SUBMISSION TO:

HOUSE OF COMMONS STANDING

COMMITTEE ON FINANCE

PRE-BUDGET CONSULTATION HEARINGS

July 2018

OBJECTIVE: **STRENGTHEN OUR CHARITABLE SECTOR TO HELP ENSURE CANADA IS COMPETITIVE**

RECOMMENDATION: **REMOVE THE CAPITAL GAINS TAX ON CHARITABLE GIFTS OF PRIVATE COMPANY SHARES AND REAL ESTATE**

DONALD K. JOHNSON, O.C., LL.D.

Director, Toronto General & Western Hospital Foundation
Member, Advisory Board, Ivey Business School, Western University
Chairman Emeritus & Director, Business and the Arts
Member, 2018 Major Individual Giving Cabinet, United Way of Greater Toronto and York Region

Executive Summary

How the 2019 Budget can Stimulate a $200 Million Increase in Charitable Donations

The 2015 Budget which had the support of all three Parties, included a measure that would likely have increased annual charitable donations by $200 million. The measure stated that, if the owner of private company shares or real estate sold his or her asset to an arm's-length party and donated all or a portion of the cash proceeds to a registered charity within 30 days, he or she would be exempt from capital gains tax. To most observers' surprise, the 2016 Budget stated that the Government would not proceed with this measure. The purpose of this Submission is to outline how this proposal could help the Government achieve its 2019 Budget objectives. These objectives were outlined in the Government's invitation to participate in the pre-Budget Consultations. Also, we have listened to concerns expressed by the Department of Finance, senior civil servants, Members of Parliament, and Senators. This Submission outlines each of these concerns and our responses.

Achieving the Government's 2019 Budget Objectives

- Our universities and colleges provide crucial education and training for millions of Canadians and play a key role in helping Canadians be as productive as possible. Hospitals play a major role in addressing health issues and timely medical treatment helps ensure patients are as productive as possible. Universities, colleges and hospitals would be prime beneficiaries of the increased charitable donations stimulated by this measure.

- Research divisions of universities and hospitals play an important role in innovation. In order to effectively compete with the institutions in the United States and elsewhere, our research divisions need additional funding on top of that which the federal and provincial governments provide to support research and the purchase of cutting-edge technology equipment. This model of private sector support has been successful in the U.S. and will be successful here, allowing us to retain and attract the brightest talent in the world.

Addressing Concerns

Here is a summary of the concerns which are addressed in the main body of this Submission:
- ***Federal tax revenue costs:*** The foregone capital gains tax on these donations is only $50-65 million per annum and the Charitable Donation Tax Credit is the same as gifts of cash.
- ***The potential for valuation abuse:*** The donor must sell the assets to an arm's-length party, which ensures that he or she receives fair-market value for the sale.
- ***Some contend that Canada's charitable tax incentives are already very generous:*** The proposal removes an inequity in the current Income Tax Act. It provides the same tax treatment for donations of private company shares and real estate that currently apply to gifts of the other appreciated capital assets – listed securities.
- ***Substitution of private company shares and real estate for cash donations:*** Experts estimate that 90-95% of these donations would be incremental and only 5% or 10% substitution.

We urge the Finance Committee to recommend that the Government implement these measures in the 2019 Budget. It will be a great legacy for all Canadians for generations to come!

Introduction

The 2015 Budget included a measure that if the owner of private company shares or real estate sold the assets to an arm’s-length party and donated the cash proceeds to a registered charity within 30 days, he or she would be exempt from any capital gains tax on that portion of the cash proceeds that were donated to a charity. The measure had the support of the Conservatives, the Liberals and the NDP. While the measure was in the Budget, it was not included in the Budget Bill that was passed in June 2015, because the legislative documents had not been drafted. Consequently, the measure was not enacted into law.

All stakeholders in the not-for-profit sector were surprised and disappointed that the 2016 Budget stated that the Government was not going to proceed with this measure and the 2017 Budget did not address this important Public Policy issue. The 2019 Budget provides an opportunity for the Government to reintroduce this measure and stimulate an additional $200 million per annum in charitable donations. This funding will benefit all middle class Canadians who are served by our hospitals, social service agencies, colleges and universities, arts and cultural organizations and religious organizations.

Many business owners believe that their wealth should go back into society for the greater good rather than being concentrated in the hands of a few family members. At a time when government funding for social programs is being reduced, having a strong vibrant “third” sector becomes even more important. As the government's agenda is to help the middle class, whether the definition of "middle class" is determined by income or net assets, implementing this measure should help the middle class business and real estate owners to be at a fairer tax position.

The purpose of this Submission is to outline the reasons why this measure is consistent with the Government’s objectives outlined in its invitation for Canadians to participate in the Pre-Budget Consultation process.

How this Proposal Helps the Government Achieve its 2019 Budget Objectives

On June 4, 2018 the Government invited Canadians to share their priorities for the 2019 Federal Budget. The below points demonstrate how our proposal helps the Government achieve its objectives:

1. **What federal measures would help Canadians be more productive**
   - Universities, colleges and hospitals would receive the largest percentage of the additional charitable donations if these measures are passed. These not for profit organizations provide crucial education and training as well as health support for Canadians all of which are crucial to helping Canadians be as productive as possible.
2. **What federal measures would help Canadian businesses to be more productive and competitive**
   - Universities and hospitals undertake important research programs that are crucial to innovation and commercialization. In order to conduct this research, they need the latest advanced technology and equipment.

As federal and provincial governments have limited capacity to fund the purchase of this equipment and provide research staff support, private sector donations play an important role. Introduction of this measure would stimulate a significant increase in donations to provide research support, the latest technology equipment and help attract the best and the brightest talent from United States and other countries.

- These research programs often lead to the creation of new products that strengthen Canada's competiveness in international markets.
- Entrepreneurs play an important role in growing our economy with a focus on innovation, creating new products, and strengthening our competitive position. The Canadian Federation for Independent Business (CFIB) which represents 109,000 private companies is strongly supportive of this proposal.

Addressing Concerns About Our Proposal

The balance of this Submission will address all concerns expressed by the Department of Finance, as well as Members of Parliament, Senators and senior civil servants.

Federal Tax Revenue Cost

The federal tax revenue cost of the proposal depends on the amount of the increase in charitable gifts of private company shares and taxable real estate and the adjusted cost base (ACB) of the donated property. **The C.D. Howe Institute hosted a Conference on Strengthening Charity Finance in Canada on March 8th, 2011. A presenter estimated that our proposals would result in an annual increase in charitable giving in the form of private company shares and real estate of $170 to $225 million and the tax revenue cost to the federal government of the foregone capital gains tax would be only $50 to $65 million.** The fiscal cost to the federal government of the Charitable Donation Tax Credit would be the same as $200 million of cash donations, or approximately $60 million. The fiscal cost of the foregone capital gains tax is only 0.002% of the projected Budget deficit and the combined fiscal cost to the federal government of the foregone capital gains tax and the CDTC is only 0.004% of the deficit. The fiscal cost of this measure does not cause a material increase in the deficit. These estimates were based upon an analysis of the Department of Finance's Annual Tax Expenditure Report, taking into consideration the percentage of donations of appreciated capital property in the U.S. that are made in the form of private company shares and real estate.

Concern about the Potential for Valuation Abuse

Any concern about the potential for valuation abuse is addressed by the provision in the measure that the donor must sell the assets to an arm's-length party and donate the cash proceeds to a charity within 30 days of the closing of the sale. Since the purchaser must be at arm's-length from the donor and the donor will logically obtain the highest possible price for the asset, this provision addresses any concern about the potential for valuation abuse.

Concern that Canada's Charitable Tax Incentives are Already Very Generous

These proposals address an inequity in the current Income Tax Act. The exemption from capital gains tax on gifts of listed securities is already a fundamental public policy principle of both Liberal and Conservative Governments. The same principle should apply to gifts of other appreciated capital property – private company shares and real estate. In the United States, gifts of appreciated capital property are exempt from capital gains taxes. These include listed securities, private company shares and real estate.

Our proposal would level the playing field for charitable fundraising by our not-for-profit organizations in Canada with our counterparts in the United States, with whom we compete for the best and brightest talent.

Concern About Substitution of Private Company Shares and Real Estate for Cash Donations

The donations of private company shares and real estate would be largely incremental donations, not substitutions for cash donations. For example, a friend of mine has been a minority shareholder in a private company for over 25 years.

He can sell his shares any time at Fair Market Value to the controlling shareholder. If the capital gains tax on private company shares is removed in the 2019 Budget, he will donate $6 million to two prominent charitable organizations.

If it is not included, he will simply continue to hold his shares. His annual cash donations to charities is approximately $25,000. His $6 million donations would be incremental.

Capitalizing on the Success of the Removal of the Capital Gains Tax on Gifts of Listed Securities

In 1997, the Federal Government reduced the capital gains tax on donations of listed securities by 50% on a five-year trial basis. In 2006, the federal government removed the remaining capital gains tax on gifts of listed securities. Prior to 1997, Canadians did not donate listed securities to charities because when they transferred the shares to the charity, they were deemed to have sold the shares and were required to pay a capital gains tax on the donation. Since 2006, charities have received donations of over $1 billion virtually every year. The 2019 Budget provides a unique opportunity to capitalize on this enormous success and increase charitable donations by an additional $200 million per annum.

We urge the Finance Committee to recommend that the Government implement these measures in the 2019 Budget.