2013

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Recommended Citation

Roger Colinvaux, Rationale and Changing the Charitable Deduction, 138 TAX NOTES 1453 (2013).

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In this article, Colinvaux argues that any changes to the charitable deduction should be informed by rationale and that depending on the choice of rationale, some changes make more sense than others.

A. Introduction

Whether to change the federal income tax charitable deduction is part of two distinct debates — one on the budget and one on tax reform. In the context of a budget debate, the main issue is whether to raise revenue from the deduction. Here, the answer is largely one of trade-offs and is best assessed by the impact any proposed change would have on the section 501(c)(3) sector as compared with revenue raised. In the context of a tax reform debate, revenue raised or lost remains important, as does impact. But tax reform is also meant to be about broader questions. Comprehensive tax reform is a rare opportunity to revisit the purpose of the charitable deduction and reaffirm it, or to change direction. This article emphasizes the importance of the various rationales for the deduction to the tax reform debate and points out, without advocating, that depending on choice of rationale, one or another change may follow.[1]

To summarize the main points, there are two principal rationales for the deduction — that of base measurement and of subsidy. A base measurement rationale suggests eliminating the deduction for unrealized appreciation, keeping the benefit as a deduction and not a credit, not adopting caps or a non-itemizer deduction, and protecting the tax base by narrowing the group of organizations eligible to receive deductible contributions. A subsidy rationale, depending on which strand is emphasized, might favor a more equitable tax benefit in the form of a credit or through caps or a non-itemizer deduction and could lead to preferring some organizations over others. Both rationales are consistent with placing a floor under the deduction and narrowing its scope.

B. Putting the Charitable Deduction in Context

Dating from 1917, the charitable deduction is almost as old as the income tax. It is a familiar tax break for those who itemize deductions and a key selling point for charitable solicitations. It is also widely credited with promoting billions of dollars of charitable contributions each year and is generally popular with taxpayers and donee organizations. Yet despite its longevity, several points about the charitable deduction are not widely understood or are misrepresented.

1. The charitable deduction is not the main funding source for the section 501(c)(3) sector. The charitable deduction sometimes is viewed as the sine qua non of the section 501(c)(3) sector; that is, without the deduction there either would be no such sector or a severely weakened one. However,

[1] *See* my testimony before the House Ways and Means Committee on February 14. *See also* Roger Colinvaux, Brian Galle, and C. Eugene Steuerle, "Evaluating the Charitable Deduction and Proposed Reforms," Urban Institute (June 2012); Joseph J. Cordes, "Re-Thinking the Deduction for Charitable Contributions: Evaluating the Effects of Deficit-Reduction Proposals," 64 *Nat'l Tax J.* 1001 (2011).

income from contributions amounts to about 13 percent of total revenues for the sector in the aggregate.[2] Far more important is income from fees (so-called program service revenue, such as tuition or payments for healthcare) and direct government grants. Without question, some types of organizations depend more heavily than others on deductible contributions as a source of funding. These include organizations supporting arts and culture, animals, the environment, and probably smaller organizations.[3] These organizations may find it harder to adapt to a loss of contribution income because of changes to the charitable deduction than would organizations with substantial alternative funding streams. But the broader point is that the charitable deduction is, in the aggregate, not as crucial to the sector as is often depicted.

2. Charitable contributions support much more than basic needs. The charitable deduction is frequently defended by invoking the common understanding of the term ''charitable'' as supporting the poor and the needy. But charitable contributions support a wide array of purposes and organization types, from well-endowed universities to complex hospital systems, to churches, museums, the opera, think tanks, environmental groups, private foundations, and donor-advised funds to name a few.[4] Human services organizations receive important support but, in the aggregate, account for just 12 percent of private giving.[5]

3. The charitable deduction is not neutral. On its face, the charitable deduction appears to be a government-neutral means of supporting the section 501(c)(3) sector. Private donors, not government actors, decide how to allocate funds. Thus, although there may be winners and losers in the race for contributions, private and not public actors decide. Further, because the government (through Congress, the IRS, and the courts) defines the section 501(c)(3) sector broadly, the barriers to entry into the sector are low, and the competition for donor funds is thus generally open to many.

In practice, however, because of its design, the charitable deduction is not neutral. As an itemized deduction, it is available only to those who itemize deductions (about one-third of taxpayers), a group that also represents the more affluent third of the population. Further, among itemizers, the benefits of the deduction are claimed disproportionately by the most affluent. For example, itemizers earning $200,000 or more of adjusted gross income receive 37 percent of the benefits from the deduction.[6] This group represents 2.5 percent of all returns filed and 9.5 percent of returns claiming the charitable deduction.[7] More broadly, itemizers earning $100,000 or more of AGI receive 63 percent of its benefits but represent 9.9 percent of all returns filed and 37 percent of returns claiming the charitable deduction.[8] In short, although the government does not directly pick recipients, the deduction is in practice a tax benefit of most use to the wealthiest and broadly reflects the funding decisions of this income group.

4. The charitable deduction is not cost free. The charitable deduction evokes our better nature. At its best, the deduction rewards a generous act for a worthy cause. However, the charitable deduction also is a vehicle for tax planning, can be a magnet for abuse, and is complex and difficult to administer. The IRS has listed the charitable deduction as the source of one of the ''dirty dozen'' of tax scams for years.[9] The associated costs — lost revenue, reputational costs to the sector, and administrative and systemic costs — are significant.

A primary source of these costs is the charitable deduction for property contributions. On average, more than 25 percent of the value of all charitable contributions is of property (other than cash). This amounts to more than $45 billion on average each year in contributions. However, property contributions often are plagued with one or the other of valuation concerns, overly generous tax benefits, difficult enforcement challenges, and questions about the extent of the public benefit conveyed.[10] A related issue is donors who attempt to retain control

[2]This 2009 number is of all private contributions, including nondeductible contributions, and therefore overstates the amount of funding attributable to the charitable deduction. Colinvaux et al., *supra* note 1, at Table 3.

[3]*Id*. at Table 2. *See also* Cordes, *supra* note 1 (discussing which types of organizations benefit from charitable contributions).

[4]*See*, *e.g.*, National Center for Charitable Statistics classification database, *available at* http://nccs.urban.org/.

[5]Giving USA Foundation, ''Giving USA 2012: Giving Annual Report for the Year 2011,'' at 10. The 12 percent number overstates giving attributable to deductible contributions because it includes giving from all sources, *i.e.*, including gifts by bequest, private foundations, and taxpayers who do not itemize.

[6]IRS Statistics of Income division, Tax Stats, ''Individual Statistical Tables by Size of Adjusted Gross Income, Returns With Itemized Deductions: Itemized Deductions by Type and by Size of Adjusted Gross Income, Tax Year 2009.''

[7]*Id*.

[8]*Id*.

[9]*See*, *e.g.*, IR-2012-23 (listing ''abuse of charitable organizations and deductions'' and highlighting the donation of noncash assets).

[10]For additional discussion, see Colinvaux, ''Charitable Contributions of Property: A Broken System Reimagined,'' 50 *Harv. J. on Legis.* (2013) (forthcoming).

over donated assets through the use of donor-advised funds or other grant-making organizations susceptible to donor control.

5. The charitable deduction affects giving in the margin. Like many long-standing benefits, the charitable deduction has become familiar and comfortable. It is hard to imagine (for itemizers) not being able to take a charitable deduction for annual giving. But if the charitable deduction were eliminated, giving would not stop. Giving by non-itemizers (two-thirds of taxpayers) should not change.[11] Giving by itemizers would be reduced, but it is not clear by how much or which organizations would be most adversely affected.[12] This does not mean that the charitable deduction should be eliminated but rather that the deduction should be put into perspective — it is a supplement to but not a condition for giving. In other words, even without a deduction, Americans would remain generous and mindful of favorite causes.

C. Why Do We Have a Charitable Deduction?

There are many explanations for the charitable deduction. In general terms, there are two theoretical approaches. One is related to how best to measure the base of income subject to income tax. The other views the deduction as a form of government spending or subsidy. Subsidy theories in turn have different strands. The various explanations are not mutually exclusive, meaning that the charitable deduction can and does perform a variety of functions within the income tax. The different theories are summarized below.

1. Defining the proper tax base. One view of the charitable deduction is that it is simply an appropriate adjustment necessary to properly measure income. This view is foundational, in that it comes from first principles of an income tax. Any tax must have a base to tax — in this case, income. Defining the base therefore is critical. For expenses outside the base, a deduction follows as a matter of course.

Under the base measurement theory, charitable expenses are viewed as outside the tax base. Charitable giving is seen as distinct from other personal spending (say on theater tickets). Charitable giving does not represent private consumption by the taxpayer but rather is the transfer of consumption opportunities to the donee.[13] Relatedly, under the base measurement approach, income spent on charitable giving is in an important sense not available to the taxpayer — meaning that the taxpayer's ability to pay taxes on that income is adversely affected. For instance, a taxpayer who gives $100 to a section 501(c)(3) organization no longer has the $100. The taxpayer's ability to pay taxes on that $100 is hindered by the gift. Arguably it would be unfair to tax the donor the same as someone with identical income who made no charitable contribution. In short, under a base measurement approach, a charitable deduction simply means that charitable expenses are properly taken outside the donor's tax base (and of the tax system).

2. Subsidy theories: An amalgam. Another explanation of the charitable deduction is to view it as a form of government spending, or tax expenditure. Under this approach, as a general rule charitable expenses are viewed as normally within the tax base, but an exception is created in the form of a deduction. The exception takes on the language of subsidy, or government-provided incentive, for charitable giving.

The question then is, why allow an exception or subsidy for charitable expenses? Many reasons are given. Perhaps the most common is that an exception promotes the provision of undersupplied public goods. To the extent that section 501(c)(3) organizations provide goods or services (such as scientific research) that may not be provided in sufficient quantity by the private marketplace, an incentive is needed to help support these organizations. Another reason is that it is good public policy to promote private giving. Thus, a governmental incentive for private giving is not so much to support the provision of particular goods (although it may have this effect) but rather to promote an important social value — giving. This contributes to a more altruistic society. Yet another reason for the deduction is that it uniquely allows taxpayers to allocate what would otherwise be public funds. By giving to a section 501(c)(3) organization, a taxpayer directs to a private organization of the taxpayer's choice money that would have been collected as tax revenue. This lets people, and not government, decide how to prioritize funding.

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[11]For example, charitable giving by non-itemizers for 2011 has been estimated at $42.02 billion, or 19.5 percent of all giving by individuals. Giving USA, *supra* note 5, at 276.

[12]*See*, *e.g.*, Cordes, *supra* note 1 (discussing the efficiency of the deduction); Bank of America and the Center on Philanthropy at Indiana University, "The 2012 Bank of America Study of High Net Worth Philanthropy," at 56, 71 (Nov. 2012) (reporting that 31.7 percent of high net worth donors give largely because of the tax benefit and that about 50 percent of those households would give the same amount without a tax benefit but that about 10 percent would dramatically decrease their gifts).

[13]It is the donee, if anyone, who should pay the tax. However, because recipients of charitable contributions are tax exempt, no tax will be paid on the gift. Further, even in the absence of tax exemption, gifts are excluded from the tax base (albeit subject to a different standard of law than charitable contributions).

D. Changes Based on Rationale

Ideally, in the context of tax reform (as opposed to budget concerns), any proposed changes to the charitable deduction should be understood in terms of one of the deduction's rationales. For example, if the charitable deduction is best explained by the tax base rationale, then some changes follow from or are consistent with this rationale more than others. Alternatively, a subsidy rationale suggests different changes, and these changes in turn depend on which aspect of the subsidy rationale is emphasized.

1. Changes suggested by a base measurement rationale. The base measurement rationale for the charitable deduction has clear implications on the tax policy of the deduction. In a nutshell, strict adherence to the base measurement rationale (1) favors a deduction over a credit, (2) generally would not allow for a cap (or ceiling) on the deduction, (3) arguably is consistent with placing a floor under the deduction, (4) would not allow a deduction for any appreciation in contributed property, (5) would generally not favor a charitable deduction for non-itemizers, and (6) would lean toward restricting the types of organizations eligible to receive deductible contributions.

The base measurement rationale favors a deduction over a credit because under the rationale, the tax base generally is defined exclusive of charitable giving. A deduction therefore is proper because it completely removes the expense from the tax base. A credit, on the other hand, may remove all or only a portion of the expense from the tax base — depending on the credit percentage. If the credit percentage is less than the highest marginal rate of the taxpayer,[14] the taxpayer will pay tax on a portion of the charitable giving expenses. Accordingly, proposals that call for a credit rather than a deduction[15] are contrary to the base measurement rationale.

For similar reasons, the base measurement rationale disfavors caps on the deduction. The effect of a cap is to put charitable expenses above the cap amount back into the tax base. Again, this is inconsistent with the base measurement rationale idea that charitable expenses are not respective of income. Accordingly, proposals calling for a cap[16] generally are inconsistent with the base measurement rationale.[17]

This line of reasoning does not apply with equal force to placing a floor under the deduction, however. A floor is the opposite of a cap and provides that charitable expenses under a specified amount (the floor) are not allowed but expenses above the floor amount are allowed. Like a cap, the effect of a floor is to make some charitable expenses part of the tax base, and to this extent may be viewed as inconsistent with the base measurement rationale.

But two factors argue in favor of a floor even under this rationale. First, to the extent charitable gifts are not entirely altruistic and the donor derives some personal private gain of good feeling from the gift, a portion of a charitable gift is also a ''purchase'' of that feeling — a private consumption. A floor can be understood as recognizing the private consumption component of a charitable contribution and so is consistent with a base measurement rationale. Second, to the extent that the base measurement rationale also is tied to protecting the ability to pay taxes, a floor (as long as it is low enough) may be viewed as not undermining ability to pay. In other words, it is only when expenses rise to a significant amount that a taxpayer's ability to pay is truly affected. Floors on other deductions (for example, medical expenses) are justified on similar grounds under a base measurement approach.

As noted, although a deduction rather than a credit is generally the appropriate form for the tax benefit under the base measurement rationale, in theory the deduction should be limited to offset only income actually realized by the taxpayer. For example, a gift of $100 cash represents income of the taxpayer that otherwise would be subject to tax. But if a taxpayer gives appreciated property, the appreciation in the property has not been realized and taxed (that is, it is not taxable income of the taxpayer). Allowing a deduction for the appreciation allows the taxpayer to offset other realized income that is not given away and for which the taxpayer has an ability to pay. Contrary to the base measurement rationale, current law generally allows a deduction of the appreciation. Accordingly,

[14]For example, assume a charitable contribution of $100. If the highest marginal tax rate is 35 percent and there is a credit for charitable giving equal to 30 percent of the contribution, the tax on the $100 is $35 offset by a credit of $30, resulting in tax of $5. A deduction, on the other hand, means no tax on the $100 contribution (assuming the percentage limitations do not apply).

[15]*See*, *e.g.*, National Commission on Fiscal Responsibility and Reform, ''The Moment of Truth,'' at 15, 28-34 (Dec. 1, 2010) (aka Simpson-Bowles); Bipartisan Policy Center Debt Reduction Task Force, ''Restoring America's Future,'' at 35-36 (Nov. 2010).

[16]President Obama, ''Fiscal 2012 Budget''; Martin Feldstein et al., ''Capping Individual Tax Expenditure Benefits,'' National Bureau of Economic Research working paper 16921 (2011).

[17]Section 170(b). The percentage limitations of present law cap the deduction and therefore are generally inconsistent with base measurement. However, to the extent that the reason for the percentage limitations is to protect the tax base by ensuring that charitable contributions do not eliminate tax liability altogether, they can be viewed as a base protection measure.

the base measurement rationale indicates changing current law to disallow charitable deductions for unrealized appreciation.[18]

In general, the base measurement rationale would not favor a charitable deduction for non-itemizers.[19] The charitable deduction is an itemized deduction, meaning that those who take the standard deduction (roughly two-thirds of taxpayers) may not claim a charitable deduction. The standard deduction can be viewed as a substitute for itemized deductions, including the charitable deduction, when deductible expenses are relatively low but reasonably expected. If a taxpayer has expenses in excess of the standard deduction amount, the taxpayer may forgo the standard deduction and itemize expenses instead. If a charitable deduction were allowed in addition to the standard deduction, without a related adjustment to the standard deduction amount, the result would be in effect to allow a double deduction for charitable expenses. This would run contrary to a base measurement theory by allowing two deductions for the same expense.

Finally, the base measurement rationale is at least agnostic toward the definition of the type of organization that is eligible to receive charitable contributions, and arguably favors a more constrained definition. Central to the rationale is that charitable giving is distinct from private consumption. Present law doctrines prohibiting a charitable deduction for return benefits are meant to police private benefit contributions. But a weak enforcement presence and a broad definition of eligible organization mean that many donations have significant private elements. Also central to the rationale is the importance of a definite and protected tax base. The broader the definition of eligible organizations, the greater the erosion of the tax base. In other words, one base-broadening measure concerning the charitable deduction would be to narrow the definition of eligible organizations, thus bringing expenses that currently are deductible back into the base. There is nothing immutable about the present law definition of an eligible organization under the base measurement theory. If anything, efforts to preserve the base would argue in favor of narrowing the pool of eligible organizations.

2. Changes suggested by a subsidy rationale. The subsidy rationale for the charitable deduction is consistent with a variety of changes. As a subsidy, the principal questions are the reason for, or purpose of, the subsidy, and how to design the subsidy to effectively produce the desired end. Depending on the reason for the subsidy, some changes make more sense than others. One overriding concern of any subsidy theory is to measure responsiveness — that is, the extent to which the deduction spurs a particular donation. (This is not a concern of the base measurement rationale.) If the deduction does not affect behavior, it is unnecessary and, apart from any symbolic value, a waste of government resources.

a. Emphasis on promoting giving in the aggregate. If the reason for the subsidy is primarily to promote charitable giving for givings sake, then changes to the deduction should be viewed from the perspective of impact on giving.

The principal option in this context would be to extend the incentive to more taxpayers. Because the charitable deduction may be claimed only by taxpayers who itemize their deductions, it is unavailable to the roughly two-thirds of taxpayers who do not itemize but claim the standard deduction instead. The standard deduction is not an incentive for charitable giving, however. Although it takes account of charitable contributions,[20] the standard deduction amount remains the same whether or not a donation is made. A non-itemizer charitable deduction would provide a direct incentive to give and could be expected to increase giving. Placing a floor under the non-itemizer dededuction would be important to target the incentive on giving that is not already occurring, and would also minimize revenue loss.

If increasing giving is the goal and the choice is between a floor or a cap, a floor would be preferable because a floor is likely to adversely affect giving less. This is because a floor would retain the incentive to give once the floor amount has been reached. A well-designed floor serves to eliminate the deduction for gifts that would be made with or without an incentive (thereby also raising revenue). By contrast, in general, a cap eliminates the incentive once the cap has been reached and so discourages giving in the margins, where an incentive is most needed.

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[18]The deduction for unrealized gain has been condemned as ''inefficient and unfair,'' a ''clear error,'' ''inequitable,'' and a ''mistake.'' Evelyn Brody, ''Charities in Tax Reform: Threats to Subsidies Overt and Covert,'' 66 *Tenn. L. Rev*. 687, 720 (1999); Richard Schmalbeck, ''Gifts and the Income Tax — An Enduring Puzzle,'' 73 *Law & Contemp. Probs*. 63, 89 (2010); Daniel Halperin, ''A Charitable Contribution of Appreciated Property and the Realization of Built-In Gains,'' 56 *Tax L. Rev*. 1, 4 (2002); Wendy C. Gerzog, ''From the Greedy to the Needy,'' 87 *Or. L. Rev*. 1133, 1158 (2008); Calvin H. Johnson, ''Ain't Charity: Disallowing Deduction for Kept Resources,'' *Tax Notes*, Aug. 2, 2010, p. 545.

[19]This depends in part on the role of the standard deduction. A non-itemizer deduction was enacted as part of the Economic Recovery Tax Act of 1981 but allowed to expire. It was again raised but not adopted in connection with the tax cuts of 2001.

[20]The standard deduction generally is viewed as a proxy for all itemized deductions, including charitable contributions.

The goal could be to both increase giving in the aggregate and raise revenue. For example, if there is a target of raising $10 billion of revenue from changes to the deduction, there are several ways to raise that amount but with widely different effects on giving. As estimated by the Tax Policy Center,[21] approximately $10 billion could be raised in four different ways:

- Option 1: replace the deduction with a 15.25 percent credit;
- Option 2: impose a 22 percent cap on the deduction;
- Option 3: impose a 1 percent AGI floor under the deduction; or
- Option 4: extend the deduction to all taxpayers (not just itemizers) while also imposing a 1.7 percent AGI floor.

If the reason for the subsidy is primarily to promote giving overall, Option 4 makes the most sense because, under the estimate, it would not result in a net increase or decrease in giving. Second best would be Option 3, which is estimated to lead to a reduction in giving of between $1.4 billion and $2.4 billion. Next is Option 2 — a loss of between $5 billion and $9.8 billion in giving. Finally, Option 1 could lead to a loss of between $6 billion and $10.8 billion in giving.

Efforts to simply encourage additional giving also could lead to proposals that would allow calendar year taxpayers to claim deductions for charitable contributions made up to April 15.[22]

b. Emphasis on promoting an altruistic society and private choice. Rather than promoting giving in the aggregate, reforms might emphasize that the deduction is a policy tool to promote an altruistic society. Related also is that the deduction is praised as a way to connect taxpayers more closely to government by allowing individuals to choose how tax revenue should be allocated. Both goals stress the incentive aspects of the deduction and could lead to reforms that make the charitable deduction available to more people on an equal basis. One reform in this context would be to extend the charitable deduction to non-itemizers.

Relatedly, an emphasis on promoting altruism and choice raises questions of equality and whether some taxpayers should be rewarded more for their choices than others.[23] Here, because the incentive takes the form of a deduction, it is often criticized for its ''upside down'' effect,[24] namely that the amount of the tax benefit increases with the tax rate of the donor. The result is that charitable giving is cheapest for the wealthiest taxpayers. Moving to a credit available to all taxpayers at the same percentage of charitable contributions (irrespective of tax rate or wealth) would more equally distribute the tax benefit.[25]

Proposals to cap the charitable deduction appear to be motivated in part by equity concerns. For example, the Obama administration proposal to cap the deduction at 28 percent of the gift[26] (even if the taxpayer's top marginal rate is higher) makes sense in the context of equity — the cap directly limits the value of the benefit to the wealthy. This proposal also could be seen as a first step toward a credit. By severing the tax benefit from the rate structure, it could be easier to further modify the value of the benefit and move toward a unified percentage. Not all caps are the same, however. A cap on the overall benefit derived from itemized deductions[27] could, depending on its design, largely eliminate the charitable incentive for those subject to the cap. This is because charitable expenses, unlike other itemized expenses, are discretionary and taxpayers subject to the cap would have no incentive to make contributions.

c. A subsidy for ends. Alternatively, emphasis could be placed less on encouraging giving and private choices as abstract policy goals, and more on encouraging giving for particular ends. Under current law, a wide variety of organization types may qualify to receive deductible contributions. But apart from a distinction between public charities and private foundations, all eligible organizations are treated equally. Or put another way, current law generally does not favor some purposes or activities over others.

But the policy of the charitable deduction does not have to be open-ended. Rather, the policy could be to favor organizations that serve the social safety net or other functions. If a functional or activities-based approach to the tax benefit is the priority, a credit might make more sense than a deduction, perhaps with higher credit percentages (a larger tax benefit) for the preferred type of organization. This

[21]Colinvaux et al., *supra* note 1, at Table 6.

[22]Steuerle, ''A New April 15: Make it a Day of Giving (Efficiently),'' Urban Institute (2010).

[23]Retaining the charitable deduction as an itemized deduction magnifies this inequity.

[24]*See, e.g.*, Brody, *supra* note 18, at 714.

[25]The point has been made that questions of progressivity generally should not be assessed solely on the basis of one tax benefit but rather on the tax code as a whole. *See* Colinvaux et al., *supra* note 1, at 10-11.

[26]The cap would apply to all itemized deductions and therefore does not reflect a specific policy regarding the charitable deduction.

[27]*See supra* note 17.

approach could retain an incentive for all organizations that benefit under current law, but prioritize gifts to some organizations over others by increasing the tax benefit for contributions to those groups. To a more limited extent, this division already exists in the law, with private foundations being the disfavored type of donee.

E. Conclusion

In the context of a comprehensive tax reform, any number of changes to the charitable deduction might be sensible. Before opting for any particular reform, some consideration should first be given to determining anew what the deduction primarily is intended to accomplish. Importantly, if a base measurement rationale for the deduction is favored, some changes follow as a matter of course — for example, there should be no deduction for the appreciation in property. Other changes make less sense (caps, moving to a credit, and a non-itemizer deduction), and still others seem reasonable — a floor under the deduction, and protecting the tax base by narrowing the scope of eligible donees.

The subsidy rationale is considerably messier because of its many variants. Virtually anything could be consistent with a subsidy rationale. Thus, credits, caps, floors, a non-itemizer deduction, and better targeting the incentive to serve specific ends all might be plausible options, depending on the desired outcome. The main challenges become having a clear goal and designing an incentive that is not wasteful.

Notably, a floor is consistent with either of the main rationales for the deduction. A floor also would affect aggregate giving only in the margins and have considerable administrative benefits by eliminating many small deductions, especially of low, difficult-to-value property contributions.

Finally, despite general resistance to altering the charitable deduction, it is worth noting that the charitable deduction has been modified substantially since its inception. Because of the many changes, the simple idea of tax-favored giving has evolved into one of the most complex provisions of a notoriously complex tax code. Unfortunately, the changes to the deduction have been largely piecemeal, reactive to abuses, and generally have not directly reflected a particular rationale. What remains is a confusing mix of policies and priorities. Tax reform presents an opportunity to reconsider the role of the charitable deduction in the tax system — and to act accordingly.