

September 1, 2023

Department of Finance Canada  
90 Elgin Street  
Ottawa ON K1A 0G5

Via email: [Consultation-Legislation@fin.gc.ca](mailto:Consultation-Legislation@fin.gc.ca)

Dear Sir or Madam:

**Re: August 4, 2023 Draft legislation proposals – Alternative Minimum Tax for High-Income Individuals**

In its August 4, 2023 news release, the Department of Finance (“Finance”) asked for submissions on various current draft tax proposals. One of these proposals, the legislative amendments related to alternative minimum tax (“AMT”) provisions in the *Income Tax Act (Canada)* (“ITA”) – specifically in respect to the proposed changes to sections 127.51. and 127.531 of the ITA, potentially has significant consequences for substantially-valued donations being made to Canadian registered charities and other qualified donees.

The Canadian Association of Gift Planners (“CAGP”) believes these consequences could have a serious impact for the charity sector and therefore is writing to you to provide its comments and recommendations on how these proposals could be amended.

As described in the 2023 Federal Budget, the proposed amendments to the AMT regime are intended to broaden the base of high-income individual taxpayers (and certain trusts) that should be subject to alternative minimum tax through denial of certain tax deductions, the reduction of non-refundable tax credits, and an increase in the AMT tax rate.

CAGP makes this submission in support of the charitable community in Canada, which includes both qualified donee recipients who carry out important and impactful charitable activities and Canadian donors who voluntarily relinquish their assets to altruistically support donees in the critical charitable work they carry out.

This submission is intended to demonstrate how the proposed amendments to the AMT provisions will disincentivize high-valued donations that have the power to substantially accelerate a donee’s capacity to do more good work (see Appendix A). It is our experience that Canadian philanthropists make high-valued or transformational donations<sup>1</sup> to charity in two ways: when they experience one-time monetization events like the sale of a business and that access to full donation tax credits permits the maximization of after-tax wealth to pass to charity; or, when they have achieved sizable wealth and are

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<sup>1</sup> Transformational donations are philanthropic commitments that can positively change the trajectory of a program, project or even an entire organization. The size of a transformational donation is different for every organization – they key is that the donation enables the charity to make an exponential impact possible. Usually, the donation is in the six- to nine-digit range.

committed to improving the quality of lives of Canadians by donating a significant portion of their assets annually based on existing tax structures.

The claiming of donation tax credits does not provide personal economic enrichment to the donor whereas the removal of the same, may have the effect of displacing funds originally earmarked for charity in favour of the government in the form of AMT tax.

While we do not know with certainty the degree the new AMT proposals will impact high-value donations, the charitable sector knows that historically, transformational donations represent approximately 35 per cent of the total dollar amount of charitable gifts. Therefore, it would not be unreasonable to suggest that as much as one-third of the \$11.8 billion of annual charitable giving by Canadians will be negatively impacted.

### **Draft legislation proposed amendments to alternative minimum tax**

The formula to determine an individual's minimum tax for the year is described as follows:

$A \times (B - C) - D$ , whereby the description of D in section 127.51 is an individual's basic minimum tax credit for the year. The amount of the basic minimum tax credit is determined pursuant to section 127.531. The proposed amendment to the description of D provides that, for the purposes of computing an individual's minimum tax liability, an individual's **basic minimum tax credit is one half of the amount otherwise determined under section 127.531.**

Section 127.531 provides for the individual's basic minimum tax credit for a taxation year, the total of all amounts each of which is:

(a) an amount deducted under any of subsections 118(1), (2), (3) and (10), sections 118.01 to 118.07, subsections 118.3(1), (2) and (3) sections 118.5 to 118.79 and 119 and subsection 127(1) in computing the individual's tax payable for the year under this Part; or

(b) the amount that was claimed under section 118.1 or 118.2 in computing the individual's tax payable for the year under this Part, determined without reference to this Division, to the extent that the amount claimed does not exceed the maximum amount deductible under that section in computing the individual's tax payable for the year under this Part, determined without reference to this Division.

Subparagraph 127.52(1)(d)(i) removes the exception for gifts to qualified donees such that capital gains that arise on the donation of capital property to qualified donees are includable in adjusted taxable income for minimum tax purposes at a 100% inclusion rate<sup>2</sup>.

New paragraph 127.52(1)(d.1) provides for an exception to subparagraph 127.52(1)(d)(i) by adjusting the 0% inclusion rate found in paragraph 38(a.1) in respect to the donation of publicly listed securities ("PLS") to qualified donees to 3/10 (or 30%) for purposes of computing an individual's minimum tax.

Similarly, new paragraph 127.52(h)(ii) adjusts the 0% inclusion rate for donations of PLS to qualified donees from employee stock options to 30% for purposes of computing an individual's minimum tax.

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<sup>2</sup> This change was not signaled in the 2023 Federal Budget nor in the Supplementary Notes.

While we respect the government's decision to refocus the alternative minimum tax system and have it capture a broader number of Canadian taxpayers by having taxpayers pay a minimum amount of income tax in taxation years in which the taxpayer earns a significant amount of income and/or realizes significant capital gains and/or claims tax deductions and tax credits considered preferential by the government, the claw back of 50% of personal tax credits related to charitable donations in section 118.1 is particularly punitive. Unlike preferential tax items such as the personal amount, age amount, tuition amounts, medical expense amounts, and child care expenses, which represent personal consumption expenditures and preferential tax items such as interest expense and partnership losses which represent expenditures incurred to generate wealth, **charitable donations are in a category of their own — they represent neither personal consumables or wealth-enabling expenditures.**

By restricting access to full donation tax credits in the AMT system speaks to a false narrative that Canadian individual taxpayers who make altruistic decisions to support qualified donees are somehow enriching themselves by claiming a donation tax credit.

Any claw back of the charitable donation tax credit, in the regular income tax system or under the AMT regime, *undermines the federal government's long-standing policy to support the work of the charitable sector through its tax policy and disrupts private wealth transfer to charity in Canada.* The amendments that propose to reduce the donation tax credit to 50 per cent of its full amount or increase the capital gains inclusion rate for an asset that is donated, under the AMT regime:

- creates an inequity in the ITA by diminishing a philanthropic dollar donated by a high-income individual compared to a philanthropic dollar donated by a non-high-income individual;
- unfavourably prejudices a charitable gift of a non-cash capital property over a cash gift by requiring the individual donor to fund their minimum tax liability triggered on the donation/disposition of the asset, using additional financial resources of the donor (i.e., the proposed amendment ignores the economic reality that the subject property is surrendered upon donation and is not available for the donor for subsequent monetization in order to fund the minimum tax liability);
- unfavourably prejudices a charitable gift of a non-cash property that is not publicly listed securities over a gift of publicly listed securities;
- converts the AMT tax regime from its tax policy origins as a pre-payment of tax model to permanent tax model where minimum tax effectively becomes permanent because the taxpayer who has a one-time high income earning year will have no opportunity to use AMT tax credits in any of the seven subsequent taxation years especially when a substantial portion of their wealth has been transferred to charity in an earlier year;
- radically curtails mining flow through donation programs, currently very active for high-tech minerals, where some professional in the industry believe the proposed changes will reduce purchases from 20% to 40%, and could result in a reduction of charitable donations; and
- diminishes the amount of philanthropic dollars that will ultimately flow into the charitable sector to support the charitable and community services carried on by qualified donees, particularly in respect of high-valued donations or what is referred to in the charitable sector as transformational gifts.

The negative impact on future charitable program delivery in Canada is inconsistent with the public statements by all levels of government in Canada that they view Canadian charities and other qualified donees as necessary participants in Canada's social ecosystem as providers of essential services and goods to Canada's most vulnerable residents.

### Illustration of proposed amendments to AMT on charitable giving

The following scenarios illustrate the incompatibility of the proposed AMT tax provisions in respect of charitable giving with the government of Canada's longstanding policy to support the ongoing operations of qualified donees by incentivizing private philanthropy.

#### *Illustration A: Charitable donation of real property*

An individual wishes to donate real property to a qualified donee. The qualified donee will use the real property in its charitable operations. The real property has a fair market value of \$8,000,000 and an adjusted cost base ("ACB") of \$1,000,000 and an undepreciated capital cost ("UCC") balance of \$1,000,000. The eligible amount of the contribution on the donation tax receipt will be \$8,000,000. Annually, the individual earns \$200,000 of rental income (up until the donation of the real property) and pension income of \$100,000.

If the donor proceeds with the proposed charitable gift, the taxpayer will need to fund an extra tax liability (federal portion) of \$845,000, likely making the gift economically unviable. With annual income of \$100,000 in future years, there will be little opportunity to recover most of this penalty tax.

	<b>Regular federal tax</b>	<b>Current AMT (federal only)</b>	<b>Proposed AMT (federal only)</b>
Donation amount	\$8,000,000	\$8,000,000	\$8,000,000
Capital gain inclusion	\$3,500,000	\$5,600,000	\$7,000,000
Other Income	\$300,000	\$300,000	\$300,000
AMT Exemption		\$(40,000)	\$(173,000)
Tax rate	Various	15%	20.5%
Federal tax liability or AMT liability before tax credits	\$1,232,000	\$879,000	\$1,461,000
Donation used	\$3,725,000	\$3,725,000	\$3,725,000
Non-refundable tax credits (including donation tax credit amount )	\$1,232,000	\$1,232,000	\$616,000

Federal tax or AMT liability	\$0	\$0	\$845,000
AMT surcharge			\$845,000
Federal tax if no donation	\$75,000		

*Illustration B: Transformational charitable donation*

An individual pledges to make a \$35,000,000 charitable donation to a Canadian university (a registered charity) having sold their business. The individual will donate \$35,000,000 cash. The individual sells private company shares which have a nominal ACB, for cash proceeds of \$35,000,000 and \$65,000,000 in shares of the purchaser's company. The eligible amount of the contributions will be \$35,000,000 on the official donation tax receipt. The taxpayer is entitled to a 33% federal donation tax credit.

	<b>Regular federal tax</b>	<b>Current AMT (federal only)</b>	<b>Proposed AMT (federal only)</b>
Donation amount	\$35,000,000	\$35,000,000	\$35,000,000
Capital gain inclusion (for ordinary sale of private company shares)	\$50,000,000	\$80,000,000	\$100,000,000
AMT Exemption		\$(40,000)	\$(173,000)
Tax rate	Various	15%	20.5%
Federal tax liability or AMT liability before credits	\$16,478,000	\$11,994,000	\$20,465,000
Donation tax credit %	33%	33%	16.5%
Donation tax credit amount	\$11,550,000	\$11,550,000	\$5,775,000

Federal tax under proposed AMT	\$4,926,000	\$444,000	\$14,689,000
AMT Surcharge			\$9,763,000
Federal tax No Donation	\$16,478,000		
AMT Surcharge No Donation			\$20,465,000
AMT Surcharge due to CG inclusion increase			\$3,987,000

Under the new proposals, AMT of \$9,763,000 will be exigible of which \$3,986,000 is due to the additional capital gain inclusion and \$5,776,000 is due to reduced donation tax credits, this latter amount of which will not be logically recovered in the subsequent seven taxation years. The provincial AMT tax impact further compounds this impact and further destimulates a substantial transformational charitable gift such as this one and others like it.

### Comments and recommendations on proposed amendments

#### Basic minimum tax credit in respect of donation tax credits

Canadian taxpayers voluntarily donate over \$11.8 billion to the charitable sector annually. Canada's charitable sector is comprised of 86,000 organizations, which contributes an estimated \$192 billion to Canada's economy, representing 8.3% of the GDP. The sector employs 2.5 million people, and engages 13 million Canadians as volunteers, who contribute close to 2 billion hours per year.

A significant percentage of Canadian wealth is derived from private business interests and from real property holdings and it is from that pool that Canadian philanthropists typically make substantial private gifts to charity. These major gifts have transformational impact on the donee-recipients' capacity to undertake the charitable work they are charged with undertaking. Rather than disincentivizing Canadians' wealth transfer to qualified donees, we recommend that the Government of Canada reinforce its longstanding policy that private funding of qualified donees continue through tax policy and legislative measures to encourage private donations.

We recommend that section 127.531 which describes amounts claimed as donation tax credits under subsection 118.1(1) be excluded from the basic tax credits in the description of D in section 127.51 that are the subject of inclusion in the credits at one-half.

#### Basic minimum tax credit in respect of non-cash gifts of capital property (other than gifts of publicly listed securities)

Making a charitable gift of a non-cash property results in the relinquishment of all of the benefits and risks of asset ownership by the donor in favour of the qualified donee. It is not possible to partition certain non-cash assets before they are donated. It is a reasonable position that a donor should not have to fund a minimum tax liability that arises from the denial of the donation tax credit that is intended to acknowledge that voluntary contribution.

We recommend that subparagraph 127.52(1)(d)(i) be re-drafted so that it does not remove the exception for capital gains arising as a consequence of gift capital property to qualified donees, so that capital gains that arise on the donation of capital property to qualified donees are not includable in adjusted taxable income for minimum tax purposes at a 100% inclusion rate as contemplated in the August 4, 2023 draft legislation.

### Basic minimum tax credit in respect of gifts of publicly listed securities

We recommend that new paragraph 127.52(1)(d.1) be removed and reference to paragraph 110(1)(d.01) in new subparagraph 127.52(h)(ii) be removed from the draft tax amendments and that subparagraph 127.52(1)(d)(i) be re-drafted to provide for an exception for the inclusion for capital gains arising in respect to the donation of publicly listed securities for purposes of computing an individual's minimum tax.

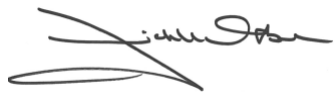
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We appreciate your time in considering our comments and recommendations set out in this letter. If a member of the Department of Finance would like to discuss any of the above items, please contact Ruth MacKenzie at [rmackenzie@cagp-acpdp.org](mailto:rmackenzie@cagp-acpdp.org), or 613.266.8295 ext 223.

Yours sincerely,



Ruth MacKenzie  
President & CEO  
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Michelle Osborne  
Chair, Government Relations Committee  
Canadian Association of Gift Planners

cc: Michael McGonnell, Senior Tax Legislation Specialist, Tax Legislation Division, Finance Canada

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### About CAGP

The Canadian Association of Gift Planners (CAGP) is a leading national, non-profit organization established in 1993 whose purpose is to champion the growth and development of strategic charitable gift planning in Canada. A cornerstone of our mission is a 30-year history as a voice for the charitable sector, advocating for a beneficial tax and legislative environment that supports charitable giving and maximizes the impact of charitable gifts.

Our national membership, engaged in our 20 Chapters across the country, is comprised of over 1,500 charitable gift planners, as well as individuals from a variety of allied professions, including law, trust and estate planning, accounting, life underwriting and financial planning.

## Appendix A

### Transformational Gifts in Canada

The following is a sampling of transformative philanthropic gifts or commitments, alone representing over \$1 billion of private wealth given to Canadian charities. With such gifts being at risk as a result of the increased tax burden resulting from the proposed AMT changes, specifically in respect to proposed changes to sections 127.51 and 127.531, the ability of Canada's charities to meet their missions to solve social problems, enhance access to nature and culture, and fuel research that results in better health outcomes for Canadians will be severely hindered. Charities and Canadians will look to government to replace this funding in order for vital programs and services to continue.

#### BC Parks Foundation

- Lululemon Athletica Inc. founder and billionaire Chip Wilson is donating \$100 million to the BC Parks Foundation to help protect and enhance natural spaces in the province.  
<https://www.cbc.ca/news/canada/british-columbia/chip-wilson-nature-donation-1.6584267>
- Dax Dasilva, the BC-raised, Montreal-based tech entrepreneur recently donated \$14.5 million to the B.C. Parks Foundation.  
<https://www.cbc.ca/news/canada/british-columbia/donors-protecting-parks-climate-1.6427084>

#### University of Toronto

- University of Toronto Receives Single Largest Gift in Canadian History from James and Louise Temerty to Support Advances in Human Health and Health Care \$250 million  
<https://temertymedicine.utoronto.ca/news/university-toronto-receives-single-largest-gift-canadian-history-james-and-louise-temerty>

#### Canadian Mental Health Association

- Local developer, Robert Eilers, gives \$50 gift of a building to house the Canadian Mental Health Association Waterloo Wellington's Children and Youth Services is maybe an extreme example of giving back, but it's his way of saying thanks to those who helped him through his own challenges with mental health and addictions.  
<https://www.guelphtoday.com/local-news/local-developer-gives-50-million-donation-to-community-mental-health-project-3977889>

#### Hamilton Community Foundation

- Paletta family to commit \$50 million to Hamilton Community Foundation. The money will establish the Pasquale & Anita Paletta Family Fund through a \$25-million donation and a \$25-million legacy pledge supporting the family's charitable interests throughout the Hamilton-Burlington area.  
<https://globalnews.ca/news/8941899/paletta-family-donation-hamilton-community-foundation/>



#### Vancouver Art Gallery

- Vancouver Art Gallery receives \$100M donation from Audain family for new building  
<https://www.cbc.ca/news/canada/british-columbia/vancouver-art-gallery-donation-for-new-building-1.6237034>

#### CHU Sainte-Justine Foundation – Montreal

- It was with a deep sense of gratitude that the CHU Sainte-Justine Foundation announced today a historic \$40-million donation from Diane Blais and Michel Lanteigne. Dedicated to the CHU Sainte-Justine Research Centre, this transformative gift, a portion of which will be earmarked for pediatric oncology research, will have a major and immediate impact to accelerate the pace of scientific discoveries.  
<https://www.newswire.ca/news-releases/chu-sainte-justine-foundation-receives-biggest-ever-donation-to-a-quebec-hospital-840005641.html>

#### McGill University

- Single-largest gift in Canadian history to create a flagship graduate scholarship program at McGill University| C\$200 million gift will establish the McCall MacBain Scholarships for outstanding graduate students  
<https://www.mcgill.ca/newsroom/channels/news/single-largest-gift-canadian-history-create-flagship-graduate-scholarship-program-mcgill-university-294528>

#### University Hospital Foundation – Edmonton

- Donor's gift keeps on giving to advance research. Donald Kaye's transformational \$30-million gift to the University Hospital Foundation continues to advance patient care through his support for research, education and innovation.  
<https://www.albertahealthservices.ca/news/Page14667.aspx>

#### Food Banks Canada

- The Rogers Family Donates \$20 Million to Food Banks Canada, the Largest One-Time Donation in History of the Charity  
<https://www.newswire.ca/news-releases/the-rogers-family-donates-20-million-to-food-banks-canada-the-largest-one-time-donation-in-history-of-the-charity-832578421.html>

#### Alpine Canada

- Financier gives seven-figure sum to Canada's alpine, para alpine and ski cross racers  
<https://cfjctoday.com/2022/09/28/financier-gives-seven-figure-sum-to-canadas-alpine-para-alpine-and-ski-cross-racers/>

#### Richmond Hospital

- Richmond entrepreneur donates \$10M to give hospital much-needed 'facelift'. Richmond Hospital will get a second Computed Tomography (CT) scanner thanks to a \$10 million donation from a Richmond business owner and his family.

<https://www.vancouverisawesome.com/economy-law-politics/local-entrepreneur-donates-10m-to-give-richmond-hospital-much-needed-facelift-7470944>

#### Royal Columbian Hospital Foundation

- Today, Royal Columbian Hospital Foundation is honoured to announce a transformational donation of \$30 million from renowned Canadian philanthropist and business leader Jim Pattison. This donation will join the combined contributions of thousands of gracious donors, supporting the second phase of Royal Columbian Hospital's redevelopment project, focused on the Acute Care Tower—to be named the Jim Pattison Acute Care Tower.  
<https://rchfoundation.com/royal-columbian-hospital-foundation-celebrates-a-transformational-30-million-donation-from-jim-pattison/>

#### Jim Pattison

- \$50M Children's Hospital Foundation of Saskatchewan: <https://pattisonchildrens.ca/about-us/newsroom/jim-pattison-makes-historic-gift-to-jim-pattison-childrens-hospital-foundation/>
- \$75M St. Paul's Hospital Foundation: <https://globalnews.ca/news/3340099/b-c-billionaire-jim-pattison-makes-canadian-history/>

#### Royal Ontario Museum

- Hennick Family donates \$50 million to advance ROM's strategic vision  
<https://www.rom.on.ca/en/support-us/get-involved/inspiring-stories/hennick-family-gift>

#### Sinai Health – Toronto

- Sinai Health to Rename Canada's Largest Complex Care and Rehabilitation Hospital in Celebration of Transformative \$36 Million Gift – Jay and Barbara Hennick  
[https://secure.supportsinai.ca/site/SPageNavigator/LatestNews/20211027\\_Transformative\\_Gift.html](https://secure.supportsinai.ca/site/SPageNavigator/LatestNews/20211027_Transformative_Gift.html)

#### Concordia University – Montreal

- Engineer and business leader Gina Cody makes a \$15-million gift for Concordia's next generation. On September 24, Concordia made history. It became the first Canadian university with an engineering faculty named after a woman  
<https://www.concordia.ca/cunews/offices/vpaer/aar/2018/09/24/Engineer-and-business-leader-Gina-Cody-makes-a-15-million-gift-for-Concordia-next-generation.html>

#### Peter Gilgan

- \$105M Trillium Health Partners  
<https://trilliumgiving.ca/press-releases/trillium-health-partners-receives-historic-105-million-donation-from-the-peter-gilgan-foundation/>
- \$100M SickKids Foundation  
<https://www.sickkidsfoundation.com/aboutus/newsandmedia/stories2019petergilgan100>

- \$15M Toronto Metropolitan University (formerly Ryerson)  
[https://www.insidehalton.com/news/gilgan-gives-15-million-to-maple-leaf-gardens-site/article\\_a0b36ce8-68ff-5c7b-b260-613496ee013b.html](https://www.insidehalton.com/news/gilgan-gives-15-million-to-maple-leaf-gardens-site/article_a0b36ce8-68ff-5c7b-b260-613496ee013b.html)
- \$30M St. Michael's Hospital  
<https://www.theglobeandmail.com/report-on-business/mattamy-homes-peter-gilgan-gives-record-donation-to-st-michaels-hospital/article20675923/>
- \$10M Unity Health Toronto  
<https://unityhealth.to/2017/09/peter-gilgan-honours-parents-and-west-end-roots-with-10-million-donation/>

#### Garry Hurvitz

- \$50M SickKids Foundation – mental health centre  
[https://www.sickkids.ca/en/news/archive/2021/garry-hurvitz-donates-\\$50-million-to-sickkids-in-support-of-paediatric-brain-and-mental-health/](https://www.sickkids.ca/en/news/archive/2021/garry-hurvitz-donates-$50-million-to-sickkids-in-support-of-paediatric-brain-and-mental-health/)
- \$20M Sunnybrook – brain sciences centre  
<https://www.newswire.ca/news-releases/landmark-20-million-donation-to-sunnybrook-creates-canadas-first-integrated-brain-sciences-centre-515905971.html>