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SUMMARY OF REPORT ON TAX INCENTIVES FOR CHARITABLE GIVING

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A. INTRODUCTION

On February 11, 2013, the House of Commons Standing Committee on Finance (the "Committee") released a report entitled *Tax Incentives for Charitable Giving in Canada*[1] (the "Report"). The Committee was mandated by a House of Commons motion to study "current tax incentives for charitable donations with a view to encouraging increased giving, including but not limited to

i. reviewing changes to the charitable tax credit amount,
ii. reviewing the possible extension of the capital gains exemption to private company shares and real estate when donated to a charitable organization,
iii. considering the feasibility of implementing these measures".

In conducting its study, the Committee met eight times and heard statements from 36 organizations and five individuals. This *Charity Law Bulletin* provides a brief summary of the Committee's Report.

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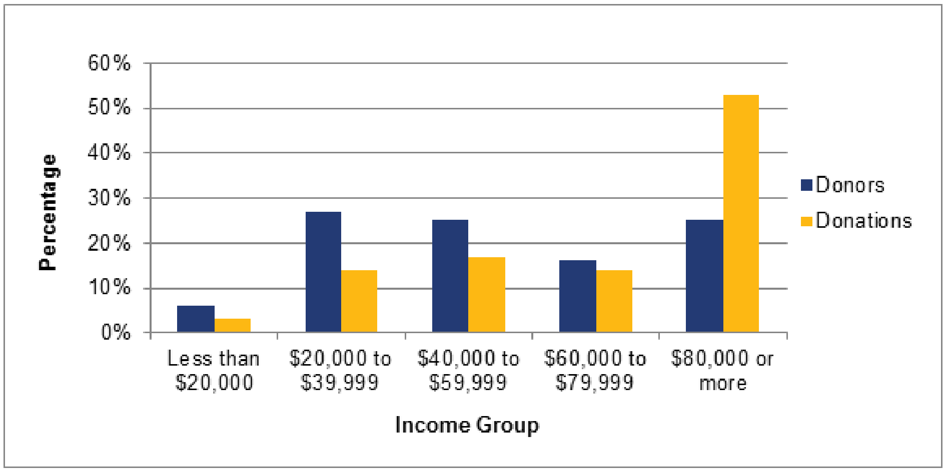
[1] Report of the Standing Committee on Finance. James Rajotte, MP, Chair. 41st Parliament, 1st Session. Available online at: http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=5972482&Language=E&Mode=1&Parl=41&Ses=1.

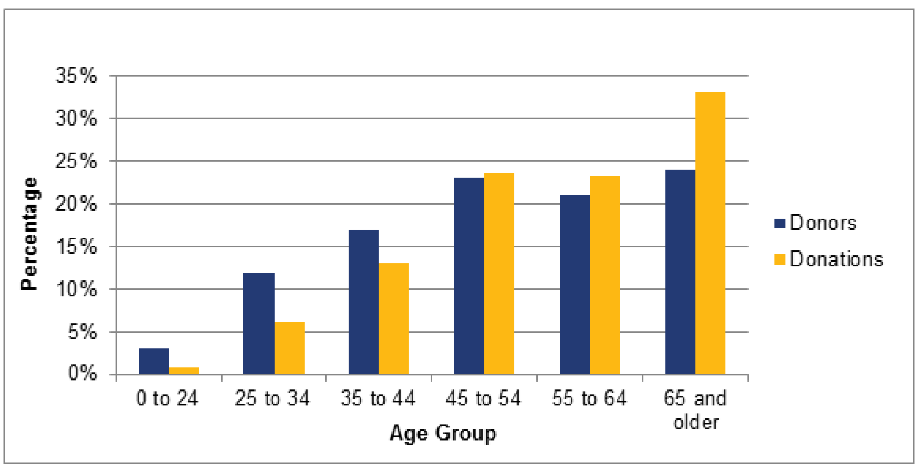
B. DONORS AND DONATIONS, REGULATION AND EXISTING TAX INCENTIVES

1. Charitable Donations and Donors in Canada

Based on information received from Statistics Canada regarding the 2010 tax year, the Report states that approximately one in five individual taxpayers reported making a charitable donation, with the median donation being $260. Half of the total charitable donations by individuals were made by donors who earned at least $80,000. Donors aged 45 and older gave over 80% of the total charitable donations by individuals.

Percentage of Donors and Charitable Donations by Individuals, by Income Class, Canada, 2010 Taxation Year[2]





Percentage of Donors and Charitable Donations by Individuals, by Age of Donor, Canada, 2010 Taxation Year[3]

[2] Statistics Canada, Brief submitted to the House of Commons Standing Committee on Finance, 31 January 2012 (Figure 3 in the Report).
[3] Statistics Canada, Brief submitted to the House of Commons Standing Committee on Finance, 31 January 2012 (Figure 4 in the Report).

The Department of Finance (“Finance”) informed the Committee that charitable donations by individuals increased by 6.5% between the 2009 and 2010 taxation years, reaching $8.3 billion. Meanwhile, the total number of individual donors rose from 5.6 million to 5.7 million.

2. The Regulation of Charities

In reporting on the regulation of charities, Finance outlined the restrictions imposed on registered charities to ensure that the tax system functions properly and that donations are not used for personal benefit. The Canada Revenue Agency (“CRA”) described the Registered Charity Information Return (Form T3010) that charities must submit annually in order to maintain their registered status. CRA explained that it uses the revenue and expenditures information that a charity reports to monitor the charity’s compliance with the various restrictions and that a charity that violates any restriction may have its registration revoked or suspended and/or face financial penalties.

3. Tax Incentives and their Estimated Federal Fiscal Cost

Based on information provided by Finance, the Committee reported that the federal government has provided tax incentives for charitable donations since 1930 and began using the non-refundable charitable donations tax credit for individual taxpayers in 1988. The current tax credit rate is 15% on charitable donations of $200 or less and 29% on donations above $200. The Committee was told Canada provides the most generous tax credits for charitable donations in the world.

Finance highlighted a number of other key features of the charitable donation tax credits for individuals:

- An individual tax payer may claim charitable donations up to 75% of his/her net income for that year and 100% in the year of or the year after the taxpayer’s death.
- Charitable donations that are not claimed for a tax credit in the year of the donation may be claimed in any of the subsequent five years.
- Spouses may pool their charitable donations to maximize their access to the 29% credit rate.
- Capital gains taxes are not charged to gifts of publicly listed securities, ecologically sensitive land and certified cultural property.
- Individual taxpayers may claim charitable donations of ecologically sensitive land and certified cultural property up to 100% of their annual income.

With regards to corporate gifts,

- Corporate taxpayers may deduct donations directly from their taxable income up to 75% of the corporation's net income for the taxation year.
- Like individuals, corporate taxpayers may carry forward unclaimed charitable donations for five years.
- Like individuals, corporate tax payers are not required to pay capital gains taxes on gifts of publicly listed securities, ecologically sensitive land and certified cultural property.

In discussing the fiscal cost of these tax incentives, Finance reported that tax credits to individuals and corporations for charitable donations would cost the federal government $2.9 billion in forfeited tax revenue in 2011. These costs are broken down in the table below.

Projected Federal Fiscal Cost of Tax Incentives for Charitable Donations, Canada, 2011[4]

	Donations by Individuals	**Donations by Corporations**
	(millions of dollars)	
Charitable Donation Tax Credit (individual) or Deduction (corporation)	2,280	390
Donations of publicly listed securities	150	67
Donations of ecologically sensitive land	9	10
Donations of certified cultural property	24	10
Total	**2,463**	**477**

C. PROPOSALS BY WITNESSES AND COMMITTEE RECOMMENDATIONS

The Committee's witnesses made numerous proposals on a variety of topics. The Report divides these proposals in to the eight topics listed below. Based on these proposals, the Committee made twelve recommendations to the federal government.

[4]Department of Finance, Brief submitted to the House of Commons Standing Committee on Finance, January 25, 2012 (Table 4 in the Report). Note: For 2011, the reference for individuals is the calendar year; for corporations, it is the corporation's fiscal year.

1. Charitable Donations, Tax Credit Thresholds and Rates

Of the variety of suggested changes to the tax credit thresholds and rates, the Committee recommended that the federal government explore the feasibility and cost of adopting the "stretch tax credit" (Recommendation 2), extending the carry-forward period for claiming charitable donations (Recommendation 3) and increasing the donation contribution limit for corporations (Recommendation 4).

A number of witnesses, including Imagine Canada, the World Wildlife Fund and the Association of Fundraising Professionals, advocated for what has come to be known as a "stretch tax credit". This tax credit would provide individual donors with an additional 10% credit on the amount by which their donations exceed their donations from the previous year (up to $10,000 over the donor's life time).

Those advocating for the stretch tax credit asserted that it could result in a number of positive outcomes:

- increase the number of donors and donations, particularly first-time donors and youth
-
- benefit a large number of charities and taxpayers, including small charities
- provide improved tax relief to middle-income families
- reward individuals who make significant financial contributions to the social health of their community

Imagine Canada cited a study by the Office of the Parliamentary Budget Officer estimating that the annual federal fiscal cost of the stretch tax credit would be between $10 million and $40 million.

The Committee's recommendation to extend the carry-forward period for claiming an unclaimed donation would provide a greater incentive to make a charitable donation by extending the time period in which the donor can earn taxable income against which the tax credit could be claimed. The carry-forward period is currently restricted to 5 years. The Canadian Council of Christian Charities suggested extending that period to 7 years or 10 years, while the Canadian Land Trust Alliance advocated increasing the period to 10 years for gifts of ecologically sensitive land. The Committee's recommendation does not specify how long the federal government should consider extending the period.

The recommendation to reassess the donation contribution limit for corporations stems in part from a suggestion heard by the Committee to remove the current limit that prevents corporations from claiming a charitable donation tax credit against more than 75% of its annual net income.

2. Donations of Real Property and Shares of Private and Public Corporations

Recommendation 1 of the Committee is that the federal government "explore the feasibility and costs of eliminating or lowering the capital gains tax on charitable donations of real or immovable property or the shares of private corporations to charities, provided that the proceeds of disposition are donated to a charity within a fixed period."

This was a common suggestion to the Committee. Witnesses cited the increase in donations of shares of publicly traded corporations after the government stopped charging capital gains tax on donations of such shares in 2006 as evidence of the benefits of such an incentive.

The Office of the Parliamentary Budget Officer estimates that eliminating the capital gains tax would cost between $42 million and $101 million for donations of real property and between $61 million and $169 million for donations of shares of private corporations. Donald K. Johnson, a key proponent of this proposal, estimates lower federal costs and predicts that annual donations would increase by $200 million. However, the Canadian Land Trust Alliance noted that eliminating taxable capital gains on all dispositions of real property would also effectively eliminate any incentive for protecting ecologically sensitive land.

3. Bequests and Estate Planning

The Committee heard technical recommendations regarding changes to the *Income Tax Act* that would reduce the tax payable and potentially increase donations upon death. In response, the Committee gave a rather general recommendation to explore the feasibility and cost of promoting bequests to charitable organizations and transfers of property to a charity pursuant to a will (Recommendation 5).

4. Tax Fairness

The Committee heard a variety of perspectives on tax fairness, but did not make any recommendations on this issue.

5. Other Tax Measures

Witnesses made a number of other suggestions regarding tax measures for incentivizing charitable donations. In the end, the Committee recommended "a technical review of the ITA as it relates to charities, including the definitions of the terms 'charity', 'charitable donation', and 'gift'" (Recommendation 6). This recommendation follows Professor Adam Parachin's suggestion that simplifying this area of the law would reduce the costs of administrative compliance and enforcement for charities and the CRA respectively.

Also mentioned in this section of the Report is Imagine Canada's suggestion that CRA increase its "marketing" of tax incentives for charitable donations. This suggestion seems to be part of the basis for the Committee's Recommendation 8: "That the federal government further promote charitable giving by reminding and educating Canadians of existing tax incentives for charitable donations and their benefits."

6. Transparency and Accountability of Charities

While it was not in the Committee's initial mandate to discuss transparency and accountability, the Committee made recommendations on this topic. Witnesses spoke about issues related to the disclosure of information, communication with donors, considerations when a donor selects a charity, the administrative burden on charities, and the role of governments in overseeing the charitable sector.

The Committee recommended that the federal government continue promoting transparency and accountability to increase Canadians' confidence in the charitable sector. In particular, the Committee raised options, such as allowing CRA to disclose serious non-compliance by qualified donees and to disclose the annual returns of those donees, requiring that charities demonstrate their "public benefit" annually, adopting measures proposed in Bill C-470[5], and allowing CRA to disclose information from the Non-Profit Organization Information Return (Recommendation 12).

In addressing the "Red Tape Burden" associated with compliance, the Committee recommended reviewing the possibility of streamlining the excess corporate holdings provisions for private foundations and

[5] *An Act to amend the Income Tax Act (disclosure of compensation — registered charities)*, which received first reading in the Senate in March, 2011. Bill C-470 introduced new disclosure obligations for charities under the *Income Tax Act*, which would require all registered charities to disclose to the Minister the name, job title and annual compensation of any executive or employee who is paid aggregate compensation in respect of a taxation year of the executive or employee exceeding $100,000.

duplicative requirements as well as introducing administrative reporting on a sliding-scale that is proportionate to the size of the charity (Recommendation 11).

7. Fundraising and Sources of Income

Comments on charitable fundraising and sources of income centered on the regulation of fundraising, charitable investments and business activities and income. The Canadian Council of Christian Charities and Cardus encouraged further dialog between the federal government and the charitable sector about the involvement of charities in for-profit social enterprises, while others recommended that charities be permitted to conduct business activities to fund their charitable purposes. The Committee recommended "that the federal government continue to explore social finance instruments as a way to further encourage the development of government-community partnerships" (Recommendation 10).

8. Other Measures Proposed and Issues Highlighted

Finally, the Committee witnesses spoke on aspects of charitable giving, including the use of existing data sources to better understand charitable giving and the use of technology to make charitable donations. Recommendation 7 is that "the federal government continue to monitor charitable giving trends and characteristics, and make such data available," which appears to respond to the calls by Volunteer Canada to expand the use of existing data to better understand the trends and characteristics of charitable giving. Mobile Giving Foundation Canada meanwhile encouraged the use of mobile technology to expand giving in Canada. Recommendation 9 reflects the Committee's support for further promotion of innovations such as "mobile giving".

D. CONCLUSION

The charitable sector will no doubt be pleased with the recommendations regarding tax incentives, such as the stretch tax credit, eliminating or lowering the capital gains tax on charitable donations of real and immovable property and shares of private corporations, and extending the carry-forward period for claiming donations including ecologically sensitive lands and certified cultural property. However, because these incentives will only be implemented if they are adopted in the federal budget, we will not know the real impact of this study until the 2013 budget is released this spring. Hopefully the federal government will include some of these tax incentives in the budget instead of simply focusing on the recommendations related to transparency and accountability for the charitable sector.

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