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**PART I:  
AN OVERVIEW OF TAX CREDITS FOR CHARITABLE DONATIONS AS A  
PHILANTHROPIC INCENTIVE IN CANADA**

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**A. INTRODUCTION**

In Canada, charities are subject to a very broad range of federal and provincial legislation, creating a complex patchwork of laws that Canadian charities must take into account.<sup>1</sup> However, tax administration by the federal government under the *Income Tax Act* (Canada)<sup>2</sup> (the “Act”) is the primary means by which Canadian charities are regulated, and as such, the relevance of tax incentives to encourage charitable giving in Canada cannot be underestimated.

According to a 2005 study of Canadian non-profit and voluntary organizations (including charities registered under the Act), approximately 49% of the revenues of such organizations came from government funding, 35% from earned income from non-governmental sources (e.g., fees for membership, goods and services), 13% from gifts and donations, and 3% from other sources.<sup>3</sup> The large amount of revenue from the government must be understood in light of the fact that hospitals, universities and colleges were the major recipients, even though these organizations accounted for less than 1% of the total number of organizations.<sup>4</sup> Gifts and donations from individuals were particularly important to smaller organizations, as indicated by the statistic that for organizations with less than \$500,000 of revenue,<sup>5</sup> individual gifts and donations constituted

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<sup>1</sup> See Maria Elena Hoffstein, Terrance S. Carter & Adam Parachin, *Charities Legislation & Commentary*, 2009 ed. (Markham: LexisNexis, 2008).

<sup>2</sup> *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.).

<sup>3</sup> Michael H. Hall *et al.*, *Cornerstones of Community: Highlights of the National Survey of Nonprofit and Voluntary Organizations* (Ottawa: Statistics Canada, 2005) at 24.

<sup>4</sup> *Ibid.* at 22.

<sup>5</sup> All monetary figures herein are in Canadian dollars.

approximately 20 to 25% of their revenue, as opposed to 4 to 12% for organizations with revenues of \$500,000 and above.<sup>6</sup>

The Canadian tax regime, with regard to charitable donations, has undergone various reforms over the past century. From the standpoint of tax policy, one of the most significant reforms has been the introduction of the income tax credit system to replace the previous tax deduction system. While there may be differing opinions as to whether or not the tax credit system has actually been effective in promoting charitable giving, this paper reviews the underlying rationales for the change from a tax deduction to a tax credit system, and the apparent effects that this has had in promoting philanthropy in Canada.

## **B. FROM DEDUCTION TO CREDIT: CANADA'S EXPERIENCE**

### 1. Historical Background

The notion of encouraging charitable giving through income tax incentives had its origins during the First World War, as the first Canadian income tax statute in 1917 allowed an unlimited deduction for donations to the Patriotic and Red Cross Funds, and other approved patriotic and war funds.<sup>7</sup> However, it was not until 1930 that the first deduction was made available for receipted donations to charitable organizations in general, allowing deductions of up to 10 percent of net taxable income (after having deducted various costs of earning income and other personal deductions).<sup>8</sup> At that time, the applicability of the deduction was extended to donations made to any charitable organization that “operated exclusively as such and not operated for the benefit of private gain or profit of any person, member or shareholder thereof.”<sup>9</sup>

The rationale for introducing a general deduction system in Canada during the onset of the Great Depression in the 1930s was a method for the government to provide “incentives to the populace to donate to private charities . . . without itself assuming responsibility for relief,” and “a means of assisting the overburdened provinces without the federal government becoming involved in a provincial responsibility.”<sup>10</sup> In general terms, the deduction has been described as being introduced to promote

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<sup>6</sup> Michael H. Hall *et al.*, *supra* note 3 at 25.

<sup>7</sup> *The Income War Tax Act, 1917* (Can.), 7-8 Geo. 5, c. 28.

<sup>8</sup> S.C. 1930, c. 24, s. 3.

<sup>9</sup> *Ibid.*

<sup>10</sup> Rod Watson, “Charity and the Canadian Income Tax Act: An Erratic History” (1985) 5 *The Philanthropist* 3 at 8.

“public policy and the general good of the community”;<sup>11</sup> and “to promote munificence or at least to protect charities against the indirect consequence of high rates of income tax on those who sustain them.”<sup>12</sup>

After 1930, one of the first major changes to the charitable deduction was in 1957, when an optional standard deduction was introduced, whereby a taxpayer could claim a \$100 deduction without submitting receipts.<sup>13</sup> This deduction was for charitable donations, medical expenses, and union, professional or similar dues, and its purpose was simply for administrative efficacy – to limit the paperwork for both the government and taxpayers, who were found to typically claim less than \$100 for those expenses.<sup>14</sup> However, this standard deduction “was sharply criticized by advocates for voluntary organizations on the grounds that it lessened tax incentives to contribute to charities.”<sup>15</sup> In response to those criticisms,<sup>16</sup> this provision was finally repealed in 1984.<sup>17</sup>

Other noteworthy aspects of the deduction’s historical progression include the introduction of ceilings, carryovers and transfers of receipts. As mentioned above, the general deduction for all charitable donations was first introduced in 1930 with a maximum of 10% of the taxpayer’s income that could be deducted for the year. This ceiling was increased several times and currently stands at 75% of net income, as introduced in 1997.<sup>18</sup> The government’s stated purpose for increasing the ceiling was to increase tax assistance for charitable giving.<sup>19</sup> Carryovers were introduced in 1957 to allow deductions that exceeded the ceiling to be carried forward to be used in the next year.<sup>20</sup> Today, taxpayers in Canada can claim a charitable donation in the year of the gift or any of the following five taxation years,

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<sup>11</sup> Gwyneth McGregor, “Charitable Contributions” (1961) 9 Can. Tax J. 441 at 448.

<sup>12</sup> Royal Commission on Dominion-Provincial Relations, *Report of the Royal Commission on Dominion-Provincial Relations*, vol. 2 (Ottawa: King’s Printer, 1940) at 161.

<sup>13</sup> S.C. 1957, c. 29, s. 7(3).

<sup>14</sup> David G. Duff, “Charitable Contributions and the Personal Income Tax: Evaluating the Canadian Credit” in Jim Phillips, Bruce Chapman & David Stevens, eds., *Between State and Market: Essays on Charities Law and Policy in Canada* (Montreal and Kingston: McGill-Queen’s University Press, 2001) 407 at 410-411.

<sup>15</sup> *Ibid.* at 411.

<sup>16</sup> *Ibid.* at 412.

<sup>17</sup> S.C. 1984, c. 1, s. 49(2).

<sup>18</sup> S.C. 1998, c. 19, s. 22(14). Pursuant to s. 110.1(1) and the definition of “total gifts” in s. 118.1(1) of the Act, this 75% ceiling is applicable to charitable donations generally, but for donations of ecological and cultural gifts, the ceiling increases to 100%. For more information on ecological and cultural gifts, see companion Part II paper by Terrance S. Carter, “An Overview of Capital Gains Tax Exemptions as a Philanthropic Incentive in Canada” (Presented to the Australian Centre for Philanthropy and Nonprofit Studies - Modernising Charity Law Conference, Queensland University of Technology, April 2009).

<sup>19</sup> Department of Finance Canada, *Budget 1997: Building the Future for Canadians* (Ottawa: Department of Finance Canada, 1997) at 112.

<sup>20</sup> S.C. 1957, c. 29, s. 7(1).

regardless of whether or not the gift could have been deducted in the year it was donated.<sup>21</sup> As an administrative practice, charitable donations may also be claimed by a spouse for the other spouse, or for any of their dependants, regardless of whose name the receipts are actually issued to.<sup>22</sup>

The year 1967 marked a watershed in the Canadian regulation of charities, as a result of the creation of a central registration system for charities with the consequence that only donations made to registered charities could be deducted.<sup>23</sup> During that time, a Royal Commission on Taxation (the “Carter Commission”) reported on recommendations for income tax reform, which included a discussion of tax credits vis-à-vis deductions.<sup>24</sup> Although the Carter Commission’s assessment of the charitable deduction was not extensive, it appears to have been the first meaningful Canadian discussion of the subject matter. In particular, the Carter Commission recognized that an element of inequity existed within the then current deductions system as discussed below.<sup>25</sup>

## 2. The Regressive Nature of Deductions

The issue of inequity that was mentioned by the Carter Commission has since been identified as an issue involving the regressive nature of income tax deductions.<sup>26</sup> In this regard, a deduction operates to reduce the taxable income of a taxpayer, and therefore, when income tax is levied at a progressive rate, a deduction from income tax will necessarily deduct the amount from the highest tax bracket of the taxpayer. Because of this, a taxpayer who has income that reaches an income bracket with a higher marginal tax rate will have greater tax savings than one who has a lower marginal tax rate.

By way of a simple illustration, suppose that Anna and Betty have respective incomes of \$100,000 and \$50,000 per year and each have contributed \$1,000 in charitable donations which may be deducted from their taxable income. Using hypothetical progressive tax rates, Anna is taxed at 50% for every dollar of income earned in excess of \$50,000, while Betty is taxed at 25% for all of her income. Although both individuals are eligible for a \$1,000 deduction, Anna enjoys tax savings of 50% of \$1,000 (i.e. \$500) whereas Betty enjoys tax savings of 25% of \$1,000 (i.e. only \$250).

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<sup>21</sup> Paragraph 110.1(1)(a) and subsection 118.1(1) of the Act.

<sup>22</sup> Canada Revenue Agency, Pamphlet P113 *Gifts and Income Tax*, online: <<http://www.cra-arc.gc.ca/E/pub/tg/p113/p113-e.html>>.

<sup>23</sup> S.C. 1966-1967, c. 47, s. 3.

<sup>24</sup> Royal Commission on Taxation, *Report of the Royal Commission on Taxation*, vol. 4 (Ottawa: Queen’s Printer, 1966).

<sup>25</sup> Arthur B.C. Drache, Robert B. Hayhoe & David P. Stevens, *Charities Taxation, Policy and Practice*, looseleaf (Toronto: Thomson Carswell, 2007), s. 2.3.2(4).

<sup>26</sup> See, for example, David G. Duff, *supra* note 14 at 415.

### 3. The Continuation of Deductions

Although the Carter Commission recognized the inherent inequity created by the deduction system, it ultimately recommended that the *status quo* should continue. The Carter Commission did not provide a thorough justification for this recommendation, but did indicate its concern that using the tax credit approach could discourage charitable giving by upper income donors.<sup>27</sup> In recommending the continuance of the deduction system, it is not clear why this concern about the impact upon wealthier donors persuaded the Carter Commission more than the issue of inequitable treatment of donors. In this regard, academics have suggested some reasons<sup>28</sup> which may assist in understanding the possible arguments for why the deduction system was maintained.

One possible reason for the Carter Commission's recommendation is based on the view that "high-income taxpayers are more responsive to changes in the after-tax cost of charitable giving than low-income taxpayers."<sup>29</sup> Consequently, a departure from the deduction system was seen as possibly reducing the tax savings afforded to higher-income donors and would therefore reduce the amount of charitable donations to the charitable sector. However, at the same time, a proportionate increase in the tax savings of lower-income donors would not necessarily produce a proportionate increase in charitable donations by these lower-income donors. Another possible reason is based on the view that high-income taxpayers tend to support certain types of charitable organizations, such as hospitals and educational institutions. To this end, an inequitable deduction system could be justified if the Carter Commission was of the opinion that the support for such organizations was more important than others.<sup>30</sup>

Furthermore, as a matter of tax policy, the concept of a deduction is consistent with "income recognition" theory, in which the function of the tax system is to properly measure the income of an individual.<sup>31</sup> Therefore, the deduction of charitable donations from taxable income would be an appropriate and logical mechanism when measuring the actual income of a taxpayer.

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<sup>27</sup> Arthur B.C. Drache, Robert B. Hayhoe & David P. Stevens, *supra* note 25, s. 2.3.2(4); David G. Duff, *supra* note 14 at 417.

<sup>28</sup> See, for example, David G. Duff, *supra* note 14 at 417-418.

<sup>29</sup> *Ibid.* at 417.

<sup>30</sup> Faye L. Woodman, "The Tax Treatment of Charities and Charitable Donations since the Carter Commission: Past Reforms and Present Problems" (1988) 26 Osgoode Hall L.J. 537 at 575.

<sup>31</sup> Arthur B.C. Drache, Robert B. Hayhoe & David P. Stevens, *supra* note 25, s. 17.2.2.

#### 4. Developing Criticism of Deductions

Through the 1970s and 1980s, academic criticism of the tax deduction increased.<sup>32</sup> Underlying the criticism was not simply that it was inequitable between different taxpayers, but that the deduction was not consistent with a “tax expenditure” theory, which focuses on the charitable donation as a form of government tax expenditure to encourage charitable giving.<sup>33</sup> Arguably, the inconsistency between the deduction system and tax expenditure theory is that the focus of the deduction is not on the charitable donation, but on the measurement of individual income. If charitable giving was genuinely treated as part of tax expenditure, all donors should receive equal benefit or incentive to give. For example, based on the function of the deduction in 1971, the benefit of tax savings for individuals with different incomes ranged from zero cents per dollar donated from individuals with less than \$500 taxable income, up to eighty cents per dollar donated from individuals with more than \$400,000 taxable income.<sup>34</sup> Hence donors with progressively higher incomes received progressively larger benefits, whereas no benefits were afforded to donors with too little income to be taxed.

Criticism of the deduction system came from a variety of sources, including the National Council of Welfare (an arm’s-length advisory body to the government) in its well-publicized 1976 report on income tax.<sup>35</sup> It is important to note that the disapproval of the deduction for charitable donations was only one aspect of a broader critique of the government’s use of deductions in tax administration. The inequity of deductions led the National Council on Welfare to conclude that the multitude of deductions were, in effect, a welfare system for the wealthy.<sup>36</sup> It was thus in response to this broad array of criticism that the government began in 1979 to publicly identify and account for all the “tax expenditures” that were being made through deductions.<sup>37</sup> In 1988, as part of a broader tax reform initiative, the tax deduction system for charitable donations in Canada was converted into the existing tax credit system.<sup>38</sup>

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<sup>32</sup> See, for example, Wayne R. Thirsk, “Giving Credit Where Credit Is Due: The Choice between Credits and Deductions Under the Individual Income Tax in Canada” (1980) 28 Can. Tax J. 32; and Neil Brooks, *Financing the Voluntary Sector: Replacing the Charitable Deduction* (Toronto: Law and Economics Workshop Series, Faculty of Law, University of Toronto, 1981).

<sup>33</sup> Arthur B.C. Drache, Robert B. Hayhoe & David P. Stevens, *supra* note 25.

<sup>34</sup> David G. Duff, *supra* note 14 at 415.

<sup>35</sup> National Council of Welfare, *The Hidden Welfare System: A Report by the National Council of Welfare on the Personal Income Tax System in Canada* (Ottawa: National Council of Welfare, 1976).

<sup>36</sup> Peter W. Hogg & Joanne E. Magee, *Principles of Canadian Income Tax Law*, 2nd ed. (Toronto: Carswell, 1997) at 42.

<sup>37</sup> Peter W. Hogg, Joanne E. Magee & Jinyan Lee, *Principles of Canadian Income Tax Law*, 5th ed. (Toronto: Thomson Carswell, 2005) at 31-32.

<sup>38</sup> S.C. 1988, c. 55.

## C. TAX CREDITS IN CANADA

### 1. The Mechanics of the Tax Credit

The fundamental feature of the tax credit is that the credit is calculated as a percentage of the charitable donations made and the amount is subtracted directly from a taxpayer's total tax payable.<sup>39</sup> A credit is therefore contingent on the amount of the taxpayer's donations rather than the level of income of the taxpayer. However, it is clear that a great degree of variation can exist within this system. For example, a flat rate tax credit could be applied for all donations irrespective of their amounts, which would ensure equal treatment of all taxpayers. Alternatively a series of progressive rates for tax credits could be used, being contingent on the amount donated, but which would, to a certain extent, produce a greater tax incentive for the higher income donor who was able to give more than the lower income donor.

In Canada, a two-tier credit system has been adopted for charitable donations made by individual taxpayers (not corporations), in which the first \$200 of donations is credited at the same percentage as the lowest marginal income tax rate, whereas for donations in excess of \$200, the credit increases to the same percentage as the highest marginal tax rate.<sup>40</sup> The relevant provision governing the tax credit system for individual taxpayers is section 118.1 of the Act. For charitable donations made by corporations under section 110.1 of the Act, the tax deduction system continues to apply. The tax credit is non-refundable in Canada, meaning that it cannot reduce the tax for the year to an amount below zero. More simply put, non-refundable credits "are not grants of money to someone who is already paying no tax."<sup>41</sup>

Subsection 118.1(3) of the Act provides that for the purpose of computing an individual's tax payable, a deduction can be made calculated according to the following formula:

$$(A \times B) + [C \times (D - B)]$$

where

A is the appropriate percentage for the year;

B is the lesser of \$200 and the individual's total gifts for the year;

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<sup>39</sup> Arthur B.C. Drache, Robert B. Hayhoe & David P. Stevens, *supra* note 25.

<sup>40</sup> The threshold was originally \$250 when introduced in 1988, but was subsequently reduced to \$200 starting for the 1994 tax year.

<sup>41</sup> David M. Sherman, *Basic Tax and GST Guide for Lawyers, 2007-2008* (Toronto: Thomson Carswell, 2007) at 187.



C is the highest percentage referred to in subsection 117(2) [of the Act] that applies in determining tax that might be payable under this Part for the year; and

D is the individual's total gifts for the year.<sup>42</sup>

It should be noted that the Act refers to the credit as a deduction from the tax payable, which should not be confused with a deduction from taxable income. The “appropriate percentage”<sup>43</sup> under “A” is the lowest percentage of tax payable under subsection 117(2) of the Act, which is currently 15%. The highest percentage referred to under “C” is currently 29%. Taking into account provincial income taxes, both of these percentages would increase to reflect the rates of the respective province. For example, the federal and Ontario provincial income tax rates would currently be combined to generate the lowest and highest marginal tax rates of 21.05% and 46.41%, respectively.

For example, suppose that Anna and Betty, with respective incomes of \$100,000 and \$50,000 per year, each made charitable donations of \$500 and reside in the Province of Ontario. Using the formula above and the actual combined federal-provincial marginal tax rates, the appropriate calculation for both Anna and Betty would be as follows:

$$(0.2105 \times 200) + [0.4641 \times (500 - 200)] = \$181.33$$

As such, Anna and Betty would each receive a 21.05% credit on the first \$200 (i.e. \$42.10) and a 46.41% credit on the next \$300 (i.e. \$139.23), resulting in a total credit of \$181.33, that both Anna and Betty could deduct from their total tax payable, regardless of what amount of taxable income each had.

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<sup>42</sup> The term “total gifts” under “B” and “D” is a reference to the distinction between various types of gifts in the Act, which generally includes charitable gifts, Crown gifts, cultural gifts and ecological gifts. Generally, charitable gifts are donations to registered charities in Canada and other “qualified donees.” Subsection 149.1(1) of the Act provides that qualified donees are organizations that can issue official donation receipts for gifts that individuals and corporations make to them under paragraphs 110.1(1)(a) and (b) and 118.1(1). They consist of registered charities, registered Canadian amateur athletic associations, certain low-cost housing corporations for the aged, municipalities, provincial and federal governments, the United Nations and its agencies, prescribed universities outside Canada, charities outside Canada to which the federal government has made a gift in the past year, and registered national arts service organizations. In February 2004, it was proposed to amend sections 110.1 and 118.1 of the Act by including municipal or public bodies performing a function of government in Canada. This proposed amendment has been brought forth and was previously included in Bill C-33 in November 2006, which died on the Order Paper since the federal Parliament was prorogued on September 14, 2007. The proposed amendment was again re-introduced in Bill C-10 on October 29, 2007. Bill C-10 again died following the dissolution of the federal Parliament on September 7, 2008. Crown gifts are donations specifically made to a federal or provincial government or government agency. For an explanation of cultural and ecological gifts, see companion Part II paper by Terrance S. Carter, “An Overview of Capital Gains Tax Exemptions as a Philanthropic Incentive in Canada” *supra* note 18.

<sup>43</sup> As defined in subsection 248(1) of the Act.

In this regard, both Anna and Betty would be treated exactly the same in relation to the amount of tax credit that both would receive.

## 2. Analyzing Canada's Two-Tier Tax Credit System

Although the calculation of the tax credit is generally straightforward, a number of interesting implications have been identified. First, the level of credits may at first glance appear low, but the figures in this regard are misleading. If one were to take into account Canadian provincial taxes, which are levied in addition to federal taxes, the credit for gifts exceeding \$200 would be the same as the tax levied on an equal amount of income.<sup>44</sup> Depending on the province, the tax credit is typically enhanced from 15% to approximately 21% for the lower tier and from 29% to approximately 40 to 50% for the upper tier.<sup>45</sup> Second, the tax credit has different implications for donors at different income levels. These varying effects have been succinctly summarized as follows:

For taxpayers paying tax at the lowest marginal rate ... the credit functions as a deduction for annual contributions up to \$200 and an additional incentive on charitable gifts exceeding these amounts. For taxpayers paying tax at the top marginal rate, the credit provides roughly half the assistance as a deduction for annual charitable gifts up to \$200 but functions as a deduction for annual amounts exceeding \$200. For taxpayers paying tax at the 26 per cent rate [i.e. the second-highest marginal tax rate], the credit is worth less than a deduction for amounts up to \$200 but more than a deduction for amounts over this threshold.<sup>46</sup>

Comparing the basic consequences of using the deduction and the credit for Anna and Betty, it is apparent, as indicated above, that the tax credit is at first glance more equitable than the deduction system for donors with different levels of income because they receive the same tax credit for the same amount of donation. However, what is also made apparent by the tax credit is that while it does not differentiate between donors based on their income levels, it still differentiates between donors on the basis of the amount donated, given the fact that the tax credit is two-tiered. Returning to the illustration of Anna and Betty's treatment under the tax credit system, suppose that Anna, who earns \$100,000 a year, makes a donation of \$500, but Betty, who makes \$50,000 a year, can now only afford a donation of \$200. Anna, with her \$500 donation, would receive a tax credit of \$181.33 for the year, whereas Betty, with her \$200 donation, would only receive a tax credit of \$42.10, as illustrated below.

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<sup>44</sup> Arthur B.C. Drache, *Canadian Taxation of Charities & Donations*, looseleaf (Toronto: Thomson Carswell, 2005), c. 11 at 13.

<sup>45</sup> David M. Sherman, ed., *Practitioner's Income Tax Act*, 35th ed. (Toronto: Carswell, 2009) at 823. For a summary of all current federal and provincial marginal tax rates, see Canada Revenue Agency, "What are the income tax rates in Canada for 2009?", online: <<http://www.cra-arc.gc.ca/tx/ndvdl/fq/txrts-eng.html>>. Note that certain provinces levy additional income surtaxes.

<sup>46</sup> David G. Duff, *supra* note 14 at 418-419.

$$\text{Anna: } (0.2105 \times 200) + [0.4641 \times (500 - 200)] = \$181.33$$

$$\text{Betty: } (0.2105 \times 200) + [0.4641 \times (200 - 200)] = \$42.10$$

As such, while Betty's donation was 40% of the amount of Anna's donation, Betty's tax credit was only 23% of the amount of Anna's tax credit, almost a 50% difference. From the perspective of the government's tax expenditure, this illustration indicates that more tax assistance per dollar donated is being provided for Anna's \$500 donation than for Betty's \$200 donation.

This may be more clearly illustrated by the following hypothetical situation in which a total of \$10,000 is donated by the residents in the Province of Ontario. If this amount was reached through 50 individuals donating \$200 each, the government's tax expenditure would be a total of \$2,105. However, if this amount was donated by 5 individuals donating \$2,000 each, the tax expenditure would be \$4,387.40.

$$50 \text{ individuals: } (0.2105 \times 200) + [0.4641 \times (200 - 200)] = 42.10 \times 50 = \$2,105.00$$

$$5 \text{ individuals: } (0.2105 \times 200) + [0.4641 \times (2000 - 200)] = 877.48 \times 5 = \$4,387.40$$

Although this is a greatly simplified illustration, it is clear that the use of a two-tier tax credit creates the possibility that a government can provide vastly different amounts of tax assistance as an incentive for the same amount of charitable donations.

The difference in the treatment of donations created by the two-tier system has led one commentator to conclude that "the level of tax assistance for charitable contributions continues to depend on the income level of the donor, as it did under the deduction [system]."<sup>47</sup> The general rationale behind this observation is that, to the extent that individuals with higher incomes are more likely to make donations above the \$200 threshold, the two-tier system continues to provide less benefit or incentive to lower-income donors. Statistics from a 2004 study concerning charitable giving in Canada indicate that donors with a household income of less than \$20,000 donated an average amount of \$197,<sup>48</sup> and therefore the average donation for those with household incomes of less than \$20,000 would have received the lower-tier credit only. On the other hand, donors with household incomes of \$20,000 to \$39,999

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<sup>47</sup> *Ibid.* at 419-420.

<sup>48</sup> Michael Hall *et al.*, *Caring Canadians, Involved Canadians: Highlights from the 2004 Canada Survey of Giving, Volunteering and Participating* (Ottawa: Statistics Canada, 2006) at 17.

donated an average amount \$304, and this amount generally increased proportionately as income increased.<sup>49</sup>

Given this disproportional treatment, the rationale behind the use of a two-tier system is not altogether clear. It has been suggested that the two-tier system was an implicit acceptance of the Carter Commission's concern that a tax credit system would discourage wealthier individuals from donating.<sup>50</sup> As explained above, the Carter Commission pointed out that the deduction should continue and expressed its concern that the switch to a tax credit might discourage the wealthy from donating, which would probably be a justifiable concern if the credit was set at a lower percentage than the highest marginal tax rate. As such, it may be that the reason for using the highest marginal tax rate for the upper-tier credit was to maintain a similar incentive as the deduction for the wealthiest Canadians, while the creation of a lower-tier with the lowest marginal tax rate was to help offset the costs of a generous upper-tier credit.

In this regard, the use of the lowest marginal tax rate for the lower-tier credit would enable the government to minimize the cost of forgone revenues arising from the provision of the tax credit.<sup>51</sup> The Department of Finance estimated that the foregone tax revenues arising from the tax credit was approximately \$1.6 billion in 2005.<sup>52</sup> If the two-tiered system was not used (and assuming that the aforementioned hypothetical scenario in Ontario is not the reality across Canada), the amount of foregone revenues would certainly be higher.

#### **D. THE EFFECT OF THE TAX CREDIT AS A PHILANTHROPIC INCENTIVE**

While it is clear that a tax credit system is, in principle, more equitable between donors than a deduction system, it is also clear from the experience of Canada's two-tier system that the specific design and administration of the tax credit system in Canada has considerable implications on the degree of equity achieved. However, the remaining issue is whether or not, on the whole, the tax credit functions as a better philanthropic incentive than the tax deduction.

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<sup>49</sup> *Ibid.*

<sup>50</sup> David G. Duff, *supra* note 14 at 418.

<sup>51</sup> *Ibid.* at 420.

<sup>52</sup> Standing Senate Committee on Banking, Trade and Commerce, *The Public Good and Private Funds: The Federal Tax Treatment of Charitable Giving by Individuals and Corporations* (Ottawa: Standing Senate Committee on Banking, Trade and Commerce, 2004) at 5.

Whether the amount of charitable giving is measured as a whole, or comparatively between various income groups, it would appear that the transition between deductions and credits has not had a significant impact on charitable giving. In this regard, general statistical trends of charitable donations between the mid 1980s and early 1990s do not indicate that any major shifts in the trend of charitable donations occurred.<sup>53</sup> These statistics indicate that from 1984 to 1990 the real value of total donations claimed increased by an average annual rate of 4.6%, with no major increases between the 1987 and 1988 tax years, when the tax deduction was converted into the tax credit. In fact, the annual rate of donations actually decreased by 2.2% in 1991 and 1.2% in 1992. A similar trend of increase applies to charitable giving when measured as an average donation for a donor. The average donation amount between 1984 and 1992 increased steadily, but actually decreased when the values are adjusted for inflation.

An actual comparison of statistics for total annual donations in the years immediately preceding and following 1988 shed further light on whether the introduction of the credit had any quantitative impact.<sup>54</sup> Between the taxation years of 1986 to 1987, the approximate total donations in Canada increased from \$2.173 billion to \$2.441 billion, an increase of \$268 million or 12.3%. For 1988, the amount increased to \$2.638 billion, an increase of \$197 million or 8.1%. For 1989, the amount increased to \$2.885 billion, an increase of \$247 million or 9.4%. By 1990, this amount increased to 3.076 billion, an increase of \$191 million or 6.6%. In this regard, these statistics indicate that the introduction of the tax credit did not produce any noticeable acceleration in the rate of increase of charitable donations.

Moreover, other statistical analyses indicate that there were no major changes in the distribution of charitable donations by income group.<sup>55</sup> From 1987 to 1988, donations from donors earning between \$1 and \$30,000 actually decreased as a proportion of all charitable donations claimed, with the \$30,000 to \$60,000 group remaining virtually the same, and an increase for all groups earning over \$60,000. Despite the theoretical improvements in equity between higher and lower income donors, these statistics do not support the proposition that the tax credit had the effect of increasing the amount donated by lower income donors.

As with most statistical data, caution should be exercised when relying on the figures set out above. Statistics pertaining to charitable donations are based on reported donations only, and there are a number of reasons

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<sup>53</sup> Michael H. Hall, "Trends in Individual Donations: 1984-1992" *Canadian Centre for Philanthropy Research Bulletin* 1:1 (October 1994).

<sup>54</sup> Glenn Gumulka & David Lasby, "Trends in Individual Donations: 1984-2004" *Imagine Canada Research Bulletin* 13:1 (2006).

<sup>55</sup> David G. Duff, *supra* note 14 at 420.

why reported donations may differ from actual giving. For example, not all Canadians file tax returns, charities might not issue receipts for all donations received, and many individuals may not claim tax credits for their donations.<sup>56</sup> Nevertheless, to the extent that the statistics indicate that the tax credit has not actually changed the trends in reported charitable giving, this conclusion may in fact be accurate given that claims for tax credits, by definition, require that they be reported. In this regard, at least one study, conducted by Statistics Canada in 2004, has indicated that Canadian donors are far less likely to claim tax credits for small donations, and the likelihood of claiming the credit increases in proportion to the amount donated.<sup>57</sup> The study showed that the following percentages of donors stated that they would claim the tax credit:

- 15% of donors giving \$1-39;
- 35% of donors giving \$40-119;
- 55% of donors giving \$120-324;
- 73% of donors giving \$325-869; and
- 87% of donors giving \$870 and over.<sup>58</sup>

Furthermore, the study reported that only 46% of donors reported that they or someone in their household would be claiming a tax credit for their charitable donations, and only 53% indicated that they would donate more if a better tax credit was offered.<sup>59</sup>

Given the fact that “the tax credit system ... for all intents and purposes operates as a tax deduction” for aggregate gifts over \$200,<sup>60</sup> it would not be surprising to find that the change from the tax deduction to the tax credit did not actually lead to any noticeable increase in donations in Canada. Nevertheless, it is certainly possible that further reform of the tax credit system would have the potential to increase charitable donations in Canada. In this regard, proposals for an enhancement of the tax credit were recently made by the charitable sector<sup>61</sup> prior to the release of the federal government’s 2009 budget.<sup>62</sup> As a stimulus mechanism to counteract the economic recession, the proposals called for the provision of a 50% credit for the first \$15,000 of additional donations in excess of what a donor gave in 2008. In other words, the enhanced tax credit would be accessible only after a donor gave as much as the donor did in 2008. However, this proposal was

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<sup>56</sup> Glenn Gumulka & David Lasby, *supra* note 54 at 1.

<sup>57</sup> Michael Hall *et al.*, *supra* note 48 at 28.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> William I. Innes, “The Case for Tax Incentives on Publicly Traded Securities” (2003) 51 Can. Tax J. 905 at 905.

<sup>61</sup> Imagine Canada, *Budget 2009: Short-Term Stimulus Measures for assisting Canadians and Communities during the Economic Downturn* (Ottawa: Imagine Canada, 2009) at 4-5.

<sup>62</sup> Department of Finance Canada, *Budget 2009: Canada’s Economic Action Plan* (Ottawa: Department of Finance Canada, 2009).

not accepted by the government in light of the fact that the 2009 budget did not include any new tax incentives for charitable donations.<sup>63</sup>

## E. CONCLUSION

The conceptual distinction between a tax deduction and tax credit system is clear, as they have different objectives and different effects on taxpayers. In general, the most logical objective of a tax deduction would be the accurate measurement of taxable income, while that of a tax credit would be to encourage charitable giving in an equitable manner. However, as surveyed in the historical background of the deduction system and its transition to a tax credit, it appears that the objective of encouraging philanthropy was always the impetus for both the tax deduction and the tax credit in Canada. When it was introduced in the early twentieth century, the tax deduction was not lauded for its accuracy in defining taxable income, but was simply used as a mechanism for encouraging donations to support Canada's war efforts or later to assist in economic recovery during the Great Depression. Therefore, the accurate measurement of taxable income has not been generally accepted by the Canadian government to be the primary objective of either the tax deduction or the tax credit.

The conceptual distinction between tax deductions and tax credits has been a fruitful ground for academics and commentators over the years to critique the tax deduction system in Canada. In this regard, the tax deduction system was clearly criticized as being inherently inequitable between donors at different income levels. Nevertheless, while the objective of creating an inherently equitable tax mechanism may be perceived as the ultimate goal of the tax credit and not merely a means to an end, additional considerations may exist. The overall objective of encouraging philanthropy may itself be achieved with a variety of more specific policy objectives.

For example, the greater benefit for higher income donors provided by the deduction (and to the extent that a multi-tier credit continues this benefit), may have effects on the types of charitable causes that are given more support in a society. If evidence indeed indicates that higher and lower income donors are likely to support different types of charitable causes, as has been suggested in Canada,<sup>64</sup> then the favourable treatment of one income class over another will indirectly affect the proportion of donations to different parts of the charitable

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<sup>63</sup> Terrance S. Carter & Karen J. Cooper, "Federal Budget 2009: Grants, Contributions and Earmarks, but No New Tax Incentives" *Charity Law Bulletin* 156 (30 January 2009), online: <<http://www.carters.ca/pub/bulletin/charity/2009/chylb156.pdf>>.

<sup>64</sup> Faye L. Woodman, *supra* note 30.

sector. Proponents of pluralism and critics of the current two-tier credit in Canada may point to the proposition that the higher credit for larger donations still favours donors who are able to give more. As such, it has been suggested that the favouring of wealthier donors “may foster a form of ‘philanthropic paternalism’ in which the mix of goods and services provided by the charitable sector is shaped more by an affluent minority than by the community as a whole.”<sup>65</sup> Moreover, it may be argued that even a single-tier credit would be insufficient to fully promote pluralism if the credit was non-refundable, as it currently is in Canada, because a non-refundable credit is only beneficial to those who claim the credit, and therefore donors with little or no taxable income do not benefit.<sup>66</sup> On the other hand, maintaining the value of donations from high income donors could be an equally legitimate objective. In recommending the retention of the deduction in 1967, it is not clear whether or not the Carter Commission was cognizant of the indirect distributional effects of favouring affluent donors, but a decrease in the amount of donations by the wealthy was certainly a concern to the Commission. Some scholars in examining the tax credit system before it was introduced in Canada, actually concluded that “[c]haritable organizations now heavily dependant on the wealthy would face difficult times under such a [tax credit] regime.”<sup>67</sup>

That being said, if the encouragement of philanthropy involves the policy objective of fairly rewarding a donor’s generosity, then it may be most equitable that tax assistance for charitable donations should be commensurate to the proportion of a donor’s income that is donated. In this regard, it has been suggested that “[t]he reward should be the same for persons who make a similar sacrifice, however measured.”<sup>68</sup> To the extent that lower income donors actually donate a larger percentage of their income than higher income donors, as statistics appear to indicate in Canada,<sup>69</sup> it may be argued that a tax mechanism that disproportionately benefits higher income donors has actually reversed the appropriate reward structure.<sup>70</sup> Ultimately, within the context of encouraging philanthropy, whether or not it is a desirable objective to seek

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<sup>65</sup> David G. Duff, *supra* note 14 at 436.

<sup>66</sup> *Ibid.*

<sup>67</sup> R.D. Hood, S.A. Martin & L.S. Osberg, “Economic Determinants of Individual Charitable Donations in Canada” (1977) 10 *Canadian Journal of Economics* 653 at 667.

<sup>68</sup> Paul R. McDaniel, “Federal Matching Grants for Charitable Deductions: A Substitute for the Income Tax Deduction” (1972) 27 *Tax L. Rev.* 377 at 394.

<sup>69</sup> Michael Hall *et al.*, *supra* note 48 at 17. In 2004, donors with a household income of less than \$20,000 donated an average of \$197, whereas donors with a household income of \$100,000 or more donated an average of \$698. Even using the maximum of \$19,999 and the minimum of \$100,000 to represent the actual incomes of all the donors in each class, the percentage of total income donated by the lowest income group was 0.985%, whereas the percentage for the highest income group was 0.698%. In reality, most donors would probably have income that was less than \$19,999 or more than \$100,000, so this disparity would be even greater.

<sup>70</sup> David G. Duff, *supra* note 14 at 429.



charitable pluralism, or to provide tax assistance that is proportionate to the degree of sacrifice, is a matter of public policy and debate.

Therefore, both the tax deduction and tax credit systems, including their variations, appear to have the ability to further certain policy objectives or at least better accord with certain theories of tax administration. In Canada, the criticism of the tax deduction and subsequent creation of a two-tier tax credit system indicate that policy objectives and ideologies are clearly relevant to how the system is designed. However, based on the statistical data discussed in this paper, it is not clear whether or not the change from the tax deduction to the tax credit has actually bolstered the Canadian propensity for philanthropy.