

Intelligence MEMOS



From: Adam Aptowitzner
To: Bill Morneau, Minister of Finance
Date: September 25, 2017
Re: **CHARITABLE DONATIONS OF PRIVATE SHARES AND REAL ESTATE: LET'S NOT OVERTHINK THIS**

For several years, voices in the charity community have been advocating for changes to the regime by which private company shares and real estate may be donated to charity. The argument for making the change was that, conceptually, there should be no difference, for purposes of tax treatment on gifting, between the donation of shares of publicly traded securities and privately held ones. In the case of real estate, it has been acknowledged that there are good reasons to exclude environmentally sensitive land.

In 2015 the federal government included a vague promise to equalize the tax treatment of donations of both private securities with public securities and regular real estate with environmental property. The technical wording of these initiatives was released after Parliament rose before the 2015 election, but following the election in the fall, the proposals were quietly dropped.

The technical wording, released by the Department of Finance in July, 2015, made it clear that there would be a reduction in the taxable capital gain proportional to the sale price donated to charity. In other words, the only way to ensure that the entire amount is not taxable is to donate the entire sale amount.

Currently, taxes are owed when an owner disposes of an asset that has increased in value. This disposition includes donations of assets. However, when property is donated to charity, the donor receives a donation tax credit that offsets either all or some of the taxes owing depending on the nature of the item donated.

Under the current system, the donor must pay tax on 50 percent of the capital gain associated with private shares, even if the whole amount or the securities themselves are donated. In contrast, the capital gains on publicly traded securities are not subject to tax when the securities are donated.

The 2015 budget proposals differed from the current system for donation of private shares in a number of ways. Most important, by sheltering a proportionate amount of the capital gain from taxation in addition to a donation tax receipt, the incentive to donate was higher in the proposals than under the current system. The proposals introduced a completely new mechanism that attempts to use the market for valuation and encouraged an immediate disposition of the asset being donated.

The current government has articulated its intention not to proceed with the changes, ostensibly because of concerns about the practical implementation of the proposals.

The government should look at how a new proposal can satisfy the practical implications. In my [C.D. Howe Institute E-brief](#) earlier this month, I laid out some of the ways to deal with these problems. Ottawa should re-evaluate the efficacy of the current system and not try to reinvent the wheel.

Fundamentally, the proposals for equalizing tax treatment of donations of private- and public-company shares were, in theory, a step in the right direction. For the donation of both private company shares and real estate, the government should simply modify the current system for the donation of private shares – a regime that has served us well in the past.

Adam Aptowitzner practices in the areas of charity and tax law in Ottawa. He is a member of both the bars of Alberta and Ontario and has been writing on the topic of charity law for several years.

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