

Standing Committee on Finance (FINA)

Pre-budget consultations 2012

Blumberg Segal LLP

Responses

1. Economic Recovery and Growth

Given the current climate of federal and global fiscal restraint, what specific federal measures do you feel are needed for a sustained economic recovery and enhanced economic growth in Canada?

SURVEY QUESTIONS FOR PRE-BUDGET CONSULTATIONS 2012 1. Economic Recovery and Growth Given the current climate of federal and global fiscal restraint, what specific federal measures do you feel are needed for a sustained economic recovery and enhanced economic growth in Canada? The charity sector is a vital part of the Canadian economy. It provides some of the most important services and helps the most vulnerable. Over 600,000 Board members volunteer their time, effort, energy and skill to running registered charities. According to Statistics Canada, 13.3 million people, or 47% of the population, volunteered their time through a group or organization. These volunteers contributed nearly 2.1 billion hours in 2010 – a very valuable contribution to the work of the voluntary sector by Canadians which is generally not reflected in financial statements. The charity sector in Canada has 24 million donors. Also over 2.2 million people work in the charity sector. According to the T3010 Registered Charity Information Return data from CRA, the charity sector has a total combined revenue of approximately \$192 billion per year. That is approximately 11% of the GDP of Canada. From 2000 to 2009, that number rose by approximately 94%. The charitable sector obtains this revenue from several different resources; \$133 billion from various levels of government, \$46 billion from earned or business income, and \$13 billion from receipted donations. The amount of receipted donations has actually increased by 35% from 2003 to 2009. Currently, about 7% of the charity sector's revenue is a result of charitable donations and fundraising. It is important that measures taken to provide for extra donations do not undermine the ability of government to continue funding the charitable sector. For example, if various levels of government decided to reduce their funding of the sector by 10%, the sector as a whole would need to fundraise twice as much to account for that difference. Also it is important that at times of austerity that it does not appear that additional incentives will be provided to help the most affluent in Canada with their own personal philanthropic priorities. It is vital that the public trust charities and does not view philanthropy as a club of wealthy people trying to game the system. There is a big difference between bringing more money into the charitable sector versus actually having more funds spent on real charitable activities. Do we want to increase the investment portfolios of the foundation sector or do we want funds to be spent on charitable activities? They are not necessarily the same thing. There are many ways in which the total amount of charitable donations can be increased while ensuring that these donations are actually spent on beneficial charitable initiatives including: Recommendations: 1) We need better governance in the charity sector through education and training to ensure that there is appropriate stewardship of the resources that charities have. 2) We need more transparency in the charitable sector through a. changes to the Income Act to allow CRA to disclose more about registered charities and also non-profits; b. an improved T3010 Registered Charity Information Return which provides greater details on charities, especially large charities, as we have seen in the UK and US improving their charity sector's transparency over the last few years; and c. Canadian need to encouraged to be more knowledgeable and aware in their giving and to be able to carefully select worthy charities and avoid scams; 3) We need to reduce the amount of abuse of charities by a relatively small number of people a. by monitoring the implementation of the "ineligible individual" rules, and if these rules are not sufficiently effective in removing those who abuse charities, or their beneficiaries,

then considering additional measures.; and b. making greater use of police forces to investigate abuse of charities and establishing a dedicated police unit that focuses on complicated schemes involving charity fraud. 4) We don't need more tax incentives that will disproportionately benefit a few charities, including closely held private foundations, and some very wealthy individuals. a. Rather we should make small changes to the disbursement quota to increase the payout from 3.5% to 5%, so hundreds of millions of dollars can be used for charitable programming that would have been otherwise an unauthorized encroachment on capital;

2. Job Creation

As Canadian companies face pressures resulting from such factors as uncertainty about the U.S. economic recovery, a sovereign debt crisis in Europe, and competition from a number of developed and developing countries, what specific federal actions do you believe should be taken to promote job creation in Canada, including that which occurs as a result of enhanced internal and international trade?

There are about 1,434,600 full time employees working in the Canadian charity sector and many part time employees. We should continue to empower the charity sector so that it can hire talented and experienced people to serve the sector. If the public loses trust in the sector it will result in reduced donations, reduced income from government and business activities. Recommendations discussed above to improve governance, increase transparency, reduce abusive of charities and maintain support for the charitable sectors are important to maintain the public trust and ensure that funds spent by charities are well spent.

3. Demographic Change

What specific federal measures do you think should be implemented to help the country address the consequences of, and challenges associated with, the aging of the Canadian population and of skills shortages?

It is important to strengthen the capacity of charities especially the numerous types of charities that interact and serve the aging population. As well young people need to be trained and charities can play a vital role in that process. The recommendations on improving governance, increasing transparency, reducing abusive of charities and maintaining support for the charitable sectors are important to maintain the public trust and keep the focus of charities on serving vulnerable populations such as the elderly. Also as the population ages it is important to remember that those who abuse charities often also prey on the elderly who are vulnerable and trusting.

4. Productivity

With labour market challenges arising in part as a result of the aging of Canada's population and an ongoing focus on the actions needed for competitiveness, what specific federal initiatives are needed in order to increase productivity in Canada?

As mentioned previously over 1.4 million people work full time in the charity sector. There are also many part time employees and volunteers. The charity sector can be a vital component in increasing the productivity of Canada in that most of the education in Canada from day care to JK, to primary, secondary and post-secondary education is provided by registered charities. Also to the extent that the charity sector improves its own workforce through continuous education it will increase the productivity of the sector and also make those employees more valuable contributors to the Canadian economy. Furthermore, there is nothing more inefficient than having people who can work, not be able to work. Charities are in the forefront of integrating people who are down on their luck back into society. They are out their helping the vulnerable get through some very tough times. There are a number of initiatives that the Canadian government could embark on to improve this vital sector including: - streamlining the government grants process to reduce inefficiency and the use of charitable resource to

apply for grants. -encourage better governance and accountability within the charitable sector as noted above -encourage the increasing use of technology to lower the cost of charities delivering services and to improve those services. It is interesting to note that private business spend far more money on technology than charities and greater investment by charities will be able to substantially increase their effectiveness.

5. Other Challenges

With some Canadian individuals, businesses and communities facing particular challenges at this time, in your view, who is facing the most challenges, what are the challenges that are being faced and what specific federal actions are needed to address these challenges?

There are many areas of significant need including International development, youth at risk and homeless. By adopting the recommendations discussed above to improve governance, increase transparency, reduce abusive of charities and maintain support for the charitable sector these and other sub-sectors of the charity sector will benefit. What are some of the problems in the charitable sector? A small number of people have been misusing charities for a number of reasons including private benefit. According to the CRA, over the last nine years there have been approximately \$6 billion dollars in donation receipts issued as part of "abusive charity gifting tax schemes". Approximately 1% of this amount was spent by these few registered charities on charitable activities and over 175,000 tax returns have also been filed as part of these schemes. Many of these gifting schemes involve a taxpayer receiving a higher tax receipt than the actual amount of their donation. For example, investing only \$30,000, but receiving a \$100,000 donation receipt. Over 100,000 Canadians have also filed tax returns with what CRA refers to as 'fraudulent receipting'. In addition, there have been several other elaborate schemes used to abuse receipting privileges. A number of Canadian and foreign journalists have covered some of the misuse of Canadian registered charities and our firm has provided information to the public about some of the abuses. Confidentiality Provisions of the Income Tax Act The non-profit and registered charity sector is essentially divided into two. While non-profits and registered charities are both exempt from paying income tax, only registered charities, and some other categories of qualified donees, can issue official donation receipts for income tax purposes. Currently, the confidentiality provisions in Section 241 of the Income Tax Act (Canada) forbid the Canada Revenue Agency ("CRA") from disclosing information about any non-profit or registered charity either through an informal request or a formal access-to-information request. The only way this information can be accessed is if it falls within certain narrow exceptions, such as the public part of the T3010, or if there has been consent for disclosure provided by the non-profit or registered charity. Registered Charities Currently, without the consent of the registered charity CRA can only provide the "entirety of or any part of any letter sent by or on behalf of the Minister to the charity relating to the grounds for the revocation or annulment". However, this can only be provided after the charity's registration has been revoked. This means that by the time the charity has actually lost its registered charity status, several years may have passed after CRA started having significant concerns about the charity. Therefore, CRA essentially has no ability to disclose to the public any information about charities that are involved with abusive gifting tax shelters (totaling approximately \$6 billion dollars over the last 9 years). CRA also does not have the power to disclose to the public any information surrounding charities that have had complaints of systemic child abuse, involvement with inappropriate third party transactions or other major concerns. Accordingly, we welcome the 2011 Federal budget changes that provide CRA with the ability to release certain basic information on certain qualified donees (for example, RCAAAs). We also welcome the 2012 Federal budget changes that allow the suspension of a charity that fails to report information on its annual return. The public, especially donors, should have the right to know of any serious non-compliance by charities and it will take amendments to the Income Tax Act to allow for such disclosure. Recommendation: S. 241 of the Income Tax Act should be amended to allow the CRA to

disclose serious non-compliance with legal requirements by a registered charity, Registered Canadian Amateur Athletic Associations or certain other qualified donees. Non-Profit Organizations It is estimated that there are over 80,000 non-profits that are not registered charities or other types of qualified donees in Canada. They are exempt from almost all transparency requirements even though in many cases, they receive government funding, support or public donations. Prior to the introduction of the Canada Not-for-profit Corporations Act (CNCA), non-profits did not have to publicly disclose their finances, such as revenues, expenditures, compensation and programs. With the CNCA now in force, financial statements of certain Federal non-profit soliciting corporations may need to be disclosed. However, this rule does not affect provincial non-profits, Federal non-profits under the old Canada Corporations Act or Federal non-soliciting corporations under the CNCA. While non-profits that are not charities must in some cases file the two page Form T1044, Non-Profit Organization (NPO) Information Return, such form is not made available to the public either electronically or by request. In essence, except for the limited disclosure under the CNCA, there is no transparency for these non-profits in Canada. Recommendation: S 241 of the Income Tax Act should be amended to allow the CRA to disclose information contained on the Non-Profit Organization (NPO) Information Return. Blumberg Segal LLP is a law firm based in Toronto that provides legal services to Canadian non-profits, registered charities and donors. Blumberg Segal LLP maintains websites, <http://www.canadiancharitylaw.ca> and <http://www.globalphilanthropy.ca>, that provides extensive information and resources to Canadian charities to encourage them to comply with their legal obligations and strive for higher ethical standards. We also encourage donors to be generous but careful in the way they practice charity and philanthropy. Our firm is concerned about the well-being of the non-profit and charitable sector. If you require further information or wish to discuss this submission, please do not hesitate to contact us. If the Committee thought it would be helpful we would certainly be prepared and interested in presenting to the Committee. Submitted by: Mark Blumberg Blumberg Segal LLP 390 Bay Street, Suite 1202 Toronto, Ontario Canada M5H 2Y2 Tel: 416-361-1982 Fax: 416-363-8451 mark@blumbergs.ca <http://www.canadiancharitylaw.ca> <http://www.globalphilanthropy.ca>