDF/N1624882.pdf?OpenElement>

⁸³ <http://www.icriict.org/>

especially for developing countries, to rein and regulate. Hence, the need for re-regulation after the age of deregulation comprises not only processes of investment, production and trade, but taxation as well and calls for stronger states on several levels.

This is reflected in the following statement by the Zambian Ambassador to Germany, indicating that there may be many good declarations and pledges which are not worth its money since states are not in the situation to check on their implementation. In, for diplomats quite undiplomatic frankness, Ambassador Chiti explains:

I would also like to put it on record that the issues you raised therein are pertinent for not only Zambia but many other developing countries who may find themselves in a similar position and may not have enough resources to follow through and monitor investors regarding pledges, commitments and tax declarations both within the country and in other jurisdictions. In that regard, Zambia would support any efforts that ensure that TNCs abide by the tax regulations and contribute their rightful share towards revenue in those countries they operate in. It would also be in our interest to renegotiate such agreements which disadvantage us especially in the event that the loopholes for exploitation emanate from flaws in our negotiated agreements.

Therefore, and regarding structural imbalances between market and state regulation, a number of initiatives must be adopted to make international trade, FDI and taxation more profitable for developing countries and a number of suggestions are on the table, for example:

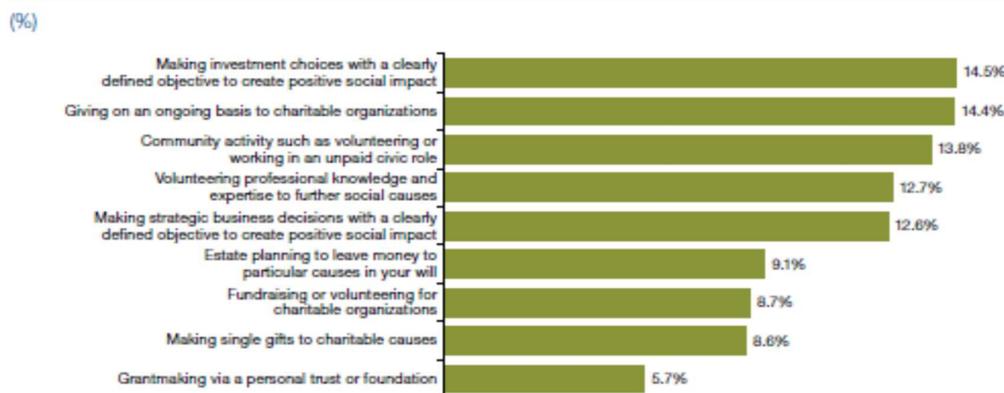
Regarding strengthening labor and trade unions against capital internationally, an important step might be the strengthening of the ILO, enabling it to implement all those standards which, in theory, are agreed by the worlds community of states. But while the WTO has all those rights, the situation of ILO is weak, resulting in an institutional imbalance between labour on the one side, and financial/economical interest groups on the other (UNIAPAC, 2015).

Regarding the deadlock and tension between “OECD” and “G77/UN” positions, a global tax authority modelled after the example of the WTO, could be a way out: An truly independent tax authority could be the closest we can get to an independent mediator between conflicting tax rules and entitlements (see Dietsch/Rixens proposal of an ITO or Tanzi).

5 Specific Alternatives to taxation - Overview

Over the past years, more attention has been spent on alternatives to taxation by academics and wealth manager. For example, the Capgemini/RBC Wealth report 2014 dedicated some space to the question of what HNWIs can do for the good of the larger community and the common good:

FIGURE 23. Mechanisms Used by HNWIs to Make a Positive Social Impact, Q1 2014



Note: Question asked: "Which of the following activities is the most important to you with the goal of generating positive social impact?" Percentage means: Percent of HNWIs who are considering that particular mechanism as most appealing in generating positive social impact
 Source: Capgemini, RBC Wealth Management, and Scorpio Partnership Global HNW Insights Survey, 2014

Source 3 (Capgemini; RBC, 2014, p. 29)

5.1 Conceptual Clarification: Charity, Philanthropy

'Traditional philanthropy has been criticized for being too detached, isolated and reactive. The billionaire of today has better options. Much more emphasis is being placed on social investing and results: lives changed, improved health conditions, financing of causes via micro-lending. Current philanthropy is focusing much more on tracking and delivering measurable and tangible results.' (UBS-PwC, 2015, p. 27)

'Unlike charity, philanthropy focuses on specific causes – generally education, health or humanitarian support – looking to achieve a specific and measurable impact ... Philanthropic concepts and organizations ... are run like businesses. They identify major social problems that they set out to solve with planned strategies and they measure their impacts. Billionaires give not only money but also time and ideas. They look for bold and innovative approaches to improve the lives of futures generations.' (UBS-PwC, 2015, p. 28)

The Wealth-X/Acton Capital Philanthropy gives the following under the headline "The Spectrum of Philanthropy". It contains elements which, in common-usage understanding, would not qualify for any charitable engagement since it is linked with returns for the donor in the first place.

Many donors today are looking to invest in ways that match their experience in business life, and have begun to seek out sustainable and scalable models for addressing key problems. Thus, two significant developments have shaped philanthropy over the past decade: the development of new tools, such as venture philanthropy, impact investing, and microfinance for achieving philanthropic goals, and the rise of return on mission metrics to measure the success of particular ventures in achieving these goals. Wealth-X estimates that these emerging forms of philanthropy make up 7% of UHNW philanthropy giving, or US\$7.8 billion. Venture efforts in philanthropy, impact investing and micro finance are among the ways that philanthropists have begun to bring the beneficiaries of philanthropic donations into the process of improving the local quality of life. (Wealth-X; Arton Capital, 2015, p. 11)



One example given is the Breakthrough Energy Coalition (BEC) where one might guess how that money is invested and who else is profiting from it.⁸⁴ Not surprising, therefore, that high estimates of philanthropic giving are calculated and forwarded.

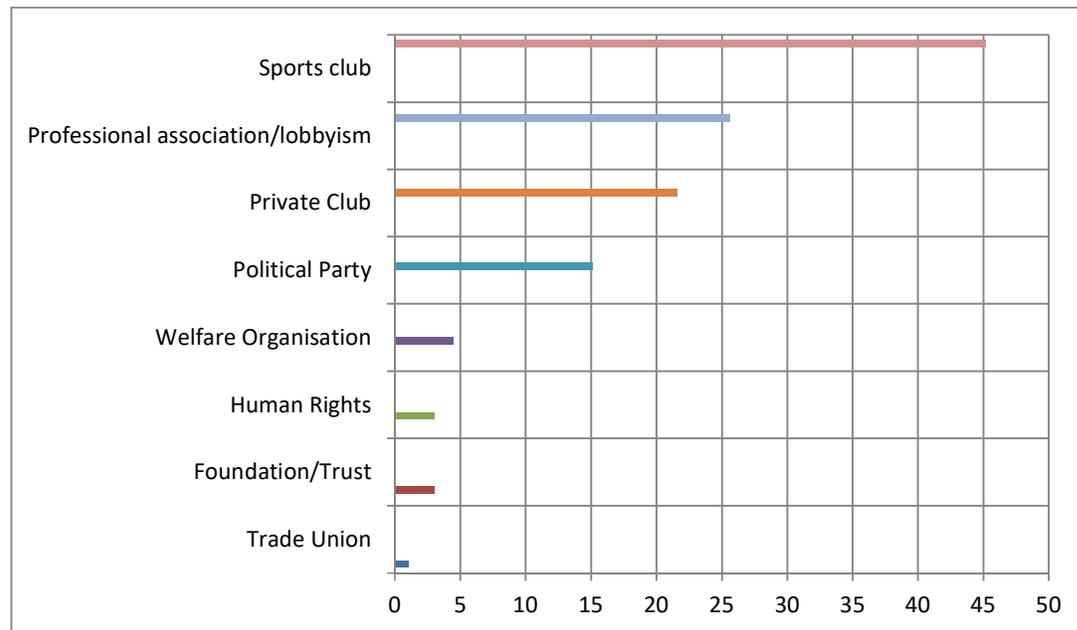
5.2 Donating money, in-kind or time

A first way is to donate money to existing NGOs and other institutions, provide those with in-kind support (e.g. buildings, equipment, personnel...) or own time and energy. They donate for a wide range of issues, e.g. research and science (8.3%) or culture (13.9) assistance in situation of emergency (42.6%) and social issues (51.8%) (Ströing & Kramer, 2011, p. 118f.).

Interesting is a list of areas where they invest free time and what counts for them under the category of voluntary engagement (the four at the lowest and the four at the highest end). Of course, there are multiple engagements possible, but somehow the high ranking of Political Party, Private Club and Professional Association/Lobbyism makes suspicious and also engagement in a sports club could mean a small club trying to bring together German and immigrant kids or the Advisory Board of Bavaria Munich.

⁸⁴ The Breakthrough Energy Coalition (BEC) is an example of UHNW philanthropists putting their money to good use through impact investing and venture philanthropy. Bill Gates, cofounder of the Bill & Melinda Gates Foundation and Microsoft, launched the BEC, and he is partnering with UHNW donors Jeff Bezos, Richard Branson, Jack Ma, Masayoshi Son, George Soros, Tom Steyer, Meg Whitman, Mark Zuckerberg, and over a dozen other influential donors and investors to allocate billions to the fund. The objective of the fund—in addition to lowering the cost of renewable energy and carbon dioxide emissions, and bringing energy to the one billion people in the world who are living without electricity—is earning a return on its investment. By focusing on measurable results, both in the form of social benefits and financial returns, the BEC incentives clean energy companies to accomplish what hasn't been done before —unseating the fossil fuel industry through technological advances. Gates noted, “Progress towards a sustainable energy system is too slow, and the current system doesn't encourage the kind of innovation that will get us there faster.” Gates and his cohort of UHNW donors are applying the same business acumen and standards towards the BEC as they do in their professional endeavours. This is what return on mission philanthropy is all about. (Wealth-X; Arton Capital, 2015, p. 12)

Abbildung 3 Areas of personal engagement of wealthy persons, bottom and top listings



Source 4 (Ströing & Kramer, 2011, p. 123)

Interesting: Engagement for Foundation and Trust is second lowest area of engagement!

5.3 Establishing NGOs, foundation or trusts

A third area of engagement is the establishment of own charitable NGOs, foundations or trusts is another feature increasing in importance with which certain types of wealthy people want to show their responsibility towards society. Since this area is an important category and often named to be the better alternative to taxation it shall be dealt with separately.

5.4 Interim conclusions

Normally, of course, wealthy people display a mix of engagement, e.g. which is confirmed by UBS research, e.g. the survey “Doing well at doing good”, (UBS, 2014a, p. 6). Also the Capgemini Wealth report states a mix of options and Timmer: Donators are giving more than money, they also give time depending on the passion which connects them to the “cause“. Stifter geben mehr als Geld, sie geben auch Zeit, abhängig von der Leidenschaft, die sie mit dem „cause“ verbinden

On part of this project there is no objection whatsoever against financial donations or *Zustiftung*, in-kind support of other NGOs or personal engagement for other NGOs or foundations. The important point to make is that all this is in accordance with the freedom of choice, but at the same time it is self-less, i.e. the donor gives away and no longer wants to control administration or spending of assets.

Over time, however, one notes a shift in sympathy towards available options Capgemini concludes

‘Notwithstanding the fact that no single mechanism stood out, it is worthwhile to note that making investment choices with a clearly defined objective to create positive social impact,

was rated as the most important, beating out the more commonly accepted mechanisms of charitable donations and volunteering, suggesting a trend that HNWI's are increasingly venturing beyond traditional conduits to fulfill their social impact goals.' (Capgemini & RBC, 2014, p. 29)

Here already some critical remarks have been given above (4).

Equally, Timmer notes already in 2005 that the number of foundations is rising. This is, however, not so much due to private foundations but due to business foundations. The share of private persons in relation to the overall number of foundations is decreasing: Of ca. 150 foundations annually, in 2002 87, in 2003 39 were established by persons, the rest by cultural, commercial and public entities (Museums, companies, sports clubs...). The increase in overall foundations is not an indication of increasing civic engagement or a growing number of large private and corporate estates, but reflects the need of fundraising, combined with attractive tax saving features for those contributing.⁸⁵ This poses several questions:

- As in the case of PublicPrivatePartnerships: Whom do those foundation benefit? Luxury problems (supporting Opera Houses) or poverty reduction (Day Care Institutions)
- In case foundations support luxury problems: Is there a mechanism that the state saves here and spends additional money on the needy, e.g. the Day Care Institution?

The number of foundations continued to increase, as Timmer elaborated in the 2015 Stifterstudie – by then, an increase also in private engagement could be noted (see below, chapter 8 onwards)

More important is, of course, why there is a funding shortage of private and public institutions in the first place which then brings back the question of tax cuts and tax saving options with a resulting decrease in tax revenue.

When looking at the following graphic one is less surprised that most UNHWI's make money in the financial sector. But what about the second largest sector, Non-Profit/Social Organizations?

⁸⁵ ,Der Stiftungsboom der letzten Jahre ist daher kein Stifter-Boom und somit auch kein Ausdruck für ein gestiegenes bürgerliches Verantwortungsgefühl oder eine Folge der Erbschaftswelle. Der Stiftungsboom scheint vielmehr die Fundraising-Zwänge öffentlicher und privater Institutionen zu belegen, die ihren Förderern die steuerlichen Vorteile von Stiftungen sichern möchten.'

TOP INDUSTRY REPRESENTATION OF UHNW PHILANTHROPISTS

Industry	% of Billionaires
Finance/Banking/Investment	24.8%
Non-Profit & Social Organizations	8.8%
Real Estate	6.3%
Manufacturing	3.7%
Media	3.6%
Business Services	3.4%
Industrial Conglomerates	3.3%
Construction & Engineering	2.9%
Health Care Providers & Services	2.9%
Oil, Gas & Consumable Fuels	2.5%

Source 5 (Wealth-X; Artion Capital, 2015, p. 18)

Does this not suggest that the upsurge in foundations is just because UNHWIs withhold money from states and democracies due to tax saving options so that they can determine themselves how to spend it? If, for example, Mark Zuckerberg's foundation is paradigmatic for this segment, it is not surprising that the share of those UNHWIs making their money in the non-profit sector rose from 6% to 8.8% since the last report was compiled.

Then, and even more when including the first and largest sector for the creation of fortunes, finance/banking/investment begs the question: Is the damage done by generating the fortune not much larger than whatever philanthropy is done afterwards? In other words: Would the world not be better if less wealth is generated for few, but spread for the many?

The question needs answering: Are those alternatives to taxation indeed an alternative also for the common good in general and combating inequality and poverty in particular? And this not just in principle, but effectively regarding the amount of revenue transferred and spent?

6 Context determining alternatives

6.1 Historical context

Christ's command to spend the 10th. Historical: Stiftungen der Superreichen tun durch die Jahrhunderte Gutes, z.B. die Fuggerei (Manager Magazin Spezial, 2014) oder das Hospital zum Heiligen Geist in Nürnberg. Look also chapter on the development of the inheritance law under Christian and Roman influence (G/Inheritance#)

Interesting: Trusts

Trusts have been used for estate planning and asset protection for centuries, and their usefulness and flexibility for these purposes have been proven by the test of time. The origin of trusts can be found in the eleventh century crusades. Crusading English knights left their manors and estates in the care of trusted friends for safekeeping while themselves away on crusade. However, trusts are not just some dusty, antiquated notion from manorial England!

Not only are trusts a well-established feature of the common law with a staid history, they are quite resilient and endure today as an innovative element of modern legal systems. The flexible character of trusts has allowed them to be adapted to the ever-changing global legal and financial landscape, meaning new uses and adaptations of trusts are constantly being developed to suit the needs of property holders worldwide. In fact, trusts have proven so useful and popular they have expanded beyond common law jurisdictions, with a number of civil law countries recently modifying their codes to allow for recognition of the trust relationship.⁸⁶

6.2 Tax privileges for money, in-kind and time

More helpful guidance on this at: <http://www.finanztip.de/spenden-als-sonderausgaben/>, for example⁸⁷

- Donations to charitable organizations can be claimed as special expenses up to 20% of the income.
- Donations to political parties are deductible up to Euro 1650.
- Every donation receipt pays-off as special expenses reduce the taxable income as long as they are above the lump sum of Euro 36.
- For donations up to Euro 100 receipts are not necessary. Up to Euro 200 burden of proof is simplified.
- Donations to the assets of a foundation can be claimed as special expenses up to Euro one mio.
- Who does not want to donate money, can also donate goods.
- Even expenditure of time in a honorary post can be claimed as donation.

Leseberg/Timmer summarizes those issues in the 2015 study on donors and founders: ‘Donations offer tax privileges, foundations a bit more. And: From the subsidiarity point of view (to engage oneself instead of the state) is it justified that foundations have a little bigger tax advantage.’⁸⁸

⁸⁶ <https://www.seychellesoffshore.com/offshore.seychelles.faq/international.trust/trust-origin.php>

⁸⁷ Spenden an eine gemeinnützige Organisation können Sie bis zu einem Anteil von 20 Prozent Ihrer Einkünfte als [Sonderausgaben](#) geltend machen.

Wenn Sie an politische Parteien spenden, sind bis zu 1.650 Euro absetzbar

Jede Spendenquittung zahlt sich aus, denn Sonderausgaben mindern Ihr zu versteuerndes Einkommen, sobald sie über dem Pauschbetrag von 36 Euro liegen.

Für Spenden bis 100 Euro müssen Sie nicht unbedingt Belege einreichen. Bis 200 Euro gelten vereinfachte Nachweispflichten.

Spenden in das Vermögen einer Stiftung lassen sich mit bis zu einer Million Euro als Sonderausgaben geltend machen.

Wer kein Geld spenden will, kann auch Sachspenden leisten.

Sie können sogar Ihren Zeitaufwand im Ehrenamt als Spende absetzen

⁸⁸ Steuerprivilegien gibt’s auch beim Spenden, bei Stiften etwas mehr. Und: Unter dem Gesichtspunkt der Subsidiarität (selbst anstelle des Staates tätig werden) ist es gerechtfertigt, dass Stiften einen etwas größeren Steuervorteil haben. (Leseberg & Timmer, 2015, p. 173).

6.3 German law regarding charitable giving

For Germany the definition of “benefit to the public“ is pivot which regulates the Tax Code and lists in § 52 what is eligible. In the translation of Dr. Berning:

(1) A corporation pursues charitable ends if its activities are aimed at promoting the community on material, spiritual or ethical level. A promotion of the community is not given when the circle of persons who benefit from the promotion is firmly closed, e.g. the affiliation to a family or company, or because of the limitation due to spatial or professional features can permanently be only very small.

(2) Among the prerequisites of paragraph 1 are acknowledged as promotion of the community:

1. The promotion of science and research;
2. The promotion of religion;
3. The promotion of public health service and care, especially the prophylaxis and combating of communicable diseases, also in hospitals according to § 67, and of animal diseases;
4. The promotion of youth and elderly care;
5. The promotion of art and culture;
6. The promotion of monument protection and care;
7. The promotion of education, primary and vocational including student help;
8. The promotion of nature protection and landscape conservation in the sense of the federal and provincial law of nature protection, environmental protection, coastal protection and flood protection;
9. The promotion of public welfare, especially the purpose of officially acknowledged associations of free public welfare (§23), their sub-associations and affiliated organizations and institutions;
10. The promotion of support for politically, racially or religiously persecuted, refugees, displaced persons, resettler, late resettler, war victims, war bereaved, war disabled, war prisoners, civil disabled and support for victims of crimes; the promotion of memoriam of persecuted, war and catastrophe victims; the promotion of searching services for missed persons;
11. The promotion of rescue of deadly perils;
12. The promotion of fire, work, catastrophe and civil protection as well as accident prevention;
13. The promotion of international attitude, the tolerance on all areas of culture and the thought of international understanding;
14. The promotion of animal protection;
15. The promotion of development cooperation;
16. The promotion of consumer counseling and protection;
17. The promotion of care for prisoners and former prisoners;
18. The promotion of equal rights for women and men;
19. The promotion of support for marriage and family;
20. The promotion of crime prevention;
21. The promotion of sports (chess is also a sport);
22. The promotion of local history and geography;
23. The promotion of animal breeding, plant breeding, garden plots, traditional customs including carnival, soldier and reservist support, ham radio, dig sports;

24. The common promotion of the democratic political system within the reach of this law; efforts are not included which only pursue single interests or which are limited to local politics;
25. The promotion of civil engagement in favor of charitable, benevolent and churchly purposes;

These are the 25 topics acknowledged as charitable, and if one wants to exclude some of them this law has to be changed. And finally, if the own ideas are not covered by the preceding, the paragraph concludes with a final “catch the rest” phrase:

Sofern der von der Körperschaft verfolgte Zweck nicht unter Satz 1 fällt, aber die Allgemeinheit auf materiellem, geistigem oder sittlichem Gebiet entsprechend selbstlos gefördert wird, kann dieser Zweck für gemeinnützig erklärt werden.

Whoever is charitable benefits from comprehensive privileges, e.g. tax advantages:⁸⁹

- Exemption from corporation tax and business tax as far the non-profit organization does not run a so-called taxable business operations
- Exemption from property tax (but nor per se from real estate transfer tax!)
- Non taxable asset transfer in one’s lifetime and by reason of death to charitable corporations (i.e. exemption from inheritance tax and gift tax)
- Refrainment from captial income tax deduction
- Right to receive taxable deduction donations
- Possibility of the taxfree coach and volunteer workers lump-sum

Additionally, non-tax privileges are possible, e.g.

- Certain favors regarding state fees (e.g at authorities and broadcasting fees),
- Subsidies which are often conditioned upon the status of being non-profit, and
- A high public reputation.

6.3.1 Discussion

In Germany, the application of these laws is much too wide, there are too few general binding criteria and the implementation/acknowledgement is left to the local financial authority that has much allowance at discretion to differentiate between non-profit organization, social entrepreneurs or charitability. This is why for instance the “Golfing club Wannsee“, the Eastern European association of the German economy or the German association for defense technology is acknowledged as charitable, but not attac - they lost the acknowledgement because they were “politically“ engaged, while two of the earlier mentioned one are clearly lobbying for their members. In addition, foundations just have to generate 51% of their income via donations, and 49% can be made via other services which are not non-profit. A reform of the charitable law would be urgent in order to promote transparency and publication of balance sheets.⁹⁰

⁸⁹ See <http://www.winheller.com/gemeinnuetzigkeitsrecht.html>

⁹⁰ For example: ,Generiert etwa eine Stiftung 51 Prozent ihrer Einnahmen aus Spenden, dürfte sie 49 Prozent ihres Budgets mit Dienstleistungen erzielen, die nicht gemeinnützig sind. Einige Finanzämter sind dabei gar noch großzügiger und verleihen den Status auch bei einem kleineren Anteil gemeinnütziger Tätigkeit. Book, S. (2016, July11) Stiftungen und Vereine werden zur Steueroase.‘ In: Wirtschaftswoche. Retrieved from

And regarding the tax-deductibility of time: Auch was die Absetzbarkeit von Zeit betrifft: Looking at the graphic above, there is, however, a question why in-time engagement in Sports, lobbying, private clubs and political parties should be tax deductible.

7 Trusts

7.1 The unbundling of ownership rights as precondition to trusts

The common perception is that you own what you own. But ownership can be unbundled into a number of rights. Most known are home ownerships: Even though you might be the legal owner, the bank might take away your house if you default on the payment for your mortgage. Likewise, ownership of money and companies can be unbundled: For example, the settler (donor) gives 1 million USD to a lawyer (trustee) and instructs him to deal in a certain way with the money (by writing a deed of settlement) and hand on the money to his kids once they are grown up. This is slightly different in a limited liability company, where the owner retains control over the company via the institutions set up to run the business.

7.2 Trusts

As a good primer on trusts point out (Tax Justice network International, 2009), the concept originates mainly in the Anglo-Saxon Context and goes back to the Middle Ages, where knights looked for trustworthy persons to take care of their estate on behalf of their wives and children. Nowadays trusts are very widespread and important within the Anglo-Saxon world, especially in dependent territories or Crown territories of the UK. They are widely used to hide ownership from the taxman and there are numerous proceedings to hide ownership from whoever wants to find out about who owns or benefits from certain assets. For example, setting up a legal barrier between the settler/donor and trustee may include a barrier of information as well, and of course such a barrier can also exist between the trustee and the beneficiary.

But given the legal positions that trusts are no legal entities of their own, they are not registered and therefore investigators do not even know where to start looking for something. And, in case, that investigations start, a “flight clause” in the trusts contract might command the trustee to relocate trust and assets. The latter points to the important fact that the assets might be parked differently from where the trust resides: While the trust is in Jersey, the assets may well be in London.

Tax avoidance and evasion is possible because of the difference between donor, trustee and beneficiary, especially if they reside in different countries and there might be clauses who regulated that the settler did not really hand over control etc., and because trust registration and asset deposition might differ. How to find out what belongs where to whom? Too difficult.

There are a number of ways where the settler can retain control over the asset even if within this construct the trustee assumes legal ownership on behalf of the (later) beneficiary. Here,

laws of secrecy jurisdiction openly advert their “permissive legislation”, permitting such constructs.

‘Belize, a 2008 US Senate report notes, offers something even more blatant: "In Belize you can be the grantor, the trustee, and the beneficiary, and have the trust considered valid".’ (Tax Justice network International, 2009, p. 8).

There are also constructs enabling the donor to exchange trustees or (revocable trusts) to resume ownership.

7.3 Trusts and Foundations: Similarities and differences

First of all there is a widespread confusion about trusts and foundations and their role in tax planning, avoiding and evasion schemes.⁹¹ As certain brochures (e.g. Schroder)⁹² indicate, also Holdings might be an additional useful construct, but for the purpose of this research the focus on trusts and foundations is adequate.

Trusts (Treuhandgesellschaft, Trust) and foundations (Stiftung): Similarities and Differences

Similarities	Differences
<ul style="list-style-type: none"> • Bankable and non-bankable assets can be transferred and held • Both can be revocable or unlimited of duration • Can be set up during lifetime or death • Provide for the appointment of a protector or enforcer • The founder of a foundation can be member of the council and retain control over assets, the settlor of a trust can retain certain powers to direct investments, e.g. by issuing a non-binding “letter of wishes” • Set up for asset protection and succession planning 	<ul style="list-style-type: none"> • Trust a legal concept in common law jurisdictions, foundations is a civil law concept, governed by the laws of the land of registration • Foundation is legal entity and holds assets in its own name. A trust, governed by a trust deed, has no separate entity from its trustees • Foundations contract in its own name, trustees in their own name • Members of Foundation council act on behalf of foundation and do not assume responsibility, the other way with trustees • Foundation Statute/Charter is a public document while Articles remain private. Trust documents remain totally private • Changing the jurisdiction of a trust is easy, a foundation needs to be re-domiciled • Powers of a Foundation Council are limited (e.g. by purpose of foundation). Trustees have unlimited capacities within the overall goal to act in the best interest of the beneficiaries • A foundation stands in its own and does not need succession planning

One can conclude, therefore, that both instruments have advantages and disadvantages, but that, on the whole, trusts are more, foundations less suitable for tax planning.

⁹¹ Foundations vs. Trust Purposes, Similarities & Differences of these Estate Planning Vehicles. (2011, February) From: Rhone-Services. Retrieved from http://www.rhoneservices.com/images/pdf/Foundation_vs_Trust.pdf.

⁹² Schroders Private Bank. Trustbroschüre. Retrieved from <https://www.schroders.com/StaticFiles/Schroders/About%20Schroders/Company%20Information/Brochure/Trustbroschure-DE.pdf>

7.4 Trusts and German law

Due to the embedding of trusts in common law, the situation with trusts in Germany is particularly complex: ‘German civil law does not contain specific provisions for trusts... A foreign trust with German-situated property set up by a will is invalid from a German civil law perspective. Any trust that is created will be assimilated to the legal entity under German law which most closely resembles the provision of the trust (e.g. foundation, aggregation of property, nominee agreement, execution of a last will)...’ (Ernst & Young, 2013, p. 116).

However: Treuhandschaften/Treuhänderschaften are permissible following the BGB and can assume a comparable role as trusts.

8 German foundations

While trusts are widely used in the Anglo-Saxon countries, for Germany the foundation based options are more important for tax planning. But there are more purposes besides tax planning. For example, foundations are also used

- To prevent fortunes from being divided endlessly and therefore fragmented,
- It can be used to either accord to relatives that which is financial due to them in accordance to inheritance legislation, but exclude them from a voice and vote in running the business.
- To prevent heirs to sell of their inherited share to others.
- To protect assets from creditors.
- To secure the will of its founder by making sure that his will and ideas are preserved and applied via the foundation charter.

8.1 Categories

8.1.1 Introduction, numbers

An overview about the typology of foundations which are available in Germany contains the website of the German Federation of Foundations (Bundesverband Deutscher Stiftungen).⁹³ Not all of them are of relevance for discussing private wealth, it is also possible to have some groupings.

One problem are deficits in the requirements to reveal beneficial owner of foundations and the fact that there is no uniform legislation for foundations in Germany since regulations are done on the state level.

If a foundation is set up, family members still have a right to that which is their legal portion in accordance with Inheritance Law. This entitlement comprises also wealth assets which have been transferred up to ten years before the legator’s (Erblasser) death. Here treaties can be concluded to avoid that (Erbverzichtsverträge) (Sparkasse Saarbrücken, 2013, p. 15f.)

If wealth is transferred into a foundation, the donor de facto loses his wealth which in turn acquires an own legal personality. But, of course, the donor is able to determine how the

⁹³ <http://www.stiftungen.org/de/stiftungswissen/was-ist-eine-stiftung/stiftungstypologie.html>

foundation is managed and operated and how proceeds from the foundations are to be distributed. (Lechner, 2014, p. 188ff.).

Towards the end of 2014 there were 20,784 Stiftungen bürgerlichen Rechts in Germany, up 40% from 2004 (12,670), nicht rechtsfähige Treuhandstiftungen not included. Two thirds of those were set up by private persons, a very different finding from the Stifterstudie 2005. The rest can be set up via organisations such as Vereine, church or public institutions or corporations, but it is not rare that even then private persons donate the funds (Leseberg & Timmer, 2015, p. 12+14).⁹⁴

Since Treuhandschaften do not need to be registered in Germany, there is not even knowledge about how many exist in Germany, a fact which is criticized by FATF 2010 (Henn, Meinzer, & Mewes, 2013, p. 11)

8.1.2 Foundations and fiduciary foundations

An important distinction exists between rechtsfähige Stiftung bürgerlichen Rechts (proper foundation) and nicht-rechtsfähige Stiftung/Treuhandstiftung (fiduciary/trust/sheltered foundation) (Sparkasse Saarbrücken, 2013, p. 18). (Leseberg & Timmer, 2015, p. 15)

Rechtsfähige Stiftung	Treuhandstiftung (Leseberg & Timmer, 2015, p. 127ff.)
Legally independent, own legal personality with own assets and carries legal rights and responsibilities. Purpose and intention are determined by the founder.	No legal entity. Established via contract between donor and fiduciary, this includes the statute of the foundation.
Assets are owned by the foundation, the Board administrates the assets in accordance with the statute	The estate is not given into an independent foundation, but to a natural or legal person. A rechtsfähiger Treuhänder (fiduciary/trustee/custodian) is needed. Assets are transferred into ownership of fiduciary/trustee on condition to pursue a purpose which the donor is defining. The fiduciary/trustee manages the assets as Sondervermögen is under obligation to act as ordered.
The foundation is represented by the Board	The Fiduciary represents the foundation.
The foundation is needs to be recognized and is supervised by the state and tax administration.	The foundation does not need to be recognized and is not supervised by the state, but is controlled by the tax administration.
95% of those foundations are charitable and therefore tax privileged.	Though not vested with legal capacity, it can be a proper taxpayer and therefore have a proper benefit to the public, see (Leseberg & Timmer 15)
Depending on the purpose, minimum assets need to be EUR 50,000 or more	Minimum assets can be lower.
	Less costs for administration than a fully fledged foundation.

Fiduciary trusts are the hidden champions of the German foundation world. Without question they were and are one of the fundamental drivers for the foundations' growth of the last years. According to current estimations, in the meantime in Germany are clearly more trusts than foundations. However, there are hardly any scientific studies on that topic. How trusts are used and established is largely unknown.⁹⁵

⁹⁴ More statistics see http://www.stiftungen.org/no_cache/de/forschung-statistik/statistiken.html

⁹⁵ Die Treuhandstiftung ist der Hidden Champion der deutschen Stiftungswelt. Ganz ohne Frage war und ist sie einer der wesentlichen Treiber für das Stiftungswachstum der letzten Jahre. Nach aktuellen Schätzungen werden in Deutschland inzwischen deutlich mehr treuhänderische als rechtsfähige Stiftungen errichtet (Wiek 2015, Kap.

8.1.3 Privatnützig und Gemeinnützige Stiftung (charitable foundation)

A first distinction for the German context is the privatnützige and the gemeinnützige foundation. Privatnützige foundations are only ca. 5% of all foundations, they have the form of family or business foundations. They are subject to income taxation, when disseminating profits (Ausschüttung), corporation tax and local business tax, and every 30 years a inheritance substitution tax (Erbersatzsteuer).

The charitable foundation advances purposes serving the common good and it therefore most tax privileged. This model is the most widespread and applies to 95% of all foundations (Sparkasse Saarbrücken, 2013, p. 7). Similar are kirchliche Stiftungen (ecclesiastical foundation) for the advancement of services peculiar to church organisations.

8.1.4 Family foundations

A family foundation is a sub-category under private foundation.⁹⁶ It is not charitable and therefore not exempt from taxation, but it still enjoys a number of tax privileges.

- While in the case of gifts to an ordinary Private Foundation gift tax is calculated within taxation category III, in the case of Family Foundation the degree of relationship is decisive. If, therefore, the relationship between donor and beneficiaries is within the core family (partner and children), the much better taxation category I applies.
- Family foundations are exempt from inheritance tax, but subject to inheritance substitution tax every 30 years. To start with, here EUR 820,000 are tax exempt⁹⁷, besides all general rules for inheritance and gift law apply which may lead, especially under the current inheritance law, to substantial exemptions especially in the case of business assets.
- In a family foundation, business assets are separated from persons so that Gewerblichkeit of persons is excluded. This means that no local business tax applies, but merely corporation tax of 15%. Hence, compared with other legal forms of business ownership, the family foundation option is much preferable.
- Capital gains of a family foundation are taxed with 25% Capital Gains Tax, this payment can be credited against the corporation tax
- Family foundations are subject to corporation tax of 15% and have the option to retain assets (Thesaurierung)⁹⁸
- Beneficiaries of income from the family foundation are subject only to a flat tax (Final Withholding Tax, Abgeltungssteuer) and not progressive income tax.
- Family foundations might consider the ertragssteuerliche Vorteile when it comes to Wegzugsbesteuerung.⁹⁹
- According to experts, it is quite easy to obtain privileges normally linked to charitable foundations via the inclusion of simple qualification in the charter.¹⁰⁰

5.1). Trotzdem gibt es kaum wissenschaftliche Untersuchungen zu diesem Thema. Wie Treuhandstiftungen in der Praxis genutzt und gestaltet werden, ist weitgehend unbekannt. (Leseberg & Timmer, 2015, p. 126)

⁹⁶ Familienstiftung. In: Rose & Partner. Retrieved from <http://www.rosepartner.de/rechtsberatung/unternehmensnachfolge-stiftung/familienstiftung.html>. Retrieved at 2015, January 12. More detailed: (Schmallowsky, 2012)

⁹⁷ Doppelter Kinderfreibetrag

⁹⁸ See Schmallowsky. This retention, however, is rather done in the business which is managed via the Familienstiftung.

⁹⁹ Here also (Bundesministerium der Finanzen, 2012b, p. 31)

Nowadays it is relatively easy to establish a family foundation outside Germany, for example Austria, which abandoned inheritance and gift tax. However, experts are divided about whether (and when) this is a preferable option or not. Some relevant information contains also (Ernst & Young - Luther, 2006).

8.1.5 Business foundations

Unternehmensstiftungen (Sparkasse Saarbrücken, 2013, p. 24f.) are very complex. Three main categories are

- **Unternehmensträgerstiftung:** The foundation manages the business directly, which is rare
- **Beteiligungsträgerstiftung:** Here the foundation participates/holds shares of a partnership or capital corporation and via a partnership agreement sole or participatory partner. Day to day business is conducted on the basis of established structures operating unincorporated or corporate business, the foundation is not commercially active but secures merely ownership. That way, the founder can secure the unity of the business and prevent it from division and at the same time leave the management to established structures.
- **Doppelstiftung:** Combines Unternehmens-/Familienstiftung with the advantages of a tax exempt charitable foundation.¹⁰¹

When transferring private assets into a business foundation one should consider for tax reasons to declare certain items, i.e. the real estate on which the business stands or other forms of business assets, as private wealth which is let to the business to use commercially.¹⁰² More details contains (Ernst & Young - Luther, 2006)

Foundations as entrepreneur successors avoid unwanted asset stripping of a company in a globalized world, as well as the fragmentation of the heritage in case of many heirs with legal portions. Certainly, this does not mean automatically that a non-profit legal form is chosen as also a non non-profit legal form can be chosen (like Lidl, Aldi or Fielmann). Doppelstiftungen are especially popular.

¹⁰⁰ Möglich ist es jedoch durchaus, Geschäft und Gemeinnützigkeit zu verbinden. Dazu reicht es aus, dass die Satzung sich den Zweckbetrieb vorbehält, das steht nach Ansicht der Rechtsprechung der Anerkennung als steuerbegünstigte Körperschaft gemäß [§ 5 Abs. 1 Nr. 9 Körperschaftsteuergesetz](#) nicht entgegen.

¹⁰¹ Unternehmensverbundene Stiftungen beispielsweise sind am Unternehmen beteiligt und zugleich gemeinnützig tätig.

Unternehmensträger-Stiftungen hingegen sind selbst als Unternehmen tätig – wie beispielsweise die Adi Dassler-Stiftung. Eine andere Form hat die Bertelsmann-Stiftung gewählt, und zwar die der Unternehmensbeteiligungs-Stiftung, bei der die Unternehmensanteile Teil des Stiftungsvermögens sind. Daneben gibt es rein privatnützige Stiftungen. Das gilt etwa für die Markus-Stiftung des Aldi-Gründers Theo Albrecht, die ausschließlich zum Ziel hat, das Vermögen zusammenzuhalten und die Nachkommen zu versorgen.

Häufig gründen Unternehmer Doppelstiftungen. Diese verknüpfen eine gemeinnützige mit einer Familienstiftung.

¹⁰² ‚Bei der Vermögensausstattung der Stiftung sollte aus steuerlicher Sicht stets die Möglichkeit geprüft werden, Betriebsgrundstücke oder sonstiges betriebliches Vermögen als „Privatvermögen“ in das Eigentum der Stiftung zu führen, und es dann dem Unternehmen zur Nutzung zu überlassen.‘ Unternehmensstiftung. In: Rose & Partner. Retrieved from <http://www.rosepartner.de/rechtsberatung/unternehmensnachfolge-stiftung/unternehmensstiftung.html>. Retrieved at 2015, January 13.

Regarding the proportion: Only 8.1% of those establishing a foundation give as prime reason continuation and securing of business as prime motive – for others the continuation of business was not the prime intention (which is not identical with the regulation of the estate as such, but may overlap, given the liquid border between privately held and business held wealth assets...

Foundations often have shares of companies: real participations are rather seldom. Some foundations have the goal to sustain a company. 8.1% of the respondents want to secure with the establishment of the foundation the successors of their company.¹⁰³

In 2012, the Institut für Demoskopie surveyed specifically those business foundations and identified a number of advantages, ranging from business success, security for long-term planning and investment to protection from hostile takeover to employee satisfaction (Institut für Demoskopie, 2012), as will be further examined in GW/Businessassets#. However, it needs case to case examining regarding the influence of the founding owner or owning family. In the case of the Diehl Foundation in Nuremberg, Dr. Thomas Diehl is not only CEO, but also Gesellschafter and member of the Supervising Committee, i.e. he is supervising his own performance – which is not unique, but also the case in other foundations (e.g. Bertelsmann). This, and the distribution policy of profits (i.e. the question how much profit from the business needs to go to the foundation and how much is retained in the business), is frequent criticism of those constructs, contradicting standards of good corporate governance. Diehl himself admits that this is bad style, but, shrugging his shoulder, states that this combination is permissible in accordance with the local law in Bavaria – and foundation law is in the hands of German law (Manager Magazin Reichstenheft, 2016, p. 59ff.). Since control and influence of top wealth holder in those construction is an essential point for this research (see 16.3) one should be rather cautious in reading the small print.

Even the Handelsblatt warns in the article “Welcome in the Club of Good Capitalists”¹⁰⁴ of too much enthusiasm here because of this lack of transparency and states: In case of conflict, the supervising Land is interested in strong businesses rather than strong foundations.

8.1.6 Stiftungsfonds

Special form of supplementary donation (Zustiftung). Stiftungsform can be part of a trust of sheltered foundation which then functions as an umbrella foundation. It is no own foundation but assets enter into the assets of the umbrella foundation. It is not an own taxable subject. (Sparkasse Saarbrücken, 2013, p. 20).

8.1.7 Other types

A case in itself are Gemeinschaftsstiftungen, set up by a group of people – they are distinct from the former since they normally own larger assets, besides that are of interest Verbrauchsstiftungen or Bürgerstiftungen.¹⁰⁵

¹⁰³ Stiftungen halten im Rahmen ihrer Finanzanlagen häufig Anteile von Unternehmen; echte Unternehmensbeteiligungen sind eher selten. Bei einigen Stiftungen ist damit das Ziel verbunden, ein Unternehmen zu erhalten. Immerhin 8,1 Prozent der Befragten wollen mit der Stiftungserrichtung die Nachfolge ihres Unternehmens sichern. (Leseberg & Timmer, 2015, p. 66)

¹⁰⁴ Klesse, H.J. (2012, March 21) Willkommen im Club der guten Kapitalisten. In: Handelsblatt. Retrieved from <http://www.handelsblatt.com/unternehmen/mittelstand/stiftungsunternehmen-willkommen-im-club-der-guten-kapitalisten/6356528.html>

8.1.8 Capitalization of foundations

Charitable foundations just have to generate 51% of their income via donations, and 49% can be made via other services which are not non-profit.¹⁰⁶

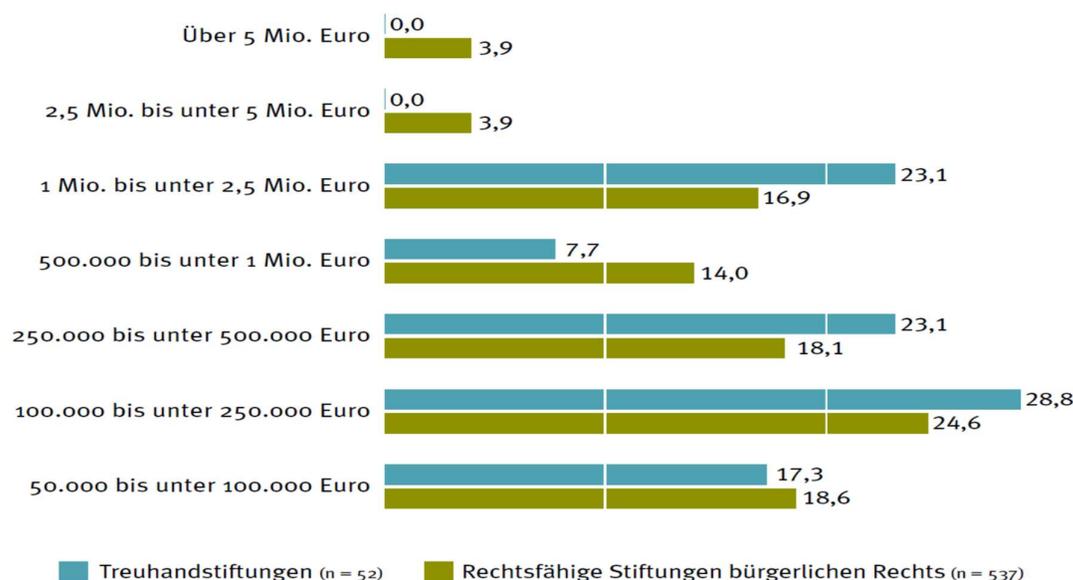
Regarding capital endowment, private persons do not donate less than companies, associations or public institutions, on the contrary there is a similar capital endowment¹⁰⁷

Following the 2015 Stifterstudie, the rechtsfähige Stiftung bürgerlichen Rechts starts off with more money than a Treuhandstiftung

There are two important differences: Foundations vested with legal capacity have high investment, the expectation to personally influence the foundation's work is higher with legal foundations (89%) than with trusts (66.7%). Actually, it seems that there exist only a few trusts with assets more than Euro 2.5 mio.¹⁰⁸

Stiftungskapital rechtsfähiger und nicht rechtsfähiger Stiftungen im Vergleich

Stiftungskapital zum Befragungszeitraum (in Prozent)



Source 6 (Leseberg & Timmer, 2015, p. 131)

¹⁰⁵ Zu allem Leseberg & Timmer

¹⁰⁶ Book, S. (2016, July11) Stiftungen und Vereine werden zur Steueroase. In: Wirtschaftswoche. Retrieved from <http://www.wiwo.de/finanzen/steuern-recht/steuervermeidung-stiftungen-und-vereine-werden-zu-steueroasen/13808506.html>

¹⁰⁷ Von der Ausstattung stiften Privatpersonen nicht weniger als Unternehmen, Vereine oder öffentlich rechtliche Einrichtungen. Im Gegenteil: Eine durchaus ähnliche Kapitalausstattung. (Leseberg & Timmer, 2015, p. 103ff.)

¹⁰⁸ 128f. Zwei wichtige Unterschiede: Rechtsfähige Stiftungen haben hohe und höchste Einlagen, die Erwartung, auf Arbeit der Stiftungen persönlich Einfluss zu nehmen, ist bei Stiftern von rechtsfähigen Stiftungen stärker ausgeprägt (89%) als bei Treuhandstiftungen (66.7%). (131): In der Tat scheint es nur sehr wenig Treuhandstiftungen mit einem Vermögen über 2.5 Millionen Euro zu geben

8.2 Private wealth and the utilization of foundations

8.2.1 Income and retained assets

Proceeds of foundations, e.g. interest, needs to go to the purpose of the foundation, but there are exceptions. It can also be used to cover administrative expenses or to the acquisition of wealth as long as it serves the statutory purposes (Sparkasse Saarbrücken, 2013, p. 11): Here there can be

- Freie Rücklage (up to one third of administrative expenses and up to 10% of that which is being spent for the statutory purpose)
- Zweckerücklage (shall secure the sustainable implementation of specific projects)
- Ansparrücklage (surplus of foundation can be collected for four years after foundation to strengthen the proceeds of foundation)
- Umschichtungsrücklage (can be collected to insure against losses which might occur later when assets are redeployed)

8.2.2 Income and usufruct

Even though the person setting up a foundation transfers his private or corporate wealth assets to a separate legal entity, there are ways to continue the reception of income.

First of all, even the charitable foundation can be obliged to pay an income to the founder and his/her family (Stifterrente). This financial support, which can be up to one third of the foundation total income, should be used to financially support and maintain the founder and his family/relations “adequately” (which is checked by tax administration). For this kind of income recipients have to pay income tax (Sparkasse Saarbrücken, 2013, p. 31).

Secondly: in addition to the Stifterrente it is permissible to receive income for jobs done for, or “services” rendered to, the foundation.¹⁰⁹

The third case is more complex: Usufruct (Nießbrauch)¹¹⁰ Here, assets can be transferred to the foundation, but the donor can retain the financial profit/usufruct of those assets for himself or others whom he assigns. This lowers the value of the transferral and enables even higher transfers of assets. For example, real estate and houses go into the ownership of the foundation, the proceeds from rent remain with the donor etc. This construct cannot be applied 100%, since the foundation also needs income to fulfil their purposes and to preserve and sustain its substance. Usufruct quotas of around 50% are, however, not out of the ordinary. Usufruct entitlements cease when the entitled parties die.

A final option is the combination of a charitable and family foundation: Here the donor can stipulate that the charitable foundation has to transfer a percentage of assets to the family foundation until a certain basic amount has been reached. If this basic amount is reached,

¹⁰⁹ This is taken from p. 2 of Familienstiftung. In: Rose & Partner. Retrieved from <http://www.rosepartner.de/rechtsberatung/unternehmensnachfolge-stiftung/familienstiftung.html>. Retrieved at 2015, January 12. → Does it also apply for charitable foundations?

¹¹⁰ This point and the following: Doppelstiftung. In: Stiftungswissenschaften. Retrieved from <http://www.stiftungswissenschaften.de/category/stiftung/stiftungsmodelle/doppelstiftung>. Retrieval date 2015, January 12. (Bach, 2016b): ‚Ein weiterer Trick ist, dass der Schenker sich die Erträge des übertragenen Vermögens vorbehält, die den steuerpflichtigen Wert der Schenkung mindern, zum Beispiel durch Nießbrauch. So lassen sich noch höhere Vermögen steuerfrei übertragen.‘ Position 1162f.

transfers will cease. If the basic amount falls below the stipulated threshold, transfers have to resume. The family foundation on its part can distribute the transferrals to its members.

8.2.3 Running businesses via a double-foundation

8.2.3.1 *The business model*

A widespread and very useful vehicle for tax planning on the level of large businesses is the double-foundation, the sub-division of a business to a combination of family and charitable foundation.¹¹¹ That way, the interests of the founder and his family can be preserved and secured in the family foundation and tax privileges for the charitable foundation can be used, e.g. regarding the payment of regular corporation tax or the avoidance/reduction of inheritance and gift tax.¹¹² The trick is as follows: The family foundation only receives business assets which are required to secure both the sustenance of the family members (Destinatäre), the by far largest share of business assets is transferred into the charitable foundation. In order to exclude the public overseer from the charitable foundation to exercise influence in how to operate the business or how proceeds of the business are to be distributed, voting rights in the business are allocated “disquotal”, i.e. the other way round: Only the smallest amount necessary of voting rights lies with the charitable foundation, the by far largest share lies with the family foundation. The typical combination is that the family foundation contains only 10% of capital shares, but 90% of voting rights in the holding. Accordingly, the charitable foundation contains 90% of the capital and 10% of the voting rights.¹¹³

Equally important as the distribution of assets and voting rights is the distribution of proceeds. Since the charitable foundation owns most of the business, most of proceeds goes to this foundation and is tax privileged. The proceeds flowing in normally exceed that which the foundation needs to spend on its charitable purpose which causes a problem since charitable foundations cannot retain that which they cannot spend. According to German law, assets need to be spent within the year after reception. There are ways out, of course: For example, members of the family foundation might vote that the proceeds are retained in the business itself, which would increase the value of the business. Another option is that the rights of proceed-entitlements are regulated in a “disquotal” manner to ownership rights. In this case, however, the tax privileges would be reduced.¹¹⁴

Regarding the tax privileges arising from the charitable foundations ownership of the economic business (wirtschaftlicher Geschäftsbetrieb), only proceeds used for fulfilling the foundations purpose are exempt from corporation tax. Whatever is generated by the business beyond that is subject to corporation and local business income tax. Still the advantages of

¹¹¹ See Klümpen-Neusel, Cl. (2009) Die Doppelstiftung – eine steuerlich effiziente Gestaltungsmöglichkeit. In: Institut für Wissen in der Wirtschaft (IWW) Informationsdienste. Retrieved from <http://www.iww.de/sb/archiv/steuern-die-doppelstiftung--eine-steuerlich-effiziente-gestaltungsmoeglichkeit-f26476>. Retrieval date 2015, January 12

¹¹² When assets are transferred to the charitable foundation, no gift tax is payable. When assets or proceeds are transferred to the family foundation, no inheritance tax is payable but the reduced inheritance replacement tax.

¹¹³ See (Ernst & Young - Luther, 2006)!

¹¹⁴ Aus diesem Grund sollten neben den Stimmrechten auch die Gewinnbezugsrechte disquotal zur Beteiligungshöhe ausgestaltet werden. Bei einer von den Beteiligungsverhältnissen abweichenden Gewinnbeteiligung sind allerdings steuerliche Grenzen der Anerkennung zu beachten.

this construction are large compared with operating the same business as an unincorporated business (Personengesellschaft).

If the charitable foundation controls incorporate businesses (Kapitalgesellschaft) this participation is tax exempt which is why it is important that the business should have the legal form of an “AG” (public limited company, plc) or “GmbH” (private limited company, ltd).

A family foundation is subject to taxation. However, when establishing the foundation and transferring property one can gain advantages if membership in the foundation is reduced to the founder and member of his core family, which are taxed within the lowest taxation category, Steuerklasse I. If other members of the family should be considered it might be recommendable to establish another family foundation separately.

This kind of control of business assets via a combination of family and charitable foundations exists in the case of many eminent German businesses. One example being the long-time top German wealth holder, the Albrecht family:

8.2.3.2 Albrecht Family

The two Albrecht brothers, one of Germany’s largest wealth holder, discovered and implemented the option of establishing double foundations already in the 1970s.

In the case of the Aldi South (Karl Albrecht) and North (Theo Albrecht) families, the situation is as follows: Aldi South established the Siepmann (Karls mother’s maiden name), Oertl and Elisen-Foundation (the two latter advancing medical research and culture). The Siepmann Foundation controls 75% of the business. Aldi North established the Mark, Luke and James Foundation. Beneficiaries of the family foundations are direct family members of the two founding brothers. But beyond the support of family members is, when reading the charter of the Luke foundation, also the collection of funds for the payment of inheritance tax.¹¹⁵

Best of all: The charitable foundations managing the business are totally tax exempt, because this activity is not entrepreneurship (unternehmerische Tätigkeit), but mere administration of assets (Vermögensverwaltung).¹¹⁶

Aldi South finally transferred its financial operations to a Management-Holding in Salzburg, Austria, among others for tax reasons – central operations worldwide are now directed from there.¹¹⁷

Proper taxation of Family Albrecht’s wealth is therefore almost impossible, except, perhaps the family owned house, cash and valuables outside those foundations.

There are also other foundations by the Albrecht brothers, for example the Auridis Stiftung für sozial benachteiligte Kinder. Whoever works there is under obligation not to mention the

¹¹⁵ P. 36 of Jensen, S./ Schwarzer, U. Eine schreckliche schräge Familie. In: Manager Magazin (2014/12), pp. 31-42

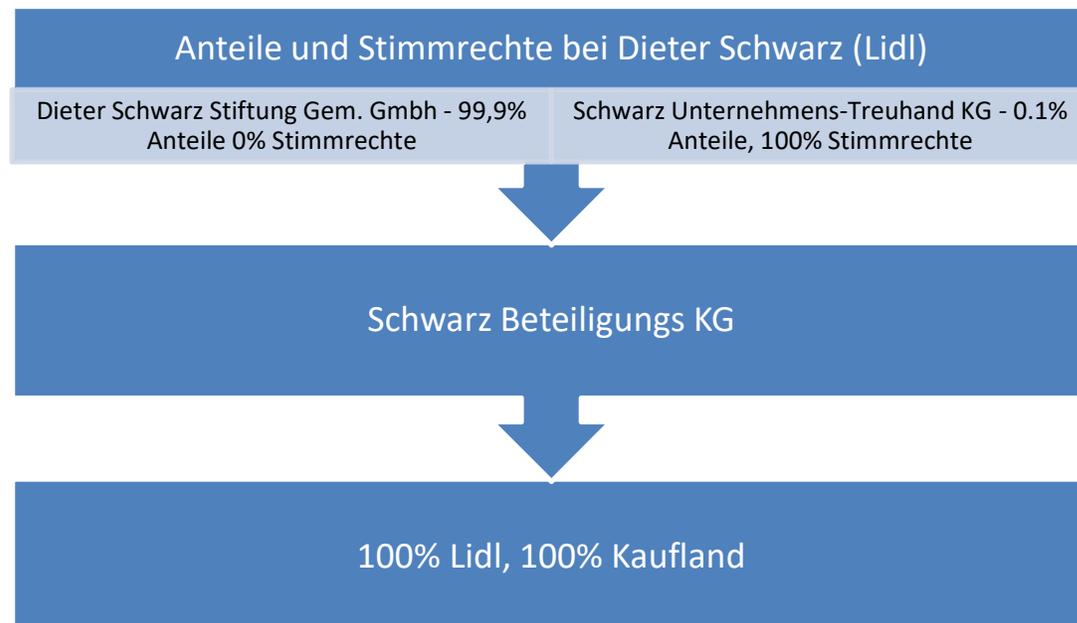
¹¹⁶ Giesen, Chr./Hulverscheid, Cl. (2014, July 22) Wie der Aldi-Gründer sein Geld vor dem Staat schützte. In: Süddeutsche Zeitung. Retrieved from <http://www.sueddeutsche.de/wirtschaft/karl-albrecht-wie-der-aldi-gruender-sein-geld-vor-dem-staat-schuetzte-1.2057911> .

¹¹⁷ P. 38 of Jensen, S./ Schwarzer, U. Eine schreckliche schräge Familie. In: Manager Magazin (2014/12), pp. 31-42

origin of money ensuring the foundations operation. It is also prohibited to tell those who profit from services the name and background of benefactors (Manager Magazin Spezial, 2014, p. 79). The question is, of course, how the money devoted to really charitable purposes relates in quantity to the other income and wealth of the donor.

8.2.3.3 Schwarz/Lidl

Also Dieter Schwarz transferred his assets into a foundation during his lifetime which in contrast to the foundations of the Albrecht brothers is a non-profit GmbH. Hence, it is not only almost completely inheritance tax free, but also corporation tax free. Even though the foundation holds 99.9% of the shares of the parent company of Lidl and Kaufland it has no voting right and thus no power in operative business. 100% of the voting rights are held by Schwarz Unternehmens-Treuhand KG which only has 0.1% of the parent company – on paper Schwarz has only Euro 13 mio and not 13 bn. Dieter Schwarz/Lidl (Manager Magazin Sonderheft, 2015, p. 50).



8.2.3.4 Götz Werner Stiftung

Another famous story is the “disinheritance“ of the children of dm Markt owner Götz Werner and the transfer of his company shares to a non-profit foundation. His children got a good education and have to establish themselves. One of his sons is marketing CEO of the company. His foundation shall secure that the current management board only earns that much profit that is necessary to keep the company’s stability. The surplus goes into charitable projects. “The foundation’s idea generates awareness that companies are spiritual-creative, economic-social organizations and that they need space for investment decisions reaching far into the future.”¹¹⁸

¹¹⁸ „Der Stiftungsgedanke schaffe Bewusstsein dafür, dass Unternehmen geistig-kreative, wirtschaftlich-soziale Gebilde sind und Freiraum für weit in die Zukunft zielende Investitionsentscheidungen brauchen“<http://www.unternehmeredition.de/vom-unternehmer-zum-stifter-motive-einblicke-perspektiven-2/>

Werner also established two foundations: The Donata-foundation supports since 25 years charitable purposes in the field of education and the dm-Werner foundation with the company shares as capital stock feeds again with its earnings this foundation.”¹¹⁹

8.2.3.5 Curt Engelhorn Stiftungen

A rather contested case is the one by Curt Engelhorn of the BASF. Its dealings caused a number of scandals, hitting the headlines. The following is taken from reports surrounding the tax evasion case of his daughters, which broke in Bavaria in 2016¹²⁰

In 1997, father Curt sold the traditional pharmaceutical company Boehringer in Mannheim for D-Mark 19 bn to the Swiss corporation Hoffmann-LaRoche. At that time, it was the biggest acquisition in Europe which also captured the attention for another reason. The sales profit was tax free due to a legal loophole which was immediately closed by the German Bundestag. “We avoided the tax trap successfully“ said Engelhorn happily in an interview. “Mr. Waigel will be angry.“ The residence and head-office of Corange Ltd. was relocated in time abroad, to Bermuda....

According to investigators‘ insights who sift through 50 boxes of material of evidence, P. is for more than a decade Engelhorns‘ lawyer and the same time manager of assets that are hidden in an intransparent network of letter box companies and dozen of foundation-like trusts. To the outside, the billionaire who bought his youngest daughter a historic villa including park in Starnberg as well as half of the Caribbean island “Five-Star-Island“ has no access anymore to his money.

Part of the prosecutors investigations is also Professor Reinhard P, one of Germanys leading tax lawyers.

Lawyer P. has general powers of the family and is also supervisor of different trusts. According to confiscated documents, he instructed the trustees located in Bermuda regularly to transfer the money needed by the daughters on a “lockage account” of their mother at the Zurich UBS Bank.

Curt Engelhorn was married with this woman before his current marriage. P. is CEO or shareholder of companies that are registered with the address of the office in Munich. He is also CEO of the ranch in Reichling. But the German judiciary cannot catch the 89-year old as he also lives in Switzerland. As the German tax investigators got informed only through the purchase of a CD with banking details, Switzerland does not give any legal assistance. If the deal with the judiciary will take place as planned, the daughters are allowed to travel to Germany without being impeded with imprisonment.

8.2.3.6 Robert Bosch Stiftung

The following is taken from Wikipedia¹²¹

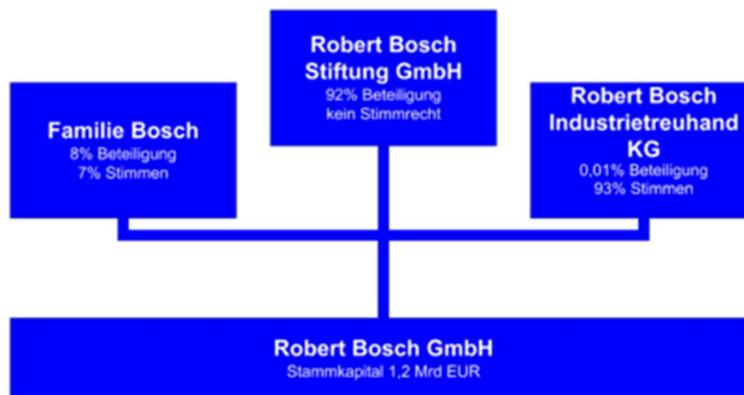
The Robert Bosch Foundation is a [Kapitalgesellschaft](#) in the form of a [GmbH](#) while the company only has in its name the legal form of a [Stiftung](#) and therefore is a “foundation-like legal entity“. The corporation owns 92% of the [Stammkapitals](#) of [Robert Bosch GmbH](#) of Euro 1.2 bn. In 2013, the total budget was Euro 70 mio. ¹²¹

¹¹⁹ Koenen, J./ Schier, S. (2012, March 26) Wenn Mittelständler stiften gehen. In: Handelsblatt. Retrieved from : <http://www.handelsblatt.com/unternehmen/mittelstand/nachfolgeloesung-wenn-mittelstaendler-stiften-gehen/6203086.html>

¹²⁰ Richter, P. (2016, January 23) Haben zwei Millionärs-Töchter 80 Millionen Euro hinterzogen? In: Augsburg Allgemeine. Retrieved from <http://www.augsburger-allgemeine.de/bayern/Haben-zwei-Millionaers-Toechter-80-Millionen-Euro-hinterzogen-id36690557.html>

¹²¹ <https://de.wikipedia.org/wiki/Robert-Bosch-Stiftung>

As stockholder of the Robert Bosch GmbH, the foundation gets parts of the distributed dividends while it is as non-profit foundation not doing business. It transferred the voting rights of the shares to Robert Bosch Industrietreuhand KG which means a clear separation of economic and philanthropic aspects. The foundation holds its assets as defined by Robert Bosch. The purposes of the foundation are exclusively non-profit and are operatively and supportively implemented. Divided into four program areas the foundation fulfills its promotional program. In order to pursue its goals, it supports projects of third parties and has its own development and implementation of programs. In Stuttgart, it runs three institutions: [Robert-Bosch-Krankenhaus](#), [Dr. Margarete Fischer-Bosch-Institut für klinische Pharmakologie](#) and [Institut für Geschichte der Medizin](#), which holds the bequest of [Homöopathie](#) founder [Samuel Hahnemann](#). In 2013, the Robert Bosch Foundation supported education, social and research projects with a total of Euro 70 mio. Since 1964 the total amount is more than Euro 1.3 bn.



8.2.3.7 Other examples

- Deichmann (Berger) family Deichmann (Euro 3.35 bn) who manages its chain of shoes via a number of subsidiaries and sales companies that are not subject to publication requirements and are managed tax optimized by a family foundation in Luzern.
- Betz (Berger)
- Diehl (Berger: steuerbegünstigte Familienstiftung, see 8.1.5)
- Thyssen (Engelmann)
- Brenninkmeijer: COPRA im Kanton Zug
- Reiman Financial Holding for companies in Luxembourg, corporations with family shares in Austria (inheritance tax!). (Universität St. Gallen, 2014a, p. 28). In the Reimann case it is also interesting to see that besides the 5 Kernbeteiligungen other shares are mainly used for the administration of liquidity (i.e. financial assets) and “tax optimization” (Universität St. Gallen, 2014a, p. 32)
- Theo Müller (Manager Magazin 2015: 19): Unternehmensholding in Luxemburg, die eine weitere Holding auf Zypern kontrolliert – dazu privatwohnsitz in der Schweiz.

8.2.3.8 Foundations plus residence abroad

Switzerland

- Sachs (Schlötterer)
- Betz (Berger)

- Finck (Berger)
- Diehl (Schlötterer)
- Müller (Manager Magazin 2015: 19)

8.2.4 Conclusion

There are tax advantages to consider for wealthy persons by transferring private assets either to the foundation or the business which is managed by one of those foundations. Since ownership and control is still with the one transferring the items, there is no real damage done and influence and power retained.

Due to trust constructions, those commissioning them are at times rather poor people, for example Dieter Schwarz, who merely owns 0.1% of his own company because the rest is part of another foundation. Similar relationships exist when a business is no longer privately owned or controlled, but part of a business foundation, where members of the donating family are “merely” part of the Executive Officers or the Supervisory Board. In all cases it is obvious that this is not reflecting the real

8.3 Foundations & the state

8.3.1 Pros & cons of foundation and state

Foundations are not aiming at giving the poor what the state cannot. In fact, giving for basic needs represents a surprisingly small percentage of foundation activity. Indeed it represents a surprisingly small percentage of all charitable giving. (Reich, 2013)

When asked about motivation to participate in society, the following typical answers were given (El-Sehity & Schor-Tschudnowskaja, 2011, p. 164):

If you participate in society, you can influence society	50.4%
The state cannot solve all problems. I feel the obligation to assume responsibility here.	60.4%
Social and charitable organizations need whatever support they need. I feel the obligation to support them	65.7%
Wealthy persons have a higher social responsibility to get involved than those not as wealthy, including financial engagement and philanthropy	65.9%

Primarily, it is not about taking over something from the state, but about being engaged where he is not or he even hopes that he can take over sometime. Stifterstudie 2005 & 2015:

Statement to be judged	Agree fully/ mostly 2005	Agree fully/ mostly 2015	Disagree mostly/ fully 2005	Disagree mostly/ fully 2015
Foundations shall implement the ideas and intention of founder	18	76.6	56	8.9
Foundations act independently from social trends and public opinion		79.9		8.4
Foundations shall not replace state responsibility but complement it	70	79.5	9	11.9
Foundations are more better/ efficient than the state	80	37.7	3	33.8
Foundations should support projects who have difficulties acquiring funds	81	52.9	3	22.7
The state shall not solve all problems. It is important that private initiative comes in	83	53.9	3	25.6
If the state were as it ought to be, foundations would not be	26		52	

needed				
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Even if the question in 2015 was different from 2005 and was evaluated differently, the strong variation of the topic “donator’s will“ still exists. Also, that the beauty of foundations is that they can operate independently from trends and majorities. It is interesting that foundations are supposed to balance state deficits and that it hopes to take over later. That the state is not able (anymore) to do by himself or support because the rich do not pay their taxes is not mentioned anywhere! It is okay that wealthy or foundations cover niche topics before they become mainstream. But many things that foundations do cannot be done by the state anymore because the wealthy do not support him anymore sufficiently. And then one has to ask whether foundations are really better for the big picture!

8.3.2 Alternatives, because no adequate taxation in place

In Germany, a number of top wealth holder donate or establish foundations because they think that taxation would be better. But since there is no adequate taxation of top wealth holder they donate or support/establish foundations. For example: Donor I sees her engagement as contribution to more justice in the sense of redistribution of goods: “It is a small, a tiny contribution to [longer thinking] well, the generic term is more justice.” She delineates afterwards why she considers a capital levy as important (Leseberg & Timmer, 2015, p. 119).

And Donor II puts it as follows: “Now the question is what is better: that all wealthy donate or that there are more taxes – or both. But the direction that the gap is more and more widening and that the wealthy get more and more rich and then do some foundations, I object. I think taxes are better.“ (Leseberg & Timmer, 2015, p. 172f.)

8.3.3 Tax privileges surrounding foundations

There are different tax privileges when establishing, when running and when dissolving a foundation:

8.3.3.1 Establishing a foundation

For private persons, the establishment of a foundation is tax exempt as “extraordinary expenses”. Whenever adding assets to a foundation, up to a maximum equivalent of 20% of the donors total income are tax deductible and can be reclaimed as “extraordinary expenses”. That which exceeds the limit in one year can be carried forward without limitations to subsequent assessment years. In addition once in ten years donors can claim EUR 1 million for transfers into the stock of the foundation (Grundstockvermögen), can be EUR 2 million in the case of couples. (Sparkasse Saarbrücken, 2013, p. 27ff.)

→ The normal procedure today is a gradual endowment contribution and not the one-time-foundation as it has tax advantages since 2007. Maybe that is why there is a trend away from a sole donator to couple/partner foundations. (Leseberg & Timmer, 2015, p. 63+86)

If corporations set up foundations, they, too, can claim tax deductions up to 20% of total income, but if it is more profitable for them they can reclaim 4 per mille of the sum of annual turnover, wages and salaries. Capital companies cannot do that, partnerships can deduct the amount from business tax. If the business owner transfers assets from the business into the foundation, the book-values counts, not the market value – i.e. there is no need to publish the

difference to the potential market value which allows silent reserves (stille Reserven) to remain hidden and unpublished.¹²²

Generally, foundations are exempt from business and corporation tax. But they may be subject to inheritance and gift tax. Charitable and ecclesiastical foundations are exempt from inheritance and gift tax, provided that the charitable purpose exists for the first/at least ten years. If the charitable purpose exists not that long, inheritance/gift tax has to be paid retrospect.

For family foundations inheritance substitution tax (Erbersatzsteuern) apply every 30 years, which is, however, less than regular inheritance tax.

‘When endowing the assets of the foundations from a tax perspective the possibility of transferring firm estates or other firm assets as „Privatvermögen“ should always be examined, including the option to “let” it to the business for use afterwards.’¹²³

The transfer of property to a foundation is exempt from property transfer tax.

8.3.3.2 During its existence

Regarding tax privileges when gradually increasing the foundation assets over a longer period of time, see 8.3.3.1

Taxation of a foundation is only relevant if the foundation operates economic businesses and its commercial activity and proceeds surpass that which is needed for the regular wealth management and administration of the foundation. Business and corporation tax applies only if the turnover (including turnover tax) surpasses EUR 35,000.

Tax privileged are Zweckbetriebe, which serve the tax privileged purposes of the foundation, e.g. supporting homes for the old or sick, children or students.

8.3.3.3 Dissolving

In the case of dissolving foundations, proceeds are only subject to tax if assets are transferred to non-charitable purposes. If proceeds are transferred from one charitable business to another no taxation occurs.

8.3.3.4 Open and hidden tax relevant issues

In parts, the interest in tax saving aspects when setting up foundations is obvious, in parts it is hidden. Obviously, when interviewed about motivations underlying the setting up of a foundation it cannot be assumed that people are open about their tax avoiding intentions. This applies even then if the interview is conducted anonymously. Rather, they talk about more acceptable motivations.

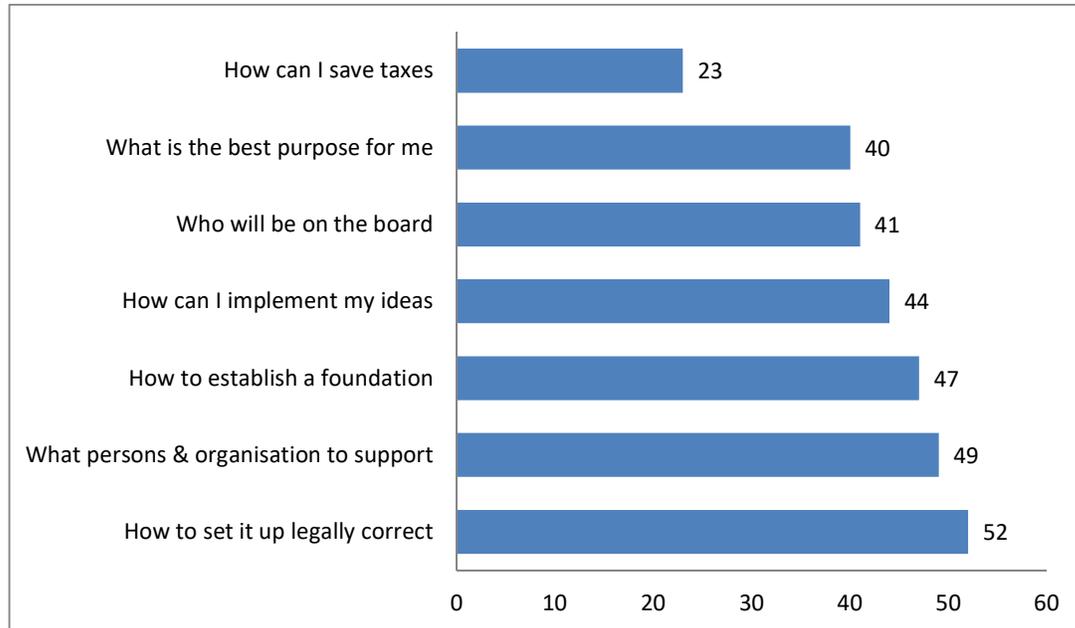
No honesty about motivation is heightened if those surveyed had to reply to pre-formulated questions, as is the case in the Stifterstudie. The question then is whether people here are really honest or whether they try to obscure their interest. When asked, what pre-occupied

¹²² See for precise conditions (Schmallowsky, 2012)

¹²³ Unternehmensstiftung. In: Rose & Partner. Retrieved from <http://www.rosepartner.de/rechtsberatung/unternehmensnachfolge-stiftung/unternehmensstiftung.html>. Retrieved at 2015, January 13.

them most when they got started with setting up a foundation, tax related issues achieved a surprisingly low score, contradicting other findings. However, it could be hidden also in the question achieving the highest score, namely “setting it up legally correct.”

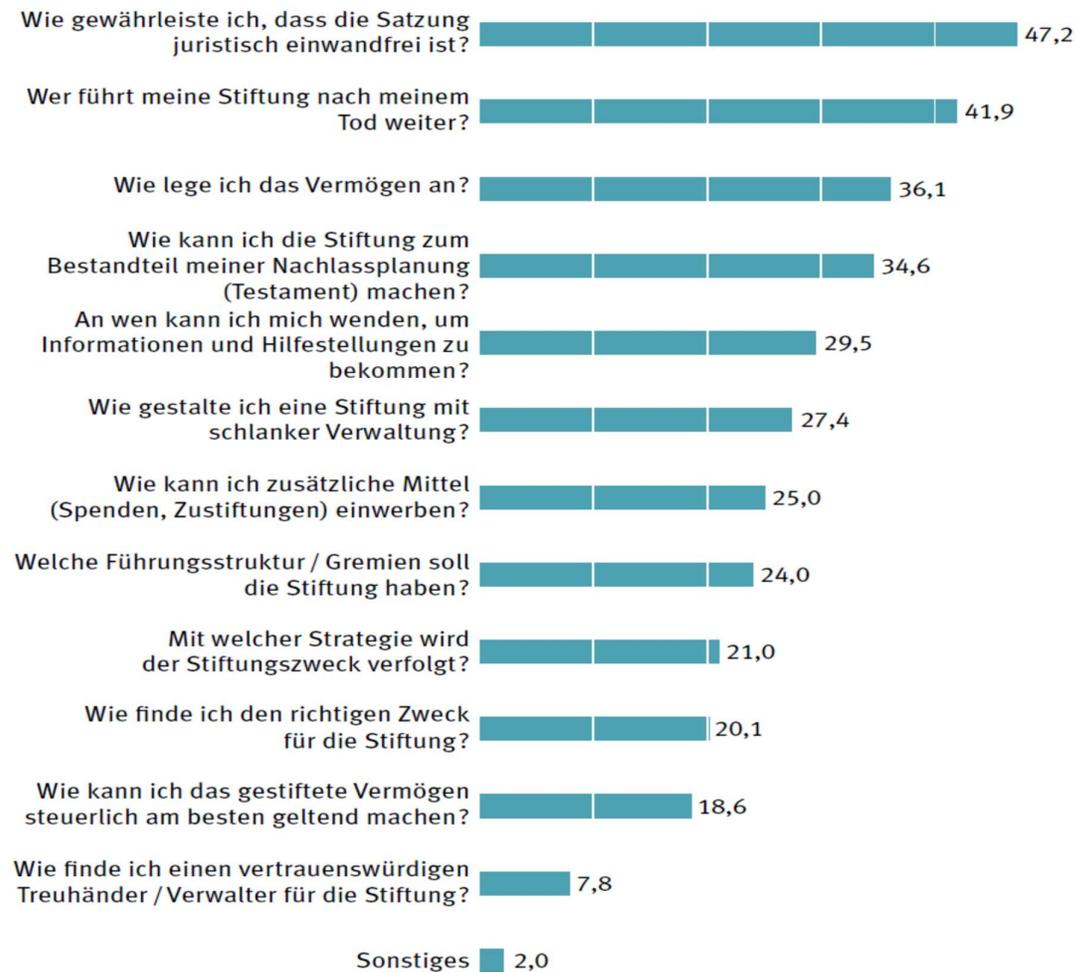
On that background, the 2005 Stifterstudy has the following ranking:



The 2015 Studie has the following ranking – apparent is that the importance of saving taxes decreased, compared to 2005 from 23% to 2015.

„Technische“ Fragen stehen bei der Stiftungsgründung im Vordergrund

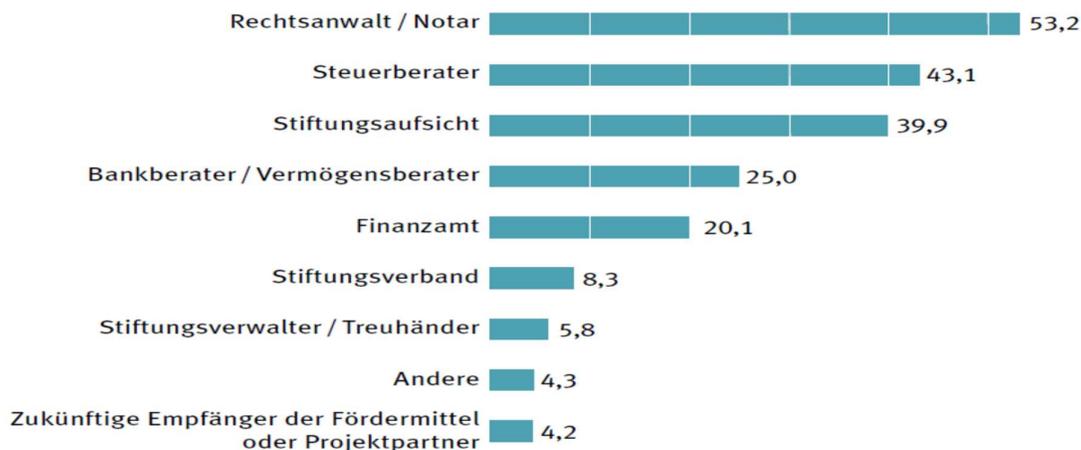
„Welche Fragen haben Sie bei der Gründung Ihrer Stiftung besonders beschäftigt?“
(in Prozent)



Source 7 (Leseberg & Timmer, 2015, p. 90)

At the other hand, different from the 2005er study, it is in 2015 more important that not only family and friends are consulted when considering or even setting up a foundation. Now experts play an increasingly important part in 91.3% of all cases. And, if one looks at what experts they are, tax experts rank second! Deeds betray intentions.

„Welche fachliche Beratung haben Sie im Gründungsprozess in Anspruch genommen?“ (in Prozent)



Mehrfachnennungen möglich. n = 601 Stifter rechtsfähiger Stiftungen bürgerlichen Rechts

Source 8 (Leseberg & Timmer, 2015, p. 95)

The same emphasis can be found when trusts are established. There the tax advisor is ranked second with 31% after the foundation/trust advisor (Leseberg & Timmer, 2015, p. 135).

Interestingly, the support a donor gets in Germany is concentrated on establishing the foundation (‘good statutes, optimal tax usage or profitable asset investment’), less on the question of application of funds which would mean the inclusion of project partners and potential receivers. This is reinforced when one looks at the priorities of the donors.

Another tax-saving element is the increasing importance of couples setting up a foundations (because they profit twice from tax privileges), the Zustiftungs-Model and the setting up of foundations for fundraising purposes, so that everybody has his/her own charity in order to collect money and write out tax deductible receipts.

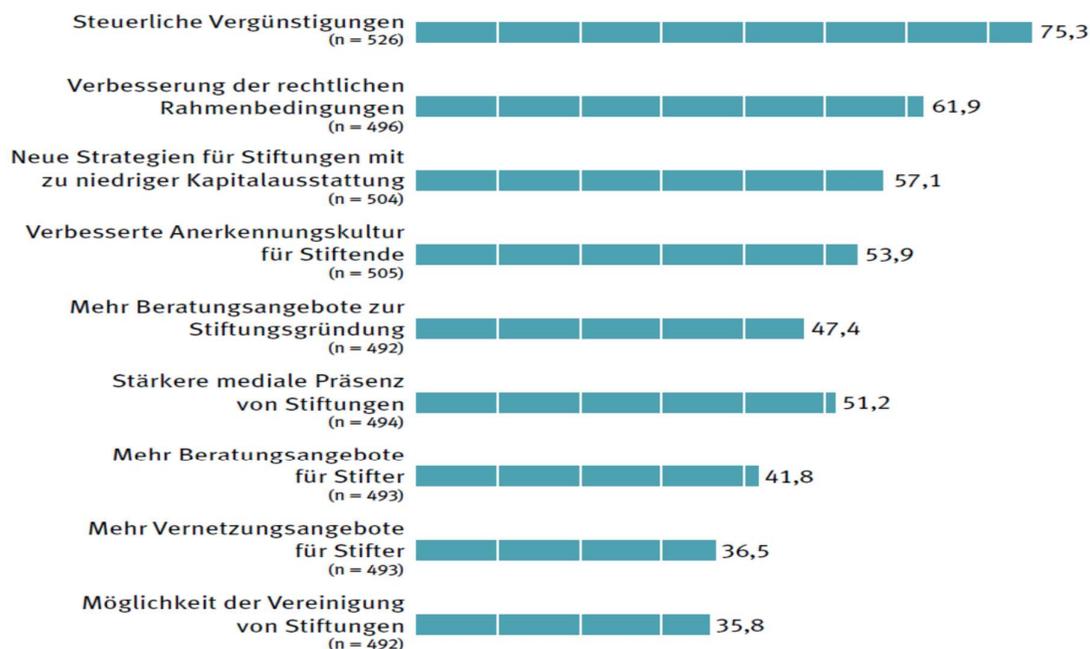
There is critique that thereby much “dead capital“ lies about which could also be transferred to the foundation purpose and be used. This possibility would also exist via the Verbrauchsstiftung. But this hardly used as the latter does not have any comparable tax advantages. (Leseberg & Timmer, 2015, p. 116).

Last not least: Even though it is always been said that tax issues, e.g. the reform of foundation law, is only important for 3.4% if the donors. But when asked in a different way, like what could be motivating, the answers are (Leseberg & Timmer, 2015, p. 72).

Improvement of tax advantages (75.3%) and of legal conditions (61.9%) are leading by far, even when among the current donors only 22.7% state to transfer more in their existing foundations if tax conditions were to be improved. And: Only 30% state that they have preferred foundations over other forms of doing good due to tax reasons. (Leseberg & Timmer, 2015, p. 192f.)

Stifter wünschen sich bessere Rahmenbedingungen für das Stiften

„Wie könnte stifterisches Engagement in Deutschland Ihrer Meinung nach besser unterstützt werden?“ (in Prozent)



Nennungen der Werte 1 und 2 auf einer 5er-Skala: 1 = trifft voll und ganz zu, 5 = trifft gar nicht zu

Source 9 (Leseberg & Timmer, 2015, p. 194)

8.3.4 Tax administration

For tax practitioners, trusts and foundations are a major problem in discovering the beneficiary ownership of wealth and income. Here it is admitted that trusts and foundations are not bad as such. If it is used, however, in a manner which is contrary to that which the lawgiver originally intended when creating the option then it should be addressed by the legislator again. From the assessment departments view,

I don't have any experiences. If the declaration states somewhere that there is income from foundations or trusts then this will be checked. But if the foundation is abroad then in principle a request can be sent to the local officers as they also request us. If you get the information in time is another question. The taxpayer has to be informed in these cases of request. There is not much experience with such foundations. Investigating services have to do this as they have more experience and time. Zentralfinanzamt Nürnberg may be specialized. There are investigators on the federal level. But the tax audit cannot say much about that unless they invest a lot of time.

8.3.5 Conclusion

(Friedrichs, 2015, p. 271f.), herself benefitting from an Inheritance, criticizes that foundations are subsidized because they are tax-privileged and at the same time beyond democratic control or even co-determination. Foundations are more favorable in terms of taxes than donations.

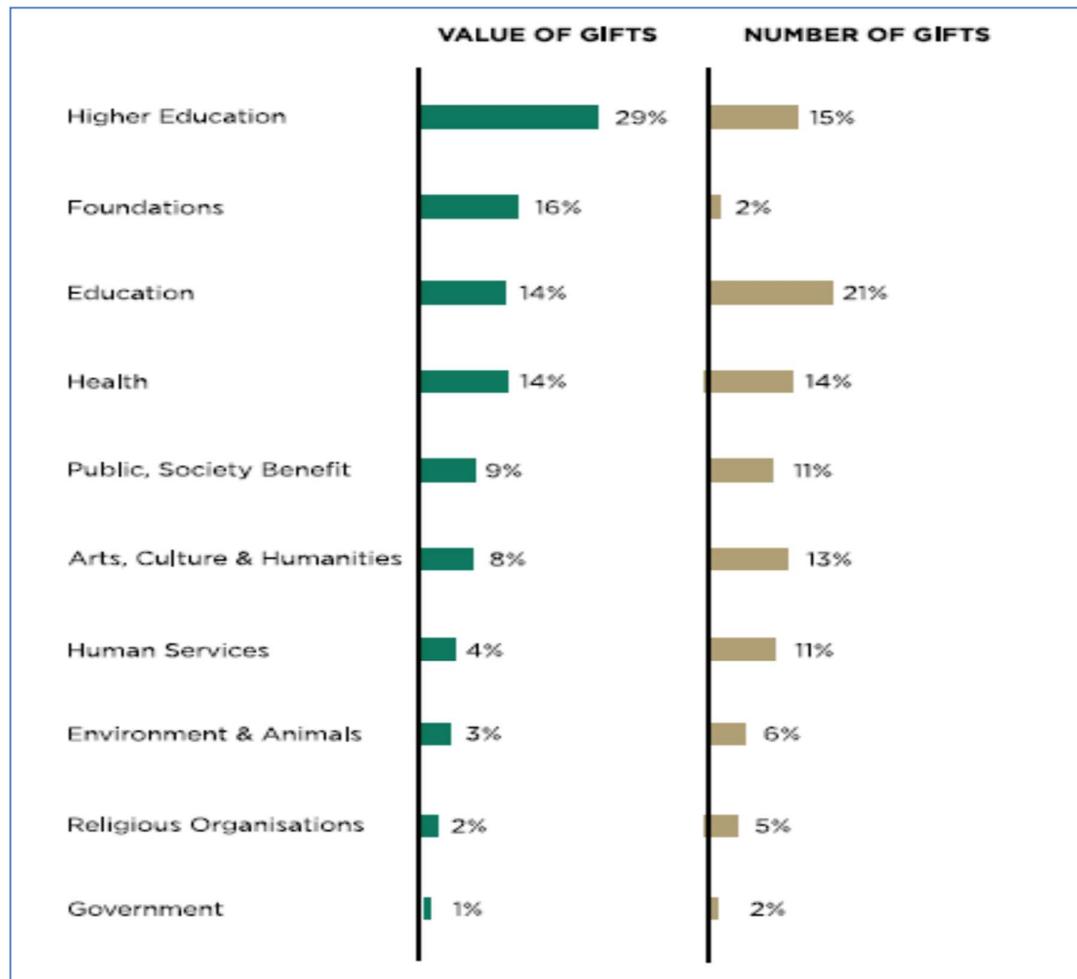
Philanthropic charity in the end is paid by us all, not only because of tax privileges of the foundation, but rather for all the needs which are not covered by foundation and need to be financed by the wider public with their taxpayers money. I.e. because the wealthy follow and advance their preferences via tax privileged foundations, putting in money which otherwise could have taxed, the burden on the regular taxpayer to bridge the opening gap is larger than otherwise. (Reich, 2013)

9 Supported causes

If not specified further, it is not distinguished between support via donation, in-kind, time or foundation.

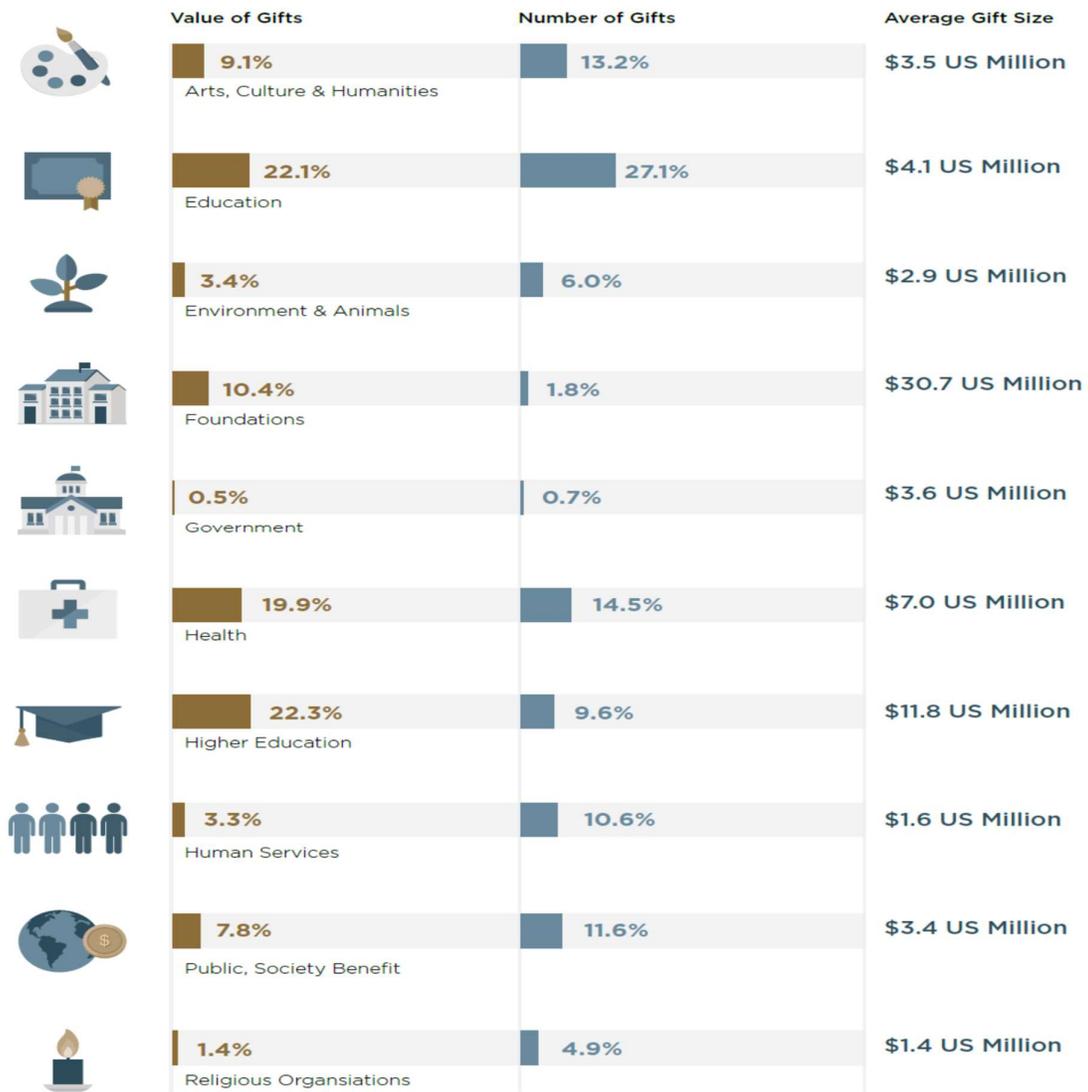
9.1 International overview

Foundations are not there to give to the poor what the state cannot. In fact, giving for basic needs represents a surprisingly small percentage of foundation activity. Indeed it represents a surprisingly small percentage of all charitable giving. (Reich, 2013)



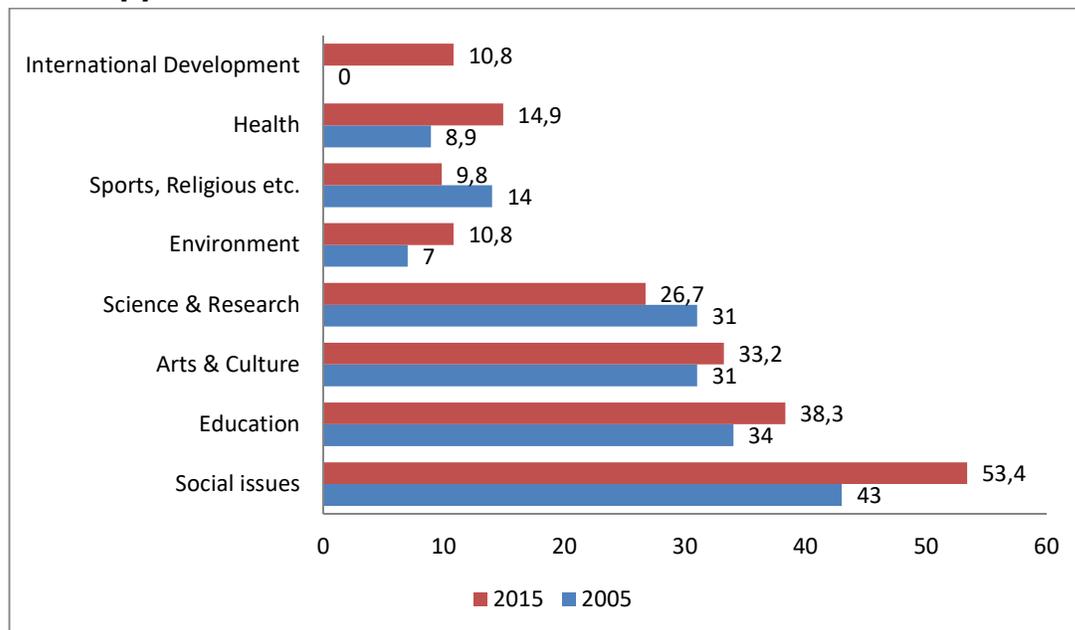
Source 10 (Wealth-X; UBS, 2014, p. 28)

UHNW PHILANTHROPIC CAUSES



Source 11 (Wealth-X; Arton Capital, 2015, p. 16)

9.2 Support of causes via foundation



In 2015, social issues still dominate, environment and health are considerably growing, religion decreases and international development re-emerges. (Leseberg & Timmer, 2015, p. 105ff.)

9.3 Age dependence regarding causes

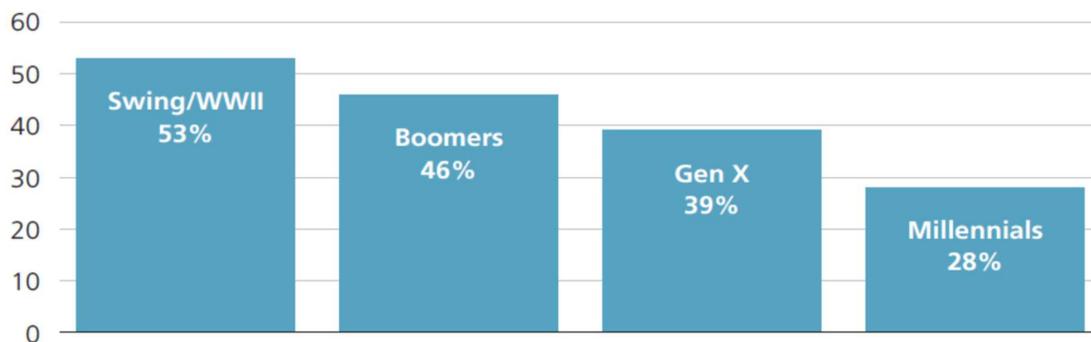
The UBS report also states shifts both in supported causes of philanthropy and means of preference. Regarding the cause the following graphic is interesting:

Question: "To what philanthropic causes have you donated in the last year?"

	Swing/WWII (Ages 68+)	Boomers (Ages 49 – 67)	Gen X (Ages 37 – 48)	Millennials (Ages 21 – 36)
#1	Help the less fortunate	Help the less fortunate	Help the less fortunate	Help the less fortunate
#2	Religious organizations	Religious organizations	Fight diseases	Fight diseases
#3	Alma mater	Fight diseases	Religious organizations	Education/kids' programs
#4	Fight diseases	Alma mater	Alma mater	Religious organizations
#5	Education/kids' programs	Education/kids' programs	Education/kids' programs	Alma mater

Support for religious organizations varies the most

Question: "To what philanthropic causes have you donated in the last year?" (Percentages show those who have donated to religious organizations.)



Source 12 (UBS, 2014a, p. 8)

10 Motives regarding volunteering giving

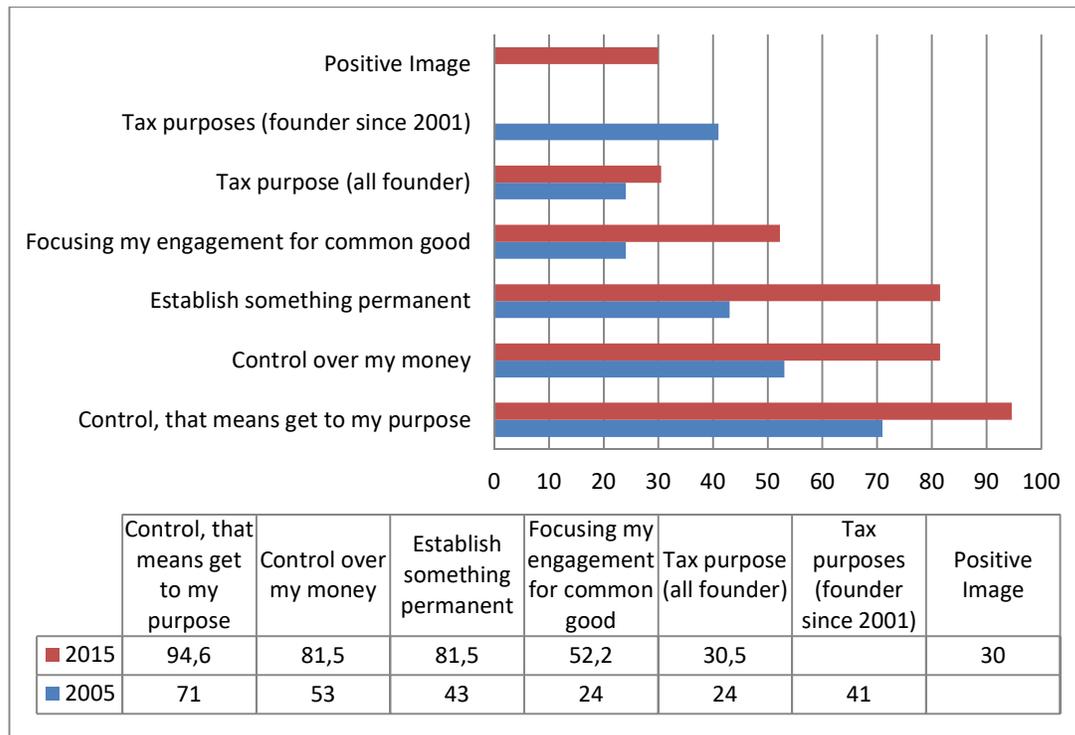
An important question is what we know about the motives of wealthy people to donate, set up NGOs or foundations and get involved in them.

10.1 Survey

(Leseberg & Timmer, 2015, p. 57ff.). Why to choose the legal form foundation instead of donating or personally engaging in an association? The most important reasons:

1. To ensure that the money benefits the purpose I have chosen for a long time (94.6%)

2. To decide myself how my money is used (81.5%)
3. To create something that lasts beyond my own life (81.5%)
4. To bundle my engagement in one organization (52.2%)
5. Tax-wise an attractive legal form (30.5%)
6. To chose a legal form with a positive image (30%)



Transcendent reference of foundations became remarkably more important, increased from 43% to 80% (2014) (p. 61)

Especially strong increase of trusts, at the same time one does not really know why (because they are not statistically recorded) and for what purpose they are used (Leseberg & Timmer, 2015, p. 126).

10.2 Responsibility to “give back”, do good, wealth entails responsibility

The UBS survey „Doing well at doing good“ indicates that motives for philanthropic engagement is shifting with generations and that the motivation of „giving back“ is more strongly with the WWII and Baby boomer generation, while younger generations are more enthusiastic about supporting causes about which they feel strongly (UBS, 2014a, p. 9)

(Perry, 2007) Wealthy people in Germany are concerned about social inequality and tension within society.

A tax advisor among the conversation partners puts it as follows:

Many people see a responsibility for the community that goes beyond paying taxes, but rather think of foundations than of higher taxes or even donations to other organizations. It also plays a role here that they think they are best in dealing with money. The fact that foundations are charitable, enjoy tax privileges is naturally seen and used. It is also very important that foundations enable rich people to decide themselves about their money use and maybe even to set a memorial. In a foundation, it is also secured that their own ideas are set forever and cannot be changed from unloved heirs and family members. The question of course is whether the unchangeable defining of foundation purposes is not the anachronism in today's fast changing world.¹²⁴

10.3 Desire to keep and exercise control

The study into the motivation of founders comes to the following conclusion:

Decisive is the possibility to keep respectively perpetuate the right of disposing. Therewith is linked the sustaining of more power in society and politics, which is quite egocentric. One donator is cited: "I know which point this was. When she (the other founder) was in the board she was supposed to work out a concept. Then the ideas ended in the decision-makers' drawers. This made her very upset as she wanted to implement them as well." There it seems not to matter whether the rejection was due to good or bad reasons. One just does it because one can. Another advantage in a foundation is that there is less need to check with others.¹²⁵

The desire to dominate and control is also visible in the following: 92.6% of those setting up a foundation are either part of the board supervising the foundation or run the operations directly (Leseberg & Timmer, 2015, p. 101).

¹²⁴ Viele sehen eine Verantwortung für das Gemeinwesen, die über das Steuerzahlen hinausgeht, denken dann aber eher an Stiftungen als an höhere Steuern oder gar Spenden an andere Organisationen. Hier spielt auch hinein, dass sie davon ausgehen, dass Sie am besten mit Geld umgehen können. Dass Stiftungen, die gemeinnützig sind, Steuerprivilegien genießen, wird natürlich gesehen und gerne genutzt. Ganz wichtig ist natürlich auch, dass Stiftungen reichen ermöglicht, über die Verwendung seines Geldes selbst zu entscheiden und sich vielleicht sogar ein Denkmal zu setzen. In einer Stiftung wird auch sichergestellt, dass seine eigenen Vorstellungen auf ewige Zeiten festgeschrieben sind und von ungeliebten Erben und Familienmitglieder nicht geändert werden können. Die Frage ist natürlich, ob die unveränderliche Festschreibung von Stiftungszwecken in der heutigen sehr wandelbaren Welt nicht den Anachronismus ist.

¹²⁵ Entscheidend ist aber die Möglichkeit, Verfügungsrecht zu behalten bzw. zu perpetuieren. Damit ist durchaus verbunden, mehr Macht in Gesellschaft und Politik zu erhalten, also ziemlich egozentrisch. Eine Spenderin wird wie folgt zitiert: „Ich weiß, welcher Punkt das war: Als sie [die andere Stifterin] dort im Vorstand war, sollte sie ein Konzept ausarbeiten. Die Ideen landeten dann in den Schubladen der Entscheider. Das hat sie sehr geärgert, denn sie will auch umsetzen.“ **Dabei scheint egal zu sein, ob die Ablehnung mit guten oder schlechten Gründen erfolgte. Man machts einfach weil mans kann.** Dabei ist ein weiterer Vorteil in einer Stiftung, dass es für den Stifter weniger Abstimmungsbedarf mit anderen gibt. (Leseberg & Timmer, 2015, p. 62ff.)

65 Prozent der Stifter engagieren sich im Vorstand

„In welcher Form engagieren Sie sich in Ihrer Stiftung?“ (in Prozent)



Mehrfachnennungen möglich. n = 598 Stifter rechtsfähiger Stiftungen bürgerlichen Rechts

Source 13 (Leseberg & Timmer, 2015, p. 155)

In addition, the share of family, relatives and friends in boards of foundations increased: While in 2005 there were 31.5% from this group in committees, currently there are 40%.

In den Gremien dominiert das private Umfeld der Stiftenden

„Wen haben Sie in die Gremien der Stiftung berufen?“ (in Prozent)



Source 14 (Leseberg & Timmer, 2015, p. 102)

Via telephone, Timmer explains: Trust is more important than expert knowledge: therefore are more family members, friends and acquaintances in foundation

Even the positive image becomes a means, as Donator J admits:

‘At some time, I decided that I now need something which gives me a bit more power as a relative. Especially when I want to approach politics. ... The foundation of donator J just has very low capital but it allows her to be perceived not as a single person but as a powerful organization.’¹²⁶

Influence is exerted: Most foundations forward money to organizations that do the work (65%), only 28.9% do the work themselves, i.e. via own projects or offers or via institutions of which they are the charitable Träger¹²⁷

When expenditures of foundations and state are compared one finds most agreement from donators that the foundation exists to implement the donator’s expectations (76%), and this against the current media trends and excitements (79%).

¹²⁶ ‘Ich habe irgendwann beschlossen, ich brauche jetzt irgendwas, was mir ein bisschen mehr Macht verleiht als Angehörige. Gerade wenn ich an die Politik rangehen will. ... Die Stiftung von Stifterin J verfügt zwar nur über sehr geringes Kapital, ermöglicht es ihr aber, nicht als einzelne betroffene Person, sondern als schlagkräftige Organisation wahrgenommen zu werden.’ (Leseberg & Timmer, 2015, p. 64)

¹²⁷ Einfluss wird ausgeübt: Die meisten Stiftungen leiten Mittel an Organisationen weiter, die die Arbeit machen (65%), nur 28.9% machen die Arbeit selbst, d.h. über eigene Projekte oder Angebote, oder über die Institution, deren gemeinnützige Trägerschaft sie sind (6.2%). (Leseberg & Timmer, 2015, p. 108)

The same attitude exists towards the state: The state wastes money and spends money on things I do not approve. In the foundation, I can control this (zit in Friedlich p. 274).

The Stifterstudie 2015 rejects the thought that those establishing foundations exercise undue influence: ‘Like the findings show, the donators have much influence on the foundation. But they are also bound to the charitable law which is examined by the financial authority. The Satzung of the foundation is also binding for the donator and the foundation board controls this.’¹²⁸

Here, however, we have the problem of wide interpretation regarding the criteria and the application of the Satzung, and we have the perennial problem of resources on part of the tax administration whose task is to execute checks and control.

But this is nothing really new. Even if people pay much taxes they think they have more rights to determine than those who pay little taxes. A tax consultant illustrated his experience as follows:

And one surely meets many people who want to join in the conversation heavily how their taxes are spent even if they would not consider discreet talks with their Members of Parliament or tax collectors as purposeful exertion of influence. About that they do not really think about – it is simply like that.

10.4 Desire to establish an enduring legacy

According to Timmer, the desire to create a memorial is an important and driving force behind setting up foundations:

Taking a closer look it is important to donators to be acknowledged – even if not necessarily publicly or by the media. This becomes clear by the fact that quite a lot of them name their foundations after themselves and that the “eternity thought“ for many is so meaningful. Of course, the link “donating to increase the reputation“ was seldom answered even when anonymized.¹²⁹

For such an egocentric motivation accounts that for the donators the maintenance of the foundation’s assets is most important (92.4%). Involving independent experts (49.8%), transparency towards the public (48.8%), or publication of the donations guidelines (26.6%) fall behind.¹³⁰

¹²⁸ ,Wie die Ausführungen zeigen, haben die Stiftenden viel Einfluss auf die Stiftung. Aber sie sind natürlich an das Gemeinnützigkeitsrecht gebunden, dessen Erfüllung das Finanzamt prüft. Nicht zuletzt ist die Satzung der Stiftung auch für Stifter bindend und die Stiftungsaufsicht kontrolliert, ob diese umgesetzt wird.’ (Leseberg & Timmer, 2015, p. 175)

¹²⁹ Stiftenden ist es bei genauerer Überlegung doch wichtig, anerkannt zu werden – wenngleich nicht notwendigerweise öffentlich oder medial. Das wird auch dadurch deutlich, dass doch recht viele ihre Stiftung nach sich benennen und dass der „Ewigkeitsgedanke“ für viele so bedeutend ist. Natürlich wurde die Verknüpfung „Stiften, um Ansehen zu erhöhen“ auch in anonymisierter Form selten beantwortet. (Leseberg & Timmer, 2015, p. 162f.)

¹³⁰ Für eine solche egozentrische Motivation spricht: Am wichtigsten ist dem Stifter der Erhalt des Stiftungsvermögen (92.4%). Die Einbindung von unabhängigem Sachverstand (49.8%) oder Transparenz gegenüber der Öffentlichkeit (48.8%) oder die Veröffentlichung der Förderrichtlinien (26.6%) fällt dahin zurück. Es gibt zwar Kritik, dass dadurch viel „totes Kapital“ herumliegt, welches doch eigentlich auch dem Stiftungszweck zugeführt werden und aufgebraucht werden könnte. Die Möglichkeit gäb es auch über die

10.5 Freedom to choose cause

Timmer They start doing it already during lifetime in order to establish its course and cause and not entrust others in whose expertise they do not trust.

10.6 Passion about causes and happiness

The UBS survey „Doing well at doing good“ indicates that motives for philanthropic engagement is shifting with generations and that the motivation of „giving back“ is more strongly with the WWII and Baby boomer generation, while younger generations are more enthusiastic about supporting causes about which they feel strongly (UBS, 2014a, p. 9)

As the Capgemini Report states, it is young people who are most enthusiastic about Impact Investment. This has to do with their tendency to align in ‘their wealth with their values by engaging in values-based investing, and making buying and career decisions based on their core values.’ (UBS, 2014a, p. 10)

(Rickens, 2009): Der liberal-intellektuelle verfolgt causes and values

Timmer: Wichtigster Antrieb zur Stiftung ist das Herzensanliegen

10.7 Stifterreport 2005 und Stifterreport 2015

An interesting difference can be seen between the Stifterreport 2005 and Stifterreport 2015: The former is clearly more critical of foundations than the latter is.

Especially in the concluding part, the 2005 study is very open: “Foundations are elitist and non-democratic. Independently of the good deeds done by them, this insight consolidates from a sociological point. Founder overwhelmingly belong to the better off and wealthy segments of society; they withdraw their money democratic procedures by placing it in a foundation.’ That way one may justifiably say that ‘foundations are anachronistic and a contradiction to modern civil society. That founder do not see it that way is obvious.’ (Timmer, 2005, p. 145). He continues to ask what reasons justify foundations? He presents the view of Kenneth Prewitt, Director of the US Census Bureau, who discusses four options:

1. Foundations redistribute wealth from the wealthy to the poor
2. Foundations are more efficient than the state
3. Foundations support innovation for which the state has no money left
4. Foundations are an expression of increasing pluralism

Prewitt discards all except the last one. As to those surveyed in the Stifterstudie, the agree with all those points, even though the first point never emerged in both survey and interview. Here the issue closest was the suggestion that spending wealth on the common good would legitimate wealth, which finds a high approval rate.

The 2005 study therefore concludes with the following recommendations:

Verbrauchsstiftung. Aber davon wird wenig Gebrauch gemacht, da letztere auch keine vergleichbaren Steuerprivilegien genießt. (116) Ein Manko ist auch die geringe Zusammenarbeit mit anderen, wodurch der Wille des Stifters zur Vermeidung von Synergie führen kann, der im Miteinander von Wirtschaft, Staat/Kommune, NGOs in ein größeres Gesamt eingebunden wäre und Fördermittel bündeln könnte – natürlich um den Preis, hier und da Kompromisse eingehen zu müssen! (Leseberg & Timmer, 2015, p. 111ff.)

- More transparency is needed and
- more engagement in public discussion to understand better what foundations are doing and why, to get them out of the elitist, self-serving corner.
- Do not infringe freedom and self-determination of founder
- Put tax privileges for donations on the same level as foundations
- More checks of foundations, not necessarily by the state, but via transparency towards the public and civil society.

The 2015 study is far more restraint. The value of the instrument as such is no longer questioned, assertion that, for example, founder mis-use their foundation to exercise undue influence is rejected (by reference to controls by the tax administration or the binding force of the satzung (Leseberg & Timmer, 2015, p. 175). One of the recommendations in 2015 is that a wider range of foundation models should be explored in their usefulness, two are explicitly mentioned (Leseberg & Timmer, 2015, p. 190):

- Bürgerstiftungen: There are 272 in Germany that want to change things locally together. They hold the Gütesiegel des Bundesverbands Deutscher Stiftungen
- Verbrauchsstiftungen make sense because of the low interest policy where more must be done to maintain the capital stock than to spend for the foundation's purpose.

It would be interesting to know why this change in tone occurred, especially since one of the authors of the 2015 study is the same as in 2005.

The author of the study doubts my observation:

He denies that the 2005 study was more critical than the 2015 study. But he has this thought after I mentioned it. He confirms his critique in the 2005 study and agrees that there are no legal changes which would justify a more positive judgement. The editor changed: in 2005, it was Bertelsmann Stiftung, in 2015, Bundesverband der deutschen Stiftungen that are responsible for most chapters while he only contributed two.

He then sends me an article, saying:

bei unseren Telefonat musste ich an einen Beitrag von Bob Reich denken, den ich Ihnen gerne anbei zukommen lasse: Der Artikel diskutiert die Schwächen und Probleme von Stiftungen als „Spielzeug der Reichen“ und kommt doch zu einer, wie ich finde, sehr überzeugenden Rechtfertigung ihrer Existenz.

Looking closer at this article (Reich, 2013), however, there are only three arguments in defence against the accusation that foundations are the “voice of plutocracy”:

Foundations implement pluralism: It diminishes all powerfulness of state bureaucracy and offers more decentralism → is it not possible to remove the deficit of bureaucracies by better democracy?

Foundations safeguard expertise: State officials and the public does not know what really to do. Foundations can elaborate expertise and do some experiments to see whether it works or not and then offer findings ready-made to the public. → Whatever the outcome still reflects the preference of the founder, not of democratic society. And: there are also experts in a democracy which could incorporated into long-term projects, e.g. Professors of publicly

funded universities. Yes, re-election is a problem, but this could also be reformed by improving democratic and funding/accountability decisions .

Foundations advance discovery: Large foundations with good experts are more risk friendly and able to do the out of the box thinking and innovative thinking. They have funds to do that. → Same objection as before. And: Are foundations really innovative and risk friendly? Or do they rather elaborate programs based on the preference of the founder and then try to sell that to the wider public as “innovation”?

Therefore: Do we need foundations for the little that there may be good? Or would it not adequate to encourage tax-deductible donations to NGOs and Charities which are more accountable and transparent in what they do – and who are part of a wider plan of society, incorporated in joint analysis and planning and not so isolated “Selbstherrlich” in what they do as foundations are?

10.8 Conclusion

There are some setting up a foundation are aware that they need to do it because of the widening gap between wealthy and the poor.

Foundations are the obvious alternative for all those rejecting taxation by the state: they are not transparent and they do not really give anything away.

At the same time it's a fact that those setting up foundations donate more than they receive in tax benefits. Timmer, in a telephone interview, defends foundations as follows:

One may not forget that the money is actually gone and does not belong to one anymore, therefore it is in any case a loss and I do not earn anything even if I pay less taxes. When I donate 1 mio and get 300000 reimbursed by the state, then 700000 are gone none the less,

Sure, I can still be controlled: with corporate foundations or Doppelstiftungen I still have the say over the company or as CEO over the expenditure behavior of the foundation. But it is not mine.

11 Other determinants influencing voluntary giving

11.1 Family, wealth, estate

In Europe and Asia, the model of family business is much more pronounced than in the US, where only 36% of businesses are continuing after the founding “patriarch” withdraws. In Europe, the share is 57%, in Asia 56%. As the UBS/PwC Wealth report on Billionaires argues: ‘family businesses owned by multi-generational billionaire families are a key pillar of economic development’ (UBS & PwC, 2015, p. 24+30). Important: ‘Philanthropy can play a vital role in bringing the family together by transmitting family values across generations. This means that billionaires embracing philanthropy not only improve society for future generations in general, but also the cohesion of their own family.’ (UBS-PwC, 2015, p. 28). Meaning: Family and Philanthropy does not exclude each other. This is certainly true for Germany. Even though not in all cases.

The “sacrificial” life of a billionaire who lives rather for the business than his family, also destroys families. In the words of a tax consultant

This contradicts reports of families of the superrich where it is very tense, where the patriarch is an asshole and tyrant who puts everyone else under pressure, e.g. Brandmüller from Fürth (“No one will miss him when he is dead”).

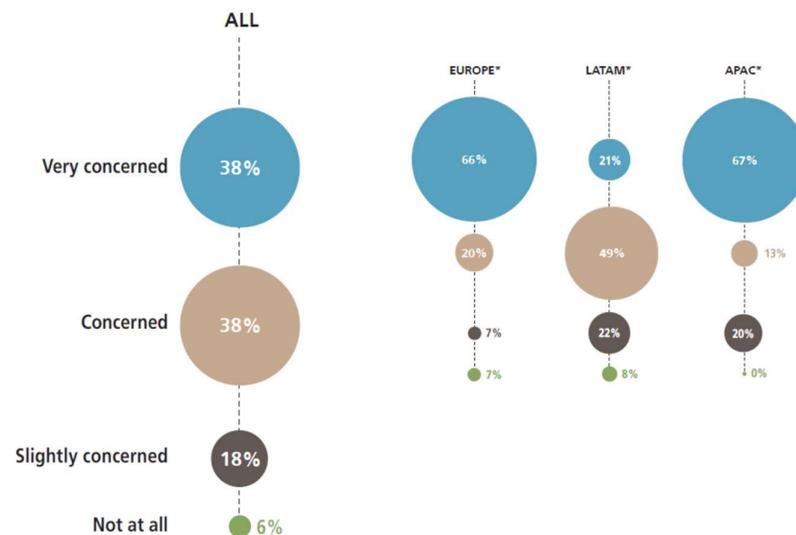
The UBS 2015 survey of 2,215 millionaires illustrates that there is the desire to do good for their family and kids, especially to secure their best possible education. This desire is linked with the fear that sudden crises might destroy this ambition (UBS, 2015a, p. 4f.)

Next a more specialized survey among 120 global UNHWIs (Hirzel & al., 2011), those having created wealth have a strong motivation and preoccupation to protect their wealth and pass it on towards their heirs in the hope that it is preserved and increased.

1. Ultra high net worth individuals are concerned about protecting their family wealth.

We asked:

How concerned are you about protecting your family's wealth?

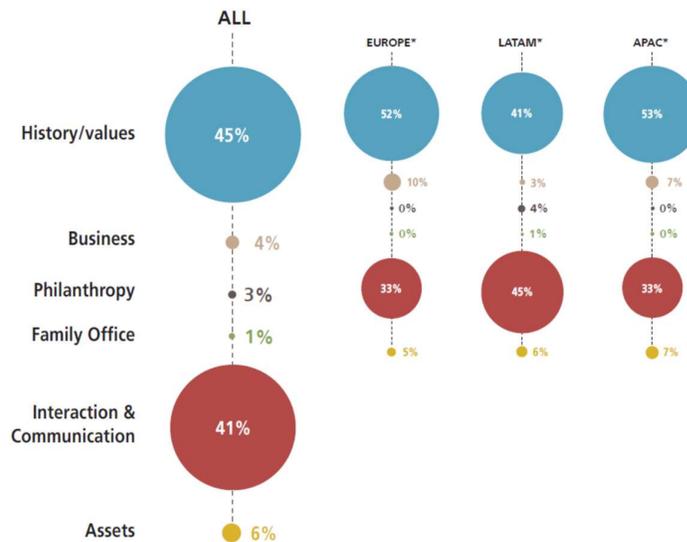


This does not always succeed. Most important for continuity and the preservation of private and corporate family wealth is the transmission of family history and values, facilitated by communication, process which might take years. This creates a strong sense of identity, community, shared responsibility.

4. "Family History" and "Interaction and Communication" are seen as the main factors protecting a family business.

We asked:

Which one of the following do you consider being the biggest glue holding your family together?



*Figures represent % of total responses received by region

In order to combine both, UBS and other advisors of banks and wealth management institutions have plans and suggestions in place to facilitate a communication process within families: Intra-family communication, through story telling or joint discussions, help establish a formalized family values framework or mission statement. ... In practical terms such an approach consists of a series of workshops and dialogues involving various family members to clarify some of the most important questions, such as: What are our values? What is our legacy? How important is the business to our family? How do we want to be involved? Where are the biggest risks? Who gets what? How do we develop the next generation? The outcomes of the workshops are then documented and summarized in a document, called the family constitution. Depending on the number of members involved and the complexity of the family, this process can take weeks, month or even years. (Hirzel et al. 2011, p. 4)

Family importance also Sinus study, see e.g. (Rickens, 2009; Rickens, 2008)

In Germany the importance of family is very considerable when it comes to the accumulation and transfer of wealth. "I think it is crucial motivator of human action to want to create wealth and give it further to the children."¹³¹ But, at the same time, those top wealth holder would confirm their awareness of social responsibility beyond the family. Leibinger-Kammüller, e.g. brings the example of how their companies cares for difficult trainees).

(Knight Frank, 2015) In priority list, what worries the wealthy, Inheritance/transfer is the only point ahead of fear of taxes and increased asset transparency.

¹³¹ „Ich halte es für eine wesentliche Antriebsfeder menschlichen Handelns, Vermögen zu bilden und an die Kinder weitergeben zu wollen“ Trump Chief Leibinger-Kammüller. (Manager Magazin Spezial, 2014, p. 58).

11.2 The lack of suitable heirs, protection of assets

If private and corporate wealth is overlapping to a major extent, one major reason for setting up a business foundation is the absence of a qualified heir. Since there are business shares held privately there is also attempt to secure unity of business rather than selling off (risking shares moving out of control) for paying taxes or avoiding hostile takeover.

The impetus for setting up a foundation comes rather from family and social networks than from experts, some developments within the personal context may spark the search for this or that way to pass on a fortune. The desire to regulate the legacy or the lack of heirs are the two most commonly mentioned reasons for people to start thinking about a foundation (Leseberg & Timmer, 2015, p. 68). Once a decision has been taken, professional advice is being sought, most importantly from lawyers, tax lawyers included.

In the words of an expert:

The foundation is used by superrich such as Reinhard Mohn, primarily to secure the corporation and the assets, as well as to defend the assets against the Zerschlagung through Heuschrecken or the necessity of Zerschlagung to pay inheritance tax. This was not the state's intention, but it developed like this.

11.3 The drive for getting more

An UBS into “what drives a millionaire” found out that millionaires are feeling to live in a treadmill, for three reasons: The first is insecurity about what they think is enough wealth to lead a secure life and to maintain the standard of living for themselves and their family:

(M)ost millionaires don't have enough wealth to feel secure. As a result, many feel stuck on a treadmill, without a real sense of how much wealth would make them satisfied enough to get off. Millionaires' constant striving comes mainly from pressure they feel to maintain the high standard of living they have established for their families, whom they value above all else. At the same time, millionaires worry this very lifestyle may be spoiling their children, causing them to lack motivation and feel entitled. Ironically, millionaires believe they sacrificed too much time with family to get where they are, and their biggest regrets relate to mistakes they made with spouses and family members. (UBS, 2015a)

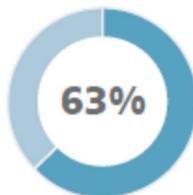
Working millionaires with children at home feel lifestyle pressure

Question: “Please indicate whether you agree or disagree with the following statements.”
(Percentages show those who strongly or somewhat agree.)

In my work, I sometimes feel stuck on a treadmill. But I can't get off without giving up my family's lifestyle



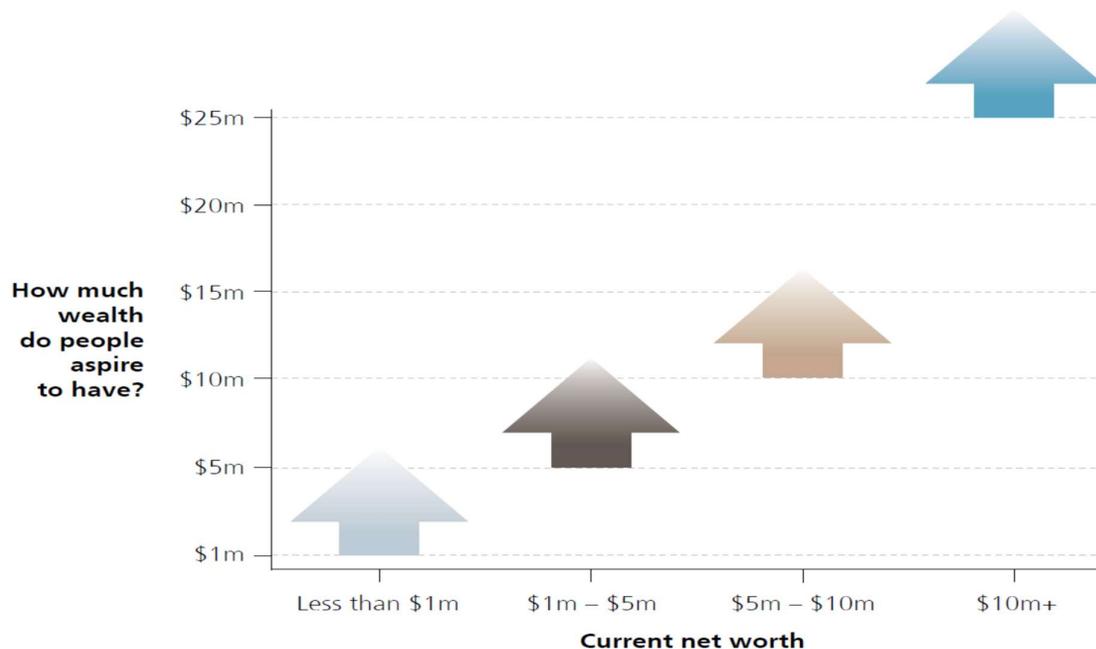
One major setback (e.g., lost job, market crash) would have a major impact on my lifestyle



There is also, secondly, the finding that those who achieved much are not happy and content with it, but aim for ever more: Those who have their first million aim for the second, those who have 25 million aim for 50:

Abbildung 4 Who has more, wants more

Question: "About how much wealth do you aspire to eventually have?" (Most popular answer choices shown.)



Source 16 (UBS, 2015a, p. 10)

The third is social comparison, i.e. what the study calls the desire to “keep up with the Joneses”. This attitude is strongest with Millennials, i.e. new wealthy holder

Millennials are more insecure and conscious about how their wealth compares to that of peers (68% of Millennials vs. 53% of Baby Boomers). With so much of their peers’ lifestyle and spending information available online and through social media, Millennials are most likely to say they feel pressure to “keep up with the Joneses.” This sense of competition manifests itself in their career decisions and personal behavior. For example, Millennials are more likely to feel pressure to work long hours (49% of Millennials vs. 28% of Boomers). Three-quarters of Millennials have checked online for their peers’ salary, career history, home price or purchases (74% for Millennials vs. 57% for Boomers). (UBS, 2015a, p. 11)

Millennials are, at the same time, the age group feeling most insecure about that which they have at all.

11.4 The FOMO attitude

This links to findings of the study by (UBS-PwC, 2015) presents some common features of this segment of the population. On pp. 15ff. the study says that self-made billionaires have indeed common features, such as “smart risk taking”, “obsessive business focus” or “dogged determination”. It is interesting to note that this still sounds more positive than that which those commissioning and writing the study put it at the presentation press conference: There,

they talked of “special inclinations”, almost amounting to addictions: Regarding risks, they coin the expression FOMOs (Fear of missing an opportunity/Fear of missing out) and their determination to follow up projects would seem to be “abnormal” and “obsessive” when seen with ordinary citizens.¹³² This attitude to not missing anything and daring risks where more prudent persons would shy away certainly also explains the behaviour of some of those working at Stock Exchanges and other trading places. A tendency towards risky investment is also seen by other wealth report, e.g. the 2015 one by Knight Frank (p.13).

11.5 Fear/obsession with secrecy/privacy

Desire to hide what they have also impacts on alternatives and willingness to make public that they belong to that special group.

According to conversation partner, German wealth holders are more paranoid about their situation than any other in the world: They do not even talk to friends and relatives about their situation and certainly not to the public or researcher. If those people receive a letter from a person like me they first think what is in there for them or what kind of harm a non-response could bring. More likely than not the outcome of this calculation is that a reply is not worth the bother. Any suggestion that if they are doing good they should talk about and that the spreading of good deeds will also improve acceptability of their kind is not shared.

One conversation partner, himself originating in a wealthy family, puts it like this: ‘My brother is someone who says: “I do not cut the tree that feeds me”. I do not talk about this with him in order to not burden our relationship. Towards third parties who know that I am in favor of a wealth tax in public he says that he is not responsible for his brother. Otherwise, I think we all live more or less in parallel societies.’ ,

Conversation partner from the wealthy or those who deal with them on a daily basis agree that the German “virtue” of discretion is often motivated by a number of fears: They fear to lose their wealth, to be kidnapped, to be approached for donations, to be resented due to their possessions... This leads them to seal themselves off from the larger world and protect themselves from outside curiosity and because they are dealing so much with their own kind they are living in a kind of space ship which is filled with fear, fear and fear once more again.

The dominance of a number of fears is confirmed by UBS research (2015a, see also below), also Brooke Harringtons book on wealth administrators (“Capital without Borders: Wealth Managers and the one percent“, Harvard UP).¹³³ And Robert Johnson, the director of the Institute for New Economic Thinking explained (on Russia Today!) how the wealthy prepare for social unrest, e.g. by buying property in New Zealand or building private airports.¹³⁴

¹³² Papp, F. (2015, May 26) UBS: Superreichen sind „Fomos“. Retrieved 8 June 2015 from

<http://www.finews.ch/news/banken/18276-josef-stadler-matthias-memminger-ubs-uhnwi-superreiche>

¹³³ Kremer, (2016, August 16) Die Verteidigung des Reichtums. In: FAZ. Retrieved from http://www.faz.net/aktuell/finanzen/fonds-mehr/wie-aengstliche-millionaere-ihren-reichtum-verteidigen-14386726.html?printPageArticle=true#pageIndex_2

¹³⁴ Angst vor dem Volk? Superreiche bereiten sich auf soziale Unruhen vor. (28 January 2015) In: Russia Today. Retrieved on 8. June 2015 from <http://www.rtdeutsch.com/10406/gesellschaft/angst-vor-dem-volk-superreiche-bereiten-sich-auf-soziale-unruhen-vor/>

Another example regarding the awareness of wealthy people regarding social unrest is the famous contribution of billionaire Nick Hanauer on Politico.¹³⁵

And in the Wealth-X newsletter the following quote from the report “Decades of Wealth” reads:

A GROWING COLLECTIVE ANXIETY

The wealthy have increasing concerns about the economy, geopolitics, wealth preservation, privacy and their own health. The proliferation of on-demand media and globalisation provides ever greater knowledge and awareness, leading to increasing concern on the part of wealthy regarding the macro-economic environment. On a more personal level, advances in medicine have increased their awareness of health issues. The wealthy will also remember the recent financial crisis and be mindful of the potential for history to repeat itself. If it does, the wealthy have more to lose than others, even if they may have a larger cushion. The wealthy, particularly those in retirement, will increasingly be concerned about the preservation of their assets and take a more active role in securing them. One result will be the desire to research and to monitor everything more closely – from financial holdings, to personal health, family, holidays, and other interests. And what can be measured will be managed. (Wealth-X, 2015b, p. 6)

- This fear even prevents from setting up foundations: ‘Analyses of the interviews and written surveys show that the respondents fear that just through the foundation the wealth becomes apparent.’¹³⁶

Here one also needs to bear in mind that the social fabric in Germany is different from the US: While society in the US is quite brutal and fragmented and most wealth holder live in gated communities, surrounded by bodyguards, such developments are yet to start in Germany. Here, therefore, privacy is the best protection because everything else, such as body guards or armored cars, would be scowled at.

11.6 Stinginess or loss of proportion?

Be it out of fear or be it out of the loss of proportion: In relation to other parts of society, the wealthy may give a lot in absolute terms, but comparatively little in terms to their relative wealth.

In an UBS survey of 2,215 millionaires there was a strong sense of entitlement among both wealthy and their kids, the former because of their hard work, kids because they grew up with it as a matter of course. (UBS, 2015a, p. 6f.+8f.). All this makes it difficult to interpret the following sentence: ‘If millionaires had more money, the thing they would be most likely to do differently is donate more’ (UBS, 2015a, p. 9): Given the narration of the ordinary day-to-day worries, it seems difficult to imagine when that point in time may come.

The more and the longer people live in their world of wealth, the more they are detached from ordinary life, people and problems, the more a sense of entitlement to that wealth is growing.

¹³⁵ Hanauer N. (2014, June) The Pitchforks are coming – for us Plutocrats. In: Politico. Retrieved on 8 June 2015 from <http://www.politico.com/magazine/story/2014/06/the-pitchforks-are-coming-for-us-plutocrats-108014.html#.VXV0U0biOfw>

¹³⁶ ‚Die Analysen der Interviews und der schriftlichen Umfrage zeigen vielmehr, dass die meisten Befragten sogar befürchten, durch die Stiftung werde überhaupt erst offenkundig, dass Reichtum vorhanden ist.‘ (Leseberg & Timmer, 2015, p. 179)

Wealthy people might give a lot in absolute terms, but in relation to total income and total possession of financial, social and human capital, middle and lower class people are more generous. ‘In 2011, the wealthiest Americans, those with earnings in the top 20%, contributed 1.3% of their income to charity, while those in the bottom 20% donated 3.2% of their income.’¹³⁷

(Lebert, 2006) When reading Lebert whose report includes examples of the wealthy’s attitude towards taxes, donations and charitable activities, it is extremely difficult to imagine that those people contribute selflessly and full of empathy their fair share back to the community or the needy. Hardly any money donated for a public museum or the repair of infrastructure, e.g. public swimming pool, but requiring publicly financed clearance of snow in their private roads. But: Plenty of money into private foundations.

At the bottom line, the findings of Piff and others is not really new, after all: Already Jesus commends the poor widow for her donations, and also every parish priest will agree that ordinary folks are much more concerned and generous when it comes to addressing problems of inequality and poverty than those who are rich. This leaves us with two conclusions: First, on this background there is little optimism that effective change towards a more equal society can really be implemented on a voluntary basis. Second, against these tendencies only some mandatory requirements can safeguard that all wealthy contribute their share to the community – and, at the same time, efforts to combat tax avoidance and tax evasion.

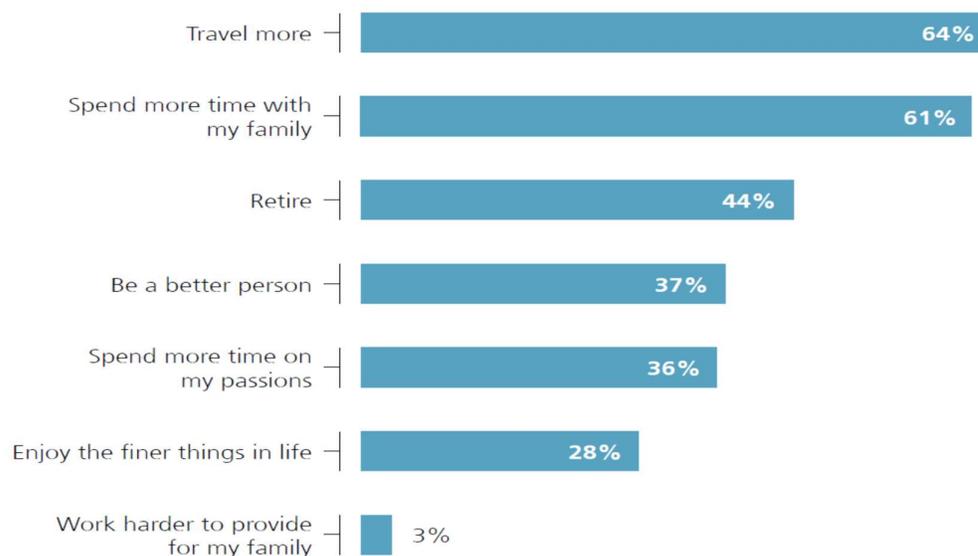
All this may be a consequence of the secluded-separate life among equals in the top 1% Spaceship (see GW/I/11.3)

11.7 Treadmill and the good life

In this context two expression need to be considered in context, emerging from the UBS Investors watch research, analyzing ideal and de facto priorities in the live of 2,215 millionaires: on the one side there is the treadmill of work and responsibility and the need to care for their families and to uphold their life style, and the longing for the “good life”, e.g. quality time for the family, time for leisure, education, travelling etc. on the other (UBS, 2015a). One should not believe it, but there is a life beyond work:

¹³⁷ Manne, A. (2014, July 7) The age of entitlement: How wealth breeds narcissism. In: *The Guardian*. Retrieved from <http://www.theguardian.com/commentisfree/2014/jul/08/the-age-of-entitlement-how-wealth-breeds-narcissism>

Question: “What would you do differently if you only had five more years to live?”



Source 17 (UBS, 2015a, p. 5)

There is longing for the “good life”, but inability to think about it, experience it and adjust their life accordingly.

11.8 Conclusion

Findings here support observations in GW/I/11.3+4: Private wealth-holder increasingly live in parallel worlds which is enforced by their fear for their own security and the “greediness” of those “out there”, regarding getting their fair share of their wealth. They develop an own set of values and think that their set of values is according to which the world will profit best. This implies disdain and hostility towards state and democracy prefers patriarchal thinking and acts in a patronizing manner because they want to keep control over their “well earned and deserved” donation even when they want to give it away to do good.

On a more positive note are findings regarding the longing for (and importance of) quality time with their family and the importance which this context has for the estate and inheritance planning. For many, there is an overlap with unhappiness with the extent to which labour determines their life and a longing to enjoy more of the “good life”. Here it is strange that the seemingly do not realize that they own more than enough to start the “good life” right now.

12 Findings regarding voluntary giving

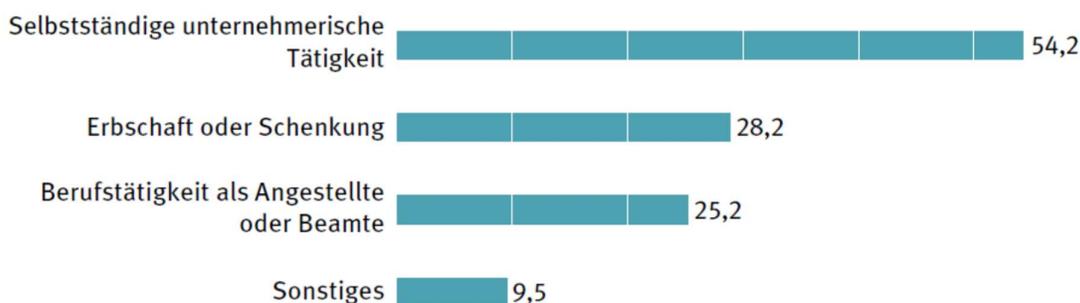
Features emerging from regarding philanthropic engagement of wealthy beyond their taxpayers obligations:

12.1 Self-Made more generous than inherited?

Interesting enough: In spite of all the fear about having and losing their wealth, the UBS/PwC study also says that self-made billionaires are more generous when it comes to philanthropy: ‘Our research strongly indicates that if philanthropy does not happen in the first generation,

it's unlikely to happen in the second generation and onward.' (p.28). This is also confirmed by conversation partners from the banking and wealth managing sector

„Woher stammt das Vermögen, mit dem die Stiftung errichtet wurde?“ (in Prozent)



Mehrfachnennungen möglich. n = 587 Stifter rechtsfähiger Stiftungen bürgerlichen Rechts

Source 18 (Leseberg & Timmer, 2015, p. 25)

‘Assets from inheritance or gift giving were donated by about 30% of the respondents, 18.3% donated exclusively from inheritance or gift giving. These figures are apparently low compared to the results of the study “Vermögen in Deutschland“: The portions of rich people whose assets are built on inheritance are in the whole population much higher. This comparison suggests that heirs donate more seldom than persons that got rich through business. An analysis of the study “Vermögen in Deutschland“ supports that.¹³⁸

This goes not uncontested as an interviewee from among the banking profession argues that especially heirs are willing to donate and set up charitable foundations.

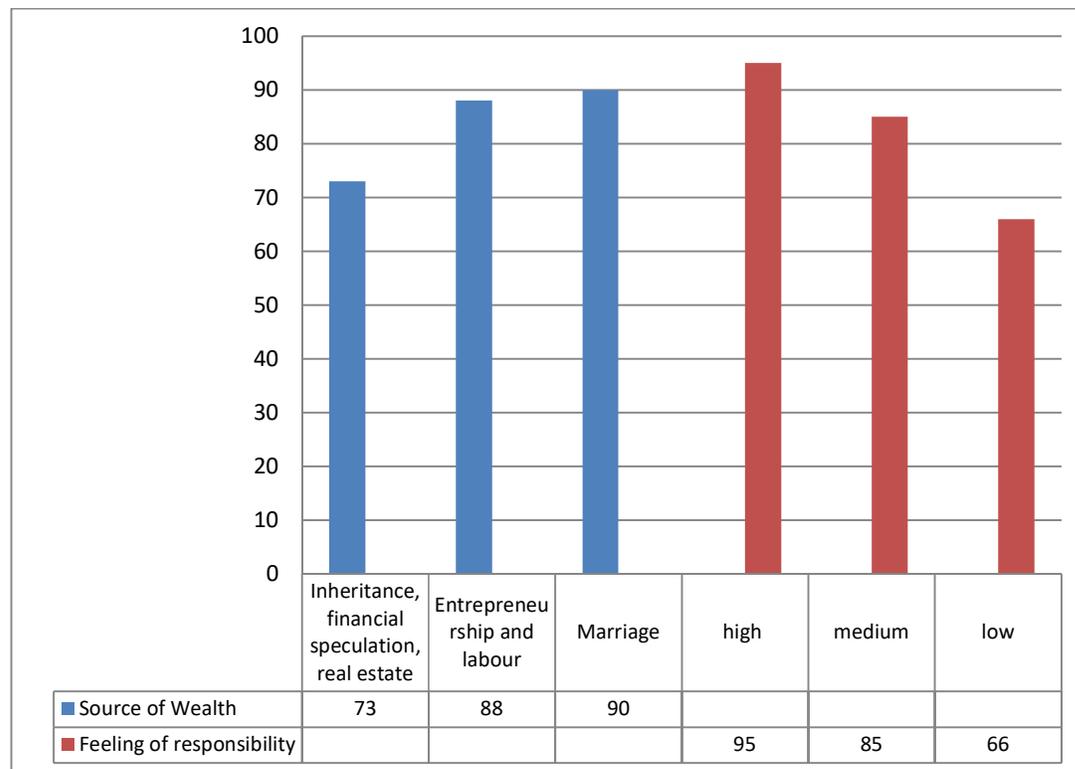
12.2 Marriage more generous than self-made and inherited

The following graphic confirms first of all that there is a high correlation between the origin of wealth and a resulting attitude towards social responsibility. The second finding is not that surprising: Those feeling a stronger sense of responsibility are more often and intensively engaged in the wider society than others, but this graphic does not tell us anything about the

¹³⁸ ‚Vermögen aus einer Erbschaft oder Schenkung stifteten rund 30 Prozent der Befragten, 18,3 Prozent stifteten ausschließlich aus Erbschaft oder Schenkung. Diese Zahlen sind auffallend niedrig im Vergleich zu den Ergebnissen der Studie „Vermögen in Deutschland“ (Lauterbach et al. 2011a): Die Anteile der wohlhabenden Menschen, deren Vermögen sich aufgrund von Erbschaften gebildet haben, liegen in der Gesamtbevölkerung deutlich höher. Entscheidend für die Vermögensbildung sind Erbschaften bei 38 Prozent der Vermögenden (Lauterbach und Ströing 2014: 11). Dieser Vergleich legt nahe, dass Erben seltener stiften als Personen, die durch unternehmerische Tätigkeit vermögend geworden sind. Eine Sonderauswertung der Studie „Vermögen in Deutschland“ stützt diese These.‘ Miriam Ströing zeigt, dass vor allem diejenigen engagiert sind, die aufgrund ihrer Arbeit reich geworden sind, und am seltensten die Befragten, die durch eine Erbschaft zu ihrem Vermögen gekommen sind. Sie schlussfolgert: ‚Wer hauptsächlich durch eigene Anstrengungen reich wird [...], hat ein anderes Verständnis von Gesellschaft und der eigenen Handlungswirksamkeit. [...] Hieraus ergibt sich eine Haltung der Dankbarkeit der Gesellschaft gegenüber mit dem Wunsch, auch anderen [...] derlei Chancen zu ermöglichen“ (Ströing 2014: 163). ... Seit der Stifterstudie 2005 ist der Anteil derjenigen, die geerbtes Vermögen gestiftet haben, gestiegen... Dies ist weniger darauf zurückzuführen, dass Erben jetzt häufiger stiften – vielmehr ist die Zahl der Erbschaften kontinuierlich gestiegen (Braun 2011: 725).‘ (Leseberg & Timmer, 2015, p. 26)

causes and motivations for this sense of responsibility to emerge. A safe bet is that a strong correlation is here with the entrepreneur rather than the speculant.

Abbildung 5 Share of those socially engaged, according to their source of wealth and their feeling of responsibility



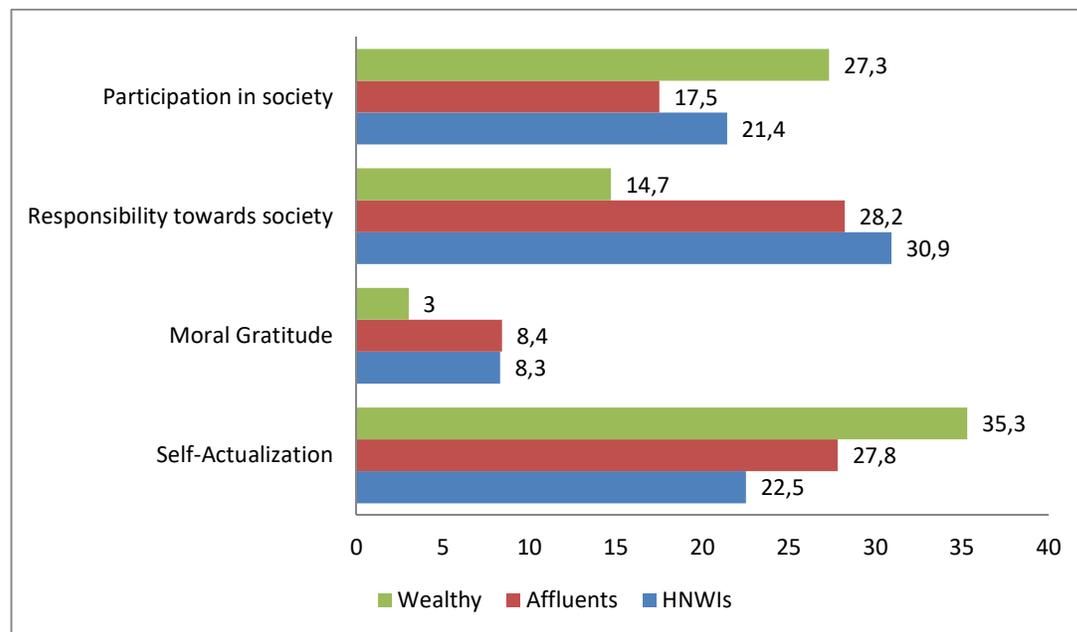
Source 19 (Ströing & Kramer, 2011, p. 104+106)

But here as well are differences, e.g. among entrepreneurs: A certain type, here the pragmatic, a-religious and post-material entrepreneur is primarily interested in securing the material wealth, while rich women value the socially sustainably handling of resources, see (Grundmann, 2011, p. 210)

12.3 Billionaires more generous than the merely wealthy

Why are people getting engaged in society? Given the variety of types among the wealthy, there is also a variety of motives, for example: for those at the lower end of the wealth hierarchy social engagement is not simply for advancing a good cause, but a means to the end of achieving social contacts which might prove useful. Or: HNWIs rather donate money and try to get not involved directly but keep discreetly in the back. In general the following motivations are mentioned to be of importance for German wealth holder:

Abbildung 6 Reasons for engagement of wealthy persons



Source 20 (Ströing & Kramer, 2011, p. 131)

Here, however, the only one which is pretty selfless, namely moral gratitude, is of little importance. From the other motivation one could also deduce that those who are wealthy want to leave their imprint upon society by “moulding” them in their fashion and following their values, by using their financial, social, human and political assets and muscle.

Timmer 2005, p. 52: Many rich are donators, but nor all donators are rich. 21 of the examined donators gave less than Euro 250000, 22% more than 4 mio. This is supported by the Stifterstudy 2015 says that higher wealth donate more and more often (Leseberg & Timmer, 2015, p. 24)

(Grundmann, 2011, p. 209): Rich are more engaged than affluents or HNWIs. Economic capital alone does not account for taking action, but instead seems to be in its way.

→ This is in line with the above mentioned empirical results that the poor proportionally donate more than the rich! (see GW/Inheritance/RichKids#)

12.4 Family context more important than individual character

At first sight, it is impressive to hear that 82% of top income and wealth holder are socially engaged with money, time or both (Ströing & Kramer, 2011, p. 98) . Breaking down the group, reveals interesting insights: the extent of wealth, gender and composition of household (married or not, children...) is not as important for the decision as (not surprisingly) religious convictions. Ströing and Kramer conclude from their evaluation that individual personality traits are less important and decisive for social engagement than the social context of an individual, i.e. where s/he is born into – not the least because this also determines with whom they socialize during education, free time and professional life – how they obtained their wealth and in what professional positions they are engaged (p. 111).

The importance of social context and component is also indicated in Druyens mental type typology. It is explicitly stated, for example, that for the type “benefactor“ and those „expressing solidarity“ the social environment is decisive for what they do, how and with whom they are doing it.

Biography is important, up until the chosen foundation purpose. Donators have already been engaged socially before the foundation’s setup, often as children. Often they are from homes where the parents very also already engaged. But overall, when looking at all wealthy the portion of engaged and non-engaged among donators is not higher than in the rest of society, i.e. there are more who donate nothing than those who do. (Leseberg & Timmer, 2015, p. 29ff.+32)

12.5 Professional status in life

It is significant whether somebody is not working, working or retired: Only 64% of those not working are engaged, but 82% of those working and 87% of those retired. The latter is only seemingly obvious: it is suggestive that those people have more time than others. But in this case the question is: why are those not engaged who are not working? More surprising is the high share of those working and engaged at the same time, not shying away from the extra burden (Ströing & Kramer, 2011, p. 98).

80% of founders are 50+, 66% of founder are beyond retirement (Leseberg & Timmer, 2015, p. 19).

12.6 Gender and Age dependence

The UBS survey “Doing well at doing good” illustrates gender and age related influences in philanthropic behavior.

In general, women are more actively involved with charitable giving than men. While men and women are equally likely to donate money, women are more likely to volunteer time. Women are also more likely to consider themselves philanthropists (26% vs. 15%) and consider philanthropy to be a more important personal goal. Despite already being more engaged with charitable giving, women have a greater tendency to wish they could give even more compared with men (45% vs. 36%). (UBS, 2014a, p. 7)

In Germany: Women don’t act differently from men. Foundations in Germany established by men (46%), couples (34%) and women (20%). Frequent occurrence: No children/heirs. (Leseberg & Timmer, 2015, p. 20ff.)

Age has influence on giving, see importance of measurement and comparison for Millenials (UBS, 2015a), age also has impact on causes.

12.7 Decreasing role of religion

The meaning of religion decreases (in 2005, 68.3% called themselves religious, now just 58%) and equally the motivation for the foundation. Die Bedeutung von Religion nimmt ab (2005 bezeichneten sich noch 68.3% als religiös, jetzt noch 58%) entsprechend auch die Motivation für die Stiftung. (Leseberg & Timmer, 2015, p. 38), which is coherent with age dependent findings regarding supported causes via philanthropy: The younger donors, the less religion is of importance, least among Millenials (see below).

Important. Also foundation motives are linked with biography and complex situations are often hidden behind bullet points. ‘Finally, behind terms like “moral obligation” or “compassion” are hidden very individual definitions and contexts.’¹³⁹

12.8 Conclusion

Hartmann: The family and social background determines whether one approves taxes that are used to create public infrastructure and structural equality or whether one is egocentric or whether one supports private initiatives (see GW/I/11.1).

Based on diverse findings of empirical life style research, the sociologist Werner Georg shows that the income of a person has only very little influence on his value orientations and his life style. More decisive are age and education (partly also the gender). The analysis of the survey results also does not show any correlation between the donators‘ values and their assets.¹⁴⁰

It seems that parents and education play a role in the correlation between being engaged for others and which attitude one has towards work and own performance, how one thinks about owning wealth and assets respectively responsibility towards the community..

Indeed: A number of those setting up a foundation are aware that they need to do it because of the widening gap between wealthy and the poor. At the same time it’s a fact that those setting up foundations donate more than they receive in tax benefits (see quotation of Timmer phone-interview above 10.8.

Donators are modest at first sight: ‘The reality is at least from the asked donators‘ perspective quite different. Hardly anyone says that he or she donates to increase the own reputation and also the idea that they have a legacy through the foundation is not shared by many.’¹⁴¹

This is pretty much nonsense

- ➔ One admits that equally non-honest than the fact that one wants to keep control, lessen the state’s influence. It is important to show the contradictions, like the meaning of tax advisors, the hint that more will be donated when tax conditions are improved, the fact that the own name is chosen for the foundation and the “legacy thought” is important to them. (S. 163+52).
- ➔ Admittedly, the good reputation is really a stimulus to do something, see Nowak or CSR. But also among the latter, finally own calculations like a better image for the company product and therefore higher sales are important.

¹³⁹ Wichtig: Auch bei Stiftungsmotive häufig mit Biographie verbunden und komplexe Sachverhalten oft hinter Schlagworten verborgen. ‚Schließlich verbergen sich hinter Begriffen wie „moralische Verpflichtung“ oder „Mitgefühl“ ganz individuelle Definitionen und Kontexte.‘ (Leseberg & Timmer, 2015, p. 45f.)

¹⁴⁰ Anhand diverser Ergebnisse der empirischen Lebensstilforschung zeigt der Soziologe Werner Georg, dass das Einkommen eines Menschen seine Wertorientierungen und seinen Lebensstil nur sehr geringfügig beeinflusst. Entscheidend sind vielmehr das Alter und die Bildung (teilweise auch das Geschlecht) eines Menschen (Georg 2009: 272). Die Analyse der Umfrageergebnisse ergibt ebenfalls keinen Zusammenhang zwischen den Werten der Stiftenden und ihrem Vermögen. (Leseberg & Timmer, 2015, p. 36)

¹⁴¹ Stifter sind bescheiden: ‚Die Realität sieht zumindest aus Sicht der befragten Stifterinnen und Stifter ganz anders aus. Kaum jemand gibt an zu stiften, weil er oder sie das eigene Ansehen erhöhen möchte, und auch die Idee, in der Stiftung selbst fortleben zu können, teilen nicht viele.‘ (Leseberg & Timmer, 2015, p. 172ff.)

- ➔ Denying to want to bundle society influence does not really count when one considers the intransparency of foundations and donators as well as the “elite Klüngel“ that is in the boards.
- ➔ The argument 'In addition, donators are obliged to exert their influence in favor of charitable purposes and hence in favor of democratic acknowledged community goals.': There are listed many things and even more room exists to interpret in reality. This is also seen by others.¹⁴²

13 Germany and the US

When talking about alternatives to taxation, one normally refers to the Anglo-Saxon context, pointing to private provisions and initiatives as opposed to money squandering bureaucratic systems in central Europe. And indeed: in Europe, the role of the state and its assigned tasks are much more comprehensive and diversified, bringing with it a higher amount of taxation and mandatory SSCs so that he is able to fulfill its task (see E/II+III).

Additionally conversation partner and literature agree that the “culture” of the US and Europe is often contrasted and compared.¹⁴³ And: Due to the reluctance to put wealth and the wealthy on the public agenda in Germany, for the United States exist better knowledge and insights so that “wealthiness” is somehow hidden and obscured in German public debate.¹⁴⁴

13.1 Culture of donating & philanthropy

The US system of taxation and donation, public institutions and private foundations is influenced by protestant-puritanist values. Due to that, there was and is a lean state with comparatively low taxation, leaving a lot to private initiative. The feeling that one “has to give back” to the community is strong, sometimes reinforced by religious beliefs (“God has blessed me with wealth – and accordingly obligations”). A good book to symbolize this thinking is Carnegies “The Gospel of Wealth” with the famous sentence “The man who dies thus rich dies disgraced” (Carnegie, 1901, p. 19). Children brought up in this environment see that philanthropy is rewarded by naming Universities, hospitals and museums after donors and wealth is generally socially more acceptable than in Germany.

13.2 Generosity-Index

Wealth-X published in October 2015, together with the magazine Business-Insider, a hitlist of the 20 most generous people, based on a “Generosity Index” which attempts to measure life-time donations both in absolute terms and in relationship to net-worth. Here, some people have an index of over 100% since they are donating more than they actually possess. The 20

¹⁴² Das Argument ‚Zudem sind Stiftende verpflichtet, ihren Einfluss zugunsten der gemeinnützigen Satzungszwecke und damit zugunsten von demokratisch anerkannten Gemeinwohlzielen auszuüben.‘ (175): Da ist sehr viel aufgelistet und noch mehr Spielraum besteht, es auszulegen in der Praxis. Das wird auch von anderen so gesehen: To be sure, foundations must direct their grants to public charities or, in tax parlance, 501(c)(3) nonprofit organizations. But in the United States, virtually any organization can be structured as a nonprofit so long as it promises not to distribute profits to its owners. So the public charity rule is no limit at all. (Reich, 2013)

¹⁴³ (Druyen, 2007) (Gates & Collins, 2002)

¹⁴⁴ ‘The results suggest that differential non-response problems, are particularly high in a number of euro area countries, leading to underestimation of the top wealth shares’ (Vermeulen, 2014, p. 3).

individuals under examination donated around USD 106.8 billion and the list, contains a number of known US Americans such as Bill Gates and Warren Buffet, or other well known individuals such as Carlos Slim, but also (at least in Germany) less known people such as Pierre Omidya, Jon Huntsman, Li Ka-Shing or Charles F. Feeney, who owns USD 1.5 million and donated USD 6.3 billion – a generosity index of 420,000% . The only German top wealth holder in the list is Dietmar Hopp of SAP, having donated USD 1 billion, owning USD 6.3 billion, which results in a generosity index of 16%.¹⁴⁵

13.3 Transparency

In Germany, there is no transparency who donates how much. In USA, annually in “Giving USA“ is shown who donates what (individual, company, inheritance, foundation) and the purpose (religion, education, foundation, animals).¹⁴⁶

13.4 Engagement for alternatives

Even more committing are those joining “The giving pledge”,¹⁴⁷ an initiative by Bill Gates, Oracle founder Larry Ellison, Facebook founder Mark Zuckerberg, Media Mogul Michael Bloomberg or the Investor Warren Buffet and Nikolas Berggruen: They pledge to donate “the majority of their wealth to philanthropy.” The range of areas benefitting is large, ranging from universities, medical research, combating sickness and crime or education.¹⁴⁸

As for taxes, none of the German Super-Wealthy committed him/herself to the Initiative “The giving pledge”, even though Bill Gates tried to win support in Germany as well: Only SAP founder Hasso Plattner joined the group. Why is that the case?

Different is “The Entrepreneur’s Pledge”¹⁴⁹, which unites a whole bunch of young German entrepreneurs.

13.5 Conclusion

The problem is: What exactly are those guys supporting and financing? Is it really good or is it something dubious, which only with great effort can be said is “social” in the sense of humanitarian beneficial? Giving away alone is no real reason to prefer alternatives to taxation.

And how is that, which is solemnly donated, generated in the first place? Is there a dark secret?

If philanthropy is done beyond taxes, however, German wealth holders tend to hide this since they do not want to be recognized as a wealthy person and create envy. This again points to

¹⁴⁵ Martin, E./Loudenback, T. (2015, October 12) The 20 most generous people in the world. In: Business Insider. Retrieved from <http://uk.businessinsider.com/most-generous-people-in-the-world-2015-10?r=US&IR=T>

¹⁴⁶ <https://doublethedonation.com/forms/documents/charitable-giving-report-giving-usa-2015.pdf>

¹⁴⁷ <http://givingpledge.org/>

¹⁴⁸ A nice example for the range of supported initiatives is the pledge of Lord Ashcroft: ‘I also prefer to donate to subjects close to my heart: for example, to fighting crime, to supporting education and to championing the military, in general, and to gallantry, in particular. I am proud for example, that my first major charitable enterprise, Crimestoppers, is this year celebrating the 25th anniversary of its formation and which to date has led to 120,000 arrests.’ Delicately enough Lord Ashcroft admitted of not having paid a lot of taxes by using his status as “non-dom resident” and citizen of the tax haven of Belize. See ‘Lord Ashcroft admits “non-dom” tax status’ (2013, March 1). BBC. Retrieved from http://news.bbc.co.uk/2/hi/uk_news/politics/8542744.stm

¹⁴⁹ <http://www.entrepreneurspledge.org/>

the need of dialogue in order to diminish the Sozialneid-debate according to the rule “Do good and talk about it!”

14 Offshore- or Philanthrocapitalism

14.1 Overview

As is widely known, shell-companies, trusts and foundations can also be used to hide wealth, transfer illicitly funds (including money laundering) and to avoid or evade taxation, e.g. via transfer pricing. This begs the question whether paying taxes would not do better to the common good rather than depriving states of revenue and then becoming philanthropists. Or, put differently: Are capitalists engaged in this kind of game really losing anything at all?

Some governmental inquests, e.g. by the US Senate,¹⁵⁰ but also experts of the Tax Justice Network published to illustrate practices relevant here.¹⁵¹

Normally, those practices require a whole network of complex, interlinked trusts, shell companies, foundations and other artificial constructs whose main (sole) purpose is to hide the extent and categories of funds, its owner and its beneficiaries. Also normally, it involves constructs based in secrecy jurisdictions/tax havens, i.e. jurisdictions who do not exchange information relevant for the prosecution of illicit or illegal transfers of assets. In the past, this has been Switzerland, Austria and Liechtenstein, increasingly there are more exotic states such as Panama, Belize, or Mauritius. Among strategies and goals thus achievable are

- Hiding proper ownership
- Hiding beneficiaries
- Hiding the character of a foundation by not transferring money permanently, but only as loan
- Channelling payments via third countries who are not cooperative
- Hiding the chain of control
- Hiding extent and profiteers of distributed assets (Ausschüttungen)
- Hiding activities conducted via shell companies

Illustrationen Henn 2013 http://www2.weed-online.org/uploads/presentation_steuerhasen_schattenfinanzplaetze.pdf

In an interview held even before the Panama Paper Scandal broke, the owner of a large tax advisor company explained:

Misuse was surely more common in the 1990s than today as controls became tighter, and also the awareness for injustice grew and the fear exists to lose access to certain markets. It also happened that mandates left because their companies did not want to participate in certain practices and constructions. Of course, there are also tax advisors in Germany who play in this

¹⁵⁰ United States Senate Permanent Subcommittee on Investigations (2008) Tax Havens and U.S. Tax Compliance.

¹⁵¹ Henn, M. (2012) Ausländische Stiftungen: Steuerflucht, Geldwäsche und Vermögensabschirmung. Retrieved from http://www2.weed-online.org/uploads/vortrag_211112_stiftungensteuerflucht_kiel.pdf

field with adequate paying, but he thinks that the real questionable things are happening via Kanzleien outside of Germany.¹⁵²

14.2 Hiding assets

The most common form of misuse is the attempt to hide assets from the taxman. One example is linked to the Ecclestone-BayLB deal, when a tax advisor was setting up an entire network of Austrian foundations to hide the origin and beneficial ownership of USD 44 million bribery money to an Executive of the BayLB.¹⁵³

Another example is that of the Engelhorn Daughters, whose ownership in assets was veiled by a network of holdings and shell companies in the Caribbean, see 8.2.3.5

Not surprising, that a conversation partner from the tax auditing department explained that whenever foundations pop up at an auditing procedure they are getting suspicious, even though they normally lack the time to go into the details. If it were up to him, however, those constructs could be prohibited altogether without too much damage to the common good.

14.3 Dietmar Hopp & SAP

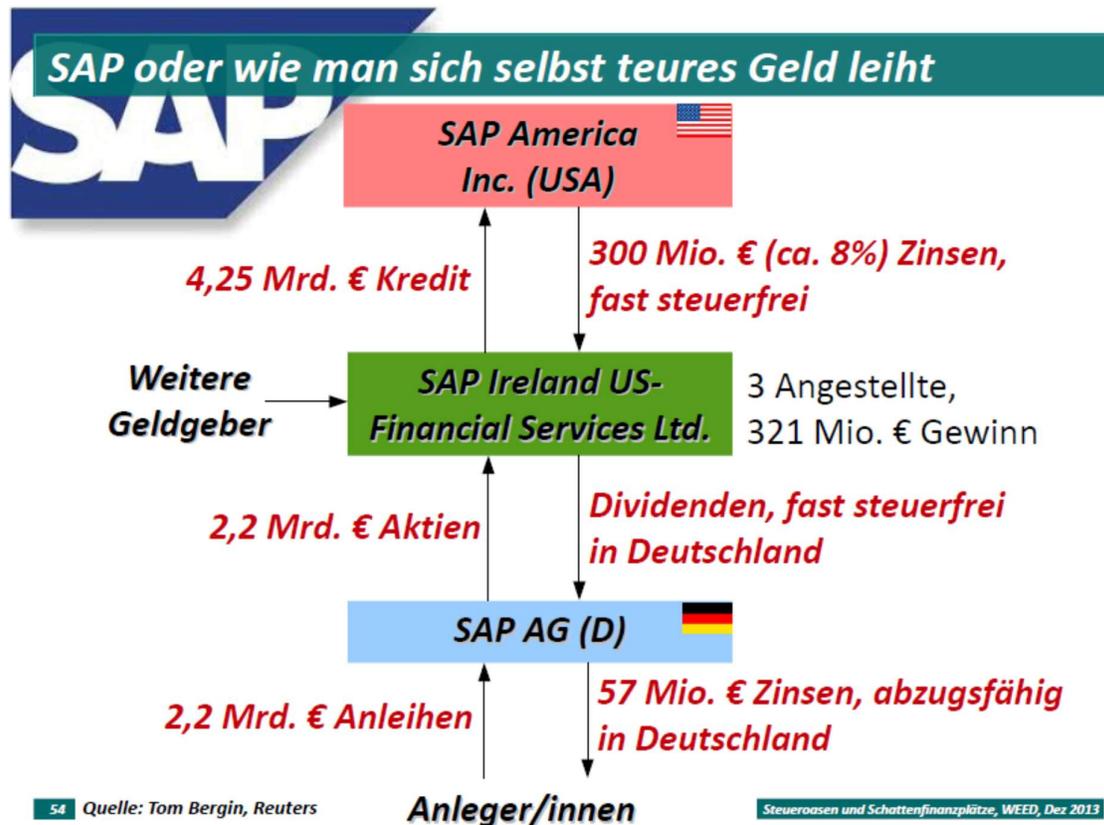
14.3.1 Dodge taxes first before becoming philanthropist

Regarding SAP, whose owner, Dieter Hopp, is one of Germany's top wealth holder and, at the same time, celebrated philanthropist. As the only German he is part of Bill Gates initiative Giving Pledge, he is sponsor of the premier leagues club Hoffenheim.

¹⁵² „Missbrauch war sicherlich in den 1990 er Jahren noch weiter verbreitet, als es heute überhaupt noch der Fall ist, da Kontrollen schärfer geworden sind, ebenso das Unrechtsbewusstsein gewachsen ist und Angst besteht, Zugang zu bestimmten Märkten zu verlieren. In ihrer Kanzlei bekommen sie natürlich auch nicht alles mit, was ihre Mandanten weltweit tun. Es kam auch vor dass Mandanten bei ihnen nicht eingetreten sind oder ausgetreten sind weil ihre Firmen sich an bestimmten Praktiken und Konstruktionen nicht beteiligen wollten. Natürlich gibt es auch in Deutschland Steuerberater, die gegen entsprechendes Entgelt in diesem Feld mitmischen, allerdings glaubt er, dass wirklich fragwürdige Dinge eher über Kanzleien außerhalb Deutschland abgewickelt werden. Bei den 2000 Selbstanzeigen, die sie inzwischen gemacht haben, gibt es natürlich Konstruktionen in Luxemburg, Liechtenstein, und der Schweiz; man kann aber davon ausgehen, dass es auch Konstrukte außerhalb von Europas gibt, von denen die Kunden ihnen auch gar nicht sagen ob man ebenso wenig, wie Zweigniederlassungen in Entwicklungsländern. Dort arbeiten die Kunden dann auch eher mit örtlichen Anwaltskanzleien zusammen, als mit ihren eigenen Zweigstellen vor Ort, ebenso wird dort sicherlich bestochen, um das zu erreichen, was man erreichen will. Dabei muss man aber auch rechnen, dass die Gegenseite mehr bezahlt, und dann hat man eben verloren. Im Zuge der gerade laufenden Aufklärung und Aufdeckung von Steuerhinterziehung, etwa die Panama-Modelle, wird man sicherlich noch einige Überraschungen erleben. Hier gilt aber, dass auch sie im vorangehen lernen. Besonders extrem waren solche Konstrukte von den Großen Vier angewendet worden, aber auch die sind inzwischen sehr zurückhaltend geworden, weil sie nicht riskieren wollen, ihre Zulassung in bestimmten Ländern zu verlieren, wenn ihre Trickserei auffliegt.“

¹⁵³ Das Vorstandsmitglied sollte als „Beratungsleistungen getarnte Zahlungen im Gesamtumfang von 44 Mio. US-Dollar erhalten. Tatsächlich erfolgten in den Jahren 2006 und 2007 auch entsprechende Geldzuflüsse. Das frühere Vorstandsmitglied beauftragte den Angeklagten mit der Errichtung einer "Stiftungskonstruktion" in Österreich, die der Verwaltung des Privatvermögens des Vorstandsmitglieds dienen sollte. In die Stiftung sollten letztlich auch die von der Formel-1-Gesellschaft erhaltenen Zahlungen eingebracht werden. Neben der Errichtung der Stiftung österreichischen Rechts wurden mehrere Gesellschaften unterschiedlicher Rechtsformen gegründet. Durch den Abschluss verschiedener Verträge zwischen diesen und weiteren Gesellschaften sollte verschleiert werden, dass die genannten Zahlungen dem früheren Vorstandsmitglied persönlich zu Gute kamen. Die erzielten Einnahmen erklärte das begünstigte Vorstandsmitglied nicht zur deutschen Einkommensteuer.“ Retrieved on 8.9.2016 from <https://www.datev.de/web/de/aktuelles/nachrichten-steuern-und-recht/steuern/verurteilung-des-steuerberaters-eines-frueheren-vorstandsmitglieds-der-bayernlb-wegen-beihilfe-zur-steuerhinterziehung-aufgehoben/>

But he, too, acquired his private wealth by playing the game of global finance:



Source 21 (Henn, 2013, p. 54)

14.4 Gates Foundation

Bill & Melinda Gates Foundation: Generally known to be the world's most famous, most influential and most successful charity. English Wikipedia entry nothing about critique/criticism. German Entry a critical chapter on three accounts:¹⁵⁴

- Investment into industries which pollute environment (also quoted by Beckett)
- Supports Monsanto
- Selective choice regarding technology and sicknesses, no information about sustainability of investment

14.4.1 Dodge taxes first before becoming philanthropist

Bill Gates did a lot to advance his business interest on the expense of others, e.g. lobbying at TRIPS.

But even nowadays Microsoft earns a lot every year via tax avoidance: In 2013/2014 annually USD 30 billion by leaving gains abroad amounting to USD 95 billion there. They only would have to be taxed when brought back to the US at 35% CIT. They also shift gains from patents out of the US to daughter companies and have them taxed there at lower rates. Right now,

¹⁵⁴ http://de.wikipedia.org/wiki/Bill_%26_Melinda_Gates_Foundation

Microsoft, Apple, Cisco etc. would like to get their money back to the US, but they do not want to pay tax then. Which is why they lobby for a “tax holiday.”¹⁵⁵

(Hartmann, 2015) Gates never started in a garage. His rich parents sent him to a private school to support his mathematical talent and interest in computers. He began programming with Paul Allen and Monte Davidoff at the private elite university Harvard, together with Allen he founded Microsoft. He did not build his huge and constantly growing wealth with hard work and brilliant ideas, but instead with aggressive business policy which was over decades at the edge of legality and grew to a software monopoly: because of competition issues Microsoft was sued worldwide in dozen of cases and had to pay in total USD 5 bn. Of course, Microsoft let its products be produced under miserable conditions in Chinese firms like Foxconn, where 14 worker committed suicide and 300 more threatened suicide because of their meager earnings. [14 Arbeiter das Leben genommen und weitere 300 Arbeiter wegen der Hungerlöhne mit Massensuizid gedroht haben](#). ... Still Gates benefits from this legal tax fraud: Until today he his the second biggest share holder of Microsoft and holds 330 mio shares which equals a stock value of USD 13.1 bn. His mega gift did not even diminish Gates' wealth. On the contrary; It almost doubled from USD 51 to 85 bn between 2011 and 2015.

14.4.2 Tax aspects

14.4.3 Exercised (personal) power via foundation

A closer check has been done by (Beckett, 2010): Critique by “The Lancet” “Grant-making by the Gates foundation,” concluded one, “seems to be largely managed through an informal system of personal networks and relationships rather than by a more transparent process based on independent and technical peer review.” The other article found that, “The research funding of the Foundation is heavily weighted towards the development of new vaccines and drugs, much of it high risk and even if successful likely to take at least the 20 years which Gates has targeted for halving child mortality.” It is hard to see this explosion of activity as a wholly bad thing. But it does have political implications. “It's kind of [creating] a post-UN world,” says someone close to the Gates foundation. “People have gotten interested in fast results.” The UN, he says, is too slow and bureaucratic – you could say democratic – to achieve them. Critics of the new, more entrepreneurial aid industry such as the Dutch journalist Linda Polman, in her recent book *War Games: The Story of Aid and War in Modern Times*, see empire-building and wasteful competition as well as worthwhile altruism. “Everyone in global health is talking about poor coordination,” says someone at a charity in that field. “The Gates foundation is contributing to the fragmentation and duplication.” Focused upon Bill & Melinda Gates personally, who are no health experts but at the same time not merely involved in big decisions (grants above US\$ 50 million), but at times even smaller projects, i.e. professional expertise is not necessarily that which counts. Report on Gates/Bufets initiative “The Giving Pledge”: And yet, some authorities on philanthropy fear the consequences of this giving boom, and dislike the faint air of playing god that hangs over its creations such as the Gates foundation. Edwards says: “The world isn't a giant experiment.

¹⁵⁵ Wie Microsoft 30 Milliarden Dollar sparte. (2014, August 25). In: Finanzen 100. Retrieved from http://www.finanzen100.de/finanznachrichten/wirtschaft/raus-aus-den-usa-wie-microsoft-30-milliarden-dollar-steuern-sparte_H299979464_69657/

The foundation affects real people in real places. Why should Bill decide which sort of vaccines get developed?

McCoy, David et. al. (2009, May 9) The Bill & Melinda Gates Foundation's grant-making programme for global health. In: *The Lancet*, Volume 373, No. 9675, p1645–1653. Abstract: The Bill & Melinda Gates Foundation is a major contributor to global health; its influence on international health policy and the design of global health programmes and initiatives is profound. Although the foundation's contribution to global health generally receives acclaim, fairly little is known about its grant-making programme. We undertook an analysis of 1094 global health grants awarded between January, 1998, and December, 2007. We found that the total value of these grants was US\$8.95 billion, of which \$5.82 billion (65%) was shared by only 20 organisations. Nevertheless, a wide range of global health organisations, such as WHO, the GAVI Alliance, the World Bank, the Global Fund to Fight AIDS, Tuberculosis and Malaria, prominent universities, and non-governmental organisations received grants. \$3.62 billion (40% of all funding) was given to supranational organisations. Of the remaining amount, 82% went to recipients based in the USA. Just over a third (\$3.27 billion) of funding was allocated to research and development (mainly for vaccines and microbicides), or to basic science research. The findings of this report raise several questions about the foundation's global health grant-making programme, which needs further research and assessment.

(Hartmann, 2015) The foundation concentrates its influence and money on a few selected technologies and diseases, especially HIV, tuberculosis, malaria and those where vaccinations are possible.” McCoy criticizes that most of the money does not go to receivers in developing countries who could decide on their own how to use it, but to global or US organizations. The urgently needed strengthening of local health systems through which poor countries would become independent from foreign aid in the long run is not supported. ... On example of the power of the foundation is its influence on WHO. The Gates Foundation is the second biggest single donator of WHO. But WHO cannot do with the Gates money what it wants. On Gates' world rescue list wad Ebola not noted for a long time which was one reason why WHO lacked the money to combat Ebola effectively. When Gates announced in the media that he donates USD 50 mio to combat Ebola, it already spread in several west-African countries,

14.4.4 Create more damage than you resolve

And, of course, the foundation with its better paid job sucks in all talents which leaves nothing for the public sector.

Accusations against investment of Bill Gates Foundation: In January 2007, journalists of the [Los Angeles Times](#) published a report in which they accused the foundation to invest in companies that are highly polluting the environment or sell expensive AIDS-medicaments.¹⁵⁶

Gates engagement was commented as follows by a conversation partners within the banking sector: The critique towards Gates that malaria in Africa is fought with disseminations that pollute the ground water in El Salvador? How can foundation capital be invested so that it does not counteract to good? ResponsAbility wants to change that with investment that are coherent with foundation purpose and target as more and more people ask “Where is our

¹⁵⁶ <http://www.latimes.com/news/la-na-gatesx07jan07-story.html#page=1>

money put into?". This is especially questioned by north-European investors, not so much yet in Germany.

Regarding Investment out of which the foundation receives money: The Bill & Melinda Gates Foundation Asset Trust has always refused to invest in tobacco firms; otherwise, the outside investment managers the trust employs are instructed to seek the maximum return on its endowment, so that the foundation can be as generous as possible. It is a moral trade-off; but then uncomfortable compromises, like unequal power relationships, run through most charitable work.

(Beckett, 2010) The way Gates and his elite staff have chosen to try to do so is by running their charity as a kind of business. Edwards calls this approach – increasingly popular at private foundations funded by business-people – philanthrocapitalism; others call it "venture philanthropy". Steiner explains: "Sitting here in Seattle, we're not going to solve Africa's problems. Africans are going to solve Africa's problems. We've got to find the Africans." Often, this means the foundation mounting competitions for grant applications, and giving money to the winners, which usually means the most "pioneering" (Steiner's word) and those that promise to fulfil a need not met by other charities. For all the charity's resources and connections, for all the attendant risks of over-confidence and over-mightiness, on the ground in Africa or Asia the foundation's immense-sounding grants are a miniscule fraction of what is required to create a fairer world. "In agriculture," says Steiner, "the problem's this big" – he throws out his long arms – "and our resources are this big" – he pinches an inch of air between a finger and thumb. With an ex-management consultant's preciseness, he concludes: "We estimate we can probably be 3-5% of the overall solution."

(Hartmann, 2015) The foundation could gain so much power and influence on WHO because the 194 member states steadily decreased their contributions due to scarce public households in the past 20 years. Here is where the circle is closing: The desolate budget of states is also caused by the fact that rich and superrich do not or not enough contribute through wealth tax and on top are not hindered to transfer their assets to tax havens and that big companies like Microsoft evade taxes maximally. Also, the tax benefits of donators and foundations lessens the public budget. And hence weakens democracy. ... Health systems in poor countries which are massively weakened by saving and privatizing forces of structural programs anyway have to cope with many things simultaneously: treatment and avoidance of diseases, combat of malnutrition, access to clean water, education of doctors and nurses, improvement of information systems. To repair this and set up a working public administration is urgently needed, says McCoy. But Bill Gates does not only disapprove that like wealth taxes, but also tries to stop it. This was found by [Katerini Storeng](#) in her work on the influence of Gates' technocratic ideology on GAVI. The Gates Foundation is also very closely linked with the industry.¹⁵⁷

¹⁵⁷ Die Gates Foundation ist eng mit der Industrie verzahnt. Die neue Vorstandsvorsitzende [Sue Desmond-Hellman](#) ist gleichzeitig Vorstandsmitglied von Procter&Gamble. Der ehemalige Vize-Präsident von Monsanto, [Robert Horsch](#), ist seit 2006 bei der Gates Foundation und dort stellvertretender Direktor für Landwirtschaftliche Entwicklung. [Trevor Mundel](#), der Präsident des Programms für Globale Gesundheit, war zuvor Leiter der Entwicklung bei Novartis. Der stellvertretende Direktor des Gesundheitsprogramms, [Ken Duncan](#), arbeitete zuvor beim Pharma-Riesen Glaxo Smith Klein. Mit jenem Pharmakonzern arbeitet die Stiftung in einer

(Hartmann, 2015) brings a number of examples of how the Gates Foundation is linked with other businesses, causing the very damage the foundation then pays to resolve. For example: The foundation donated money to combat respiratory problems caused by environmental damage in the Niger Delta, while they, at the same time, invested heavily into the very companies causing this havoc, reaping twice the amount they spent in dividends.

In Nigeria förderte die Gates Foundation 2007 ein Impfprogramm, das die Kinder dort gegen Polio und Masern immunisierte. Zum Beispiel in Ebocha im Niger-Delta. Den Kindern dort geht es wirklich miserabel: Sie leiden an schweren Atemwegserkrankungen, an Asthma und Augenkrankheiten. Tagtäglich atmen sie hochgiftige Rußschwaden ein, weil die Ölfirmen dort das Gas einfach abfackeln. Konzerne wie BP, Chevron, Eni, Exxon und Shell, denen außerdem vorgeworfen wird, das gesamte Niger-Delta mit durchlöchernten Öl-Pipelines ruiniert und Krankheit, Armut und Tod gebracht zu haben. Doch genau diese Konzerne gehörten jahrelang zum Anlagenportfolio der Bill&Melinda Gates Foundation. 2007 investierte die Stiftung 218 Millionen Dollar in Impfungen weltweit sowie in Forschung gegen Masern und Polio. Aber fast doppelt so viel, nämlich 423 Millionen Dollar, hat die Gates-Stiftung im selben Jahr in Aktien der Ölgiganten BP, Chevron, Eni, Exxon und Shell investiert. Das fanden Journalisten der New York Times heraus, die 2007 die Aktien der Stiftung analysiert und in Nigeria und Südafrika die Auswirkungen der Firmen auf die Menschen dort untersucht haben. Demnach investierte die Stiftung einen großen Teil ihres Vermögens in so rücksichtslose wie hochprofitable Konzerne, deren Kerngeschäft massiv gegen Arbeits-, Kinder- und Menschenrechte sowie gegen Umweltstandards verstößt. Beinahe die Hälfte, 41 Prozent der Anlagen, widersprachen fundamental der Philosophie und dem Ziel der wohltätigen Stiftung, die dafür sorgen will, dass jeder Mensch auf der Welt „ein gesundes und produktives Leben führen“ kann. 2005 hatte die Gates Foundation insgesamt 1,4 Milliarden Dollar in 69 der 100 größten Umweltverschmutzer der USA investiert, die die Universität Massachusetts in der Liste der Toxic 100-Liste führt. Darunter der Chemiekonzern Dow Chemical. Eine Explosion bei dessen Tochterfirma Union Carbide im indischen Bophal sorgte 1984 für den schwersten Chemieunfall in der Geschichte: 20 000 Menschen starben, mehr als eine halbe Million Menschen leidet noch an den Folgen. Seit 30 Jahren warten die Menschen vergeblich auf Entschädigung. Stattdessen mehrt das Vermögen des Konzerns das Vermögen der Gates Foundation, die zunehmend alleine darüber entscheidet, wem in der Welt weswegen und womit geholfen werden soll. Aber nicht nur die Abgase machen die Menschen in Nigeria krank und anfällig für jene Infektionskrankheiten, die die Stiftung so medienwirksam bekämpft. Das Wasser, das sich in den Bohrlöchern sammelt, zieht Mücken an, die Malaria verbreiten. Rund um das schmutzige Ölgeschäft hat sich die Prostitution etabliert, die für einen Anstieg der HIV-Infektionen sorgt – beides Krankheiten, deren Bekämpfung sich die Stiftung auf die Fahnen schreibt. 2005 hatte die Stiftung laut Times rund 1,5 Milliarden Dollar in Pharmakonzerne investiert, die schwer umstritten sind, weil sie verhinderten, dass Menschen in armen Ländern Zugang zu wichtigen Medikamenten bekamen. Der Wert dieser Aktien war damals um 54 Prozent gegenüber 2002 gestiegen. Das bedeutet aber nichts anderes, als dass die Gates Foundation hunderte Millionen Dollar mit Investments in Konzerne gemacht hat, deren Kerngeschäft Leid, Armut, Krankheit und Tod zur Folge hat. Bis 2014 hatte die Stiftung außerdem Aktien im Wert von 110 Millionen Pfund (damals 166 Millionen Dollar) bei der britischen Firma G4S, einem der größten Sicherheitsunternehmen der Welt, gekauft. G4S hat Verträge mit israelischen Gefängnissen im Westjordanland, in denen angeblich Palästinenser gefoltert werden. Außerdem wurden der Firma schwere Misshandlungen von Häftlingen in einem von ihr geleiteten Gefängnis in

Partnerschaft für die Entwicklung von Impfstoffen zusammen. Das britische Unternehmen ist höchst umstritten: Es stand mehrfach vor Gericht, weil es verfälschte Medikamente in Umlauf gebracht, mehrere Medikamente illegal vermarktet, Ärzte bestochen, Nebenwirkungen verschwiegen und durch Preismanipulation Sozialkassen betrogen hat. Weiters musste sich Glaxo Smith Kline wegen illegaler Menschenversuche vor Gericht verantworten: [2012 starben 14 Babys bei Impfversuchen in Argentinien, von denen die Eltern nichts gewusst haben sollen.](#)

Südafrika nachgewiesen. G4S-Sicherheitsleute waren es auch, denen vorgeworfen wurde, den Angolaner Jimmy Mubenga bei seiner Abschiebung aus Großbritannien so gewaltsam niedergedrückt zu haben, dass er erstickte. Im März 2015 analysierte die britische Tageszeitung The Guardian abermals die Anlagenpolitik Stiftung und enthüllte, dass diese laut deren Steuerbericht von 2013 immer noch 1,4 Milliarden Dollar in Öl-, Kohle-, Chemie- und Bergbau Giganten wie Anglo American, BASF, BHP Billiton, BP, Chevron Exxon, Glencore Xstrata ConocoPhillips, Petrobras, Rio Tinto, Shell und Vale investiert hat. Und zusammen mit den eigenen 21,1 Millionen Aktien von Coca Cola und den Anteilen an Berkshire Hathaway war die für ihr Gesundheitsengagement so viel gelobte Gates Foundation zeitweilig sogar der größte einzelne Anteilseigner des größten Herstellers gezuckerter Getränke der Welt.

14.5 Zuckerberg-Chan Foundation

A number of other prominent US foundations, e.g. the ones by Zuckerberg-Chan or Laurene Powell Jobs (widow of Steve Jobs) are in its legal forms not “charitable trusts” (as is Bill and Melinda Gates’), but rather “Limited Liability Corporations” (LLCs). This has advantages both for taxation and perpetual control of assets.

14.5.1 Tax aspects

Zuckerberg wasn’t famous for his faithfully paying taxes even before. When it made the round that Zuckerberg has to pay something between USD 1 and 2 billion income taxes in 2012, people were impressed. Until it emerged that there were a number of ways which did not only lower the tax bill, but made sure that Zuckerberg did not have to pay any taxes at all:

As soon as Zuckerberg exercises any of his stock options he triggers a tax hit. He did just that when he bought the 60 million Facebook shares for 6 cents each. But from that moment forward, Zuckerberg is responsible only for any further rise in the value of the stock, and only when he sells it, and, even then, only at the far more favorable “capital gains” rates. Zuckerberg’s \$2.3 billion payday also came after years of building up value in Facebook, meaning that he was deferring paying taxes for years. This is considered a financial benefit: It is better to pay taxes later rather than sooner, all things being equal. It also bears mention that all things were not equal, because 2012 featured one of the lowest top ordinary tax rates in a century of income taxes, at 35%..... Zuckerberg cashed out at both a high market price and a low tax rate.¹⁵⁸

Add to this benefits which he now reaps when transferring his stock into his own family foundation, because this is the trick: He does not donate cash, but stock.

Why donate stock? With stock, the donor gets a charitable contribution deduction based on the *fair market value* of the shares. Value and basis are different things, which can mean enormous tax advantages. ... Donating appreciated stock is a much better tax move than selling it and donating the sales proceeds. After all, by donating the stock, the gain he would have experienced on selling it is *never taxed*. The donee organization can either hold or sell the stock. But since it is a tax-qualified charity, if it sells the stock it pays no tax regardless of how big the gain. And since Mr. Zuckerberg will get credit on his tax return for the market value of what he donates, he can use that to shelter *billions of other income*.¹⁵⁹

Maybe the biggest benefit for Zuckerberg, or any CEO who donates stock to a family foundation: He will transfer ownership of his Facebook stock without paying capital gains

¹⁵⁸ McCaffery, E. (2013, April 9) Zuck never has to pay taxes again. In: CNN. Retrieved from <http://edition.cnn.com/2013/04/09/opinion/mccaffery-zuckerberg-taxes/>

¹⁵⁹ Wood, R. (2015, December 2) The Surprising Math in Mark Zuckerberg’s \$45 Billion Facebook Donation. In: Forbes. Retrieved from <http://www.forbes.com/sites/robertwood/2015/12/02/the-surprising-math-in-mark-zuckerbergs-45-billion-facebook-donation/>

taxes. ... Zuckerberg will also benefit from the possibility that his foundation will live beyond him, with his heirs and their heirs at the helm, untouched by estate taxes. There's an almost overnight financial benefit, too: The Facebook founder will deduct the fair value of his gift to his foundation from his taxable income in the year he makes the donation. A donor like Zuckerberg could realize a tax benefit equal to about one-third of the value of his gift. In this case, he stands to benefit as much as \$333 million, based on the \$1 billion he plans as his first transfer.¹⁶⁰

Add to this all you know of Facebook as corporation which is located in low tax areas then not only the owner of Facebook does not pay any taxes, the corporation hardly does it, either.

14.5.2 Exercising personal control and power

The advantage of LLC foundations is that those setting them up/donating them, are more in control what is going to happen and do things which charitable trusts are not permitted to do (even less if he had only donated money to existing trusts, NGOs or organizations).

That flexibility could make the foundation more effective, although it could also benefit the ... family more than a traditional trust. ... Corporations can make for-profit investments and political donations—and unlike charitable trusts, they don't have to report their political donations. ... “The beauty of having an LLC in today's world is No. 1, you have the ability to act and react as nimbly as need be to create change,” Laura Arrillaga-Andreessen, a philanthropy expert who also runs a private foundation with husband and Silicon Valley VC Marc Andreessen, [told *The New York Times*](#). “You have the ability to invest politically, in the for-profit sector and the nonprofit sector simultaneously.”¹⁶¹

In the case of the Zuckerberg-Chan foundation it was explicitly made clear that the legal structure was also chosen with the explicit intent that Mark Zuckerberg would retain control of Facebook and the way the business is being run:

The Securities and Exchange Commission [filing](#) that Facebook made as part of the announcement of the Zuckerberg charitable foundation makes it clear that he intends to control the company for a long time. The document says that the Facebook co-founder promises not to give more than \$1 billion per year to his foundation over the next three years, and says that he “intends to retain his majority voting position in [Facebook] stock for the foreseeable future.” (ibid.)

14.5.3 Conclusion

After his big stock option exercise, Zuckerberg can walk in the footsteps of hi-tech icons such as Bill Gates and Steve Jobs. These entrepreneurs built up vast fortunes using stock options with great savvy and then, after they made it to the levels of the super-rich, simply got rid of their ordinary income salaries. Jobs, famously, got paid \$1 a year to run Apple. Gates one-upped that by stepping down altogether from his day job as CEO of Microsoft. The really rich leave wages and the W-2s that go with them to the little people, like us. The truly rich do not have to pay any tax once they have their fortunes in hand. They can follow the simple tax planning advice to buy/borrow/die: Buy assets that appreciate in value without producing cash (like shares of Internet stocks), borrow to finance lifestyle, and die to pass on a "stepped up" basis to heirs wherein the tax gain miraculously disappears. ... As is so often the case, the real wizard here is Buffett, who got into the game in the early 1960s, buying up a company,

¹⁶⁰ Maiello, M. (2015, December 2) Mark Zuckerbergs Charity Windfall. In: The Daily Beast. Retrieved from <http://www.thedailybeast.com/articles/2015/12/01/mark-zuckerberg-s-charity-windfall.html>

¹⁶¹ Ingram, M. (2015, December 2) Mark Zuckerberg is giving away his money, but with a twist. In: Fortune. Retrieved from <http://fortune.com/2015/12/02/zuckerberg-charity/>

Berkshire Hathaway, that pays no dividends. Buffett was able to amass his fortune, well north of \$50 billion, without ever incurring a tax bill nearly as large as Zuckerberg's.¹⁶²

That way, the Big Names save tax several times: First, their company is cheating on the tax bill. Then the main shareholder is lowering his tax bill, thus neither CIT nor PIT is paid, withdrawing money which the state would urgently need to fund his welfare scheme.

Next, they save massively taxes on transferring their wealth into foundations.

The biggest point is also the democratic deficit: The donors, especially those controlling the foundations, determine what kind of charity will please them, so that they will support it. There is no participation on part of the receiver, and certainly no participation of the wider society, let alone transparency which would make it easier for the public to see what's happening and why.

14.6 Comparison with Germany

That foundations invest as such into industry would not be possible in Germany where the surplus must be spent. Problem: To keep the substance of the foundation requires also in times of low interests the refilling from earnings which are earned elsewhere?

14.7 Conclusion

Concluding with John Stuart Mill who allegedly said: "It is the great error of reformers and philanthropists in our time to nibble at the consequences of unjust power, instead of redressing the injustice itself."¹⁶³

Borchert contributes a sentence playing with words which is pretty much untranslatable. (Borchert, 2014, p. 154), Die steuerhinterziehenden Staatsverächter sind im doppelten Sinne »stiften gegangen«: Nicht nur anonymisieren sie ihr Geld »offshore« in Stiftungen in Steueroasen, sondern »entfernen sich heimlich, schnell und unauffällig, um sich einer Verantwortung zu entziehen« (Duden).⁴

Writers at the Economist and The New Yorker Magazine, but also NGOs perceive the rise of "Philanthrocapitalism",¹⁶⁴ a form of capitalism which is shaped by the origin of its funds the modus procedendi of spending it: First, it comes from people who first amassed a lot of money by being tough investors and employers and now redeem themselves by donating and giving away huge fortunes. Second, funds are being spent by 'applying a business model to the measurement of results' (Martens & Seitz, 2016, p. 61). The question here is whether such a later redemption justifies all that which has been done before to others. And: Whether the considerable influence on political debates due to their spending power is not going to the expense of others who also want to have a say and are not as powerful and wealthy.

¹⁶² McCaffery, E. (2013, April 9) Zuck never has to pay taxes again. In: CNN. Retrieved from <http://edition.cnn.com/2013/04/09/opinion/mccaffery-zuckerberg-taxes/>

¹⁶³ From James Wood, comp. Dictionary of Quotations. 1899. Retrieved from <http://www.bartleby.com/345/authors/339.html>

¹⁶⁴ The birth of Philanthrocapitalism (2006, February 23). In: The Economist. Retrieved from <http://www.economist.com/node/5517656> Cassidy, J. (2015, December 2) Mark Zuckerberg and the Rise of Philanthrocapitalism. In: The New Yorker. Retrieved from <http://www.newyorker.com/news/john-cassidy/mark-zuckerberg-and-the-rise-of-philanthrocapitalism>

Regarding the function and importance of trusts and foundations in hiding assets changes are to be expected in the context of the OECDs transparency initiatives (BEPS and AEOI). As experts assume, it is mostly foreign banks and wealth asset administrators, the Big 4 and lawyers abroad which are leading in the business of trickery and cheating with trusts and foundations. Here one should indeed consider the withdrawal of business licence for Germany, ideally for the EU, for all who are discovered to participate in this game – FATCA demonstrated that this is the most useful tool to force compliance of important player.

15 Quantification

The interesting question is how much wealthy person donate in relationship to their income and possession, either in addition or in place of taxation, independently of the ways and means they choose. Naturally, here data is scarce, because a lot relies on self-propagation by wealthy people and the absence of independent research and/or sources.

15.1 What they give vs. what others give

Given the diversity of philanthropic behavior, the extent of engagement beyond taxation is difficult to assess: How can you compare a donation with voluntary engagement and a non-profit guided Social Impact investment? And indeed: There are activities done in discreetness which do not turn up in public. However: some indications are:

America's "giving gene" is alive and well. Nearly all millionaires give their money or time to charitable causes; 91% have donated money or volunteered time in the last year, and the majority (55%) have done both. Typically, millionaires give 7% of their annual income to charity, and the majority (52%) plan to leave a sizable part of their wealth (28% on average) to charity when they pass away. In spite of the recent economic uncertainty, donations of money have actually increased. In the last decade, 36% of millionaires have increased their donations, while few (9%) have decreased them. (UBS, 2014a, p. 4)

Wealthy people might give a lot in absolute terms, but in relation to total income and total possession of financial, social and human capital, middle and lower class people are more generous. 'In 2011, the wealthiest Americans, those with earnings in the top 20%, contributed 1.3% of their income to charity, while those in the bottom 20% donated 3.2% of their income.'¹⁶⁵

15.2 What they give vs. what they spend elsewhere

There is a general idea that people of great wealth are also great philanthropists, i.e. that they donate plenty of money for charitable and otherwise commendable purposes or do commendable work by opening up foundations themselves. 'Wealth-X estimates that more than half of the world's UHNW population are major donors, having donated publicly at least US\$ 1 million *over the course of their lifetime*' (emphasis added). These are roughly 105,000 individuals, indicates at the same time that almost half are more restraint or not engaged at all – what about them? The average amount of donations are, according to Wealth-X, US\$ 24.4 million for male and US\$ 30.7 million for female UHNWIs (pp. 19+21). However, the same

¹⁶⁵ Manne, A. (2014, July 7) The age of entitlement: How wealth breeds narcissism. In: *The Guardian*. Retrieved from <http://www.theguardian.com/commentisfree/2014/jul/08/the-age-of-entitlement-how-wealth-breeds-narcissism>

report adds that the figures might be ‘even higher, when taking anonymous gifts into account.’ (Wealth-X and UBS, 2014, p. 28). This, however, is speculation, while it is a fact that every UNHWI (not half of them) spends *annually* US\$ 1 million on luxury consumption (Wealth-X and UBS, 2014, p. 30). Given a lifespan of 40-50 years after reaching adulthood, this amounts to much more than most will ever donate out of philanthropic reasons.

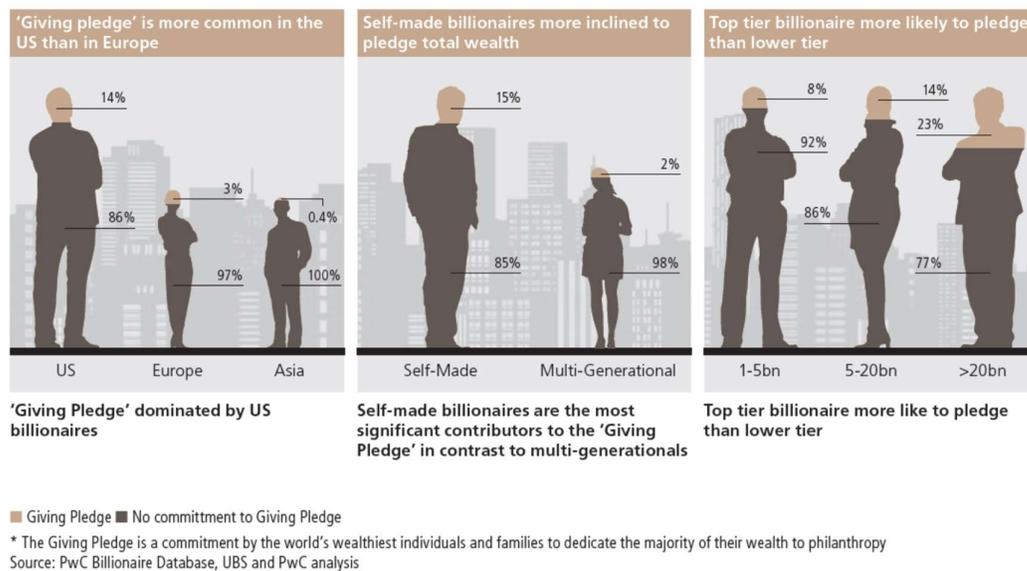
The Knight Frank Wealth Report 2015 reports that young UNHWIs consider themselves to be more philanthropic than their parental generation, at the same time they admit that they are more into buying and consuming luxury goods. (Knight Frank, 2015, p. 12f.). This leaves open, of course, the question how much the two posts relate to each other and to the owned and controlled assets as a whole.

15.3 Those who give vs. those who do not give

The Wealth-X/UBS report previously quoted said that about half of the world's ultra-wealthy donate. This estimation, i.e. that half of all UNHWIs are donors, is upheld in (Wealth-X; Arton Capital, 2015, p. 13). And: What about the other half of the UNHNWIs?

Another discrepancy is visible when looking at „The Giving Pledge“: There are many more not participating than there are participating, even though the UBS/PwC Billionaires-Report argues that the numbers will increase:

Abbildung 7 Total pledge of wealth gained popularity, especially amongst self-made, US and top billionaires.



Source 22 (UBS-PwC, 2015, p. 27)

In November 2015, “The Giving Pledge” was signed by 138 billionaires, which is 5.9% of the world's billionaire population (Wealth-X; Arton Capital, 2015, p. 8) – and this does not even say anything about that which the donation is being spent and what good is achieved for whom.

15.4 What they give vs. that which the state gives

Normally it is said that those opening up a foundation give more than they save in taxes (see above 10.8). But: What is measured? Giving assets into a foundation only withdraws those assets from taxation. You could at best compare the money issued annually from a foundation for spending with taxes which could have raised from those assets and here the guess is that those two (potential) amounts do not compare favourably.

This holds true even though the money donated and represented by them is merely a fraction of that which states still collect and spend: Mega-Foundations as the one by Warren Buffet are not more than 0.1% of the US budget, or all 3,000 foundations in Germany dealing with arts are not more than 3% of that which the German state spends in the same area (Druyen, 2007, p. 65).

15.5 Conclusion

Overall, when looking at the wealthy, it seems that the share of those being engaged and those being not is neither larger than smaller than it is in the ordinary population. (Leseberg & Timmer, 2015, p. 29ff.). And yet there are differences:

Of course, different cultures also play a role. German rich deny the participation in “The Giving Pledge” because one may not release the state from its responsibility. At the same time are these critiques the ones who donate much, perhaps more than half of their assets for charitable purposes – but discretely.¹⁶⁶

When donating or establishing a foundation, normally only financial assets are contributed. Maßstab ist frei verfügbares Geldvermögen. Was über Vermögen dann wenig aussagt, wenn noch Immobilien und Grundbesitz dazu kommen oder das Behalten von Betriebsanteilen.¹⁶⁷ In diesem Fall kann man sagen, dass Geldvermögen i.d.R. ein Viertel des Gesamtvermögens abbildet. (Leseberg & Timmer, 2015, p. 23ff)

In the word of a wealth asset manager:

He does not have the impression that German super rich feel a strong obligation to give parts of their assets back to community. They think that the tax burden in Germany is very high anyway and that they are allowed to keep the rest then. There is no protestant ethic like in the USA in Germany. The most important point in Germany is to break the “spaceship of fear” in which the super rich live and then to show that a philanthropy or charitable engagement is really respected and in any case better than a mere tax elevation.

16 Discussing meaningfulness of foundations

16.1 Conflicting findings

Depending who is asking about the meaningfulness of foundations will prove either this or that. I.e. difference whether the UBS Wealth Manager, an academic or an NGO activist asks.

¹⁶⁶ <http://www.spiegel.de/international/germany/negative-reaction-to-charity-campaign-german-millionaires-criticize-gates-giving-pledge-a-710972.html>

¹⁶⁷ Stiftungen werden oft mit Anteilen an Unternehmen ausgestattet, haben aber seltener Unternehmensbeteiligungen. (Leseberg & Timmer, 2015, p. 66)

A big problem in Germany is that the wealthy themselves are not participating in the discourse and not willing to talk about what they do. This leads to speculation, misunderstanding and conflict.

16.2 Philanthropy vs. structural injustice

The crucial question is whether private and corporate philanthropy can really counterbalance that which first of all has been earned and reaped due to structural injustices in the existing world, e.g. by exploiting cheap labour, violating labour standards or polluting the environment (Druyen, 2007, p. 57).

Obviously the overall “beneficiary” character of any foundation has to be judged on the background, where its endowment comes from, how it was/is generated. Here, the most beneficial charity is onerous if the money previously was won by cheating or exploiting community and environment. Philanthrocapitalism is capitalism no less.

Or: States debts at the costs of coming generations.

Albert Einstein: Problems cannot be solved by the level of awareness that created them.¹⁶⁸

See also (Martens & Seitz, 2016) below, sub-chapters 16.4 following.

16.3 Save taxes, advancing interests, keeping control

As has been indicated above (10.3+4), saving taxes, advancing interests, and keeping control is a major motivation behind setting up foundations – perhaps even into eternity since once a foundation purpose has been established it is difficult to adjust or change, even if the situation for which the foundation has been created no longer exists. That way, the long dead bind with their will the hands of the living. Here, therefore, the same criticism applies which Adam Smith directed towards estates and inheritances: This is manifestly absurd.¹⁶⁹

Randers/Maxton also extend this criticism towards foundations by pointing out that foundations are rarely able to amend that which previously had been done regarding damage, e.g. a foundation distributing medicine would be superfluous if industrial production would be more considerate towards environment and workers. This is why they prefer a stiff Inheritance tax, taxing all estates and legacies away and bring assets back under the control of all living (Randers & Maxton, 2016, p. 208ff.)

¹⁶⁸ See http://en.wikiquote.org/wiki/Talk:Albert_Einstein

¹⁶⁹ ‘Upon the whole nothing can be more absurd than perpetual entails. In them the principle of testamentary succession can by no means take place. Piety to the dead can only take place when their memory is fresh in the minds of men: a power to dispose of estates for ever is manifestly absurd. The earth and the fullness of it belongs to every generation, and the preceding one can have no right to bind it up from posterity²; such extension of property is quite unnatural. The insensible progress of entails was owing to their not knowing how far the right of the dead might extend, if they had any at all. The utmost extent of entails should be to those who are alive at the person’s death, for he can have no affection to those who are unborn. Entails are disadvantageous to the improvement of the country, and those lands where they have never taken place are always best cultivated: heirs of entailed estates have it not in their view to cultivate lands, and often they are not able to do it. A man who buys land has this entirely in view, and in general the new purchasers are the best cultivators.’ Smith, Adam - lectures-on-justice-police-revenue-and-arms S. 124, <http://oll.libertyfund.org/titles/smith-lectures-on-justice-police-revenue-and-arms-1763>

Much engagement is put into private area and only “seems to serve charitable purposes” (Grundmann, 2011, p. 206+211)

16.4 Foundations, capital markets, volatility

In addition, against foundations: Even more capital is invested on financial markets which floats around seeking for profits. Taxes are collected and spent at once. “Pay-as-you-go” financing between generations is a transparent and stability promoting solution (when debts are paid taxes can be lowered...)

One more problem with foundation is that they contribute to bloated capital markets since they have (at least in Germany) first the obligation to preserve the Kapitalstock and then to generate profits which can be forwarded to the foundations purpose. This, in time of low interest, makes manager of foundations participate in the chase for profitable investments and therefore contribute to the dangers of instability and potential for crisis.

As private foundations invest most of their assets on the financial markets, their income from interest and dividends is dependent on the overall economic situation —and so is their grant-making. During the recent world economic and financial crisis, international funding by the largest 1,300 US foundations dropped dramatically (by 32% between 2008 and 2010).²⁰⁵ Therefore, not only is philanthropic giving generally unpredictable, at least over the long term, it also tends to decline in times when it is most needed. (Martens & Seitz, 2016, p. 61f.)

All this suggests no sustainability and does not give the state ability to do sensible planning for the futures since contribution are at whim and random. Here, taxes are a much more solid foundation for budgeting.

16.5 Leuchtturmprojekte

When looking at those donations making the headlines, it is solitary and isolated beacons, for example the 20 million Euro of Johanna Quandt for the Frankfurt University, 40 million for the Charity Hospital, price money for Media awards (Manager Magazin Sonderheft, 2015, p. 15), Museums, Parks, Concert Halls: All contributions which do not in the first place benefit the poor since they first have to survive Primary and Secondary School before approaching potential benefits from those prestigious donations.

16.6 Short term, business-kind quick gain approach to symptoms

Trusts and foundations are not interested in paving roads and renovating/maintaining/financing research or other municipal tasks which are not as glamorous like building and opening children’s hospitals.

A tax advisor among the conversation partners to this project admits that foundations are making politics and having an influence on politics. This applies on a small and big scale. A local family entrepreneur makes politics towards the city he lives in, a big company makes politics towards national governments and in turn finances foundations and organizations that do it professionally: like the Bertelsmann Foundation or Stiftung Familienunternehmen.

Especially US foundations, such as Bill Gates have this quick gain approach, sometimes combing it with own profits. Here one also has to see what they count as success and here, of

course, the number of vaccination sounds great but might not improve anything beyond that quick pick (Martens & Seitz, 2016, p. 60f.)

16.7 No attention to long-term approach to structure and causes

Vaccination and bed nets can be done quickly, but what about sustainable structural approaches such as draining swamps to do without bed nets in the first place or establishing and maintaining public health systems? (Martens & Seitz, 2016, p. 61)

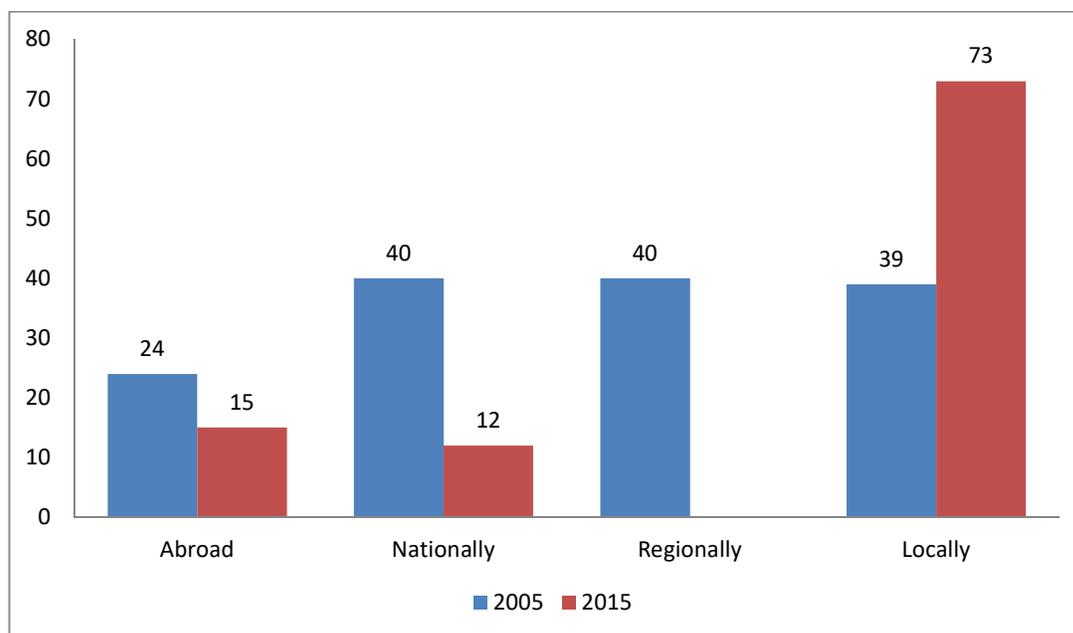
16.8 Weakening of global governance

Philanthropic foundations are behind multi-stakeholder global partnerships. IN those partnerships partners are at eye level, nobody dominates, which gives governments a weaker position. Influence of large foundations and donors also weakens UN Organizations and UN Committees, by setting up parallel structures alongside those institutions under the pretence it were more efficient and would overcome the splitting of responsibilities. At the same time, the initiation of new initiatives is increasing fragmentation for the price that those initiating things are driving force and have even more power to advance their own agenda

The Gates Foundation heavily criticized the weakness and fragmentation of the global nutrition system and was instrumental in creating the SUN movement. But SUN has not worked to overcome this fragmentation. Rather it has added to the proliferation of global partnerships on food security and nutrition, such as the Global Alliance for Improved Nutrition (GAIN), the Micronutrient Initiative (MI), the Flour Fortification Initiative (FFI), the New Alliance on Food Security and Nutrition and many others. Meanwhile the UN System Standing Committee on Nutrition, which claims to be “the food and nutrition policy harmonization forum of the United Nations,” remains weak and underfunded. Furthermore, inasmuch as partnerships give all participating actors equal rights, the special political and legal position occupied legitimately by public bodies is sidelined. (Martens & Seitz, 2016, p. 65)

16.9 Most money remains and concentrates locally

According to Stifterstudien 2005 and 2015: it is clear that the trend is towards local engagement and national and international engagement decreases. (Leseberg & Timmer, 2015, p. 108).



A tax advisor among the conversation partners commented: One problem is surely the church tower policy of foundations. A donor wants to do good and wants to be praised for that. This is easiest when it happens in the community where he lives. If he would build a school in Tanzania he would not get it. This is another disadvantage against taxes from which development aid is paid. But rich also think that their investment in poor countries lead to improvements and therefore their responsibility is done. Over conditions (environmental and social standards) they do not think as this is duty of the domestic government.

Through local spending wealth concentrates even more. Many foundations are located where rich people live, big companies are located, many taxes are being paid, easy access to CEOs is given. Concretely: A city like Munich is money abundant while Duisburg worsens. The state solidarity mechanism is a much better redistribution guarantee.

16.10 Lack of transparency

A democratic society is committed, at least in principle, to the equality of citizens. But foundations are, virtually by definition, the voice of plutocracy. The assets of a modern philanthropic foundation are set aside in a permanent, donor directed, tax-advantaged private endowment and distributed for a public purpose. These considerable private assets give it considerable public power. And with growing wealth and income inequality, their apparent tension with democratic principles only intensifies. (Reich, 2013)

Michael Endres, former board member of Deutsche Bank, until end last year CEO of charitable Hertie Foundation and member of Kuratorium, says:

Another challenge is transparency. "It goes beyond business figures". "It is also about codes of conduct. If foundations want to win public's trust there is no other way." Some foundations publish their annual reports. But they are often very thin. "A foundation should be managed like a company" hence says Weissflog. But most donors do not want that transparency. They do not want their charitable action being so public. In addition, they fear that the publication of their foundation assets may allow to inform about their private assets. So far this secrecy

succeeded as rules are seldom. “Foundations money is equal to tax money as they are tax free. It is astonishing that there are so few rules and regulations for foundations” says Endres.¹⁷⁰

This criticism is upheld by the Stifterstudie:

‘Some donators are increasing the critique by avoiding the public and by making their work intransparent.’ ... ‘The unwillingness of donators to be present in the public reinforces the mistrust against donators and their motives. Paul Watzlawick’s axiom applies: “One cannot not communicate as every communication (not only with words) is behavior and like one cannot not behave, one cannot not communicate“.’¹⁷¹

The lack of transparency is finally supported by conversation partners at banks who are in touch with top wealth holder:

Foundations in Germany are intransparent, therefore there is not much critique regarding investment and allocation practices. ... One has very seldom contact with owners, everything is filtered through asset advisors and family offices. Insofar, the consulting of the same is always filtered which reinforces the spaceship problem.

The US are, once more, exemplary here, in the words of Karsten Timmer: Regarding transparency, the US are paradigmatic: Here, tax returns of foundations can be accessed online, likewise the top salaries of those working for the foundations or who benefits with how much from donations.¹⁷²

It is finally unclear how many of the super rich donate, how much and how the relation to their remaining wealth is.

16.11 Private & corporate interests vs. democratic structures

The donator determines which values and directions get financial backup and cements that for ever. The poor and the receivers have no co-determination. Much of what can be meant selfless can at the same time be meant very manipulative. Democracy is here no ideal but a better and transparent solution.

¹⁷⁰ Eine andere Herausforderung ist die Transparenz. „Sie geht über die reinen Geschäftszahlen hinaus“, ergänzt Endres. „Es geht auch um Verhaltensregeln. Wenn Stiftungen das Vertrauen der Öffentlichkeit gewinnen wollen, führt daran kein Weg vorbei.“ Zwar publizieren einige Stiftungen einen Tätigkeitsbericht. Der fällt aber häufig sehr dünn aus. „Eine Stiftung sollte wie ein Unternehmen geführt werden“, fordert daher Weissflog. Die meisten Stifter wehren sich aber gegen diese Transparenz. Sie möchten ihr gemeinnütziges Handeln nicht an die große Glocke hängen. Außerdem fürchten sie, dass durch die Bekanntgabe des Stiftungsvermögens Rückschlüsse auf ihr Privatvermögen möglich sein könnten. Bislang gelang diese Geheimhaltung, da Vorschriften rar sind. „Stiftungsgelder sind gleichgestellt mit Steuergeldern, denn sie sind von der Steuer befreit. Da wundert es schon, dass es so wenige Vorgaben und Vorschriften für Stiftungen gibt“, kritisiert Endres. See: Koenen, J./ Schier, S. (2012, March 26) Wenn Mittelständler stiften gehen. In: Handelsblatt. Retrieved from : <http://www.handelsblatt.com/unternehmen/mittelstand/nachfolgeloesung-wenn-mittelstaendler-stiften-gehen/6203086.html>

¹⁷¹ „Gleichwohl befeuern auch einige Stifterinnen und Stifter die Kritik am stifterischen Engagement und letztlich auch am Stiftungswesen, indem sie die Öffentlichkeit eher meiden und ihre Arbeit nicht transparent gestalten (vgl. Friedrichs 2015)... Der Unwille der Stiftenden, in der Öffentlichkeit präsent zu sein, verstärkt mögliches Misstrauen gegenüber Stiftern und ihren Motiven. Es gilt das Axiom von Paul Watzlawick: „Man kann nicht nicht kommunizieren, denn jede Kommunikation (nicht nur mit Worten) ist Verhalten und genauso wie man sich nicht nicht verhalten kann, kann man nicht nicht kommunizieren“ (Watzlawick et al. 1969: 53). Stiftende, die nicht präsent sein wollen, laufen Gefahr, mit diesem Verhalten zu einem negativen Bild in der Öffentlichkeit beizutragen.“ (Leseberg & Timmer, 2015, p. 176+178).

¹⁷² See <https://givingusa.org/> „In der Transparenz sind die USA wegweisend: Man kann dort jede Steuererklärung online einsehen, ebenso die Top 5 Gehälter ebenso die Vergaben.“

Whoever prefers private and corporate donations has to reply why the private interest of the donor should be decisive for the activity of a foundation rather than democratically elected bodies such as town councils. For example, whether to build a shiny university with an economic profile rather than renovating public schools in deprived inner city areas or endowing a professors chair rather than paying primary school teachers. Conversation partner and even Druyen with all his benevolence towards the cultured wealth holder admits that in the end it is the will of the donor who determines the course of the foundation and not the need of the common good as discussed in parliaments.¹⁷³

(Friedrichs, 2015, p. 271f.) Donators are subsidized as favored by taxes and at the same time beyond democratic control or co-determination.

Karsten Timmer, Autor der 2005er Stifterstudie ‘I think it is a problem that foundations are the last institution in this country which are practically without public control.’¹⁷⁴

While foundations like the Gates and the Rockefeller Foundations have significant influence on development policies, they are not accountable to the “beneficiaries” of their activities, be it governments, international organizations or local communities. Generally, they are only accountable to their own boards or trustees. This can be a quite limited number of people, as in the case of the Gates Foundation, where three family members and Warren Buffett act as trustees and co-chairs. (Martens & Seitz, 2016, p. 66)

Of course, in addition to state action one should be privately active through donations or foundations. But not replacing, but complementing. The complementing can go unconventional ways which the conservatively acting state cannot. Problems:

- ➔ Engagement is better with the supervision and “consulting“ of democratic committees than private foundations – with the first more are benefitting.
- ➔ Where is the limit where one can say: Now the state has enough taxes and ich complement as a donator
- ➔ How many charitable foundations are lobbyists see Bertelsmann, Osteuropaverein der Deutschen Wirtschaft oder die Deutsche Gesellschaft für Wehrtechnik..

16.12 Powerful, intransparent networks

If the importance of states declines, his tasks are rendered towards private initiatives, foundations and those owning them acquire a new position of power. The importance and influence of transnational social networks of the global top 1% on the fate of states has been addressed even by Wealth Managing institutions (Wealth-X and UBS, 2014) and even Druyen with all his benevolence towards the cultured wealth holder seems to be unsure whether ‘prudent self-restraint’ is the best answer to the fact that those people eludes public control due to their personal grip on immense assets. If engaging in philanthropy would be indeed in the enlightened self-interest of wealth holder for the mutual benefit of all one wonders, why not more participate in this “business” (Druyen, 2007, p. 46f.).

Beyond that, we are not merely talking about individuals and their donor-intention which needs to be respected by regulations of existing legislation. As illustrated in the case of the

¹⁷³ See Druyens quote of Reinhard Mohn of the Bertelsmann Foundation (p.61).

¹⁷⁴ Jacobi, R. (2009,December 4) Im Spendenwesen fehlt Transparenz. In: Die Welt. Retrieved 26 May 2015 from <http://www.welt.de/debatte/kommentare/article6075843/Im-Spendenwesen-fehlt-Transparenz.html>

Staedtler Stiftung (see GW/I/12.2), private and corporate wealth holder also cooperate in the area of charity by appointing themselves into the Supervisory Boards of charitable foundations. See also (Friedrichs, 2015, p. 275f.)

Götz Werner Foundation: He is at the top, otherwise he appointed many members of his family into influential positions.

Stifterstudie 2005: Dominant in running of foundations are: The Founder (84%), friends and acquaintances (38%), spouse or partner (30%), only then followed by experts and “personalities of public life”. Zit. In Friedrich p. 273f.

Social networks extend into a network of foundations who – as also Druyen observes – develop into powerful counterparts of states, wanting to have a say on even how to approach structural reforms in important areas such as health care or education (Druyen, 2007, p. 56f.+60f.). That’s one of the main criticism, e.g., against Bill Gates Foundations involvement in medication or health politics.

Foundations are bringing in elements in society which are according to Sen part of democracy: acknowledgement of private and association welfare, promotion of civil society. Not satisfaction of needs is supported, but engagement and participation. But: is this the case?? Sen thinks that securing of private wealth is just secured through keeping societal welfare sustainably. “Measured in economic capital the rich would have to pay back to society more than they actually do”. (Grundmann, 2009, p. 205)

Last not least again a tax advisor: Such networks also exist in dealing with tax money. That foundations are intransparent is also recognized by him. Foundations are small states within states which have their own inner and foreign policies. Especially with the Gates Foundation. He did not know that the Gates Foundation also creates problems with their investment which it then combats with its earnings. In Germany, it is not possible to invest foundation capital on a large scale, there is an obligation to transfer earnings at once to the foundation purpose.

16.13 Refusal of insertion into a larger plan

And do private foundations never to anything wrong when engaging somewhere without the necessary professionalism and without consulting local expertise, involving local population? A conversation partner from the banking profession comes to the conclusion:

In principal, many donators are no experts and “naïve”. They have a purpose mostly local-regional-national to do good and give that order then to self selected experts who are very often no real experts but friends or relatives and others from the spaceship. Then everything is determined forever. But important is: Here also applies “meant well is the opposite of well“ because it is not well understood therefore conceptualized and implemented. Sustainability, problem adequacy or a global view is often missing.

The criticism at the FF3 conference regarding private and corporate initiatives: they are done along personal preferences, but not part of a larger thinking.¹⁷⁵ This is seen to be a bit overoptimistic:

In light of experiences in the areas of health and agriculture, a thorough assessment of the impacts and side effects of philanthropic engagement is necessary. Governments, international organizations and CSOs should take into account the diversity of the philanthropic sector and assess the growing influence of major philanthropic foundations, and especially the Bill & Melinda Gates Foundation, on political discourse and agenda-setting. They should analyze the intended and unintended risks and side effects of their activities, particularly the fragmentation of global governance, the weakening of representative democracy and their institutions (such as parliaments), the unpredictable and insufficient financing of public goods, the lack of monitoring and accountability mechanisms, and the prevailing practice of applying the business logic to the provision of public goods. (Martens & Seitz, 2016, p. 68)

16.14 State wasteful, private initiative efficient?

The state wastes my money, therefore I prefer to donate. Der Staat verschwendet mein Geld, deshalb stifte ich lieber. Berlin Airport, paradigmatic. But: What about Hamburg opera which is PPP.

- Question of expertise determining business of foundation
- Short-term/quick gains, long-term

17 Conclusion

17.1 Redistribution due to market, social partner or state?

In chapters 1-4 redistribution mechanism by the “markets” (investors, producers, consumers, capital or labour) was addressed, subsequently options permitted by the state and used by private, corporate and criminal wealth holder. Those presented first would be preferable in the attempt to combat inequality and poverty in accordance with the subsidiary principle, since they, e.g., can be better targeted and handled more cost-efficient. This approach would lower profits and, accordingly, tax revenue; but this would be OK since the overall benefit for the Community would nevertheless be large.

As it seems, however, those options are not used adequately or are misused due to the dominance of capital owner, whose growing influence is no longer adequately balanced by strong trade unions.

¹⁷⁵ ,Private ausländische Investitionen können durchaus eine wichtige Rolle bei wirtschaftlichen Entwicklungsprozessen spielen. Eine per se armutsreduzierende Wirkung ist durch private Mittel jedoch keineswegs gesichert, denn sie fließen nur selten in ärmere Regionen oder in weniger profitversprechende Bereiche wie Erziehung und Basisgesundheit. Es bedarf starker politischer Steuerungsmechanismen, damit diese Investitionen im Einklang mit den nationalen Entwicklungsplänen stehen und sozialer Entwicklung zugutekommen. Doch diese fehlen in den meisten ärmeren Entwicklungsländern noch. Es ist zu befürchten, dass Entwicklungspolitik nach der Konferenz verstärkt zum Investitionsprogramm für die im Finanzsystem geparkten Milliarden der multinationalen Konzerne degeneriert.‘ S. 3 der VENRO Stellungnahme zum Ausgang der FFD3 Konferenz in Addis.

For that reason, and until the markets are better regulated once more, state and democracy controlled redistribution has its merits and advantages, since it also seems that benefits provided to the Common Good via trusts and foundations is not contestable or has deficits when compared with a state and democracy controlled redistribution system funded by taxation.

17.2 Dialogue and “change in culture” is needed

Druyen asks the question of a “psychological contract” respectively of “compatibility of the wealth with society”... This target is oriented towards the “society contract” which is the base of our modern society since the Enlightenment. Can the rich handle his wealth responsibly? And asks the subsequent question “How much wealth is possible cognitively?” Some dimensions are not accessible to the single person. Psychological acquisition of big wealth requires cognitive competence maybe even a “wealth owning license”.¹⁷⁶

Druyen concludes in his research the obvious: We will not be able to resolve today's problems against the wealthy, but only with them. From this, two consequences follow.

- First, since the idea of wealth is preoccupying public mind and discussion anyhow, the persistent silence of those who are wealthy in Germany is counterproductive: If they do not participate in the discussion, they leave the discourse to prejudices and stereotypes. Germany needs a public discussion about the obvious and well known if defamation is to be kept out of the debate. Transparency about that which those people do for the good of all not only when creating and maintaining jobs, but also philanthropic deeds is the best way to evaporate greed and envy, one of them any things German wealth holder fear to attract.
- Second, and linked to that, issues of wealth, wealthiness and wealthability, questions about the good life need to be discussed and “cultivated” also with and among wealthy people, in order to increase the awareness of the power inherent in their assets and that there it does harm society of this power is exercised primarily in secret, behind the scenes. Wealthy people existed always and will be with us for more centuries to come. But together with wealth exists wealthability, namely capacities and their responsibility for the larger common good (Druyen, 2007, p. 18f.).

A banker states: Of course, some German heirs would agree to talk about the “Giving Pledge“ initiative of Bill Gates. Maybe one way would be to try to approach some entrepreneurs or super rich through the association of catholic entrepreneurs. This could happen through the credibility which we as Jesuits or Jesuit Mission have. When one would organize then an event where requests of the catholic social teaching and the obligation to donate (maybe in an

¹⁷⁶ “Druyen stellt die Fragen der eines „Psychologischen Vertrags“ bzw. nach der „Kompatibilität des Vermögenden mit der Gesellschaft... Diese Zielrichtung orientiert sich durchaus an jenem „Gesellschaftsvertrag“, der unserer modernen Gesellschaft seit der Aufklärung zugrunde liegt. Kann der Reiche mit seinem Reichtum verantwortungsbewusst umgehen? Und stellt die Anschlussfrage „Wie viel Vermögen (ist) kognitiv möglich?“ Manche Dimensionen sind dem Einzelnen schlicht nicht zugänglich. Psychologische Aneignung von großem Vermögen erfordert kognitive Kompetenz, vielleicht sogar einen „Vermögensführerschein“ ... „Dass unverzichtbar ist, die Folgenabschätzung des eigenen und gesellschaftlichen Lebens nicht nur dem Zufall zu überlassen, bedarf keiner weiteren Begründung.“ Hinzu kommt die Frage, „wie weit sich Geldreichtum diametral zur Vermögenskultur verhält, da Geld lediglich Anspruch auf Eigentum, jedoch nicht auf Vermögen ist.“ (Druyen, 2011, p. 221f.)

internal confidential frame) are discussed then also people from Brenninkmeijers would come.

17.3 Tax laws to “motivate” donation and foundations?

US-Beispiel. The likelihood is not too big that people donate without any pressure as much on their own accord and free choice than they pay in taxes.

17.4 Fiscal subsidiarity

Benedict XVI Caritas in veritatem Nr. 60 ‘One possible approach to development aid would be to apply effectively what is known as fiscal subsidiarity, allowing citizens to decide how to allocate a portion of the taxes they pay to the State. Provided it does not degenerate into the promotion of special interests, this can help to stimulate forms of welfare solidarity from below.’ This could also be applied nationally, e.g. in the field of empowerment or other attempts to increase social mobility. Perhaps the number of areas of charitable engagement (Gemeinnützigkeit) are in need to be limited and better cut to the point.

Obviously, such an offer would offend against the ruling tax paradigm according to which all money comes to the treasury and parliament decides upon its spending. All contributors from ministries and political parties were emphatic about that.

But there is also agreement on part of NGO activists and Asset Manager, equally research indicates that such an offer could appeal to certain types of wealthy persons.

Beyond that, it could be a compromise to honour effort and hardship on part of the wealthy person and yet get money spent on the community. Whatever a wealth person supports that way is no longer in need of taxpayers money, hence the state could re-route those newly available funds to areas which are less “sexy” for wealthy donors, e.g. repairing roof tops of schools or crumbling infrastructure.

17.4.1 Examples

Ähnlich wie bei Strafmandaten, wo der Richter anbieten kann, wem die Strafzahlungen zukommen.

This principle is working well in Italy with the “Otto Per Mille” Tax¹⁷⁷ and it also prevents foundations with the guise of beneficence, generosity and charitableness behind whose facade hide institutions promoting hidden agendas for the wealthy.

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¹⁷⁷ See http://en.wikipedia.org/wiki/Eight_per_thousand

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