

Creative Economy

Series editors

Stephen Hill
Kazuo Nishimura
Tadashi Yagi

Editorial Board

Nobuko Kawashima
Sebastine Lechevalier
Yoshifumi Nakata
Andy Pratt
Masayuki Sasaki
Toshiaki Tachibanaki
Makoto Yano
Roberto Zanola

As the global economy has developed, we have seen severe competition and polarisation in income distribution. With this drastic change in the economic system, creativity with a high market value has come to be considered the main source of competitiveness. In addition to the improvement of competitiveness, however, we are required to work toward fairness in society.

This series covers research on creative economies that are based on humanity and spirituality to enhance the competitiveness, sustainability, peace, and fairness of international society. We define a creative economy as a socio-economic system that promotes those creative activities with a high market value and leads to the improvement of society's overall well-being.

Through this series, we intend to propose various policy recommendations that contribute to the prosperity of international society and improve the well-being of mankind by clarifying the concrete actions that are needed.

More information about this series at <http://www.springer.com/series/13627>

Sigrid Hemels · Kazuko Goto
Editors

Tax Incentives for the Creative Industries

 Springer

Editors

Sigrid Hemels
Erasmus School of Law
Erasmus University Rotterdam
Rotterdam, Zuid-Holland
The Netherlands

Kazuko Goto
Setsunan University
Neyagawa, Osaka
Japan

ISSN 2364-9186

Creative Economy

ISBN 978-981-287-831-1

DOI 10.1007/978-981-287-832-8

ISSN 2364-9445 (electronic)

ISBN 978-981-287-832-8 (eBook)

Library of Congress Control Number: 2016959747

© Springer Science+Business Media Singapore 2017

This work is subject to copyright. All rights are reserved by the Publisher, whether the whole or part of the material is concerned, specifically the rights of translation, reprinting, reuse of illustrations, recitation, broadcasting, reproduction on microfilms or in any other physical way, and transmission or information storage and retrieval, electronic adaptation, computer software, or by similar or dissimilar methodology now known or hereafter developed.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

The publisher, the authors and the editors are safe to assume that the advice and information in this book are believed to be true and accurate at the date of publication. Neither the publisher nor the authors or the editors give a warranty, express or implied, with respect to the material contained herein or for any errors or omissions that may have been made.

Printed on acid-free paper

This Springer imprint is published by Springer Nature

The registered company is Springer Nature Singapore Pte Ltd.

The registered company address is: 152 Beach Road, #22-06/08 Gateway East, Singapore 189721, Singapore

Preface

To find the origins of this book, we have to go back to the winter of 2004 when we first met at the Rotterdam Art Center Witte de With, where we both participated in one of Arjo Klamer's special seminars on cultural economics. Klamer, the well-known Professor of Cultural Economics at Erasmus University Rotterdam, introduced us to each other saying that he was sure we had mutual interests: Kazoko Goto being a researcher in cultural economics with a public finance background and Sigrid Hemels, a tax specialist who, at that time, had just completed her Ph.D. research on tax incentives for the arts and culture in the Netherlands.

Arjo Klamer was right. What followed was an academic and personal friendship built over more than a decade with joint publications and mutual research visits to the Netherlands and Japan, enabled by financial support from the Japan Society for the Promotion of Science (JSPS) and Saitama University. During Sigrid's JSPS short-term fellowship in Japan in November 2014, we met over dinner with Prof. Tadashi Yagi of Doshisha University, Kyoto, and talked with him about the possibility of writing a book on tax incentives for the creative industries. This book is the result of that dinner.

We thank the editors of the Creative Economy series who gave us this opportunity. Furthermore, we are grateful to three anonymous peer reviewers for their useful comments on our book proposal: we hope that we have addressed your points satisfactorily. We are also very grateful to our co-authors who enthusiastically joined this project notwithstanding their busy schedules: Renate Buijze, Raymond Luja, and Dick Molenaar. Without their specific expertise, this book could not have been as comprehensive as it is now. Last but not least, we would like to thank everybody at Springer who has been involved in the production of this book, especially Juno Kawakami, Misao Taguchi and Sudeshna Das, who were always very patient and helpful. We hope our readers will enjoy this book and benefit as much from reading it as we did from writing and discussing it.

Amsterdam, Kyoto
Fall 2016

Sigrid Hemels
Kazuko Goto

Contents

1	Introduction	1
	Sigrid Hemels	
Part I Theoretical Context of Tax Incentives for the Creative Industries		
2	Defining Creative Industries	11
	Kazuko Goto	
3	Why Do Governments Financially Support the Creative Industries?	21
	Kazuko Goto	
4	Tax Incentives as a Creative Industries Policy Instrument	33
	Sigrid Hemels	
5	Tax Incentives, Harmful Tax Competition and State Aid Considerations in the EU	65
	Raymond Luja	
6	Tax Incentives Crossing Borders	85
	Renate Buijze	
Part II Cases: Focus on Specific Tax Incentives		
7	Tax Incentives for Museums and Cultural Heritage	107
	Sigrid Hemels	
8	Tax Incentives for the Audio Visual Industry	137
	Sigrid Hemels	
9	Tax Incentives for the Art Market	175
	Sigrid Hemels	

10 Tax Incentives for Copyright	193
Dick Molenaar	
11 Tax Incentives for Artists	211
Dick Molenaar	
Part III Conclusion	
12 Conclusion	229
Sigrid Hemels	
Index	237

Editors and Contributors

About the Editors

Sigrid Hemels received her Ph.D. from Leiden University in the Netherlands in 2005. She is Full Professor of Tax Law, Erasmus School of Law (ESL), Erasmus University Rotterdam; programme leader of the ESL Research Programme Fiscal Autonomy and Its Boundaries; and head of the ESL Department of Tax Law. She is also senior professional support lawyer at the Amsterdam office of Allen & Overy LLP and a member of the supervisory boards of several Dutch cultural institutions. Dr. Hemels frequently publishes and lectures, both in the Netherlands and abroad, on various tax topics, including tax incentives for charities, art, and cultural heritage.

Kazuko Goto received her Ph.D. in Economics from Kyoto University in 1998. She was Professor at Saitama University, 2004–2014, and visiting professor at Erasmus University Rotterdam, 2004–2005. At present, she is Professor at Setsunan University in Osaka, where she has been since 2014. She was an executive board member of the Association for Cultural Economics International, 2006–2012. Professor Goto also was editor in chief of *Bunka Keizaigaku* (Cultural Economics), 2006–2010, and was president of the Japan Association for Cultural Economics, 2010–2012. She has been an executive board member of the Japan Institute of Public Finance since 2016.

Contributors

Renate Buijze is a Ph.D. candidate at the Erasmus School of Law (ESL). Her research focuses on cross-border philanthropy and specifically the tax incentives for giving to the arts. With a Master's degree in Cultural Economics and cultural entrepreneurship from the Erasmus School of History, Culture, and Communication, she has an interdisciplinary scope on research.

Raymond Luja is Professor of Comparative Tax Law at Maastricht University, the Netherlands, where he heads the Department of Tax law. He is also expert counsel to Loyens & Loeff N.V., Amsterdam, where he deals with issues of fiscal state aid. He holds Master's degrees in Fiscal Economics and in Law. In 2003 he received a Ph.D. from Maastricht University after defending his thesis "Assessment and Recovery of Tax Incentives in the EC and the WTO: A View on State Aids, Trade Subsidies and Direct Taxation". Dr. Luja frequently publishes in the area of state aid and harmful tax competition and lectures in this field at various universities and institutions in Europe.

Dick Molenaar is a researcher of tax law at the Erasmus School of Law (ESL) of Erasmus University Rotterdam, the Netherlands. His research field is the tax aspects of performing artists, arts, culture, media, and sports. He is also a partner with All Arts Tax Advisers in Rotterdam, the Netherlands. In 2006, he defended his Ph.D. thesis "Taxation of International Performing Artistes" at the Erasmus University Rotterdam, the Netherlands. Dr. Molenaar has published extensively, both in the Netherlands and abroad, on various topics from his research field. He is also a member of the International Association of Entertainment Lawyers (IAEL) and of the International Tax Entertainment Group (ITEG). In addition, he is a member of the supervisory board of several Dutch cultural institutions.

Contributors

Renate Buijze Department of Tax Law, Erasmus School of Law, Erasmus University Rotterdam, Rotterdam, The Netherlands

Kazuko Goto Faculty of Economics, Setsunan University, Neyagawa, Osaka, Japan

Sigrid Hemels Department of Tax Law, Erasmus School of Law, Erasmus University Rotterdam, Rotterdam, The Netherlands; Allen & Overy, Amsterdam, The Netherlands

Raymond Luja Department of Tax Law/Maastricht Centre for Taxation, Maastricht University, Maastricht, The Netherlands; Loyens & Loeff N.V., Amsterdam, The Netherlands

Dick Molenaar Department of Tax Law, Erasmus School of Law, Erasmus University Rotterdam, Rotterdam, The Netherlands; All Arts Tax Advisers, Rotterdam, The Netherlands

Abbreviations

AO	Abgabenordnung (Tax Code, Germany)
ATR	Animation Tax Relief (UK)
AUD	Australian Dollar
AV	Audiovisual
AVMS Directive	Audiovisual Media Services Directive (EU: Directive 2010/13/EU of 10 March 2010) OJ L 95, 15.4.2010, p. 1–24
AWR	Algemene Wet inzake Rijksbelastingen (General State Taxes Act, Netherlands)
BEPS	Base Erosion and Profit Shifting
CA	Charities Act 2011 (UK)
CAD	Canadian Dollar
CCIP	Customs Code Implementing Provisions (EU)
CGI	Code Général des Impôts (General Taxes Act, France)
Chap.	Chapter
CITR	Creative Industry Tax Reliefs (UK)
CTA	Corporation Tax Act 2009 (UK)
DCMS	Department for Culture Media and Sports (UK)
EC	European Commission
ECCC	European Convention on Cinematographic Co-Production
ECJ	European Court of Justice
EEA	European Economic Area
EFC	European Foundation Centre
EStG	Einkommensteuergesetz (Income Tax, Germany)
EU	European Union
EUR	Euro
FA95	Finance Act 1995 (Ireland)
FA12	Finance Act 2012 (UK)
FE	Fundatio Europea; European Foundation
FIMI	Film in Malaysia Incentive
FTR	Film Tax Relief (UK)

G20	Group of twenty major economies
GATS	General Agreement in Trade in Services
GATT	General Agreement on Tariffs and Trade
GBER	General Block Exemption Regulation (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187/1 of 26 June 2014)
GDP	Gross Domestic Product
GVA	Gross Value Added
HMRC	Her Majesty's Revenue and Customs (UK's tax and customs authority)
HS code	Harmonized Commodity Description and Coding System
HTR	High-end Television Tax Relief (UK)
IAS	International Accounting Standards
IB	Wet inkomstenbelasting 2001 (Personal Income Tax Act 2001, the Netherlands)
IBP	International Budget Partnership
IEP	Irish Pound
IHTA	Inheritance Tax Act 1984 (UK)
IMF	International Monetary Fund
IP	Intellectual Property
IRC	Internal Revenue Code (USA)
IRR	Internal Rate of Return
ITA	Income Tax Act 2007 (UK)
ITAA	Income Tax Assessment Act 1997 (Australia)
ITR	Income Tax Regulations (Canada)
JSPS	Japan Society for the Promotion of Science
KBFUS	King Baudouin Foundation United States
LB	Wet op de loonbelasting 1964 (Wage tax Act 1964, the Netherlands)
LIS	Ley del Impuesto sobre Sociedades (Corporation Tax Act, Spain)
LOB	Limitation On Benefits
LP	Limited Partnership
MERCOSUR	Mercado Común del Sur
NGO	Non-governmental organisation
NPO	Non Profit Organisation
NPO Law	特定非営利活動促進法 (Law to Promote Specified Nonprofit Activities, Japan)
OECD	Organisation for Economic Co-operation and Development
OIDMTC	Ontario Interactive Digital Media Tax Credit
OJ	Official Journal of the European Union
OTR	Orchestra Tax Relief (UK)
p.	Page

Para.	Paragraph
PBE	Public Benefit Pursuing Entity
PDV Offset	Post, Digital and Visual effects Offset
pp.	Pages
PPT	Principal Purpose Test
PSRI	Pay Related Social Insurance (Ireland)
QAPE	Qualifying Australian Production Expenditure
R&D	Research & Development
RST	Retail Sales Tax
SAC	Significant Australian Content
SCM Agreement	Agreement on Subsidies and Countervailing Measures
Sect.	Section
SGEI	Services of General Economic Interest
SME	Small and Medium sized Enterprises
SW	Successiewet 1956 (Gift and Inheritance Act, the Netherlands)
TCA	Taxes Consolidation Act, 1997 (Ireland)
TFEU	Treaty on the Functioning of the European Union
TGE	Transnational Giving Europe
TRIP	Tax Rebate for International Production (crédit d'impôt en faveur de la production de films étrangers en France)
TTR	Theatre Tax Relief (UK)
TUIR	Testo Unico delle Imposte sui Redditi (Income Tax Act, Italy)
TV	Television
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
US	United States
USA	United States of America
USD	US Dollar
VAT	Value Added Tax
VAT Directive	Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (as amended)
VFX	Visual effects
VGTR	Video Games Tax Relief (UK)
Vpb	Wet op de vennootschapsbelasting 1969 (Corporate income tax Act 1964, the Netherlands)
WIB92	Wetboek van de Inkomstenbelastingen 1992 (Income Tax Act 1992, Belgium)
WIPO	World Intellectual Property Organizations
WTO	World Trade Organization
ZV	Zollverordnung (Customs Regulation, Switzerland)
#	Number of