

The way to cultural diversity in tax policies

The Ernst & Young international survey
on tax policies in the cultural sector

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Foreword

About this survey and Ernst & Young's collaboration with the Forum d'Avignon

For its first session in 2008, the Forum d'Avignon – Culture, Economy, Media – focused on culture as a factor of growth. At Ernst & Young, we understand culture's importance and its significant economical effects.

For its 2009 session, the Forum will now look at cultural strategies to succeed in a post-crisis area. We are honored to again be a Forum sponsor.

Any strategy requires appropriate means.

The cultural sector is where all operators of the private and public sectors collaborate - without borders - with a great mix of public policies and private interests.

In that context, tax policies play a key role in the development of culture. Indeed, governments determine and apply policies, which directly impact operators of the cultural sector, such as taxpayers. Also, related incentives ultimately benefit all persons investing into culture, such as individuals, corporations and not-for-profit organizations.

The 2009 Forum d'Avignon will therefore investigate how tax policies can be designed in order to promote culture and communication sectors. It will address various questions such as are there winning tax strategies ; how can a tax system encourage digital innovation ; should priority be given to the economy and industrial policies or to the culture.

In that context, Ernst & Young has mobilized the resources and expertise of its tax advisors around the world to perform a comprehensive and detailed survey on how tax policy is used as a tool to develop culture in various countries.

The purpose of this survey is to identify, describe, analyze and compare the main tax provisions in favor of culture in the following countries: Brazil, Canada, China, France, Germany, Japan, India, Italy, Mexico, Spain, South Korea, the Russian Federation, the UK and the US.

Those 14 countries represent some of the main cultures of the world, both in terms of diversity, population size, geographic location and historical heritage. For each country studied, local tax experts conducted a detailed technical analysis, based on tax regulations in force as of July 2009.

This publication includes key findings and highlights from the survey.

The survey is available for online access on the Ernst & Young website (<http://www.ey.com/GL/en/Industries/Media---Entertainment>) and the Forum d'Avignon website (www.forum-avignon.org).



Overview of tax policies in the cultural sector



In each of the countries studied, various tax benefits¹ have been identified that are specifically designed to develop and promote the cultural sector.

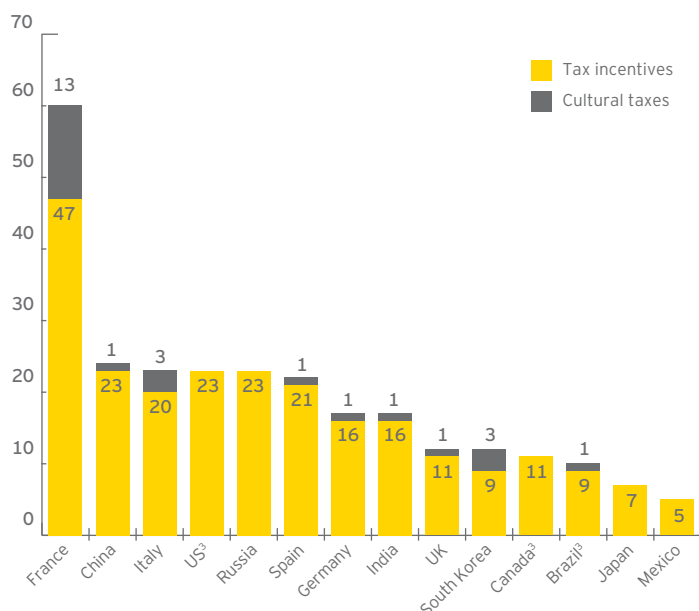
Globally tax policies can be categorized by reference to the tax techniques used, by the cultural sector targeted and by beneficiary. This classification grid helps to identify the objectives pursued by lawmakers when granting a favorable tax regime or enacting a new cultural tax.

The survey has identified two main techniques used to provide tax support to cultural activities:

- 1. The cultural tax incentives**, defined as all provisions in the law resulting in: (i) a decrease in the tax charge (from the taxpayer standpoint) and (ii) conversely, a decrease in tax proceeds collected by governments.
- 2. The cultural taxes**, which are taxes levied specifically for a political purpose. They represent an additional burden for the taxpayers but a resource for governments. The proceeds from these cultural taxes may either be allocated to the general public budget or redistributed to the cultural operators (or to a particular sector of culture)².

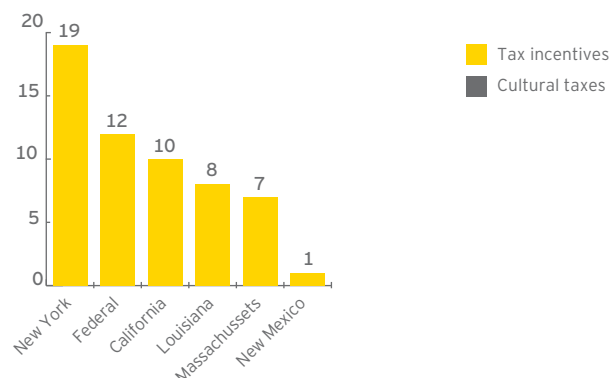
The following charts provide an overview of the tax policies reviewed from a macro and comparative perspective by country, number and nature of tax benefits identified.

Tax measures identified at national level

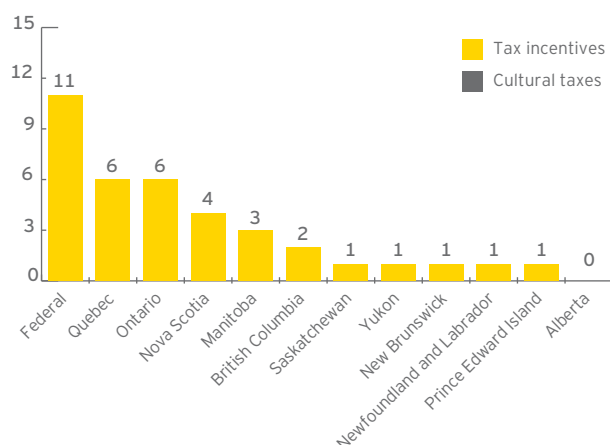


Tax measures identified at local level (for states government): two federal governments have been selected for comparison

United States⁴



Canada



¹ In common language, a tax benefit or tax "break" is a favorable tax provision when compared to normal tax rules ; also referred to as tax "relief" or tax "rebates."

² A tax can be qualified "cultural" either by nature (taxes levied on a cultural event or assets, but of which the proceeds are allocated to the state budget without direct allocation to a cultural purpose) or by purpose (taxes of which the proceeds are exclusively allocated to a cultural purpose).

³ The number of reported taxes is a combination of both national measures and (average) federal measures.

⁴ Only a limited number of states were reviewed: California, Louisiana, Massachusetts, New Mexico and New York.

The following charts provide details on cultural taxes identified by cultural sector and country.

Cultural taxes, by sector

Culture sector	Cultural taxes
Television broadcasting	10
Cinema	5
Music industry	4
Press and editing	3
National heritage	2
Radio	2
Live performing arts	2
All	1

Cultural taxes, by country

Country	Number of taxes	Description
Brazil	1	Condecine (tax on films distribution and licensing)
China	1	Culture funding tax (assessed on ads and entertainment revenues ⁵)
France ⁷	13	Television reception tax ⁶ ; cinema admission tax; tax on television services; tax on television advertisements; tax on television and radio broadcasting; tax on the turnover of companies operating in the audiovisual sector; tax on video rental and VOD; tax on printing and publishing devices; tax on book publishing; tax on certain printed advertisement expenses; variety shows tax; tax on live performances; tax for archeology works
Germany	1	Television reception tax
India	1	Entertainment tax ⁸ (film and live performance tickets, VOD)
Italy	3	Television reception tax, radio reception tax, Music entertainment tax
South Korea	3	Entertainment tax (film tickets), television reception tax, broadcasting development tax
Spain	1	Tax on exports of cultural goods
UK	1	Television reception tax
Canada, Japan, Mexico, Russian Federation, US	None	

Who are the beneficiaries of the cultural tax policies?

Tax policies appear to have similar categories of beneficiaries:

- **Operators in the cultural sector** being all individuals and organizations that are part of the culture value chain (e.g., content production, distribution to packaging and end-users, culture promotion and funding). This category covers both individuals – artists, actors, entertainment workers, authors – and private companies or other legal bodies engaged either for lucrative or non-lucrative purposes into a cultural-related activity.
- **Investors into culture**, including all individual and private bodies investing or spending their own financial resources into cultural assets or activities (e.g., art collections, sponsoring, patronage, charities). Tax policies may encourage investors, depending on whether or not the related beneficiaries of such investments are qualified not-for-profit organizations (NPOs⁹), such as museums, operas, public and private foundations with a cultural purpose.

Overall, countries tend to provide slightly more tax benefits (by the number of tax provisions) to companies and individuals operating in the cultural sector than to investors into culture.

This is, however, not a pronounced tendency – only 8 countries out of 14 have more provisions in favor of operators – and most countries appear to have actually a balanced approach with respect to beneficiaries of tax benefits.

Some countries are totally neutral, such as the UK. Other countries provide more tax benefits to one category of beneficiaries, without being exclusive. Two countries – Brazil and Spain – implemented tax policy primarily targeting investors in culture.

Obviously, a comparison based solely on the number of tax benefits is not fully satisfactory since it would be necessary to compare the financials as well (i.e., cash proceeds from each tax benefit). In practice, it appeared difficult to access all such financial data for all countries under the survey's scope.

Nevertheless, the number of tax measures gives us quite a good indication of the level of interest and of the orientation taken by the tax policy makers in the area of cultural activities.

⁵ Tax is due at a rate of 3% assessed on income subject to Chinese business tax.

⁶ Tax assessed on ownership of a television set.

⁷ France is currently debating on a new tax for online gaming and a tax assessed on turnover of internet companies (to fund cultural content creation).

⁸ Generic term referring to tax on entertainment admissions and tickets.

⁹ Not-for-profit Organizations.

Which sectors of culture are benefiting from the tax benefits?

- Out of 14 countries, 8 do not support a cultural sector in particular and have tax policies in place for all sectors.
- **The cultural sector most supported (by number of tax incentives) is without a doubt the film industry.** Some countries have developed quite a sophisticated and proactive tax policy for the movie industry, including Brazil, Canada, India, Italy, Mexico, France and the US. Such countries have notably adopted tax policies encouraging the development of local industry and attracting foreign film makers.
- **All countries heavily use the tax policy tool to preserve national patrimony and heritage**, with especially intense utilization by Italy, Spain, Russia, Japan, the UK and France.

Country	Cultural sector most supported (by number of measures)
Brazil	Culture in general, movie industry
Canada	Movie industry, video games, digital innovation
China	Culture in general ¹⁰
France	Culture in general
Germany	Live performing arts, heritage, music industry
India	Movie industry
Italy	Movie industry, heritage, television broadcasting, music industry
Japan	Culture in general, heritage
Mexico	Culture in general, movie industry
Russian Federation	Culture in general, heritage
South Korea	Culture in general
Spain	Heritage
UK	Heritage
US	Culture in general, films and heritage

¹⁰ Culture in general means that most sectors of culture are equally covered by cultural tax policies.





Points of convergence

Developing the universal tool box

The survey indicates that cultural taxes enacted throughout the world tend to be rather comparable and are relatively limited in nature and by number. They center mainly on entertainment taxes levied on turnover generated by some cultural activities and television reception taxes.

In the field of tax incentives, different techniques are used by lawmakers.

Tax incentive technique	Definition	Number identified	%
Tax exemptions	Exclude qualified persons or categories of persons from being liable to tax; can be permanent or temporary, can also exclude specific activities from the scope of tax	141	43.8%
Tax credits	Give a credit against tax payable for qualified actions (e.g., expense, investment) ; results in a reduction in the tax payable in cash (cash tax benefit)	80	24.9%
Deductions from taxable income	Allow a deduction from taxable income ¹¹ , relate mainly to income taxes and can take various different forms in practice ¹²	64	19.9%
Reduced rates of taxation	Provide a tax rate lower than the normal rate, permanently or temporarily	24	7.4%
Other	Tax-free zones, capped tax amounts, deferral tax benefits ¹³	13	4.0%
Total		322	100%

The exemption is therefore the most used technique followed by tax credits and tax deductions. There are also various miscellaneous tax regimes (under "Other" category).

Each technique obviously does not provide the same taxpayer benefits – cash-tax saving, tax deferral, tax breaks for a limited period of time – which is a fact lawmakers must consider depending on the strategies pursued.

There is also a correlation between the techniques used and the category of beneficiaries targeted.

Exemptions and reduced tax rates tend to exist in favor of operators in the cultural sector, whether they carry out lucrative or non-lucrative activities, whereas tax credits and tax deductions are generally targeting investors and may also depend on their lucrative or non-lucrative intent.

Tax incentive techniques can be applied to all of the main categories of taxes, providing many possible combinations and opportunities for a culture-oriented tax policy.

The scope of tax incentives is conceptually very broad, because taxation in the cultural field can be triggered by a larger number of events.

Among the various countries studied, the moments of taxation can be broadly classified as follows:

- **Ownership or use of a real estate** (real estate taxes)
- **Capital gain** (tax due on increase in value between acquisition and disposal of cultural asset)
- **Transfer of assets**: tax due on cultural assets transfer (with or without a gain) such as registration duties, stamp taxes, transfer taxes

- **Income and earnings**: income taxes (individual and corporate income tax)
- **Inheritance and donations/gifts**: tax on transfer of assets by effect of death or donation/gift
- **Revenues and turnover**: taxes assessed on sales, VAT, consumption taxes
- **Wealth**: tax assessed on individual wealth (in addition to individual income tax)
- **Businesses assets and activities**: taxes assessed on certain assets/activities (often levied at a local level)
- **Import and export of cultural assets**: custom duties

¹¹ Generally, for income taxes purposes, the taxable income (basis upon which the tax rate is applied) is determined net of tax-deductible expenses. Tax-deductible expenses and non-tax-deductible expenses are determined by the law.

¹² Full, partial, increased or accelerated deductions (for expenditures and general expenses) or accelerated depreciation (on fixed assets, subject to amortization over time).

¹³ Postponing of tax charge or spreading the taxation of an income over more than one tax period.



Case study: the television reception taxes

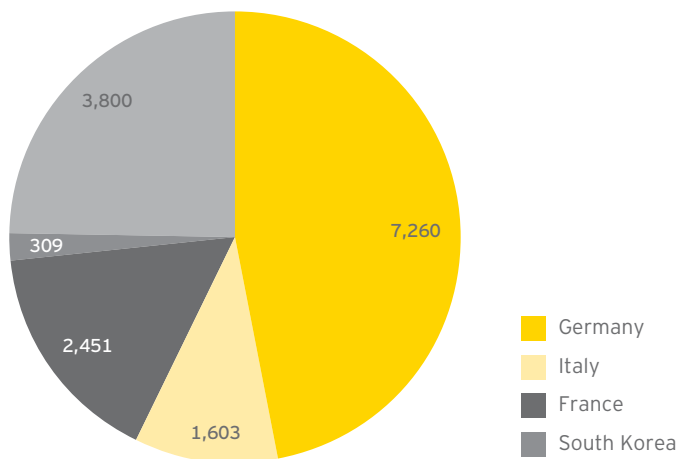
The taxes are assessed on owners of television sets, whether the owner is an individual or an organization. It is a fixed amount, per television set, and is levied annually.

It is enforced in Italy, France, Germany and South Korea. Proceeds are quite significant in volume and are allocated, in all four countries, to the financing of public television channels and radio broadcasting.

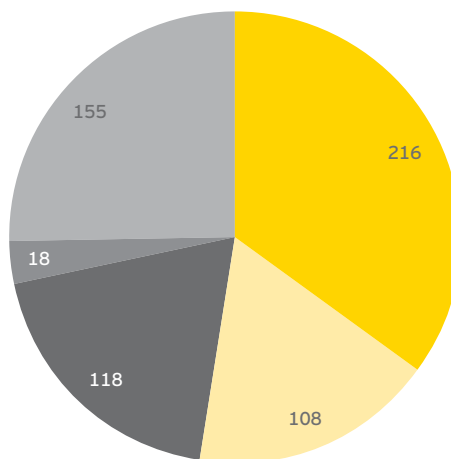
As a counterpart of such a fiscal financing, public channels in these countries have domestic content quotas. Also, their advertising capacity is often limited by the regulator such as in the UK (The BBC) and in France (France Télévisions Group) .

The only difference is therefore in the amount of annual tax due per television set and related annual proceeds in volume, as illustrated below.

2008 proceeds from television reception tax (in € millions)



Annual amount of tax due per television set (in €)



Depending on the strategy pursued by lawmakers – in terms of cultural sectors and cultural operators to be addressed – such a tool box provides almost unlimited combinations and opportunities.

	Incentives	Tax exemptions	Tax deductions	Tax credits	Reduced rates	Others
Taxes						
Corporate income tax						
Individual income tax						
VAT and sales tax						
Real estate tax						
Transfer tax						
Capital gain tax						
Inheritance tax						
Wealth tax						
Business and local tax						
Custom duties						

Focus by cultural sector

Focus by beneficiary

By using this tool box, what are the objectives actually pursued by cultural tax policies?

Diverse strategies and objectives are pursued by tax policies.

The main strategies identified by the survey are as follows. It should be noted that these are shared by almost all countries under review:

- Increased access to culture (per inhabitant, or in volume, notably for rural and emerging countries)
- Reduction of the cost of access to culture (from an end-user/consumer perspective)
- Increasing the volume of private financing of culture (e.g., donations, charities, patronage), as an alternative or complement to state action
- Preserving national patrimony and heritage by facilitating transmission of cultural items (e.g., arts, real estate) among generations (i.e., inheritance), or conservation and transfer from private to public or to not-for-profit bodies
- Increasing the involvement of NPOs in the promotion and development of culture, here again as an alternative or a complementary action to governmental action

- Facilitation of the culture-creation process, taking into account the specificity of such creative activities
- Facilitation of the financing of high-capital-intensive cultural industries (i.e., financing of investments notably for film production, communication networks, etc.)

Cultural tax policies appear to face the same dilemmas and constraints.

One explanation for such diversity of objectives and strategies is that tax policy makers face difficult dilemmas in reconciling the following considerations:

- Cultural objectives as such, considered from the public interest perspective (promote and develop culture)
- Economic and globalization concerns, making it more and more necessary to support the domestic commercial sector agents (e.g., individuals and companies) operating in the cultural sectors, usually in a context of intensive worldwide competitiveness, notably in the tax area

- Political aspects, since the domestic origin and nature of cultural activities supported are not indifferent to policy makers in view of both their national audience the international influence of their culture
- Financial constraints derived from the limited resources of public budget and increasing public indebtedness, notably after the 2008 financial crisis

Those objectives and constraints do not necessarily contradict each other. On the contrary, the survey shows that the opposite is true: they are all interconnected.

The challenge of the tax policy makers in the cultural sector is therefore to resolve that equation under a balanced approach and within budgetary constraints, whereby culture, economy and politics are closely linked.

The next section focuses on to how tax policy makers meet another difficult challenge: the way to innovation in tax policy.



From basic tax benefits
to innovative tax policies

Besides the usual tax benefits and incentives, the survey identified some more innovative tax provisions, which can serve as best practices and benchmarks.

It is obviously difficult to select an exhaustive list of such innovative regimes. Some of them are illustrated in this section, by way of example, for each of the 14 countries studied.

Brazil

Contribution for Development of the National Movie Industry (CONDECINE) at a rate of 11%, is assessed on the revenue from licensing and distribution and on payments made to producers, distributors and intermediaries outside Brazil. Tax proceeds (€18m in 2008) finance Brazilian film productions, under the form of low interest rate bearing loans.

This is a good example of a direct public financing being enhanced by a cultural tax.

Canada

- **Tax credits dedicated to the Interactive Digital Media products** (Ontario, Manitoba, Quebec)
- **Fashion design tax credit** assessed on labor costs of designers, pattern makers and outside design consultant costs (Quebec)

China

- Innovative (but very specific) Corporate Income Tax (CIT) exemption (temporary from 2009 to 2013) for cultural commercial enterprises emerging from the Chinese global-cultural reform. Under this regime, cultural public bodies being converted into private sector companies may benefit from a tax exemption during a transitional period. **This is one innovative practice for countries planning to transition some cultural activities to the private sector.**
- **Temporary (three-year) CIT exemption for revenues derived by cable television companies from rural subscribers.** This is a best practice for countries wishing to open larger access to culture to rural areas. It could be duplicated on internet access revenues as well.

France

- **Cinema investment vehicles (SOFICA)** can benefit from capital subscription upon which the corporate investor is eligible for an accelerated CIT depreciation (50%) and the individual for a credit against individual income tax.
- **R&D tax credit regime for the video games industry:** each eligible expense creates a right to a 20% tax credit, which can be offset against CIT payable. This is a typical move to enlarge benefits from the traditional cultural sector to digital economy.

Germany

Historical buildings and real estate benefit from tailored, favorable tax measures, notably including:

- Real property tax exemption provided that the income generated from the building does not exceed related costs (not-for-profit condition)
- Discount (up to 40%) applied on the value for assessing capital transfer tax and real property tax
- Increased depreciation rate for investments

India

- The local entertainment tax (tax on cinema and live performance admissions) is now applicable to **direct to home services** (e.g., VOD) with a specific rate (from 15% to 45%).
- Entertainment tax exemption **specific to cinema multiplexes** for a temporary period of three to four years so as to take into account the investment size.
- Various **bilateral, international coproduction treaties** (e.g., with Italy, UK and Germany) promote cultural exchanges and enhance growth of Indian audiovisual industry, **with benefit from tax incentives restricted to domestic productions.**

Italy

- Tax deduction granted to companies for **donations to private concessionaires of European radio broadcasting** (up to 1% of total taxable income) .
- **Tax incentive technique to develop reinvestment in the film industry**: profits derived by film production and distribution may be exempt from CIT if reinvested on production/distribution of qualified Italian films.

Japan

- A partial CIT deduction is allowed on **allowances booked for sale returns** (e.g., publishing, music records, **including records for digital players**) .

Mexico

- **Payment of income taxes due by artists is allowed in kind**: remittance of plastic art works can be used to pay income tax, with a selection process and minimum one-third allocation to both central government and municipalities.
- Donations by artists to public bodies qualify as tax credits.

Russian Federation

- **The benefit from the CIT exemption on subsidies received** (from private and public persons) **for a special cultural purpose is available to private companies as well (and not only to NPOs)** .
- Entities benefiting from subsidies and grants for eligible cultural purposes may be allowed to **pay bonus payments to individuals with a social charge exemption**

Spain

- Specific income tax deduction (15% on expenses) for individuals and companies **acquiring Spanish historical heritage assets abroad to be relocated in Spain** (for a minimum relocation period of four years)

South Korea

- **Temporary exemption (five years for income taxes; up to fifteen years for local taxes) available to companies and individuals relocating into Kwangju city**, for qualified cultural-related businesses and activities. 100% exemption for first three years and 50% for next two years. **This is typically an efficient tool to set-up a culture center.**

UK

- **Private Treaty Sale (PTS) allows a reduction in the purchase price of art-work by public bodies** to 70% of fair market value, with the individual vendor being exempt from inheritance tax and corresponding tax benefit being shared between seller and purchaser

US

- **Specific tax deduction for intellectual property donations to charities**: tax deduction corresponding to fair market value of the assets (under global imitations) . Additional deduction during the following decade may be claimed based on future income derived from the copyrights. **This is a prospective tax incentive.**
- **New Mexico offers a 25% tax rebate refundable into cash** on all direct production expenditures, which are subject to state tax. For each US\$100 of expenses (US\$95 + US\$5 of state tax) a cash refund of US\$25 may be available.

Innovation in the tax policies area can also take the form of hybrid instruments, mixing the tax tool with other techniques.

In that respect, the survey has identified various techniques that can be efficiently used alongside tax benefits and direct public financing.

Here are some illustrations:

- **The UK National Lottery**, whose management is subcontracted to a private operator. The related proceeds are allocated to the state budget and then redistributed to Good Causes and notably the arts and the heritage sectors (£215m allocation to each sector in 2008)
- **Specific cultural contributions/funding such as in Spain where a 1% contribution is due (on building costs) for public civil works**, of which the proceeds are used to finance conservation and enhancement of the country heritage

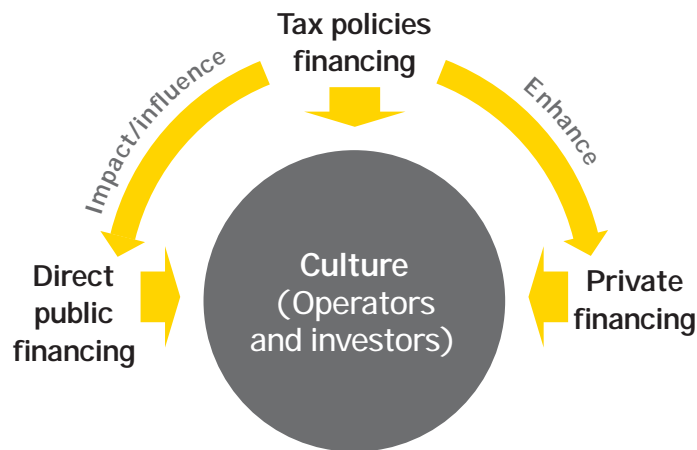
In France a comparable 1% contribution to arts is in force on public civil works (assessed on total building costs) and takes the form of a legal commitment for the contractor to allocate 1% of the awarded construction budget on any public construction to the acquisition of plastic arts creation from a living artist, which must be located in the building.



A close-up, warm-toned photograph of a film reel. A strip of film is visible, featuring the number '8' in several frames. The reel's metal components, including a central hub and various circular openings, are visible. The lighting is soft and golden, creating a nostalgic atmosphere.

Tax policy as an efficient
tool to develop culture

Tax policy is a key financing source for culture and an accelerator factor for other sources.



Tax policies are at the convergence of the various sources of financing for culture.

Tax policy is an indirect source of financing (e.g., proceeds from cultural taxes and benefits from tax incentives).

It also directly impacts and influences the direct sources of culture financing, namely the public and private funding.

First, the volume of direct public financing of culture is influenced by the amount of indirect financing derived from tax policies.

In this respect, there is a choice for governments as to what should be the right balance between direct public financing (e.g., allocation to culture from state budget) and fiscal financing – through granting of tax incentives and levying specific cultural taxes.

This choice appears to depend on political orientations and roles allocated to public bodies (e.g., centralized vs. federal and decentralized states; liberal vs. social models).

It also largely depends on budget constraints and the flexibility for additional tax expenses, given the current level of public indebtedness and the effect of the recent financial crisis.

Second, tax incentives improve the volume of private financing of culture through donations, gifts and charities, the amounts of which can be enhanced thanks to the associated tax saving granted.

The tax policy is a very powerful tool in this area as illustrated by the US tax model for funding charities.

One other finding of the survey is that the tax tool is also intensively used by local authorities (e.g., regions, provinces, municipalities):

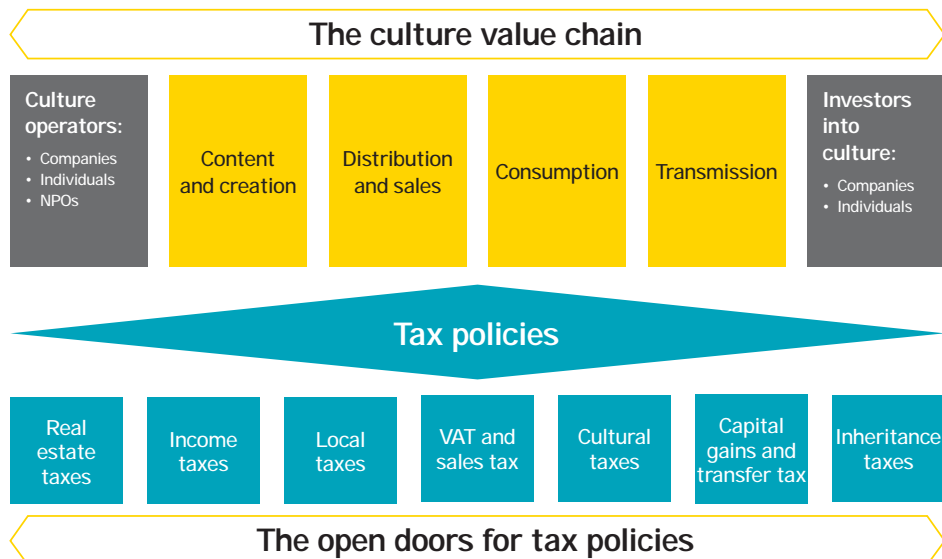
- In most countries there is a large number of taxes levied locally and local authorities are often granting favorable tax rules for culture.
- This is obviously even more so for federal states (e.g., such as the US and Canada), where the local states and provinces have enacted sophisticated tax rules in favor of cultural sectors and operators.

We can observe in that the same tendencies and type of tax relief run through the approach of cultural tax policies by local authorities as on a national level. This shows that local action is complementary to state's action.

Local authorities, however, have a more focused approach as they must take into account local culture particularities, notably in the field of museum, opera, theater and local patrimony and heritage.

Thus, tax policies can take into account all geographical aspects of culture, balancing the national and local aspects under a coordinated and complementary approach.

Tax policies have many open doors to the culture value chain.



This shows that tax policy – with its large spectrum of available techniques and tools – can be applied globally or individually to all of the stages of cultural development:

- The various steps of the culture value chain
- The direct and indirect cultural actors, notably from the economic perspective
- The cultural transactions (goods, services, financial flows)

Taxes assessed on income and earnings are imposed on private companies operating in the cultural sector, as well as on individuals such as artists, actors and workers of the various cultural sectors.

Providing tax incentives to these taxpayers is a simple way to facilitate the financing of significant investments required for capital intensive industry (e.g., films, broadcasting, publishing) or to promote artistic productions and creation at the individual level.

Tax policy makers can meet such cultural objectives by:

- **Reducing the taxable basis** (i.e., allowing for specific deductions)
- **Determining the taxpayers, the taxable activities and – most importantly in the cultural sector – those eligible for relief**
- **Enacting favorable tax rates**
- **Easing of the payment of taxes**

Sales and consumption taxes are generally a cost for the end-consumers. Tax incentives in that area will typically have a significant financing impact, as further illustrated in the next section.

NPOs are very active in the cultural sectors. Tax policy will typically be an efficient leverage tool to provide them with various exemptions or reductions of taxes, which otherwise are imposed to private commercial sectors. This trend is clear through the survey results.

NPOs are largely dependent on private financing through charitable organizations. Tax policies are playing a leading role in this sector to maximize private financing by granting tax savings to the donors (i.e., grant an income tax deduction up to the amount of the donation made, the later being grossed-up by the tax savings) .

Finally tax policy is a quick and easy tool to preserve national heritage and historical patrimony, mainly through tax incentives for conservation expenses and various tax exemptions and reductions for the transfer of cultural assets to public bodies or to heirs (e.g., capital gain tax, inheritance tax, payment of taxes in kind) .

Taxes can be imposed either on the actors of culture (operators, financing parties, individuals, companies, NPOs) **or directly on the cultural transactions** (sales of goods, delivery of services, payments for content and artistic rights, financing, etc.) .

Taxes can also be designed to apply collectively to all sectors of culture or be customized for one sector or for a particular type of manifestation both at national level and at the regions/ municipalities level.

Here are some basic examples of such diversity in tax policies:

- Tax incentives benefiting to cultural events (e.g., exemption of local and sales taxes for spectacles and live performances)
- Mix of tax and financial techniques to leverage and facilitate funding for transfer/acquisition of cultural items by public bodies
- Sector aids, such as tax benefits for the film industries in almost all the countries studied
- Favorable regimes for artists, actors and workers of cultural enterprises (often part-time employees) to take into account related particularities (e.g., unstable employment)
- Measures dedicated to the relocation of arts and national heritage in the home country
- Creation of cultural geographic centers (e.g., tax-free zones)
- Some “exotic” tax benefits (e.g., tax relief in California for owners of pioneers’ cemeteries and aircraft of historical importance)

There are almost no limits to the imagination of tax legislators in the cultural field.





The impact of sales and consumption taxes (VAT) in the cultural sector



In most of the countries reviewed, there are taxes levied directly on sales of goods and delivery of services. These usually take the form of fixed-rate taxes charged to end-users assessed on the sale price, called VAT in the European Union, Mexico, India, China and South Korea, sales taxes (in the US) and consumption taxes in Japan.

The particular feature of such taxes is that they are not assessed on income from the operators selling or distributing the cultural goods on services but on the act of consumption itself, being thus a final cost for the end-users and consumers most of the time.

Since VAT and consumption taxes are directly assessed on sales and turnover, rather than on net income, the taxable basis and thus the related proceeds are very significant for governments, in terms of amount of cash collected.

Such proceeds are not used for specific cultural purposes but rather integrated in the general budget of the states and local governments. In France, for example, the proceeds from VAT account for 50% roughly of the total tax revenues. It was therefore not a surprise to see that the total VAT incentives granted in France in the cultural sector (roughly 1€b in 2008) represents more than 70% of the total tax incentives allocated to that sector.

For those reasons, VAT appears to be a critical area where tax policy makers can make the difference, reducing the access cost to culture and maximizing its diffusion.

It is therefore not surprising that all countries have actually implemented favorable VAT rules for the cultural sector.

VAT, sales and consumption tax policies at a glance

Country	Standard VAT rate	Tax incentives for the cultural sector
Brazil	18%	<ul style="list-style-type: none"> São Paulo: tax credit for amount invested in qualified cultural projects (up to 3% of VAT total charge) Rio de Janeiro: deduction up to 4% of VAT due for donation and financing of qualified cultural projects
Canada	5% to 13% ¹⁴	<ul style="list-style-type: none"> Tax refund available to non-residents for sales tax incurred on local cultural production and works for exports (e.g., literature, music, film); exemption of sales tax is also available to not-for-profit live performances (e.g., amateur and charities shows)
China	17% ¹⁵	<ul style="list-style-type: none"> Exemption for broadcasting, films and television; tax ceiling for animation works Exemption for importation of arts by certain public bodies (e.g., libraries, galleries, museums)
European Union	15% to 25%	<ul style="list-style-type: none"> Various exemptions and reduced rates for cultural products and services (see case study hereafter)
India	12.5%	<ul style="list-style-type: none"> Reduced rate of 4% (or exemption) applicable in certain states on transfer of rights on films, programs and music
Japan	5%	<ul style="list-style-type: none"> Only a few exemptions are available, all restricted to NPOs
Mexico	15%	<ul style="list-style-type: none"> Exemption for books, press, magazines, authors rights and spectacles (except cinema, theaters and circus) 0% rate for exportations of local shootings (films and recordings)
Russian Federation	18%	<ul style="list-style-type: none"> 10% reduced rate for education, science, cultural books and periodic publications Exemption for NPOs, cultural and art institutions Exemption for film-related services (subject to national film certificate) Exemption for donation of cultural facilities to government bodies Exemption for works on historical, cultural and religious monuments
South Korea	10%	<ul style="list-style-type: none"> Exemption for books, press, magazines, news and broadcasting
US	4% to 9% depending on states	<ul style="list-style-type: none"> Massachusetts: exemption for NPOs, certain media and visual arts New York: exemption for various live shows, media and broadcasting/film businesses Louisiana: partial exemption for films, exemption for sale of arts in cultural districts New Mexico: 25% tax refund for all expenses incurred on local films productions; refund assessed on total costs, not only on sales tax actually incurred

¹⁴ Goods and Services tax (GST) of 5% and Harmonized Sales Tax (VAT tax applied in certain provinces) of 13%, applied to a broad range of goods and services

¹⁵ Reduced VAT rates in China are generally limited to primarily basic necessities, agricultural services and utility services, excluding cultural products and services.

Key findings – VAT, sales and consumption tax policies

- **Because of the amount of VAT proceeds VAT and sales/consumption tax is probably the area receiving the greatest part of states' financial effort in support of culture.**
- Although all countries are using similar tools (e.g., exemptions and reduced rates) and share some common objectives, **the survey shows a great diversity in the measures implemented both in terms of scope** (e.g., cultural sectors and operators) **and objectives** from public and national interest/cause to more particular industry interest or competitiveness and attractiveness issues.
- **Despite the trend toward globalization in the economy, there is still a great difference in countries' VAT rates.** This is, however, not specific to culture but a common statement for all national tax policies (e.g., corporate income tax rate's international benchmark) . **Tax competitiveness is a reality and a challenge for all countries, not specific to the cultural sector.**
- **One issue with tax policies is that they are complex and may therefore possibly include contradicting measures.** For example, many countries have implemented entertainment taxes (e.g., tax on movies, admission tickets, television reception taxes) increasing the cost of access to culture for consumers, while VAT favorable regimes also available generally include the contrary effect.
- Besides the usual exemption and reduced-rate techniques, **various countries are quite proactive in using VAT (cash) refunds to non-residents so as to attract cultural activities and related revenues and spendings on their territory** (especially film productions) .

Case Study: is harmonization of VAT policies within the EU a dream?

The European Union (EU) includes 27 countries, most of which share a common currency. Members of the EU have adopted a common VAT regulation framework. VAT regulations' unification is however not fully completed, and there is still quite a flexibility left to the member states, notably with respect to the determination of applicable rates and the scope for exemptions.

Ernst & Young Indirect Tax specialists have conducted a specific survey on how member states are currently using VAT policy as a tool to promote culture, focusing notably on the following topics:

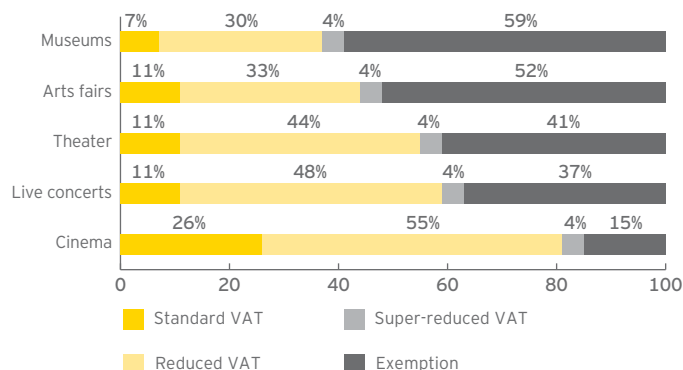
- Admission to cultural events compared to purchase of other cultural goods and services
- Sales of cultural products online versus physical deliveries
- Internet, cable and satellite television access

The main finding of this survey, within an integrated market with a common VAT regulatory framework, are as follows:

- Within the EU, the overall trend is clearly to apply favorable VAT rules to cultural activities and products (VAT exemptions and reduced rates) , when compared to other activities in the private sector.
- There are, however, significant differences in the tax policies of member states. Notably the normal rate of VAT is not harmonized. Both normal VAT rates and reduced rates are not harmonized. This is creating a very significant gap among the various member states in terms of tax competitiveness and attractiveness, in general, and in the cultural sector in particular.
- The various sectors of culture are not treated equally from a tax perspective.

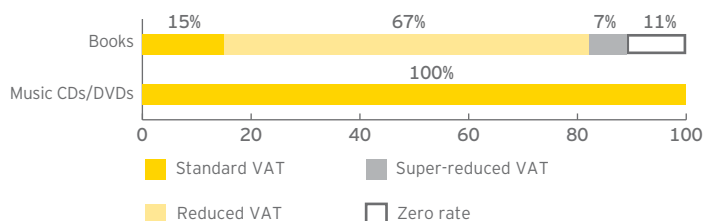
Certain detailed illustrations of these findings are described below.

Admissions and tickets



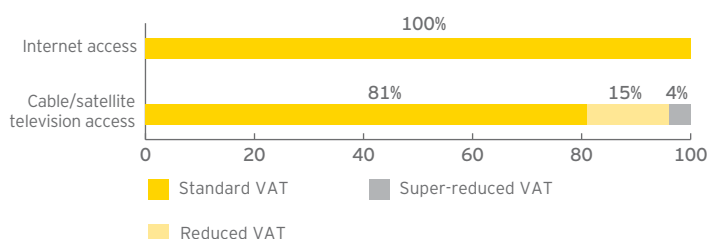
- Application of standard VAT rate is clearly an exception.
- Exemptions are accorded mostly to museums, art fairs and theaters (and much less frequently to live concerts and cinema) .
- Not all cultural sectors are equally treated. The survey shows that efforts from law makers are mainly on the “old” culture (e.g., opera, theater) , a sector that is often the less opened to commercialization and that generally receives direct subsidies from the state governments.

Books and music



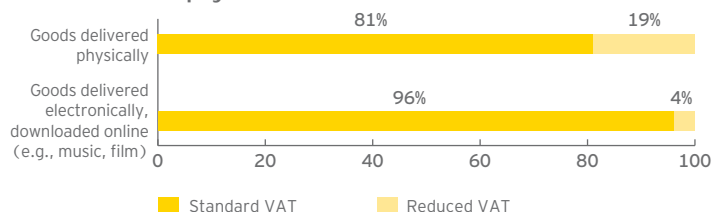
- Books are eligible to reduced rates in most instances (85%) .
- Music is typically subject to normal rates.

Internet, cable and satellite television access



- There is no tax incentive at all for internet access.
- Normal VAT rates generally apply to television access, with some exceptions (e.g., reduced rate applicable in Spain, Luxembourg, Austria, Belgium, France) .

Online sales vs. physical deliveries




- Members states do not have the same VAT rate applicable to sale of cultural products, either normal or reduced.
- In some countries, there are specific rules applicable to the determination of the taxable basis for online sales of cultural products, distinguishing between technical support provided by online sellers – the delivery process, subject to normal rates – and the sale of cultural content, subject to reduced rates most of time.

A combination of both elements can provide a significant competitive advantage to online sellers established in those countries (e.g., Luxembourg is one example)

- Currently the place of taxation, which determines the applicable local country VAT rate, is the place of establishment of the online seller. Under the so-called “common EU VAT package” the place of taxation should progressively become, as a general rule, the location of end-users (taxation at enjoyment location to be effective by 2015) .
- Favorable VAT regimes, when available, appear to be mainly restricted to physical deliveries, except for a few identified countries.

The difference in treatment accorded to the traditional (brick and mortar) economy and the internet sector is therefore posing a dilemma for lawmakers also in tax policy area, both when considering the online culture in general and the internet in particular as a culture media.

In that context, one objective for the EU authorities could be to harmonize before 2015 the reduced VAT rates applicable to cultural products and services, irrespective of the delivery process (physical vs. online) , so as to avoid unnecessary competitive difference between the operators and ensure equal treatment for the consumers of cultural products in the EU.

The background image shows the interior of a grand theater. The focus is on the seating area, which features rows of plush red velvet seats with ornate gold-colored metal armrests. The theater has a curved balcony on the right side. The walls and ceiling are decorated with intricate gold carvings and moldings. The lighting is warm and focused on the seats.

How cultural tax policies diverge

The following sets forth some examples of divergence in cultural tax policies.

- **The intensity of utilization of tax policy, as a tool to finance culture, is not the same among the 14 countries studied.**

The degree of sophistication of any tax policy appears to depend on the level of economic development, so that developed countries tend to have more sophisticated and complex tax policies.

Also, in countries facing great development issues, the financing of culture may be less of a priority, especially should it result in lower tax revenues for the governments.

Thus, the financing of culture, whatever sources it has, is more of a concern for developed or already emerged economies.

- **Various countries are reluctant to enact cultural taxes and therefore are focusing on tax incentives:**

- 9 countries out of 14 have enacted cultural taxes, most of the time in a very limited number. France is the country with most cultural taxes (13) followed by Italy and South Korea (3) other countries having only one cultural tax in place.
- For most other countries, developing culture by the means of levying cultural taxes remains an exception rather than a general rule.

Some countries are reluctant to levy high taxes as a general principle, due to ideological and political reasons (e.g., Japan, USA)

- **Countries with limited government intervention tend to give priority to the tax incentives encouraging private financing of culture, as an alternative to public financing.**

This is typically the situation in Anglo-Saxon countries, where most tax incentives are granted to individuals and companies to maximize the private financing of culture among other charities and causes such as religion, medical research and education.

Also in those countries, the direct public financing (e.g., the National Endowment for Arts in the US), is granted only when the beneficiary institution is generating at least a certain level of revenues on its own (e.g., 50%).

Tax incentives to NPOs can allow those institutions to maximize self-generated revenue and meet the requirement for public subsidies.

- **To date, only a limited number of countries have enacted tax benefits specific to the online culture, the digital world and internet.**

This trend is however inverting progressively.

- **Some of the countries which are levying taxes specifically to fund the cultural creation process are now debating about the opportunity to increase the scope of application of such taxes to the internet operators and online sellers as well (or to create new cultural taxes specific to those businesses).**

Such tax debates are often linked with other non-tax issues like creation enhancement, protection of copy rights, literary and artistic property and country appeal.

Challenges for cultural tax policies today



The survey helped to identify various significant challenges for tax policy makers.

- **The tax pressure test**

One significant limitation for any tax policy is the maximum tax pressure that can reasonably be imposed on taxpayers without endangering the taxes' objective of culture promotion and development.

Creating additional taxes for cultural purposes may be a powerful tool to increase financing, but it should be carefully weight in light of each local country's "tax pressure test".

Indeed, states' budgets are already largely funded with proceeds from general taxes (e.g., VAT, corporate income tax, individual tax), which are in turn used to finance the direct public support to culture (e.g., budget of the ministry of culture).

These general taxes constitute already a high burden on taxpayer and high tax levels often extinguish the capacity for direct private financing of culture.

- **How to factor in the principles of equality and fairness contribution to the tax effort**

Tax incentives are exception to general tax rules. As such, they are debatable – as a matter of principle – since they often benefit a limited number of taxpayers.

They are often perceived as a breach of the general tax principle according to which all citizens should be equally treated for tax policy purposes.

This principle is supposed to be the basis of the tax policies in various countries studied and often leads to a natural tendency to limit the number of tax incentives.

It appears also in various instances that due to the technical modalities of the cultural tax incentives granted, such benefits tended to flow more to high-net-worth individuals (e.g., investors in culture).

The use of such tax tools therefore creates political debates in some countries.

- **A lack of regular impact and efficiency review for tax policies in the cultural sector**

One significant challenge for tax policy makers is to evaluate the tax policies in favor of culture, so as to assess their actual economic and fiscal impacts, and their efficiency as well, in an effort to identify improvement areas and new opportunities.

In that respect, one finding of the survey is that there is a lack of means and reporting tools to evaluate cultural tax policies.

Also a review of actual efficiency of the tax policies in place may not be carried-out on a regular basis in all countries covering both fiscal and the economic impacts.

The complexity of some of the national tax systems also makes it difficult to assess the actual efficiency of both individual tax provisions and the whole tax policy.

Diversity of tax techniques is obviously a great tool but it reduces otherwise the clear transparency of the separate elements of tax systems and may lead to contradictions.

- **Budget constraints make it necessary to rethink cultural tax policies**

Granting tax incentives is an expense for the state. It has a direct impact on the state's budget, similar to direct public spending in the cultural sector.

In that respect, the 2008 financial crisis and all associated impacts on economies is a challenge for all countries, as is the increase of public indebtedness all around the world.

Tax policies are therefore becoming increasingly a matter of setting priorities among all the competing needs to be addressed by governments.

It is a real possibility that culture may not be a top priority in the coming years.

One good example is the recent debate in the US on lowering ceiling on income tax deductions for charitable donations¹⁶. The purpose of such a possible tax change – and subsequent increase – would be to finance the reform of the health policy announced by President Obama, by increasing taxes.

According to a recent study, roughly 50% of US taxpayers would be inclined to reduce donations should such a tax reform be passed. Also, it is estimated that such a reform could cause a 2% decrease in global private financing of charities, resulting in billions of dollars less revenues for charities in general – the cultural sector in particular.

Another important topic for tax legislators is obviously the urge for environment protection and related green tax policy strategy being implemented in various countries (e.g., carbon tax).

In that context, it is becoming urgent to further reconcile tax policies in the cultural and economy sectors.

Indeed, governments' ability to reduce taxes is becoming more and more limited. Thus, an efficient tax strategy for the cultural sector should be to focus on tax incentives creating value and activities in the economy, from which government and citizens will benefit in turn.

- **The pros and cons of the not-for-profit status**

In many countries the tax incentives in the cultural field are granted subject to a not-for-profit status, as are public subsidies. This can in practice limit the ability of operators from the merchant sector to invest more into culture.

Determining the right tax aids balance between private companies and not-for-profit organizations is not an easy task.

Offering furthermore tax incentives to the merchant sector can be an efficient way to increase the culture financing and creation.

In the same way, the survey shows that in various countries the financing of culture can be enhanced through merchant activities being conducted by not-for-profit organizations also.

Thus the recommendation to the tax policy makers is definitely to adopt a pragmatic approach when addressing those issues and to promote a proactive collaboration between all actors of the cultural area either with lucrative or non-lucrative invent.

- **Invent new tax policies for the modern culture and all its new business models**

The modern culture – online culture, digital world, web 2.0, internet, online deliveries – appear to benefit from fewer tax incentives than the so-called traditional culture.

This does not appear to be for ideological reasons but rather due to the recent appearance and quick development of the internet and digital technologies.

The trend is, however, inverse in some of the countries studied. The survey has permitted us to identify the best practices of current tax policies in that area.

One great difficulty is that the usual tax policy tools are not always easily adaptable to all those new business models in rapidly changing markets, especially in an immaterial environment.

One lesson from the survey in that respect is that tax policies should focus more on addressing the technical and operational aspects of the digital economy and internet operators.

Indeed, often those operators provide both technical support and services (e.g., media, delivery process) and an access to a cultural product (e.g., content).

¹⁶ The ceiling is currently fixed at 50% of donations under a certain annual revenue threshold, subject to a phase-out for wealthier individuals.

Neither aspect can be addressed in the same manner for tax purposes, as shown by the European Union VAT case study.

Tools are available in the tax policies to distinguish in a single transaction between the technical support, the delivery services and the cultural content sale.

It should thus be possible to design tax incentives, where appropriate, for each of the components of the transaction.

The various interactions among tax policies, the global competition economy – out of which tax competition is only one aspect – and all the non-tax regulations and aspects of digital culture and the internet (e.g., copy right protection) are key elements to consider in that respect.

Indeed these interactions are creating an additional complexity level for governments trying to determine a consistent approach for the creation, development and protection of culture, from legal, political and financial standpoints.



In conclusion, tax policy is a leverage tool available to governments for promoting and developing culture, notably on the financial side.

It can be one very powerful tool, especially when appropriately designed so as to meet all the intricate and common objectives of both culture and economy.

It cannot, however, be a standalone solution for all the issues in the cultural field which are to be addressed by governments.

A common and harmonized approach from governments in that respect is all the more necessary so as to avoid unnecessary competitiveness discrepancies, impacting both the local countries and the various operators of the cultural sector.

As for the vast diversity of taxes in the part of the world we studied, the competitiveness between industries, countries and actors plays a strong role in selecting the most efficient actions. However, measurement and collective action with a strong political will remain key to a simplification that will constantly be challenged by the lobbies and the creative talent of our legislators.



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