House of Commons
Chambre des communes
Canada

House of Commons Standing Committee on Finance – Pre-budget Consultations 2013

This brief is submitted by:

(•) **an organization** **Organization name:** Canadian Bar Association, National Charities and Not-for-Profit Law Section

or

( ) **an individual** **Name:** _____

Topic: Charities, charitable giving and volunteerism

*Recommendation 1: Please provide a short summary of your recommendation.

We recommend amending the Income Tax Act to allow the Minister of Revenue to confer a limited registration status on foreign charitable organizations so that grants received from Canadian charities are deemed to be gifts to qualified donees. The foreign donee would be required to use the resources exclusively for charitable activities. Existing record-keeping requirements for charities carrying out activities outside Canada would apply. The Minister might restrict this registration to charities in countries with a regulatory regime comparable to that in Canada.

Expected cost or savings: From the pull-down menus, please indicate the expected cost or savings of your recommendation to the federal government and the period of time to which the expected cost or savings is related.

other: please provide your estimated amount No cost

Immediately

Federal funding: Please provide a precise indication of how the federal government could fund your recommendation. For example, indicate what federal spending should be reallocated, what federal tax measure(s) should be introduced, eliminated or changed, etc.

This proposal does not require federal funding and will not result in any lost revenue to the federal government. The limited registration we propose would only allow Canadian registered charities to make grants to foreign organizations, subject to accountability and record-keeping requirements. These foreign organizations would not be eligible to issue official donation receipts that would allow donors to claim charitable tax credits or deductions.

Intended beneficiaries: Please indicate the groups of individuals, the sector(s) and/or the regions that would benefit by implementation of your recommendation.

Current rules require Canadian charities conducting activities through international intermediaries (who are not qualified donees) to demonstrate that the projects are their "own activities", resulting in administrative complexities which divert funds from core charitable work. Our proposal will facilitate grants by Canadian charities to international intermediaries, benefiting Canadian charities engaged in international work, their beneficiaries worldwide and individual Canadian donors by reducing administrative costs and enabling more donations to be used in charitable activities.

General impacts: Depending on the nature of your recommendation, please indicate how the standard of living of Canadians would be improved, jobs would be created, people would be trained, etc.

Canadians generously support the charitable sector, including charities that benefit the developing world. These proposed changes would: 1) enhance the impact of their support on the intended beneficiaries, without compromising the public policy goals of transparency and accountability; 2) increase the confidence of the Canadian public in the charitable sector; 3) better harmonize Canadian charity law with that of other developed nations; and 4) enable Canadian charities to work more efficiently within international charitable networks to deliver charitable programs worldwide.

Topic: Charities, charitable giving and volunteerism

Recommendation 2: Please provide a short summary of your recommendation.

We recommend removing the restriction in the Income Act on private foundations pursuing related business activity and clarifying rules around investment in limited partnerships (including whether such an investment constitutes related business activity). Other types of charities may pursue revenue-generating activity related to their purposes; private foundations should be permitted to do the same at a time when investment in social purposes is encouraged. New anti-avoidance measures related to private foundations eliminate the need for the restrictions to protect the assets of charities.

Expected cost or savings: From the pull-down menus, please indicate the expected cost or savings of your recommendation to the federal government and the period of time to which the expected cost or savings is related.

other: please provide your estimated amount No cost

Immediately

Federal funding: Please provide a precise indication of how the federal government could fund your recommendation. For example, indicate what federal spending should be reallocated, what federal tax measure(s) should be introduced, eliminated or changed, etc.

This proposal does not require federal funding and will not result in any lost revenue to the federal government. The T3010 annual reporting form already provides for reporting of such activities by public charities and could require private foundations to complete these sections, providing the necessary oversight mechanism. Additionally, we recommend that section 149.1 of the Income Tax Act be added to the existing section 253 to reinforce for all charities that investment in a limited partnership does not constitute carrying on a business.

Intended beneficiaries: Please indicate the groups of individuals, the sector(s) and/or the regions that would benefit by implementation of your recommendation.

Our proposal will result in stronger, more sustainable communities. Allowing private foundations to pursue related business activity will unleash capital assets for investment in social issues, creating an additional source of desperately needed capital and enabling private foundations to support and invest more effectively in Canadian communities. Our proposal will also benefit other registered charities, funded by private foundations, and the communities in which they operate.

General impacts: Depending on the nature of your recommendation, please indicate how the standard of living of Canadians would be improved, jobs would be created, people would be trained, etc.

Private foundations not only fund and invest in other charities but also pursue charitable activity directly. Providing them with the same tools available to charitable organizations and public foundations makes sense in this age of austerity particularly when concerns about abuses between private foundations and non-arm's length parties that control them have been addressed by other provisions in the Income Tax Act. Removal of the restriction and clarification around investments in limited partnerships would enhance the ability of private foundations to support the charitable sector.

Topic: Charities, charitable giving and volunteerism

Recommendation 3: Please provide a short summary of your recommendation.

The 2011 Budget gave CRA authority to refuse or revoke registration or suspend a charity's or Registered Canadian Amateur Athletic Association's (RCAAA's) authority to issue official donation receipts if a member of the board, trustee, officer or other individual that controls or manages the charity has committed certain offences ("ineligible individuals"). We recommend that the provisions be amended to limit the scope of the provisions and provide further clarity. See submission regarding "ineligible individuals": http://www.cba.org/cba/submissions/pdf/11-41-eng.pdf, pp. 13-15.

Expected cost or savings: From the pull-down menus, please indicate the expected cost or savings of your recommendation to the federal government and the period of time to which the expected cost or savings is related.

other: please provide your estimated amount | No Cost

Immediately

Federal funding: Please provide a precise indication of how the federal government could fund your recommendation. For example, indicate what federal spending should be reallocated, what federal tax measure(s) should be introduced, eliminated or changed, etc.

This proposal does not require federal funding and will not result in any lost revenue to the federal government. The current rules are unclear and the further guidance proposed in the 2011 Budget remains pending. Of concern is the administrative burden on CRA of issuing guidance on and enforcing unwieldy provisions. Repeal or amendment of the provisions would likely curtail compliance enforcement costs, while still achieving the policy goal of the legislation.

Intended beneficiaries: Please indicate the groups of individuals, the sector(s) and/or the regions that would benefit by implementation of your recommendation.

Registered charities and RCAAAs are facing an onerous burden in attempting to comply with provisions that are likely to result in 'ineligibility' in a very small number of cases. The breadth of "ineligible individuals", the questionable constitutionality of the provisions and the difficulty of compliance in the context of privacy legislation result in scarce resources being diverted to cover administrative costs that should be used in charitable activities. Our proposal will benefit charities and RCAAAs by reducing this administrative burden, without significantly impacting transparency.

General impacts: Depending on the nature of your recommendation, please indicate how the standard of living of Canadians would be improved, jobs would be created, people would be trained, etc.

These recommended measures will provide greater clarity with respect to the compliance obligations of charities and RCAAAs and ensure that donated funds are not unnecessarily spent on administrative compliance costs that do not further the public policy goals of transparency and accountability.

Please use this page if you wish to provide more explanation about your recommendation(s).

Re: Recommendation 1:

The current rules in the Income Tax Act related to foreign activities by registered charities create significant inefficiencies in their operations, particularly for charities that operate as part of a large international network of affiliated charities. The “own activities” requirement that must be met by Canadian charities seeking to conduct activities through international intermediaries is cumbersome and prevents Canadian charities from taking advantage of the structural efficiencies present in sophisticated international networks. Rather than spending funds on charitable activities, substantial charitable dollars are spent instead on administrative and legal costs required to implement the artificial structures necessary to comply with the “own activities” requirement and to educate international partners on these rules. The important goals of accountability and transparency are better furthered by our proposal than by the “own activities” requirement, which imposes a deadweight loss on the sector. Our recommendation is designed to eliminate the unnecessary administrative requirements imposed by the "own activities" requirement, while maintaining full accountability and transparency from international recipients of Canadian charitable funds.

Voir le mémoire français www.cba.org/ABC/memoires/PDF/13-35-fr.pdf

*Please note that at least one recommendation must be provided