Tax Treatment of Charities and Non-profit Organizations

Presentation to the Senate Special Committee on the Charitable Sector

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Presentation Overview

1. **Tax Incentives for Charitable Donations**
   - Structure of charitable donation tax incentives
   - Charitable giving in Canada

2. **Income Tax Act Requirements for Registered Charities**
   - Categories of charities and qualified donees
   - Regulatory rules for charities
   - Recent regulatory and legislative changes

Tax Incentives for Charitable Donations

Structure of Charitable Donations Tax Incentives

Individuals

- Tax assistance for charitable donations has been provided since 1930.
- Established in 1988, the Charitable Donation Tax Credit (CDTC) is designed to encourage Canadians to give as much as possible.
- In 2017, the federal tax assistance on cash donations:
  - 15% on the first $200 of total annual gifts
  - 29% on total annual gifts over $200, with the exception of donors with taxable income exceeding $202,800 who may claim a 33% tax credit on the portion of total annual donations over $200 made from taxable income greater than $202,800.
- When provincial tax relief is added, total tax assistance averages about 46 per cent on cash donations above $200 (see Annex).

Corporations

- Charitable donations by corporations receive tax assistance in the form of a deduction from income.

Annual income limits & carry-forwards

- Generally speaking, taxpayers may claim donations up to 75 per cent of their net income in a year.
- Unused donations can be carried forward for up to five years.
- These provisions allow taxpayers who make large gifts to better avail themselves of the full donation credit.
- There is also a general income limit of 100 per cent in the year of death, with a carry-back to the year before death with a 100 per cent income limit.
  - For graduated rate estates, special rules apply to allow donations to be claimed for up to five years following the death of an individual.
- Spouses are able to pool their donations in order to maximize their access to the top charitable credit rate.

Additional incentives

- Additional tax incentives encourage Canadians to donate particular types of capital property to registered charities.
- The following types of property are exempt from capital gains tax if they are donated to charity:
  - Publicly-listed securities;
  - Ecologically-sensitive land, or easements on such land, if donated to a public charity; and
  - Certified cultural property donated to certain designated institutions or public authorities.
  - Individuals may also claim donations of ecologically-sensitive land and certified cultural property up to 100 per cent of their income. Unclaimed donations of ecologically-sensitive land benefit from an extended carry forward period of up to ten years.

Government assistance is considerable

- Canada has been recognized as having among the most generous tax incentives for charitable giving in the world.[1]
- As a result of these tax incentives, government assistance is usually roughly half (or more) of the value of a donation.
- Governments typically pay about 46 per cent of the cost of cash donations.

1. Malcom Burrows: https://www.justwealth.com/2016/09/22/canadas-generous-misunderstood-donation-incentives/

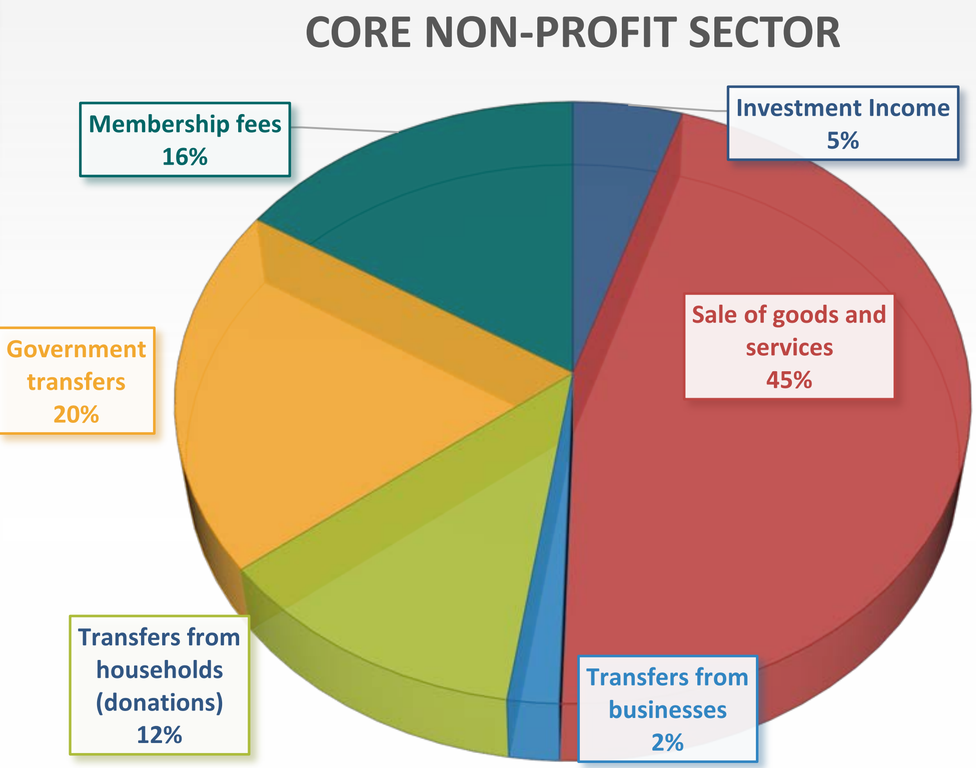
Charitable giving in Canada

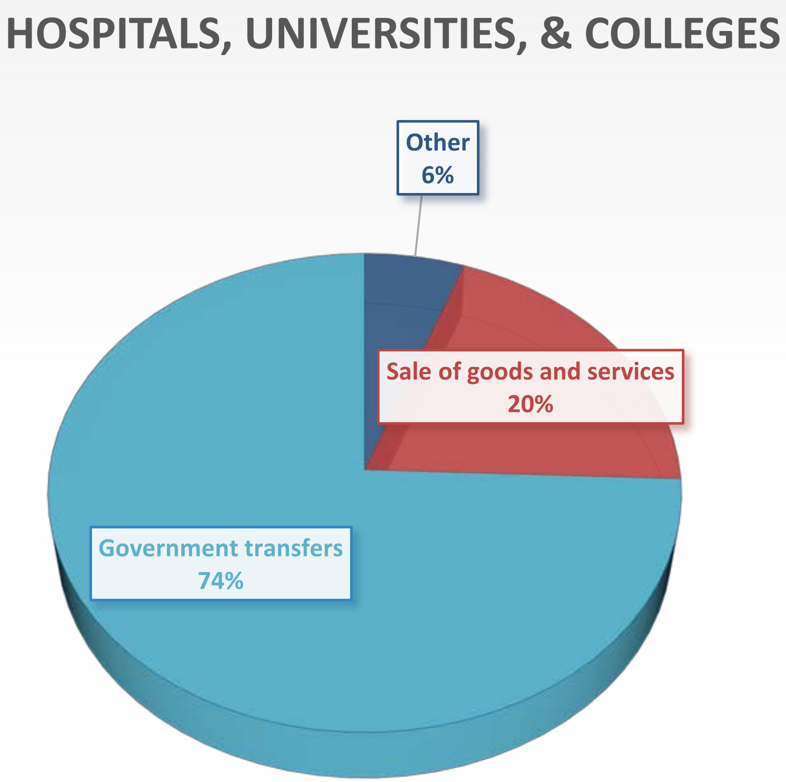
In 2016:

- Individuals claimed tax-receipted donations totaling $9.8 billion.
- 20.2 per cent of Canadians filed a tax return claiming the CDTC.
- The median donation was $300.
  - Pooling by spouses results in an underestimate of the actual number of donors.

- Corporations deducted $2.5 billion in charitable donations.
- 93,000 corporations filed a return claiming the deduction.

Revenues by type of charity





Satellite Account of Non-profit Institutions and Volunteering 2007

Income Tax Act Requirements for Registered Charities

Constitutional framework

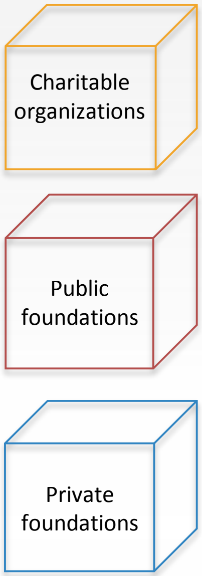
- Under the *Constitution Act, 1867* charities are the responsibility of the provincial and territorial governments.
- Due to the tax benefits provided to charities, the Income Tax Act (ITA) contains a number of requirements and restrictions primarily designed to protect the integrity of the tax system and ensure that tax-assisted donations are used for charitable purposes.
- The Department of Finance is responsible for advising the Minister of Finance on tax policies and legislation.
- The Canada Revenue Agency (CRA) is responsible for the administration of the ITA, including the registration system for registered charities.
- The CRA relies on the common law for many aspects of the regulation of charities.
- Provinces also excerise thier powers to regulate charities. (Ontario – Office of the Public Guardian and Trustee, Alberta – *Charitable Fund-raising Act, 2000.)*

Registration under the Income Tax Act (ITA)

- Registration as a charity entitles an organization to three principal benefits - exemption from income tax, the ability to issue donation receipts and favourable sales tax treatment.
- Charities also gain the ability to receive gifts from other registered charities.
- The ITA does not define charity, but relies on the common-law meaning as defined by the courts. Charitable purposes are those for:
  - the relief of poverty;
  - the advancement of education;
  - the advancement of religion; and
  - certain other purposes recognized by the courts as charitable (e.g., the promotion of health or protection of the environment).

Types of registered charities

- **There are three types (designations) of registered charities:**
  - **Charitable organizations** – Primarily carry out their own activities, and must have an arm's length board of directors.
  - **Public foundations** – Primarily fund the activities of other charities, and must have an arm's length board of directors.
  - **Private foundations** – Typically fund the activities of other charities. Foundation either has a non-arm's length board of directors, or is controlled by a group that has contributed more than 50 per cent of the capital of the foundation.



- **The ITA rules may differ depending on a charity's designation.**

Qualified Donees

- **In addition to registered charities, the ITA provides the ability to issue official donation receipts to other organizations known as "qualified donees". Qualified donees include:**

  - Registered Canadian amateur athletic associations (RCAAAs);
  - Federal, provincial, and territorial governments;
  - Municipal governments and municipal or public bodies performing a function of government;
  - Housing corporations in Canada constituted exclusively to provide low-cost housing to the aged;
  - Universities outside of Canada the student body of which ordinarily includes students from Canada;
  - Certain other charities outside of Canada who have received a gift from Her Majesty; and
  - The United Nations or an agency thereof.

The ITA rules may differ depending on the type of qualified donee.

Key Income Tax Act requirements for charities (1/2)

- **To ensure the proper functioning of the tax system, and to safeguard the donations of Canadians, registered charities are required to follow a number of rules.**

  - They must operate for **exclusively charitable purposes** and devote their resources exclusively to their own charitable activities
    - May devote resources to other activities that are necessary to accomplish its objectives (e.g., expenditures on fundraising and administration), but must be reasonable
  - They may only provide **gifts to qualified donees**
    - Where intermediaries are used (e.g., contractors for foreign activities), charity must be able to clearly demonstrate it exercised direction and control of their resources
  - They may conduct **political activities within limits**
    - Must otherwise devote substantially all (90%) of their resources to charitable purposes/activities;
    - Activities must be non-partisan (cannot involve the direct or indirect support of or opposition to a political party or candidate for public office);

Key Income Tax Act requirements for charities (2/2)

- Registered charities may carry on **related business activities**
  - Charitable organizations and public foundations may carry on businesses that relate to the fulfillment of their charitable purposes;
  - Private foundations may not carry on businesses; and
- They must submit **detailed annual reports** which are publicly available.

GST Treatment of Charities

- In recognition of the important role played by these organizations in Canada, charities are provided with GST relief on their sales and purchases.

- Most supplies of goods and services made by charities are exempt from the GST. This means they are not required to charge the tax on most of their sales of goods and services.
    - Exceptions to the general GST exemption for charities exist for certain goods and services that compete with similar goods and services supplied by businesses that must charge tax. For example, charities must generally charge tax on sales of new, non-donated goods.

- Registered charities are also entitled to a rebate of 50 per cent of the GST paid on their purchases of inputs used in the provision of their exempt supplies.

Non-profit organizations

- Non-profit organizations (NPO) must be both organized and operated exclusively for social welfare, civic improvement, pleasure or recreation or for any other purpose except profit.
- Generally exempt from paying income tax.
- Cannot issue official donation receipts for income tax purposes.
- There are approximately 90,000 non-profit organizations in Canada
- NPO sector is diverse consisting of a range of entities established for private purposes (e.g., Condominium corporation, professional associations, or industry groups) and those established for more public purposes (e.g., community volleyball association, music festival, or art collective).

Rules and requirements for non-profit organizations

- Few legislative requirements for NPOs in order to receive tax exemption.
- Do not have to go through a registration process for income tax purposes (self-assessment system).
- Do not have to file an annual return unless they meet certain criteria.
- Do not have a spending requirement.
- Key rule is that the organization cannot distribute income to members (non-profit distributing) and cannot operate for the purposes of profit.

Thank You

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ANNEX

Canada

Table A.1: Charitable Donations Tax Credit by Province, on Donations

Charitable donation tax credit rates for 2017		
Canada/province/ territory	2017 rates for eligible amount up to $200	2017 rates for eligible amount over $200
Federal	**15.00%**	**29.00% (33.00%)**
AB	**10.00%**	**21.00%**
BC	**5.06%**	**14.70%**
MB	**10.80%**	**17.40%**
NB	**9.68%**	**17.95%**
NL	**8.70%**	**18.30%**
NS	**8.79%**	**21.00%**
NT	**5.90%**	**14.05%**
NU	**4.00%**	**11.50%**
ON	**5.05%**	**11.16%**
PE	**9.80%**	**16.70%**
QC	**20.00%**	**25.75%**
SK	**11.00%**	**15.00%**
YT	**6.40%**	**12.80%**

[1] The effective credit rate can be higher than the statutory rate for provinces with a surtax (ON and PE). The surtax increases the value of the credit since the surtax is calculated on regular provincial income tax (i.e., net of the charitable donation credit).

[2] For residents of Quebec, the Quebec abatement reduces the federal credit rate by 16.5% (i.e., to 12.5% for up to $200 and 24.2% for the amount over $200).

Table A.2: Federal Tax Expenditure – Incentives for Charitable Donations – 2018 Projection

	Donations by Individuals	Donations by Corporations
	(millions of dollars)	
Charitable Donation Credit or Deduction	2,815	465
Donations of publicly-listed securities	70	90*
Donations of ecologically-sensitive land	3	1
Donations of certified cultural property	5	**
Total	2,893	556**

* Due to the way corporate tax data are reported, a significant part of the cost associated with donations of publicly-listed securities is instead reported on the line "Charitable Donation Credit or Deduction."
** This amount does not include the forgone capital gains associated with donations of certified cultural property claimed by corporations as this information is not available.