SUBMISSION TO:

HOUSE OF COMMONS STANDING

COMMITTEE ON FINANCE

PRE-BUDGET CONSULTATION HEARINGS

FEBRUARY 2016

OBJECTIVE:	**OPPORTUNITY TO INCREASE CHARITABLE DONATIONS BY $200 MILLION PER ANNUM**
RECOMMENDATION:	**INCLUDE 2015 BUDGET MEASURES ON CHARITABLE DONATIONS OF PRIVATE COMPANY SHARES AND REAL ESTATE IN THE 2016 BUDGET.**

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Executive Summary

Including the 2015 Budget Measure in the 2016 Budget

In the 2015 Budget, tabled in April 2015, the government introduced a measure to increase charitable donations by removing the capital gains tax associated with charitable donations of private company shares and real estate, effective January 1, 2017. The measure addresses concern about valuation abuse by having a provision that the donor must sell the private company shares or real estate to an arm's-length party and donate the cash proceeds from the sale to a registered charity within 30 days after the sale. This measure capitalizes on the enormous success of the removal of the capital gains tax on donations of listed securities which has resulted in charitable donations of over $1 billion virtually every year since 2006, when the remaining capital gains tax was removed. It is estimated that this measure will increase charitable donations by an additional $200 million per annum.

While this measure was in the 2015 Budget, it was not in the Budget Bill which was passed in June 2015. In order to be enacted into law, it must be included in the 2016 Budget. It is important to note that this measure has the unanimous support of all three parties. Canada's hospitals, universities, arts and cultural organizations and social service agencies have been preparing for this fundraising opportunity by identifying individuals who have significant assets in the form of private company shares and/or real estate and wish to give back to their communities. They are naturally very interested in the 2016 Budget.

Addressing an Impediment to Gifts of Commercial Real Estate

Another related issue which should be addressed in the upcoming Budget is an unintended impediment to charitable donations of commercial real estate. Owners of commercial real estate have reduced their taxable income each year by amortizing the capital cost of the building over a period of years. When the building is sold, the Capital Cost Allowance (CCA) is recaptured and the recaptured CCA is taxed like ordinary income. In many cases, the tax associated with the CCA recapture is greater than the benefit of the elimination of the capital gains tax associated with the donation. It would not be appropriate for the government to forego the CCA recapture. However, this impediment could be addressed by allowing the CCA recapture to be deferred by the donor either by transferring the CCA recapture to another commercial property which he or she owns, or by allowing the donor to amortize the CCA recapture over a five or ten year period.

Proposed Change in Tax Treatment of Stock Options

A proposal which should not be included in the upcoming Budget is the taxation of stock option benefits as ordinary income rather than as a capital gain. This proposed change in the taxation of stock option benefits would result in a reduction in charitable donations. Currently, many senior executives exercise their stock options, sell the shares and donate the cash proceeds to charities and are exempt on tax on the stock option benefit because the benefits are currently taxed like a capital gain. For example, one prominent senior executive has donated over $40 million to important charitable organizations over the past few years through the exercise of stock options. If stock option benefits were taxed like ordinary income, it is unlikely that these donations would continue.

There has also been considerable media coverage on this subject because such a change would remove a significant incentive for entrepreneurs who start-up companies and incentivize their employees through stock options. Innovation and productivity are two key priorities for Canada and we need to create an environment that attracts the best and the brightest entrepreneurial talent.

Introduction

The Executive Summary provides all of the relevant information regarding our recommendation for the 2016 Budget that are relevant to the not-for-profit/charitable sector. The rest of this Submission will summarize the high level of awareness and support for these measures.

The Success of the Removal of the Capital Gains Tax on Gifts of Listed Securities

In 1997, the Federal Government reduced the capital gains tax on donations of listed securities by 50% on a five-year trial basis. In 2006, the Federal Government removed the remaining capital gains tax on gifts of listed securities. Prior to 1997, Canadians did not donate listed securities to charities because, when they transferred the shares to the charity, they were deemed to have sold the shares and were required to pay a capital gains tax on the donation. Since 2006, charities have received donations of over $1 billion virtually every year. The removal of the capital gains tax on gifts of private company shares and real estate is estimated to increase charitable donations by approximately $200 million per annum, based upon the U.S experience.

Addressing Concerns about Valuation Abuse for Gifts of Private Company Shares and Real Estate

In order to qualify for the capital gains tax exemption on gifts of private company shares and real estate, the donor would be required to sell the asset to an arm's-length party. Because the purchaser must be at arm's-length, the asset would be sold at fair-market value and there should be no concern about valuation abuse.

Federal Tax Revenue Cost

The federal tax revenue cost of the proposal depends on the amount of the increase in charitable gifts of private company shares and taxable real estate and the adjusted cost base (ACB) of the donated property. **The C.D. Howe Institute hosted a Conference on Strengthening Charity Finance in Canada on March 8th, 2011. A presenter estimated that our proposals would result in an annual increase in charitable giving in the form of private company shares and real estate of $170 to $225 million and the tax revenue cost to the federal government would be only $50 to $65 million.** These estimates were based upon an analysis of the Department of Finance's Annual Tax Expenditure Report, taking into consideration the percentage of donations of appreciated capital property in the U.S. made in the form of private company shares and real estate.

Canadian Federation for Independent Business (CFIB)

The Canadian Federation for Independent Business (CFIB), representing 105,000 private corporations or enterprises across Canada, has an interest in our proposal regarding private company shares. This measure would be particularly interesting to business owners considering selling their company instead of turning it over to their children. The sale of their business could be a catalyst for a significant charitable donation to a local not-for-profit organization. Importantly, the measure would level the playing field for entrepreneurs who maintain private company status relative to those who take their company public.

Federation of Canadian Municipalities (FCM)

The Federation of Canadian Municipalities (FCM) represents 1,800 mayors of cities, towns and villages across Canada. As municipalities derive their revenues primarily from property taxes, not income taxes, these measures would cost them no tax revenue. However, they would result in significant increases in private sector funding for not-for-profit organizations in their municipalities. Consequently, most FCM members support these proposals.

Support of All Three Federal Parties

This is one of the few public policy issues that has the support of all three Parties. While the 2015 Federal Budget was tabled by the Conservative government, both the Liberals and the NDP were supportive. Scott Brison, the then Finance Critic for the Liberal Party, has communicated his support publically and Thomas Mulcair, Leader of the NDP is also on record as having been supportive.

Although these are challenging times for our governments and our charities, implementation of this proposal in the 2016 Budget would be appreciated by the 2.1 million Canadians employed in our not-for-profit sector, the managements of our hospitals, universities, arts and culture organizations and social service agencies across Canada, and the tens of thousands of business and community leaders who serve as volunteer board members of these organizations. In addition to providing advice and oversight, each of these individuals is involved in private sector fundraising, as well as donating personally. The millions of Canadians whom our charities serve would be very grateful.

We urge the Finance Committee to recommend that the government implement these measures in the upcoming budget.