CAGP·ACPDP™

CANADIAN ASSOCIATION OF GIFT PLANNERS

ASSOCIATION CANADIENNE DES PROFESSIONNELS EN DONS PLANIFIÉS

Outline of Submission
To the
Parliamentary Standing Committee on Finance

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Presented by

The Canadian Association of Gift Planners/
Association canadienne des professionnels
en dons planifiés

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EXECUTIVE SUMMARY

The following is a summary of the Canadian Association of Gift Planners brief to the Standing Committee on Finance regarding pre-budget consultations for 2012. We feel that our recommendations will help create and sustain a more prosperous future for all Canadians. Specifically, these tax changes overall should be implemented to ensure that our nation has the infrastructure required by Canadians and enables the fastest growing revenue stream for the charitable sector to continue to prosper in the world of the future.

Recommendations:

CAGP-ACPDP™ is making three recommendations. One related to the establishment of Charitable Remainder Trusts; one related to tax incentives for gifts of assets and one for tax incentives related to gifts of income.

1. **Increase the flow of charitable funds in the wake of the recession and encourage Canadians to enhance their charitable giving by establishing a "stretch" charitable tax credit, as advanced by Imagine Canada and other sector organizations.**

2. **Move to extending the exemption from capital gains inclusion rates to certain gifts of real estate.**

3. **CAGP-ACPDP™ submits that the Department of Finance: move forward quickly with changes to the *Income Tax Act* to clarify the law surrounding donations to Charitable Remainder Trusts.**

The Canadian Association of Gift Planners/Association canadienne des professionnels en dons planifiés (CAGP-ACPD™) is comprised of 1300 charitable gift planners from across Canada who adhere to strict standards of ethics. Three-quarters of members are employed directly by charities to assist donors. One quarter work in the private sector in the fields of law, trusts, accounting, life underwriting and financial planning.

The purpose of the Canadian Association of Gift Planners is to support philanthropy by fostering the development and growth of gift planning. The Association creates awareness, provides education and is an advocate of charitable giving.

Recommendation #1
Establishing a charitable "stretch" tax credit

There is no doubt that many organizations in the charitable sector are facing higher than usual demand for their services as a consequence of the recession. At the same time, for some organizations, their ability to carry on their mandate is challenged by the symptoms of the financial crisis including less access to government funding, a temporary slowdown in donations, and some substantial declines in the value of foundations' endowments.

On the other side, there is also no doubt that Canadians want to help the charitable community during their time of need. There have been many stories of giving and compassion shown during this recession. CAGP-ACPDP™ supports Imagine Canadas' proposal of a stretch tax credit that would apply to donated amounts that exceed a donor's previous highest giving level. This new measure would be based on an individual tax payer's best previous year of giving using 2010 as a baseline. They are recommending a stretch tax credit of 29 per cent or 39 per cent on these new donations (depending, whether the amount is below or above $200) – an increase of 10 percentage points higher than the current level. This measure would provide incentives to Canadians to continue to increase their level of giving year after year in order to increase their previous year's baselines and to continue benefitting from the stretch tax credit. This new and unique measure would encourage middle-income earners and first-time doors to give annually – up to a maximum of $10,000.

The "stretch" tax credit provides a way for the average Canadian to make a difference. It complements recent incentives encouraging gifts of assets aimed primarily at higher income Canadians with an initiative that is less exclusive and recognizes that most Canadians can donate income when a welcome tax incentive is in place.

The intent of this "stretch" tax credit is to potentially change giving behaviour through a new direction in tax policy – a policy that is relatively simple to implement. We ask the Standing Committee to strongly consider this opportunity to open up a channel of giving for Canadians that has not been seen before.

Recommendation #2:
Gifts of Real Property

Since introduced in 2006, the exemption from tax on capital gains for gifts of publicly-traded securities to public charities has been highly effective. Canadians have widely used this form of giving and charities across the country have benefited from such gifts.

In 2006, CAGP-ACPDP™ also recommended that the government amend the Income Tax Act to eliminate the capital gains tax on donations of real estate and land to public charities as well as to private foundations. Extending this incentive to gifts of real property would further increase the capital base available to charities.

Real estate is one of the most widely held asset classes in Canada, but rarely donated to charity. Given the success of the nil capital gains inclusion rate for gifts of public securities, expanding the incentive to gifts of appreciated real estate would greatly benefit the sector and society. The proposal eliminates the tax on capital gains realized from the sale of taxable real estate where the proceeds from the sale are gifted to charity within 30 days of the date of the sale or the tax on capital gains realized when a donor gifts real estate to a charity that will be used by the charity directly in pursuing its charitable purposes.

The system for calculating recaptured depreciation will remain unchanged. Thus deemed proceeds of disposition created by the donation would continue to be credited to the building pool up to original cost. This will result in immediate recapture or a reduction in the amount subject to capital cost allowance. For proceeds over the original cost- this will create the capital gain to be exempt from tax.

Conclusion:
We propose that gifts of appreciated real estate be exempt from capital gains. A further detailed description of this proposal is available on request.

Recommendation #3:
Charitable Remainder Trusts

This Committee recommends that the Department of Finance move forward quickly with changes to the *Income Tax Act* to clarify the law surrounding donations to **Charitable Remainder Trusts**.

This recommendation is consistent with the Standing Committee's request to identify how "relatively ineffective measures be changed to ensure that they have the intended effects". The Government has taken many positive steps to improve the ability of the charitable sector to engage the public in its missions and raise donor dollars to support those in need. The Charitable Remainder Trust is an attractive structure to older donors (age 65+) to use to support their charities of choice during their lifetimes. Clarification of the Charitable Remainder Trust rules in the *Income Tax Act* will promote donor and advisor confidence and ensure proper regulation of this gift vehicle. We believe this device will take on a prominent role in structuring near end-of-life asset gifts by middle income Canadians.

History of the Charitable Remainder Trust
The Charitable Remainder Trust has been acknowledged by the Department of Finance and Canada Revenue Agency as a valid tool for giving significant gifts of assets that needs clarification in Canadian law. In the spring of 2003 at the request of these Departments, a proposal was tabled by CAGP-ACPDP™ for a legislative framework for Charitable Remainder Trusts under Canadian law. While both Finance and CRA have been cooperative with CAGP-ACPDP, the major regulatory changes within the sector have delayed this initiative.
We have recently provided the Department of Finance with a detailed proposal on how to improve these rules. The proposal was prepared by CAGP-ACPDP™ and is available upon request.

What is a Charitable Remainder Trust?
A Charitable Remainder Trust is a "life income" gift that allows individual donors age 65+ to create a trust, retain a life income and, upon their death, the remainder interest goes to charity. Since the trust is irrevocable the donor also receives a current tax receipt for the ***future*** value of the capital in the trust. It is an important giving technique internationally, but due to lack of clarity in Canadian law, Charitable Remainder Trusts have not been widely used here.

An Example
Mrs. Donor, age 80, lost her husband 2 years ago. She has been a life long supporter of the United Way and has included it in her will. She has decided she wants to make the gift now, but has a concern that she has enough income in future years to support her lifestyle.

With a charitable remainder trust she would get income for life and the charity gets the capital at the time of her death, as the gift is irrevocable. She will also receive a tax receipt for the present value of the future interest of the charity, which would be approximately 70% of the amount contributed for a donor of this age. The amount of the receipt is always discounted and determined by looking at age and life expectancy. Most importantly, Mrs. Donor is recognized today by the United Way for her generosity.

Key Proposed Changes

The CAGP proposal asks for the inclusion of a new gifting vehicle to be defined in the *Income Tax Act* (Canada) as charitable remainder trust. Such a trust must have a qualified donee as a beneficiary and would provide for annual distributions to an income beneficiary that in most cases would be the donor, but could be the donor and his or her spouse or a third party. The proposal contemplates that the transfer of property to a full charitable remainder trust would be a gift for tax purposes. The charity would be required to value the remainder interest which is left to the benefit of the charity and can issue a tax receipt for that amount. The proposal asks that incentives available in the *Income Tax Act* to gifts made directly to charities apply to the transfers of property to a charitable remainder trust. Otherwise it contemplates that the transfer of property into the charitable remainder trust would be taxable in the same way a transfer to a charity would be taxable. It is contemplated that the charitable remainder trust would be exempt from tax but that the annual distributions made to a beneficiary would be taxable under the *Income Tax Act*. In other words, the proposal tabled is as consistent as possible with the current provisions of the *Income Tax Act* and the administrative policy which supports the charitable remainder trust with some uncertainty under the current regime.

Conclusion

The Charitable Remainder Trust is a prudent and effective giving tool that could unlock significant gifts of assets from donors age 65 years and older. We ask for the support of this Committee to bring some urgency to the Charitable Remainder Trust proposal currently with the Department of Finance. The continued discussions on this proposal are an excellent example of collaboration by both Government Departments and the charitable sector. The time has come for a final push to adopt the Charitable Remainder Trust proposal in the Income Tax Act for the benefit of Canadians.