CAGP Weighs in on New Planned Giving Provisions in the 2015 Federal Budget

CAGP was thrilled when last April, in the midst of our Annual National Conference, the Federal Budget was released, announcing the elimination of tax on capital gains realized on charitable gifts made from the sale of private company shares and taxable real estate. These changes are slated to take effect in 2017.

As proposed this incentive will be available to Canadian resident taxpayers who make a gift of the cash proceeds they receive from a disposition of private company shares or real estate, provided the donor resides in Canada at the end of the year in which the gift was made and that the gift is made within 30 days of the sale.

The inclusion of these provisions as further options to enable charitable giving in Canada is the result of years of discussion, prompted by CAGP in 2008 and subsequently taken up by other sector actors, such as Donald K. Johnson and the C.D. Howe Institute. CAGP's Government Relations Committee has brought forward these incentives consistently through annual submissions in response to pre-budget consultations and regularly in discussions with officials in the Department of Finance.

Notwithstanding the calling of the 42nd Canadian general election for October 19th, the Department of Finance proceeded over the summer months to prepare and table draft tax legislative proposals related to the 2015 budget, inviting comments and input from interested parties.

In response, CAGP's Government Relations Committee made such a submission on September 30th to ensure the legislative details maximize the impact of these new provisions for Canada's charities and donors. Our letter confirmed the mechanisms as a significant incentive for charitable giving. We also confirmed that, as structured, they will be particularly helpful as charities generally prefer gifts of cash rather than complex property, which requires independent valuations and may lead to ongoing liabilities. At the same time, some restrictions in the legislation were noted and CAGP recommended some amendments that could enhance the use of these provisions.

Our comments included:

1. The exemption will apparently only be available when cash proceeds from the sale are donated. This seems restrictive and requires tracing of cash, which is difficult.

2. The exemption would not apply to a capital gain realized when real property is gifted to a charity for its use in carrying out charitable activities.

3. The incentive may not be available if property is transferred between generations of a family. If the transfer creates a taxable event it is unclear why the exemption would not apply.

4. The requirement that the donor be resident in Canada at the end of the year in which the sale took place is surprising and CAGP suggested it was unnecessary.

CAGP's Government Relations Committee will track the draft legislation and provide updates on the status of these proposals and any changes that may be made to the legislative proposals tabled.

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