



**Submission to the
House of Commons Standing Committee on Finance
Study on Tax Incentives for Charitable Donations**

January 2012

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

**Susan Manwaring,
Chair, CAGP-ACPDPTM Government Relations Committee
Miller Thomson
416-595-8583**

**Diane MacDonald
Executive Director
CAGP-ACPDPTM
613-232-7991 ext. 223**

INTRODUCTION

Gift Planning is the donor centered process of planning charitable gifts, whether current or future gifts, that meet philanthropic goals and balances personal, family, and tax considerations. Most Canadians give to charity during their life time and thanks in part to a positive tax regime in Canada, Canadians are fortunate to have good donation incentives. Yet, studies tell us that the primary reason Canadians give is because they care, they want to help and they have a strong connection to a charity's mission or cause.

The Canadian Association of Gift Planners (CAGP-ACPDTM) serves 1000 charity members in Canada. Over 80% of Canada's charities are small - most under one million in annual revenue. We know that when a charity receives a large donation (a planned gift), the charity will benefit from financial security and revenue for many years to come. The tax incentives that we are recommending can provide a large impact to the sustainability of Canada's charities and ultimately our communities.

The Study

CAGP-ACPDTM is pleased to support the House of Commons Standing Committee on Finance study of tax incentives for charitable giving. Donations, for some charities, can represent as much as 90% of a charities overall income – sometimes 100%. Donations are a direct way for Canadians to support the causes dearest to them and to contribute to building stronger communities. By supporting Canadians' philanthropic activities, the federal government helps to strengthen communities and our pool of social capital. It contributes to ensuring a healthy society, alongside strong public and private sectors.

Over the years, CAGP-ACPDTM has had a positive, supportive relationship with the federal government, working closely with the Department of Finance and the CRA Charities Directorate. We have successfully collaborated with government and others in the sector on various pieces of legislation and policy to enable clarity in many areas of the donation process.

CAGP-ACPDTM believes that whatever measures the Committee might recommend to encourage greater philanthropy and support for the work of Canada's charities should be created with a cooperative approach with the sector. We encourage the Committee to work with the charitable sector to develop approaches that will be simple in implementation allowing charities to focus on their core activities and not be burdened by onerous administrative requirements. Efforts to bolster charitable giving are of limited value when administrative costs consume significant portions of monies raised. To ensure the value of any new donation incentives are maximized, we support the introduction of measures that build on those currently in place in the Income Tax Act and the elimination of measures that are unnecessarily complicated or that are not supported by a strong policy rationale. For example, the elimination of the complicated excess business holdings rules applicable to private foundations would help reduce the red tape burden. Doing so would allow registered charities to devote more resources to frontline work and reduce administrative costs associated with compliance.

CAGP-ACPDTM supports this opportunity for open dialogue and a cooperative approach in striking a better balance between public accountability for tax expenditures and flexibility for donors and charities to effectively advance their charitable work.

The Sector

Charities run the risk of reductions in contribution from various levels of government in the face of deficit reduction measures. The federal government is currently undergoing a five per cent reduction in spending annually (\$4 billion per year) until 2015.

At the same time, the median size of donations has grown steadily since the 1990's to \$260 in 2010, but the donor pool has declined from 30% in 1990 to 23.6% in 2010.

Since 1996, changes around capital gains for charitable donations of certain types of gifts have coincided with increases in the total amounts of donations claimed. Canadian tax filers claimed \$8.3 billion in donations in 2010, an increase of approximately \$500 million from 2009. Without these changes in tax incentives, the charitable sector might have struggled immensely – given the decline in the donor pool. CAGP-ACPDTM believes that Canadians care about their communities and given new incentives, will consider new donation options.

The Shift

Since the changes in 1996, many of our members have stories about loyal donors (often retirees,) who had previously donated less than \$250 per annum increasing their giving to over \$10,000 with stock gifts. As long as markets remained strong, some of these donors began to give at these higher levels on a recurring basis.

RECOMMENDATIONS

The Canadian Association of Gift Planners proposes encouraging and enabling Canadians to meet their philanthropic goals by supporting the "stretch" charitable tax credit, as advanced by Imagine Canada and other sector organizations. This incentive is a broad measure that will assist our charities to broaden their donor base and enable them to nurture relationships with new donors.. As well CAGP-ACPDTM is proposing two new planned giving incentives: gifts of real estate and gifts of private company shares.

Stretch Charitable Tax Credit

CAGP-ACPDTM encourages the Committee to establish a "stretch" charitable tax credit, as advanced by Imagine Canada and other sector organizations. This incentive would increase the flow of charitable funds in the wake of the recession and encourage Canadians to enhance their charitable giving.

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, 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 declines in the value of foundations' endowments.

On the other side, there is also no doubt that Canadians want to help strengthen registered charities during this time of need. There have been many stories of giving and compassion shown during this recession. CAGP-ACPDTM supports Imagine Canada's 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 taxpayer's best previous year of giving

using 2011 as a baseline. They are recommending a stretch tax credit of 25 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.

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.

Benefits:

The Stretch Tax Credit would increase donation levels overall, expand the donor base for all charities, provide tax relief for moderate to middle income families, encourage long-term giving and stronger relationships with charities, and ensures that organizations of all sizes and in every community are assisted in fulfilling their mission.

Gifts of Real Estate

We encourage the Committee to move to extend the exemption from capital gains inclusion to gifts of taxable real estate.¹

We propose that the capital gains realized on gifts of appreciated real estate be exempt from tax. The proposal contemplates that these gifts can occur in two different ways. In the first method, the qualified donee will receive all or part of the cash proceeds of a sale of the property. We call this method the donation of cash proceeds of a real estate sale (or closing). This method provides valuation certainty, an incentive for donors, and ease of management for charities. The second method is an in-kind real estate donation and will enable the qualified donee to retain the property for use in its mission, for example social housing or a place of worship, or investment.

The proposal eliminates the tax on capital gains realized from the sale or gifts of taxable real estate. It would contain an enhanced feature designed to permit the donor to deal with the sale of the real estate where the charity cannot use it in pursuit of its mission. In such circumstances, where the proceeds from the sale are gifted to charity within 30 days of the date of the sale, the capital gain will be exempt from tax. This is similar to the current treatment in the Income Tax Act where a donor decides to make a gift of public securities acquired under a stock option plan.

This proposal will not change the existing tax treatment of recaptured depreciation resulting from a gift. Thus, capital cost allowance previously claimed by the donor and “recaptured” by the gift or sale will continue to be taxable.

The impact

This proposal applies to taxable appreciated real estate held by Canadians. 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.

¹ *This proposal would not extend to principal residences, which are exempt from income tax.*

There are many Canadians who, after careful review of their assets and charitable goals, would welcome the opportunity to donate their taxable appreciated real estate or the proceeds therefrom to their favourite charity. Receiving a substantial gift from real estate means sustainable revenue for a charity – whether they use the property for their charitable purposes or sell it for revenue purposes. CAGP recognizes that not all donors are in the position to donate real estate but feels that a small number of donors should not discourage the move to provide incentives for this important gift. The size of an average real estate gift can have an immense and positive impact on the financial health of a charity and ultimately to the communities they serve.

Real estate is one of the most widely held asset classes in Canada, but rarely donated to charity. It is also a significant source of wealth in all regions of Canada. This proposal would complement the existing ecological gifts regime, while extending the benefits of real estate gifts to all charities.

A detailed description of this proposal is available on request.

Gifts of Private Company Shares

We encourage the Committee to extend the exemption from tax on capital gains realized on gifts of public company shares to the capital gains realized on the disposition of certain gifts of private company shares.

Currently donors who decide to contribute public company shares to charities get a significantly better deal in the tax system than a donor who would like to contribute shares of a private company. For example, an investor can buy a mutual fund and donate it a few years later, eliminating tax on any capital gain realized and obtain a charitable tax receipt equal to the amount of the gift. By contrast, a philanthropic entrepreneur who spends 35 years building a private manufacturing company up from nothing will pay the normal rate of tax on the capital gain realized on the gift of his family business shares and receive a tax receipt (under certain circumstances). This inequity in tax treatment makes the donation of private company shares a less attractive option for business owners.

Another inequity relates to geography. Currently, the incentive for donating public securities may tend to favour charities in large cities - with concentration of head offices. Private companies are a primary wealth creation structure in smaller Canadian communities, and this incentive would be helpful in ensuring charities outside large cities are more likely to receive significant donations from area entrepreneurs.

The Proposal

The mechanism to align the tax treatment of private company shares with public securities is to build on the rules contained in S. 118.1(13). Presently gifts of private company shares are afforded two different tax results depending on the circumstances. In some cases the gift results in an immediate gift recognition and the realization of a corresponding capital gain; in others the gift is not recognized and a capital gain not realized unless the charity “monetizes” the shares within a five-year period and then the gift and capital gain are realized. The proposal would exempt the capital gain from tax, if the shares are liquidated within the 60-month period in both circumstances. At that time, the capital gain would be considered exempt from tax.

The rationale for this approach is certainty and pragmatism. The method eliminates the valuation concern’s in non-arm’s length transactions as it marries the tax receipt to cash received by the charity. For arm’s length transactions the same “marrying” will occur for those

wishing to take advantage of the proposed capital gains exemption (monetizing within five years). CRA is comfortable with the existing monetizations rules and the proposal extends the use and comfort level of the existing legislation.

A further detailed description of our proposal regarding gifts of private company shares is available on request.

The Impact

The vast majority of businesses in Canada are private companies, not companies listed on stock exchanges. Moreover, some believe that the value of private companies is greater than public companies. One indicator found in the Business Development Bank of Canada study (E-Profits, February 2006) stated that Canadian family firms have annual sales of \$1.3 trillion. The same study noted that three quarters of these firms would be engaging in succession planning over the next 10 to 12 years. That's a lot of money in motion.

From a charity perspective, the wealth in these companies represents the most significant unexploited source of wealth in Canada for donation purposes. The challenge is putting rules in place that incent donors, produce reasonably straightforward and valuable gifts, and are tamper proof.

We must look at the overall integrity of the tax system. Structured as described, private company shares would primarily be donated at the time a company is sold, either to an outside buyer or perhaps the next generation of family. This may seem like a limited window, but most of major gifts occur because of other life and tax events. An upgraded incentive focusing on private company shares would be an extremely important source of funding for charities. Gifts will be structured to coincide with the sale or transition of companies, which based on the above mentioned Development Bank of Canada statistic, could be a very significant amount.

CONCLUSION

CAGP-ACPDTM's recommendations will help create and sustain a more prosperous future for all Canadians. Implementation of these tax changes will help to ensure that our nation has the infrastructure required by Canadians and sustainable revenue streams for the charitable sector to continue their priority needs of the future.

.....

The Canadian Association of Gift Planners/Association canadienne des professionnels en dons planifiés (CAGP-ACPDTM) is comprised of 1200 charitable gift planners from across Canada who adhere to strict standards of ethics. Eighty percent of members are employed directly by charities to assist donors. The other twenty percent 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.