



**Submission  
to the  
House of Commons  
Standing Committee on Finance**

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**Presented by:  
The Canadian Association of Gift Planners**

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## EXECUTIVE SUMMARY

The following is a summary of the Canadian Association of Gift Planners' brief to the House of Commons Standing Committee on Finance regarding pre-budget consultations for 2015. 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-ACDPD™ is making four recommendations. These are:

- 1. Move to extending the exemption from capital gains inclusion rates on gifts of public company shares to certain gifts of real estate.**
- 2. Extending the exemption from capital gains inclusion rates to gifts private company shares.**
- 3. 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.**

### 4. Estate Donations

The Canadian Association of Gift Planners (CAGP) is a national non-profit organization whose purpose is champion the growth and development of strategic charitable gift planning in Canada by: developing knowledge and providing education; building awareness and promoting philanthropy, locally and nationally; creating connections and facilitating partnerships; and engaging in national dialogues and influencing public policy.

Strategic charitable gift planning is a donor-centred process of planning current and future charitable gifts in a way that meets a donor's philanthropic goals and balances personal, family and tax considerations.

Our national membership is comprised of 1200 charitable gift planners working in Canada's charitable sector as well as individuals from variety of allied professions in the private sector, including law, trust and estate planning, accounting, life underwriting and financial planning. Members adhere to strict standards of ethics.

## **Recommendation #1 Gifts of Real Estate**

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

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.

### **The Proposal**

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. It would be important that implementation of these tax benefits be balanced with mechanisms for clear valuation and that support ease of administration by charities of all sizes.

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.

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.

A detailed description of this proposal is available on request.

## **Recommendation #2**

### **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 share and receive a tax receipt (under certain circumstances). This inequality 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 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 concerns in non-arms 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.

### **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.

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

### **Recommendation #3**

#### **Establishing a Charitable "Stretch" Tax Credit**

CAGP 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.

CAGP 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 tax payer's best previous year of giving using 2013 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 incentive would encourage Canadians to become more regular and consistent donors to charity. The stretch tax credit benefit would be capped at \$10,000 in annual donations. 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 Impact**

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 would ensure that organizations of all sizes and in every community are assisted in fulfilling their mission.

## **Recommendation #4 Estate Donations**

This proposal relates to the recent amendments to the *Income Tax Act* announced in the 2013 Budget concerning the timing of the donation and issuance of a tax receipt for estate donations. The new rules propose a hard and fast rule that any gift or distribution from the estate that is not made within 36 months of the date of death cannot be treated as a gift in the terminal return but rather would be a gift in the year it is made. CAGP is recommending an administrative mechanism be added to these provisions to provide an extension of the 36-month period in the circumstances where failure to make the gift within 36 months is due to extraneous events (ie. litigation or illiquid assets).

A hard and fast deadline fails to take into account the fact that some estates require a longer period of time to distribute assets. Moreover, the value of estate donations will be reduced and charities disadvantaged – through no fault of their own – if the 36-month deadline is exceeded and the tax savings that would be otherwise available are lost.

The *Income Tax Act* has a number of administrative relief provisions to address complex situations that disadvantage taxpayers. The same administrative fairness mechanism should be extended to charities and the donors that make major gifts as part of their estate plans.