1-1-2013

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Citation Details

David G Duff, "Tax Treatment of Charitable Contributions in a Personal Income Tax: Lessons from Theory and Canadian Experience" in Matthew Harding, Ann O'Connell & Miranda Stewart eds , *Not-for-Profit Law: Theoretical and Comparative Perspectives* (Cambridge: Cambridge University Press, [forthcoming in 2014]) 199.

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Forthcoming in **Matthew Harding, Ann O'Connell and Miranda Stewart (eds),** ***Not-for-Profit Law: Theoretical and Comparative Perspectives*** **(Cambridge University Press, Cambridge, 2014).**

Introduction

A hundred years after tax concessions for charitable contributions were introduced as part of the personal income taxes that many countries enacted during the First World War, these countries continue to debate the appropriate level and structure of tax concessions for charitable gifts. In Australia, where the *Income Tax Assessment Act 1915* (Cth) included a deduction for donations to 'public charitable institutions',[1] recent reviews have considered replacing the deduction with tax rebates (or credits) or matching grants.[2] In the United States, which introduced a charitable deduction in the *War Revenue Act of 1917*,[3] recent proposals include limiting the maximum marginal rate at which charitable

[1] Not-for-Profit Sector Tax Concession Working Group, *Fairer, Simpler and More Effective Tax Concessions for the Not-for-Profit Sector: Discussion Paper* (2012) 18.

[2] See, eg, ibid 22, 25–7; Productivity Commission, *Contribution of the Not-for-Profit Sector: Research Report* (2010) 168–84, app G.

[3] Pub L No 65-50.

contributions may be deducted,[4] replacing the deduction with a credit,[5] or converting the credit with a matching grant program.[6] And in Canada, where a deduction for specific charitable contributions was included in the income tax introduced in 1917,[7] the deduction was converted into a non-refundable credit in 1988,[8] while more recent reforms have encouraged gifts of capital assets by exempting certain gifts of property from tax on capital gains and increasing income-related ceilings on the amount that individual taxpayers may claim in respect of charitable gifts.[9]

This chapter considers the tax treatment of charitable contributions in a personal income tax,. The next section reviews and evaluates alternative rationales for tax recognition of charitable gifts and the implications of these rationales for the form that tax recognition should take. The section titled 'The Canadian Experience' examines recent experience in

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[4] As a revenue-raising provision, for example, President Obama has proposed limiting the tax benefit of various deductions and exclusions (including the charitable contributions deduction) to 28 per cent: Department of the Treasury (US), *General Explanations of the Administration's Fiscal Year 2013 Revenue Proposals* (2012) 73–4.

[5] See, eg, Our Fiscal Security, *Investing in America's Economy: A Budget Blueprint for Economic Recovery and Fiscal Responsibility* (2010) 32 (proposing that the charitable contributions deduction be replaced by a 25 per cent refundable credit).

[6] Pete Domenici and Alice Rivlin, *Restoring America's Future: Reviving the Economy, Cutting Spending and Debt, and Creating a Simple, Pro-Growth Tax System* (Bipartisan Policy Centre, 2010) 33–4 (proposing a 15 per cent refundable credit that would be paid directly to charitable organisations).

[7] *Income War Tax Act*, SC 1917, c 28, s 3(1)(c) (permitting a deduction for contributions to Patriotic and Canadian Red Cross Funds and other patriotic and war funds approved by the Minister).

[8] See David G Duff, 'Charitable Contributions and the Personal Income Tax: Evaluating the Canadian Credit' in Jim Phillips, Bruce Chapman and David Stevens (eds), *Between State and Market: Essays on Charities Law and Policy in Canada* (McGill-Queen's University Press, 2001) 407.

[9] See, eg, Malcolm D Burrows, 'Charitable Tax Incentives in Canada: Overview and Opportunities for Expansion' (2009) 22 *Philanthropist* 3.

Canada, evaluating recent legislative reforms in light of the rationales discussed in the preceding section.

Rationales for Tax Recognition and Implications for Tax Design

In a recent article examining options for reforming the charitable deduction in the United States, Roger Colinvaux suggests that there are 'two principal rationales' for recognising charitable contributions in computing income tax payable by the donor — 'that of base measurement and of subsidy.'[10] The first of these rationales, he explains, is 'foundational, in that it comes from first principles of an income tax.'[11] The second depends on social or economic policy extrinsic to the definition of taxable income. The following sections explain and evaluate each of these rationales for the recognition of charitable contributions in a personal income tax, as well as their implications for the manner in which charitable contributions should be recognised for tax purposes.[12]

Base Measurement

The definition and measurement of the tax base for a personal income tax is a question of horizontal equity, a basic principle of tax fairness according to which taxpayers who are similarly situated should pay similar amounts of income tax. Although the concept of

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[10] Roger Colinvaux, 'Rationale and Changing the Charitable Deduction' (2013) 138 *Tax Notes* 1453, 1453.

[11] Ibid 1455.

[12] This discussion is based on Duff, 'Charitable Contributions and the Personal Income Tax', above n 8, 426–36 and David G Duff, 'The Tax Treatment of Charitable Contributions in Canada: Theory, Practice and Reform' (2004) 42 *Osgoode Hall Law Journal* 47, 50–70.

horizontal equity reflects a notion of formal equality according to which like should be treated alike, the conclusion that two or more taxpayers are 'similarly situated' for the purpose of an income tax necessarily depends on a substantive conception of the ideal tax base. More concretely, since the definition of an income tax base involves inclusions and deductions, the measurement of an ideal base for a personal income tax requires the specification of appropriate inclusions and deductions.

Among tax theorists, those who have sought to define the income tax base have generally favoured an expansive concept of appropriate inclusions in order to ensure that the income tax applies to a broad measure of each taxpayer's ability to pay.[13] According to Robert Haig, for example, the definition of taxable income should include 'the money value of the net accretion to one's economic power between two points of time.'[14] Similarly, suggesting that income 'connotes, broadly, the exercise of control over the use of society's scarce resources', Henry Simons proposed that taxable income should include '(1) the market value of rights exercised in consumption and (2) the change in the

[13] See, eg, Robert Murray Haig, 'The Concept of Income — Economic and Legal in Robert Murray Haig (ed), *The Federal Income Tax* (Columbia University Press, 1920) 27; Henry C Simons, *Personal Income Taxation: The Definition of Income as a Problem of Fiscal Policy* (University of Chicago Press, 1938); Richard A Musgrave, 'In Defense of an Income Concept' (1967) 81 *Harvard Law Review* 44; Victor Thuronyi, 'The Concept of Income' (1990) 46 *Tax Law Review* 45. For a more critical view, see Boris I Bittker, 'A "Comprehensive Tax Base" as a Goal of Income Tax Reform' (1967) 80 *Harvard Law Review* 925.

[14] Haig, above n 13, 59.

value of the store of property rights between the beginning and end of the period in question.'[15]

With respect to appropriate deductions, theoretical approaches differ.[16] Although it is widely accepted that an income tax should allow deductions for reasonable expenses that taxpayers must incur for the purpose of producing taxable income,[17] opinion is divided on the extent to which non-income producing expenses should also be deductible. While some support the recognition of such expenses as appropriate deductions in measuring each taxpayer's ability to pay,[18] others reject the deduction of such expenses on the grounds that they are discretionary or otherwise irrelevant to the appropriate definition of taxable income,[19] or inferior to other policy instruments as a way of subsidising these expenses.[20] Yet another approach relies on Henry Simons' definition of personal income

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[15] Simons, above n 13, 49–50.

[16] For a comprehensive overview of alternative approaches, see Tim Edgar, "'The Concept of Taxable Consumption and the Deductibility of Expenses under an Ideal Personal Income Tax Base"Base' in Richard Krever (ed), *Tax Conversations: A Guide to the Key Issues in the Tax Reform Debate*, (Kluwer Law International, 1997) 293.

[17] See, eg, Richard Goode, *The Individual Income Tax* (Brookings Institution, revised ed, 1976) 75; Wayne R Thirsk, 'Giving Credit where Credit Is Due: The Choice between Credits and Deductions under the Individual Income Tax in Canada' (1980) 28 *Canadian Tax Journal* 32, 33.

[18] See, eg, Pierre Cloutier and Bernard Fortin, 'Converting Exemptions and Deductions into Credits: An Economic Assessment' in Jack Mintz and John Whalley (eds), *The Economic Impacts of Tax Reform* (Canadian Tax Foundation, 1989) 45, 54–62; Robin W Boadway and Harry M Kitchen, *Canadian Tax Policy* (Canadian Tax Foundation, 3rd ed, 1999) 131.

[19] See, eg, Neil Brooks, 'Comments on the Paper by Robin W Boadway and Harry M Kitchen' (1999) 47 *Canadian Tax Journal* 608, 621: 'One of the most fundamental principles underlying a fair tax system is that business expenses are deductible and personal expenses are not.' See also Neil Brooks, 'The Irrelevance of Conjugal Relationships in Assessing Tax Liability' in John G Head and Richard Krever, (eds), *Tax Units and the Rate Scale* (Australian Tax Research Foundation, 1996) 35.

[20] See, eg, National Council on Welfare, *The Hidden Welfare System* (1976) (regarding these deductions as 'upside-down' subsidies worth more to high-income taxpayers than low-income taxpayers). Implicit in this

as the sum of personal consumption and savings to suggest that deductions should be allowed for all expenditures that do not amount to personal consumption or saving by the taxpayer.[21]

Based on these more general debates about the appropriate base for a personal income tax, the deduction of charitable contributions is generally defended on two distinct grounds. First, as professor Boris Bittker of Harvard Law School argued in 1972, 'charitable contributions represent a claim of such a high priority' that they should be regarded as largely involuntary obligations which should be excluded 'in determining the amount of income at the voluntary disposal of the taxpayer in question.'[22] Alternatively, as his colleague William Andrews also argued in 1972, to the extent that tax burdens are based on the aggregate of a taxpayer's personal consumption and accumulation, they should not apply to charitable gifts which enter into the consumption of needy recipients (in the case of 'alms for the poor') or provide non-exclusive or public goods and services (in the case of 'philanthropy more broadly defined' to include contributions to hospitals, education and culture). [23] In a similar vein, one Canadian commentator maintains that 'the tax deduction simply removes the tax penalty which would otherwise result if taxpayers

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critique, though generally not acknowledged, is an assumption about the appropriate tax base, by reference to which deductions for personal expenses are characterised as subsidies.

[21] William D Andrews, 'Personal Deductions in an Ideal Income (1972) 86 *Harvard Law Review* 309.

[22] Boris I Bittker, 'The Propriety and Vitality of a Federal Income Tax Deduction for Private Philanthropy' in *Tax Impacts on Philanthropy: Symposium Conducted by the Tax Institute of America* (Tax Institute of America, 1972) 145, 165. For a similar argument, see also Mark P Gergen, 'The Case for a Charitable Contribution Deduction' (1988) 74 *Virginia Law Review* 1393, 1426–33.

[23] Andrews, above n 21, 317–31 and 344-70.

had to pay taxes on income which they had voluntarily chosen not to receive personally but to redirect to registered charities or other qualified donees.'[24]

While these arguments constitute a 'foundational' rationale for the deduction of charitable gifts on the basis that they should be, as Colinvaux explains, 'outside the tax base' and therefore properly deductible in computing taxable income,[25] they are not uncontested. Although charitable donations that are incurred in order to earn income are properly deductible under any income tax that applies to net income,[26] it is not obvious that charitable contributions are involuntary obligations, nor that the income tax should apply only to income that is consumed or accumulated by the person subject to tax and not income that is transferred to others.

Beginning with the argument that charitable donations should be treated as deductible involuntary obligations, it is difficult to regard charitable contributions as involuntary in the same way as costs of basic subsistence, family obligations, or necessary medical care,

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[24] E Blake Bromley, 'Charity, Philanthropy and Stewardship: A Philosophical Perspective on Tax Reform' (1988) 7 *Philanthropist* 4, 5. See also Wolfe D Goodman, 'Correspondence' (1980) 28 *Canadian Tax Journal* 399, contending that: 'When a person makes a charitable donation, the money he parts with is no longer available for his use. … In plain English, after a person makes a charitable donation, he has less money to live on.'

[25] Colinvaux, 'Rationale and Changing the Charitable Deduction', above n 10, 1455.

[26] See, eg, *Olympia Floor & Wall Tile (Quebec) Ltd v. Minister of National Revenue* [1970] Ex CR 274, in which the Canadian Exchequer Court allowed the deduction of charitable donations in excess of annual limits that applied at the time to the deduction of charitable gifts under the specific statutory deduction, on the basis that the taxpayer had made these donations for the purpose of earning income from increased sales to businesses that were headed by individuals involved in the charitable organisations to which the donations were made.

which are often deductible in computing taxable income.[27] On the contrary, whatever moral obligation many may feel to contribute to charities, the range of organisations to which one may contribute and the lack of any practical or legal obligation to do so suggest that charitable gifts are best characterised as a discretionary form of personal expenditure not unlike other consumption expenses which are not deductible in computing a taxpayer's income.[28] For this reason as well, one might reasonably question Andrews' argument that donors should be able to deduct charitable gifts because they do not constitute personal consumption. On the contrary, to the extent that donors are legally entitled to the income from which charitable donations are voluntarily made, it follows that this income is properly regarded as that of the donor rather than the recipient.[29]

For these reasons, the 'foundational' argument that a charitable deduction is essential to properly measure taxable income represents a poor rationale for the recognition of

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[27]See, eg, Gwyneth McGregor, 'Charitable Contributions' (1961) 9 *Canadian Tax Journal* 441, 442 ('Charitable contributions … are not a vital necessity of life and are voluntary'); Edward H Rabin, 'Charitable Trusts and Charitable Deductions' (1966) 41 *New York University Law Review* 912, 915 ('the charitable deduction exists almost solely to encourage charitable giving, not to relieve hardship caused by "involuntary" expenses'); Boadway and Kitchen, above n 18, 71 (contrasting medical expenses, 'which are almost always involuntary', with charitable donations, which 'are not a vital necessity of life and tend to be made on a voluntary basis'); Ellen P Aprill, 'Churches, Politics, and the Charitable Contribution Deduction' (2001) 42 *Boston College Law Review* 843, 870 ('charitable contributions are made voluntarily, as a discretionary use of income').

[28] See, eg, James A Rendall, 'Taxation of Contributors to Charitable Organizations under the *Income Tax Act*' in *Report of the Proceedings of the Twenty-Fifth Tax Conference: At the Queen Elizabeth Hotel Montreal, 19–21 November 1973* (Canadian Tax Foundation, 1974) 152, 153 (characterising charitable contributions as 'consumption').

[29] See, eg, Richard Krever, 'Tax Deductions for Charitable Donations: A Tax Expenditure Analysis' in Richard Krever and Gretchen Kewley (eds), *Charities and Philanthropic Institutions: Reforming the Tax Subsidy and Regulatory Regimes* (Australian Tax Research Foundation, 1991) 1, 5–8.

charitable contributions in a personal income tax. More promising, however, are the subsidy arguments to which this chapter now turns.

Subsidy

An alternative set of arguments for recognising charitable contributions in a personal income tax turns not on their foundational character in defining personal income that is subject to tax, but on the role that this recognition can play in serving some social or economic policy extrinsic to the definition of taxable income. In this respect, as Colinvaux explains, 'charitable expenses are viewed as normally within the tax base, but an exception is created' through a 'subsidy, or government-provided incentive, for charitable giving.'[30] From this perspective, it follows, tax recognition for charitable contributions constitutes a form of government spending or a so-called 'tax expenditure'.[31]

The concept of tax expenditures was pioneered in the 1960s by United States tax scholar Stanley Surrey, while serving as Assistant Secretary of the Treasury for tax policy. Arguing that tax incentives were functionally equivalent to government spending, Surrey generally criticised tax expenditures as poorly targeted and non-transparent forms of government spending, which increase the complexity of the tax system, distort the intended incidence of the income tax, and often confer the greatest benefit on the highest

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[30] Colinvaux, 'Rationale and Changing the Charitable Deduction', above n 10, 1455.

[31] Ibid.

income taxpayers.[32] More recently, however, tax expenditures have garnered more support on the grounds that they can be a decentralised and cost-effective way to deliver government spending, can be subjected to greater transparency and budgetary review, and can be designed in ways to avoid inequities and inefficiencies.[33]

In the context of charitable contributions, two reasons are generally offered as to why a government might wish to provide a subsidy. First, as Colinvaux explains, a government might wish to encourage or reward charitable giving, either as a valuable end in itself, or as a way to promote a more altruistic society which might be regarded as a type of public good.[34] Alternatively, the subsidy may be aimed not at the act of giving itself, but at the activities that are carried on by charitable organisations, which provide goods and services with broad public benefits that correspond to the preferences of donors.[35]

Encouraging or Rewarding Charitable Giving

The first of these rationales is apparent in Boris Bittker's 1972 article, in which he suggests as a further rationale for a charitable deduction that 'something can be said for

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[32] See, eg, Stanley S Surrey, 'Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures' (1970) 83 *Harvard Law Review* 705; Stanley S Surrey, *Pathways to Tax Reform: The Concept of Tax Expenditures* (Harvard University Press, 1973); Stanley S Surrey and Paul R McDaniel, *Tax Expenditures* (Harvard University Press, 1985).

[33] See, eg, Victor Thuronyi, 'Tax Expenditures: A Reassessment' (1988) 6 *Duke Law Journal* 1155; Joint Committee on Taxation (US), *A Reconsideration of Tax Expenditure Analysis*, JCX-37-08 (2008).

[34] Colinvaux, 'Rationale and Changing the Charitable Deduction', above n 10, 1455.

[35] Ibid. This formulation combines two rationales suggested by Colinvaux: encouragement to the provision of goods and services provided by charities, and allowing individuals to direct how tax revenue should be allocated.

rewarding activities that in a certain sense are selfless, even if the reward serves no incentive function.'[36] Similarly, Richard Goode has characterised the United States deduction for charitable contributions as a 'reward' for charitable giving.[37]

Although the goal of rewarding charitable donations might justify some method of recognising the value of these donations in computing the donor's income tax, it is doubtful whether this recognition would take the form of a deduction, the value of which depends more on the donor's income than the donor's relative generosity. On the contrary, as Paul McDaniel has argued:

> if there is to be a reward for charitable giving, the incidence and amount of the reward should bear some rational relationship to the act of charitable giving. The reward should be the same for persons who make a similar sacrifice, however measured.[38]

Indeed, since low income people who give to charities tend to give a larger portion of their income than high income taxpayers,[39] this rationale suggests that a deduction, the

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[36] Bittker, 'The Propriety and Vitality of a Federal Income Tax Deduction', above n 22, 166.

[37] Goode, above n 17, 165.

[38] Paul R McDaniel, 'Federal Matching Grants for Charitable Deductions: A Substitute for the Income Tax Deduction' (1972) 27 *Tax Law Review* 377, 394.

[39] See, eg, Richard M Bird and Meyer W Bucovetsky, *Canadian Tax Reform and Private Philanthropy* (Canadian Tax Foundation, 1976) 18 (table 18) (reporting for the 1972 taxation year that for taxpayers claiming charitable contributions, the percentage of average income among different income groups was 7.8 per cent for donors with incomes less than $5000, 4.1 per cent for donors with incomes of $5000 to $10 000, 2.9 per cent for donors with incomes of $10 000 to $20 000, 2.4 per cent for donors with incomes of $20 000 to $50 000, 2.4 per cent for donors with incomes of $50 000 to $100 000, and 3.6 per cent for donors with incomes exceeding $100 000).

value of which increases as the donor's income rises, has the reward structure backwards. Instead, assuming a diminishing marginal utility of income, one might favour a benefit that decreases as the donor's income increases. Neil Brooks, for example, has suggested that a tax credit for charitable contributions 'could be set at 30 per cent for those with incomes over $35 000; 40 per cent for those with incomes from $25 000 to $35 000, and so on, down to those with incomes under $10 000, where the credit might be set at 100 per cent.'[40] To the extent that a donor's relative sacrifice depends on wealth as well as income, moreover, one might imagine a tax benefit that decreases as the donor's wealth and income increase.

Alternatively, the amount of the tax benefit might vary according to the percentage of the taxpayer's annual income and/or wealth that the taxpayer contributes to eligible recipients during the year.[41] On this basis, for example, Paul McDaniel proposed a matching grant for charitable donations that would rise from five per cent of aggregate donations from donors contributing less than two per cent of their incomes to charities to 50 per cent of aggregate donations from donors contributing more than 10 per cent of their incomes to charities.[42] For similar reasons, others have advocated a floor on any tax recognition for charitable contributions, set at a fixed percentage of each taxpayer's

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[40] Neil Brooks, 'Financing the Voluntary Sector: Replacing the Charitable Deduction' (Working Paper, Law and Economics Workshop Series, Faculty of Law, University of Toronto, 1981) 24.

[41] See, eg, McDaniel, above n 38, 394 (arguing that the reward rationale 'appears to call for a system which increases the reward as the individual sacrifices a greater proportion of his income to charity').

[42] Ibid 397.

income for the year.[43] In the United States, for example, the Congressional Budget Office has proposed allowing the charitable contribution deduction only for contributions in excess of two per cent of the donor's adjusted gross income.[44] The Canadian Royal Commission on Taxation (also known as the Carter Commission) similarly considered, but rejected, a floor set at one per cent of the donor's income.[45] Besides targeting the 'reward' to the most generous contributors, such a floor would also reduce administrative costs associated with tax assistance for charitable giving.[46]

Although a reward rationale for the tax recognition of charitable contributions suggests a number of possible methods for this recognition, the rationale itself is problematic. While generosity is undoubtedly worthy of praise, it is not clear that it merits monetary rewards. On the contrary, as critics from radically different philosophical perspectives have observed, to reward generosity through monetary means contradicts the spirit underlying the virtue of generosity, 'corrupt[ing] the essential dignity and altruism of a simple gift',[47] and 'accentuat[ing] the purely selfish goal of reducing one's own taxes.'[48]

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[43] See, eg, Bittker, 'The Propriety and Vitality of a Federal Income Tax Deduction', above n 22, 169 (suggesting that the floor should exclude the least generous 10 or 20 per cent of donors); Goode, above n 17, 165 (explaining that such a measure would 'focus the reward or incentive more sharply by withdrawing the deduction from persons whose contributions are small relative to income while continuing it for heavier contributions').

[44] Congressional Budget Office (US), *Reducing the Deficit: Spending and Revenue Options* (2011) 150.

[45] Canada, Royal Commission on Taxation, *Report* (1966) vol 3, 224.

[46] See, eg, Rendall, above n 28, 159; Goode, above n 17, 165. See also the discussion in Aprill, above n 27, 859–62 (proposing the idea of an income-related floor on deductible charitable contributions as a solution to administrative concerns with the extension of the deduction to non-itemisers in the US).

[47] Bromley, above n 24, 12.

Moreover, as John Colombo suggests, 'the work of social scientists may indicate that providing a material reward for giving may actually decrease the giving rate where part of what individuals want from their donation is the "warm glow" and increased self-esteem from behaving altruistically.'[49] As a result, as a rationale for the tax recognition of charitable contributions, the reward rationale is no more persuasive than the argument that a deduction is necessary to ensure an accurate measure of taxable income.

Subsidising Charitable Activities

A second rationale for subsidising charitable gifts looks not to the act of giving itself, but to the ends that these gifts finance, defending tax incentives for charitable contributions as an indirect subsidy to the activities that are carried on by charitable organisations. In order to understand this rationale and its implications for the design of a tax incentive for charitable giving, it is necessary to explain first why governments might wish to subsidise charitable organisations and second why they might wish to do so indirectly through the personal income tax rather than directly through grants to charitable organizations themselves.

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[48] Neil Brooks, 'The Tax Credit for Charitable Contributions: Giving Credit where None Is Due' in Jim Phillips, Bruce Chapman, and David Stevens (eds), *Between State and Market: Essays on Charities Law and Policy in Canada* (McGill-Queen's University Press, 2001) 457, 464. See also Gergen, above n 22, 1394 (asking why, if a society values altruism, it would want to 'sully' this virtue with 'a pecuniary reward').

[49] John D Colombo, 'The Marketing of Philanthropy and the Charitable Contributions Deduction: Integrating Theories for the Deduction and Tax Exemption' (2001) *Wake Forest Law Review* 657, 677.

Rationale for Government Subsidies

Among economists, the charitable sector is generally regarded as a provider of quasi-public goods and services — the essential characteristics of which are non-rivalness, meaning that enjoyment by one person does not preclude enjoyment by another, and non-excludability, meaning that it is difficult or impossible to exclude a person from enjoying the benefit if he or she refuses to pay for it.[50] Where a good or service is relatively non-rival and/or non-excludable, economic theory suggests that private markets will either oversupply the good or service (in the case of non-rival but excludable goods and services) or undersupply the good or service (in the case of non-excludable goods or services). In either case, the resolution of these 'market imperfections' is one of the main economic justifications for the existence of a public sector which provides these 'public' goods and services directly, distributing their costs among individual beneficiaries through taxes and other levies.[51]

In addition to the public sector, the charitable sector represents another response to the existence of market imperfections, providing various goods and services such as education, culture, and religion, the benefits of which are relatively non-rival and/or non-excludable. Indeed, since charitable organisations enable individuals to select a range of

[50] See, eg, Kimberley Scharf, Ben Cherniavsky and Roy Hogg, 'Tax Incentives for Charities in Canada' (Working Paper No CPRN 03, Canadian Policy Research Networks, 1997) 4–5.

[51] In addition to this economic justification for the existence of a public sector, public finance scholars typically identify as other 'fiscal functions' the 'distribution function' to moderate inequalities in the distribution of market outcomes, and the 'stabilisation function' to moderate macroeconomic fluctuations associated with the business cycle. See, eg, Richard A Musgrave, Peggy B Musgrave and Richard M Bird, *Public Finance in Theory and Practice* (McGraw-Hill Ryerson, 1987).

goods and services corresponding to their own values and preferences, this sector may have distinct advantages over the broader public sector in providing a mix of such goods and services that are more compatible with the demands of a diverse society.[52] Furthermore, to the extent that the charitable sector is more innovative and service-oriented than the traditional public sector, it may provide a more efficient vehicle for the delivery of certain goods and services.[53] In addition, by relieving the public sector from sole responsibility for providing public goods and services, the charitable sector lessens the fiscal burdens of the public sector, making it better able to perform the important redistributive, allocative and stabilisation functions that only it can effectively fulfil.[54]

For all of these reasons, a good argument can be made that the public sector should provide financial support to charitable organisations. Where charitable organisations provide alternative methods of delivering goods and services to those employed by the

[52] See, eg, Lester M Salamon, 'Partners in Public Service: The Scope and Theory of Government-Nonprofit Relations' in Walter W Powell (ed), *The Nonprofit Sector: A Research Handbook* (Yale University Press, 1987) 99. See also Krever, above n 29, 8–13.

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[53] See, eg, Scharf, Cherniavsky and Hogg, above n 50, 5 (suggesting that 'voluntary organizations foster a do-it-yourself culture, which can improve accountability, encourage technological innovation, and promote efficiency in the use of resources, which may be more desirable if government provision is encumbered with a lot of bureaucracy.'). See also Richard Domingue, *The Charity 'Industry' and Its Tax Treatment* (Minister of Supply and Services, 1995) 3 (arguing that '[a]t a time when attempts are being made to reinvent government, it should perhaps be recognized that social services could be provided much more efficiently by charitable organizations. It could be that communities and local agencies are in a better position to assess and meet these needs economically than government employees working in a capital city far removed from the people they serve.').

[54] See, eg, McGregor, above n 27, 442 (noting that charitable contributions 'relieve the government of some of its responsibilities, and make possible some activities, such as those of a cultural nature, which the government might not feel impelled, or be able, to afford to carry on.').

traditional public sector, this quasi-public function should be supported by public funds.[55] To the extent that charitable organisations provide goods and services that might otherwise be provided by the public sector, moreover, economic theory supports the subsidisation of these activities in order to prevent their undersupply.[56]

Rationales for Indirect Subsidies

Although these considerations may provide a rationale for subsidising activities carried on by charitable organisations, they do not explain why these subsidies should take the form of indirect subsidies through the tax system rather than direct subsidies in the form of grants to charitable organisations themselves. Two further rationales are generally offered for these indirect subsidies: (1) that tax incentives may increase the amount of charitable donations by more than the cost of the tax incentive, so that they are a more cost-effective way to subsidise charities than direct government grants; and (2) that indirect subsidies are a more decentralised and pluralistic way to support charities than direct grants, since they enable taxpayers themselves to select the charitable activities and organisations to which they wish to direct public funds.

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[55] Joint Committee on Taxation (US), *Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions*, JCX-4-13 (2013) 33 ('sometimes charitable organizations provide goods or services that the government would otherwise provide. These charitable gifts are then private contributions to create public goods that alleviate the burden on government.')

[56] See, eg, ibid 34; Harold M Hochman and James D Rodgers, 'The Optimal Tax Treatment of Charitable Contributions' (1977 30 *National Tax Journal* 1, 2–3; Gergen, above n 22, 1396–414.

The Cost-Effectiveness of Tax Incentives and Charitable Giving

The cost-effectiveness of a tax incentive for charitable contributions depends on the extent to which the aggregate amount of charitable gifts increases in response to a decrease in their after-tax cost as a result of the incentive — a relationship that economists describe as the 'price elasticity of giving'.[57] Since reductions in the after-tax cost of gifts are financed by forgone tax revenues, the price elasticity of charitable giving reflects the cost-effectiveness of the tax incentive as a means of funding the charitable sector. While a price elasticity greater than one means that charitable donations attributable to the incentive increase by more than the tax cost of the incentive, a price elasticity less than one means that forgone tax revenues attributable to the incentive exceed the resulting increase in charitable donations.

A substantial body of literature has developed over the past 40 years as economists have attempted to obtain reliable estimates of the price elasticity of charitable giving — though most of this literature is from the United States so may reflect aspects of its tax regime for charitable donations as well as its philanthropic culture more generally.[58] Although

[57] For a useful introduction to this concept, see Scharf, Cherniavsky and Hogg, above n 50, 8–9.

[58] For useful summaries of this literature, see J A Johnson, 'The Determinants of Charitable Giving with Special Emphasis on the Income Deduction under the Income Tax — A Survey of the Empirical Literature' (1981) 3 *Canadian Taxation* 258; Charles T Clotfelter, *Federal Tax Policy and Charitable Giving*, (University of Chicago Press, 1985) 16–99; Scharf, Cherniavsky and Hogg, above n 50, 11–17; E Brown, 'Taxes and Charitable Giving: Is There a New Conventional Wisdom?' in *Proceedings of the Eighty-Ninth Annual Conference on Taxation* (National Tax Association, 1996) 153; Productivity Commission, above n 2, G21–G32.

the earliest studies reported relatively low price elasticities of charitable giving,[59] suggesting that tax incentives are a relatively inefficient means of funding charitable organisations,[60] subsequent studies reported price elasticities greater than one.[61] While more recent studies using more sophisticated data reported much lower estimates of price elasticities,[62] again calling into question the efficiency of tax incentives as a method of funding the charitable sector,[63] these results have been challenged by other recent studies reporting price elasticities greater than one.[64] Overall, a meta-analysis of 69 'price

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[59] See, eg, Michael K Taussig, 'Economic Aspects of the Personal Income Tax Treatment of Charitable Contributions' (1967) 20 *National Tax Journal* 1; Robert A Schwartz, 'Personal Philanthropic Contributions' (1970) 78 *Journal of Political Economy* 1264; R D Hood, S A Martin and L S Osberg, 'Economic Determinants of Individual Charitable Donations in Canada' (1977) 10 *Canadian Journal of Economics* 653.

[60] See, eg, Rendall, above n 28, 158–9; Dennis B Wolkoff, 'Proposal for a Radical Alternative to the Charitable Deduction' [1973] *Law Forum* 279, 291–3; Brooks, 'Financing the Voluntary Sector', above n 40, 18–21.

[61] See, eg, Martin Feldstein, 'The Income Tax and Charitable Contributions: Part I — Aggregate and Distributional Effects' (1975) 28 *National Tax Journal* 81; Charles T Clotfelter and C Eugene Steuerle, 'Charitable Contributions' in Henry J Aaron and Joseph A Pechman (eds), *How Taxes Affect Economic Behavior* (Brookings Institution, 1980) 403; Harry Kitchen and Richard Dalton, 'Determinants of Charitable Donations by Families in Canada: A Regional Analysis' (1990) 22 *Applied Economics* 285; Harry Kitchen, 'Determinants of Charitable Donations in Canada: A Comparison over Time' (1992) 24 *Applied Economics* 709.

[62] See, eg, Richard Steinberg, 'Taxes and Giving: New Findings' (1990) 1 *Voluntas* 76; Leonard E Burman and William C Randolph, 'Measuring Permanent Responses to Capital-Gains Tax Changes in Panel Data' (1994) 84 *American Economic Review* 794; William C Randolph, 'Dynamic Income, Progressive Taxes, and the Timing of Charitable Contributions' (1995) 103 *Journal of Political Economy* 709; Kevin Stanton Barrett, Anya M McGuirk, and Richard Steinberg, 'Further Evidence on the Dynamic Impact of Taxes on Charitable Giving' (1997) 50 *National Tax Journal* 321; Pamela Greene and Robert McClelland, 'Taxes and Charitable Giving' (2001) 54 *National Tax Journal* 443.

[63] See, eg, Brooks, 'The Tax Credit for Charitable Contributions', above n 48, 471–2 (concluding on the basis of these studies that 'the best evidence tells us that the amount [of charitable giving stimulated by the Canadian tax credit] is considerably less than the government loses in revenue. … If the government were to repeal the tax credit and allocate the saved revenue through semi-autonomous government agencies to the voluntary sector, much of the charitable sector would have considerable additional revenue.').

[64] See, eg, Laura Tiehan, 'Tax Policy and Charitable Contributions of Money' (2001) 54 *National Tax Journal* 707; Gerald E Auten, Holger Sieg and Charles T Clotfelter, 'Charitable Giving, Income and Taxes:

elasticity of giving' studies from 1967 to 2004 derives a weighted average price elasticity greater than one,[65] suggesting again that tax incentives may be a cost-effective way to subsidise charitable organisations.

In addition to these studies, other studies have examined the relationship between the price elasticity of charitable giving and other variables such as the type of charitable organisation and the income of the donor. While some studies have suggested that the price elasticity of charitable giving is lower for donations to religious organisations than other charities,[66] indicating that tax incentives are an inefficient way to fund religious organisations, these conclusions have been challenged by other studies suggesting that the price elasticity of giving to religious organisations is higher than the price elasticity of giving for other purposes.[67] Other studies have suggested that the price elasticity of charitable giving increases as income increases,[68] suggesting that tax incentives directed

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An Analysis of Panel Data' (2002) 92 *American Economic Review* 371; Arthur C Brooks, 'Income Tax Policy and Charitable Giving' (2007) 26 *Journal of Policy Analysis and Management* 599; Jon Bakija and Bradley T Heim, 'How Does Charitable Giving Respond to Incentives and Income? New Estimates from Panel Data' (2011) 64 *National Tax Journal* 615; Balayet Hossain and Laura Lamb, 'Price Elasticities of Charitable Giving across Donation Sectors in Canada: Is the Tax Incentive Efficient?' [2012] *International Scholarly Research Network Economics* <http://www.hindawi.com/isrn/economics/2012/421789>.

[65] John Peloza and Piers Steel, 'The Price Elasticities of Charitable Contributions: A Meta-Analysis' (2005) 24 *Journal of Public Policy and Marketing* 260.

[66] See, eg, Feldstein, 'The Income Tax and Charitable Contributions: Part I', above n 61; Kitchen and Dalton, above n 61; Hossain and Lamb, above n 64.

[67] See, eg, William S Reece, 'Charitable Contributions: New Evidence on Household Behavior' (1979) 69 *American Economic Review* 142; and Robert J Yetman and Michelle Yetman, 'How Does the Incentive Effect of the Charitable Deduction Vary across Charities?' (2013) 88 *Accounting Review* 1069.

[68] See, eg, Henry Aaron, 'Federal Encouragement of Private Giving' in *Tax Impacts on Philanthropy: Symposium by the Tax Institute of America* (Tax Institute of America, 1972) 211; Graham Glenday, Anil K Gupta, and Henry Pawlak, 'Tax Incentives for Personal Charitable Contributions' (1986) 68 *Review of*

at high-income earners may be more efficient than tax incentives directed at lower-income taxpayers, though this conclusion has also been questioned by other studies.[69] Finally, although empirical studies do not appear to have confirmed the result, one might expect that donations of capital property may be more responsive to the price of charitable giving than contributions from recurring income from which taxpayers may donate a fixed percentage.

Choice, Pluralism, and Indirect Subsidies

An additional argument for subsidising charities indirectly turns on the decentralised manner in which this subsidy is delivered, through contributions by donors, rather than decisions by government agencies.[70] To the extent that these indirect subsidies allow individuals to select the charitable activities to which they wish to direct support without having to obtain the agreement of a political majority, they are generally preferable to direct grants in promoting the very diversity and innovation that accounts for the charitable sector's unique advantages over the traditional public sector. In addition, although it might be argued that direct matching grants would be as consistent with this

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Economics and Statistics 688; and Christopher M Duquette, 'Is Charitable Giving by Nonitemizers Responsive to Tax Incentives? New Evidence' (1999) 52 *National Tax Journal* 195.

[69] See, eg, Michael J Boskin and Martin Feldstein, 'Effects of Charitable Deductions on Contributions by Low Income and Middle Income Households: Evidence from the National Survey of Philanthropy' (1978) 59 *Review of Economics and Statistics* 351; Yong S Choe and Jinook Jeong, 'Charitable Contributions by Low- and Middle-Income Taxpayers: Further Evidence with a New Method' (1993) 66 *National Tax Journal* 33; Bakija and Heim, above n 65, 647 (concluding that '[w]e do not find strong evidence of differences in persistent price elasticities across income levels').

[70] For a similar conclusion, see Krever, above n 29, 11–13. For a more general discussion of the use of the tax system to vote on public spending decisions, see Saul Levmore, 'Taxes as Ballots' (1998) 65 *University of Chicago Law Review* 387.

objective as indirect tax expenditures,[71] the latter are more likely than the former to withstand the kinds of political controls that would undermine their effectiveness in promoting a diverse and independent charitable sector.[72]

As a result, even if tax incentives were a less cost-effective method of subsidising charitable organisations than direct government grants, a strong argument can be made that the former are preferable to the latter on broader policy grounds. As Harold Hochman and James Rodgers have noted: 'Public policy involves much more than whether an additional dollar of subsidies can generate more than a dollar of charity.'[73]

Form of Tax Incentive for Charitable Contributions

Although these arguments may provide a rationale for indirectly subsidising charitable activities through a tax incentive for charitable contributions, they do not clearly define the specific form that this tax incentive should take.

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[71] See, eg, Brooks, 'Financing the Voluntary Sector', above n 40.

[72] See, eg, Bittker, 'The Propriety and Vitality of a Federal Income Tax Deduction', above n 22, 147–52 (concluding that 'I have very little confidence that a system of matching grants could be administered without administrative and congressional investigations, loyalty oaths, informal or implicit warnings against heterodoxy, and the other trappings of governmental support than the tax deduction has, so far, been able to escape'); Goode, above n 17, 163 (considering it 'unlikely' that a system of direct matching grants 'would be as free of undesirable controls or would serve the values of pluralism as well'); John G Simon, 'Charity and Dynasty under the Federal Tax System' (1978) 5 *Probate Lawyer* 1, 82 (observing that '[t]he tax allowance method has at least the virtue that it does not call upon the government to play an active role in singling out the chosen few'); Krever, above n 29, 21–5 (concluding that 'a matching grant system cannot effectively promote the values of pluralism. If pluralist decision making in the allocation of the government funds for charitable purposes is to be preserved, proposals to replace the current tax expenditure with a matching grant system must be viewed with suspicion.'); Evelyn Brody, 'Charities in Tax Reform: Threats to Subsidies Overt and Covert' (1999) 66 *Tennessee Law Review* 687, 757 (suggesting that 'one of the reasons why we use the indirect tax subsidy approach is that we are a very heterogeneous society. As such, we find it difficult to agree on which functions to subsidize.').

[73] Hochman and Rodgers, above n 56, 11.

To the extent that the subsidy is designed to support the provision of quasi-public goods and services, one approach might be to vary the tax benefit according to the public character of the activity carried on by the charitable organisation, providing larger tax benefits for contributions to organisations that fulfil broad public functions and smaller tax benefits for contributions to organisations providing more limited public benefits. According to Wayne Thirsk, for example:

> it would be desirable to disaggregate within an expenditure category and confer different rates of credit on items that contribute different amounts of social benefit. Not all charitable activities, for example, may yield the same degree of social value, in which case a policy of differentiated tax credits is called for.[74]

Similarly, on the basis that high-income donors tend to give more to organisations like hospitals, universities and cultural institutions that provide greater social benefits than churches and religious organisations favoured by lower-income donors,[75] some have

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[74] Thirsk, above n 17, 41–2. See also Hochman and Rodgers, above n 56, 14 (arguing that '[t]he proper level of the tax credit depends … on the "external" content of the benefits that the charity-financed activities confer; it depends, in other words, on the relationship between the marginal evaluations of the primary sharing group, namely voluntary donors, and the community-at-large.'); Scharf, Cherniavsky and Hogg, above n 50, 9 (suggesting that 'we should try to encourage donations to charities that provide goods or services to a large number of consumers'); Hossain and Lamb, above n 64, 6 (suggesting that '[p]ublic policy could be used to tailor tax credit rates to reflect society's preferences and needs by setting unique tax credit rates for the different donation sectors'); Colinvaux, 'Rationale and Changing the Charitable Deduction', above n 10, 1458 (observing that '[i]f a functional or activities-based approach to the tax benefit is the priority, a credit might make more sense than a deduction, perhaps with higher credit percentages (a larger tax benefit) for the preferred type of organization').

[75] For studies suggesting that high-income donors tend to give more to hospitals, universities, and cultural institutions, while low-income donors favour churches and religious organisations, see Taussig, above n 59; Martin Feldstein, 'The Income Tax and Charitable Contributions: Part II — The Impact on Religious, Educational and Other Organizations' (1975) 28 *National Tax Journal* 209; Kitchen and Dalton, above n 61.

argued in favour of a deduction for charitable contributions on the basis that it would provide a larger indirect subsidy to 'more worthy' organisations than a revenue-neutral flat-rate credit.[76]

Although this approach may be theoretically sound, it is likely to founder on the actual measurement of 'public benefits', which are subject to dispute,[77] and can depend on value judgments that are often difficult to reconcile.[78] More importantly, since an indirect subsidy in the form of a tax incentive is designed to promote pluralism in the allocation of public funds, any decision to favour some activities over others is arguably incompatible with the rationale for a tax incentive as opposed to direct government grants. Indeed, to the extent that pluralism itself is regarded as a public good, it follows

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[76] See, Faye Woodman, 'The Tax Treatment of Charities and Charitable Donations since the Carter Commission: Past Reforms and Present Problems"Problems' (1988) 26 *Osgoode Hall Law Journal* 537, 575 ('Simply, an argument may be made that some institutions are richer contributors to the social, cultural, and intellectual mosaic than others. Hence, it may be possible to justify a system of deduction that is skewed in the direction of the favourite charities of upper-income taxpayers.'). For a 'somewhat less elitist' version of this argument, see Simon, above n 72, 69 (suggesting that 'whether or not wealthy givers are better suited to uphold cultural and intellectual standards, affluent individuals are more likely to be idiosyncratic or unorthodox' and contending that this 'idiosyncrasy and heterodoxy' might 'justify … the inegalitarian charitable deduction in the name of pluralism').

[77] See, eg, Scharf, Cherniavsky and Hogg, above n 50, 28 ('Available evidence … seems to suggest that the activities of the nonprofit organizations and charities typically supported by the rich do not produce higher valued externalities than do those supported by lower income earners. In fact, the converse may be true: universities and cultural organizations are charities that may be viewed as more "local" than churches and religious organizations. Thus larger giving by high income earners should be discouraged on efficiency grounds, while smaller gifts by low income earners should be encouraged.'); Duff, 'Charitable Contributions and the Personal Income Tax', above n 8, 435 ('In a pluralistic society, … who is to say that the public benefits associated with religious activities are any less than those associated with higher education?').

[78] See, eg, Wolkoff, above n 60, 288 (most religious gifts 'help maintain the donors' congregations' and are 'directed at satisfying the needs of the donor, not at satisfying the needs of society at large'); Bromley, above n 24, 14 ('Religious activities are justifiably "charitable" on the basis that they are beneficial to the community as a whole because they contribute to bettering the conduct and character of citizens.').

that a tax incentive for charitable contributions should not discriminate among different activities or organisations, except to deny charitable status to organisations the aims or activities of which contradict the values of a free and democratic society. To the extent that governments wish to prefer certain activities or organisations, moreover, they can (and often do) do so through direct grants.

Alternatively, to the extent that the tax incentive is intended to subsidise the charitable sector in a cost-effective manner, the tax incentive might vary according to the price elasticity of the donation, with lesser tax benefits for charitable gifts that are determined to be less price elastic and larger tax benefits for charitable gifts that are determined to be more price elastic. On this basis, some proposals have relied on studies suggesting that high-income taxpayers are more sensitive to the price of charitable giving than low-income taxpayers to support tax incentives, such as deductions or exemptions on substantial gifts of property, that provide greater tax benefits to high-income taxpayers than low-income taxpayers.[79] Others have relied on studies suggesting that charitable gifts to religious organisations are less elastic than charitable gifts to health and education to suggest that donations to the former should attract lower tax benefits than donations to the latter.[80]

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[79] See, eg, Productivity Commission, above n 2, G29 (suggesting that 'policies targeted at promoting giving by high-income individuals may be more (treasury) efficient').

[80] Hossain and Lamb, above n 64, 6 (concluding that '[d]onations to religious organizations are not price elastic suggesting that the tax credit may not be fiscally efficient for the religious sector').

The problem with this argument for the design of a charitable contributions tax incentive is threefold. First, as the brief summary of empirical studies above shows, there is little consensus on the relationship between price elasticity of charitable giving and variables such as the type of charitable organisation and the income of the donor.[81] Second, to the extent that the tax incentives for charitable giving provide more generous tax benefits to high-income taxpayers than low-income taxpayers, they raise concerns about the equitable distribution of tax benefits across income classes that must be weighed against the presumed cost-effectiveness of these incentives. Finally, to the extent that tax incentives favour donations to one type of charitable organisation over another, they contradict one of the main objectives of an indirect subsidy for charitable contributions, which is to promote pluralism in the allocation of public funds to the charitable sector.

For these reasons, one might reasonably criticise deductions for charitable contributions, which differentiate among donors by providing a larger tax subsidy for contributions from high-income donors than low-income donors and no subsidy for contributions from donors whose incomes are too low to pay any tax. To the extent that charitable contributions operate as 'votes' to direct public subsidies to the organisations of the donor's choosing,[82] a deduction weighs the votes of high-income donors more heavily than those of lower-income donors and completely disenfranchises the lowest-income donors who pay no tax. For this reason as well, one might reasonably criticise the non-

[81] See above nn 66–69 and accompanying text.

[82] Levmore, above n 70.

taxation of gains on gifts of property, which provides the greatest tax benefit not only to high-income taxpayers subject to the highest marginal tax rate, but to particularly affluent taxpayers with property that has increased in value.[83] Rather than promoting genuine pluralism, these tax incentives are apt to foster a kind of 'philanthropic paternalism' as a result of which the mix of goods and services provided by the charitable sector is shaped more by an affluent minority than by the community as a whole.

Consequently, as I have argued elsewhere,[84] a tax incentive for charitable contributions should ideally take the form of a tax credit or rebate the value of which does not vary according to the donor's level of income.[85] In addition, the credit should be fully refundable in order to ensure that this subsidy is available not only for donations from donors with tax otherwise payable but also for contributions from donors whose incomes are too low to pay tax.[86]

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[83] For an excellent critique of US rules which allow taxpayers to deduct the fair market value of charitable gifts of property without paying tax on accrued gains, see Roger Colinvaux, 'Charitable Contributions of Property: A Broken System Reimagined' (2013) 50 *Harvard Journal on Legislation* 263.

[84] Duff, 'Charitable Contributions and the Personal Income Tax', above n 8, 435–7; Duff, 'The Tax Treatment of Charitable Contributions in Canada', above n 12, 67–9.

[85] For a similar argument to this effect, see Krever, above n 29, 19–21, 25–6 (criticising the 'upside-down' character of a deduction and recommending a flat-rate 'tax rebate' which 'could be used to offset part of the taxpayer's tax liability'). Alternatively, the credit might include a declining rate structure based on the amount claimed, thereby promoting a more genuine pluralism by providing a larger subsidy for small and medium-sized donations and a smaller subsidy for large donations.

[86] For similar arguments, see McDaniel, above n 38, 391 (suggesting that society would be 'greatly enhanced' by extending the pluralism of a tax incentive for charitable contributions to 100 per cent of contributors); Brooks, 'Financing the Voluntary Sector', above n 40, 23–4 (favouring a refundable tax credit).

Recent Canadian Experience

Like Australia and the United States, Canada used to provide a deduction for charitable contributions, which was first introduced in 1917 for a limited category of donations, and expanded in 1930 to donations to all charitable organisations.[87] In 1988, however, this deduction was converted into a non-refundable credit. The following sections consider the rationale and effects of this tax reform as well as more recent reforms which have exempted gifts of property from tax on capital gains and increased income-related ceilings on the amount that individual taxpayers may claim in respect of charitable gifts.

Conversion of Deduction to Credit

Since a deduction for charitable gifts provides a tax benefit equivalent to the donor's marginal tax rate, it is worth more to high-income donors than low-income donors, resulting in a regressive distribution of the indirect subsidy for charitable activities. Although the Canadian Royal Commission on Taxation acknowledged this regressivity when it examined the charitable deduction in 1966, maintaining that it 'would propose a system of credits for charitable donations' if equity were the only consideration,[88] the Commission resisted this conclusion on the grounds that 'private philanthropy performs a worthwhile social purpose' and '[t]he credit approach would … tend to stifle charitable

[87] Duff, 'Charitable Contributions and the Personal Income Tax', above n 8, 408.

[88] Royal Commission on Taxation, above n 45, vol 3, 222 (explaining that '[t]he tax concession would … be related only to the size of the donation and would not also depend upon the income of the taxpayer').

giving by upper income individuals and families.'[89] As a result, it concluded, 'the fundamental feature of the present system, the deduction of charitable donations from income, should be continued.'[90]

In the 1970s and 1980s, however, deductions for charitable contributions came under increasing criticism in Canada and the United States, on the basis that they were regressive tax expenditures that should be replaced by matching grants or tax credits.[91] In 1987, the Canadian federal government accepted these criticisms, announcing that it would amend the *Income Tax Act* ('*ITA*')[92] by converting the deduction to a credit that would 'increase fairness by basing tax assistance on the amount given, regardless of the income level of the donor.'[93] Instead of establishing a flat-rate credit, however, the government introduced a two-tiered credit according to which charitable contributions claimed in the year up to $250 would be creditable at the lowest marginal rate while amounts exceeding this threshold would be creditable at the top marginal rate.[94] At the time, this statutory rule implied a federal credit of 17 per cent on amounts claimed up to $250 and 29 per cent on amounts exceeding $250 — or a combined federal and provincial credit of approximately 25 per cent on amounts up to $250 and 50 per cent on

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[89] Ibid.

[90] Ibid.

[91] See, eg, McDaniel, above n 38; Thirsk, above n 17; Brooks, 'Financing the Voluntary Sector', above n 40.

[92] RSC 1985, c 1.

[93] Michael Wilson, *Tax Reform 1987: White Paper* (Minister of Supply and Services, 1987) 32.

[94] *Income Tax Act*, RSC 1985, c 1, s 118.1(3) }('*ITA*'), inserted by SC 1988, c 55, s 92.

amounts exceeding this threshold. The threshold was reduced to $200 in 1994,[95] the lowest marginal rate is now 15 per cent, and provincial governments have varied their credit rates over time, so that the combined federal and provincial credits now range from approximately 20–25 per cent on amounts claimed up to $200 and approximately 40–50 per cent on amounts over this threshold.

The reasons for the two-tiered credit were not fully explained by the government, but are partly reflected in its statement that the credit would be designed to 'maintain a substantial incentive for charitable giving.'[96] Since a flat-rate credit could achieve this result only if the rate were set at or near the top marginal rate, which would substantially increase the cost of the tax incentive in terms of forgone tax revenues,[97] the government settled on a two-tiered credit in order to maintain a comparable incentive to a deduction for high-income donors giving more than $250 per year, while limiting the incentive for all donors giving less than this amount.

Although the government estimated that the proposed amendment would cost an additional $80 million per year, increasing the aggregate level of federal assistance for

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[95] SC 1995, c 3, s 34.

[96] Wilson, above n 93, 32.

[97] According to a Canadian study published in 1986, a revenue-neutral tax credit set at a combined federal and provincial rate of 29 per cent would cause aggregate donations to fall by $10 million, while a credit set at a combined federal and provincial rate of 50 per cent would increase aggregate donations by only $6 million at a cost in terms of forgone revenue of $422 million: Glenday, Gupta and Pawlak, above n 68. See also Hood, Martin and Osberg, above n 59.

charitable giving to $900 million in 1988,[98] figures indicate that the cost of the charitable credit was $670 million in 1988, $750 million in 1989, $815 million in 1990, $845 million in 1991, $865 million in 1992, $880 million in 1993, and reached $900 million only in 1994.[99] As a result, although other factors undoubtedly influenced the level of charitable contributions and the total amount of forgone revenue, it appears that the conversion of the deduction into a two-tiered credit reduced the aggregate amount of federal assistance for charitable giving.

With respect to the distribution of this federal assistance, analysis of tax return statistics from 1988 indicates that the two-tiered credit was more generous than a deduction for low-income taxpayers, and essentially the same as a deduction for middle- and high-income taxpayers. As Table 1 illustrates, since average contributions by donors with incomes less than $25 000 exceeded the $250 threshold, a portion of these gifts was creditable at the top marginal rate, resulting in a more generous tax benefit than that which would have resulted from a deduction at the 17 per cent federal marginal tax rate applicable to taxpayers with incomes less than $25 000. For taxpayers with incomes

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[98] Department of Finance (Canada), *Supplementary Information Relating to Tax Reform Measures* (1987) 10.

[99] See Government of Canada, *Personal Income Tax Expenditures* (Department of Finance, 1992) 14; Government of Canada, *Personal and Corporate Income Tax Expenditures* (Department of Finance, 1993) 19; Government of Canada, *Tax Expenditures* (Department of Finance, 1997) 29.

Table 1

Average Federal Charitable Tax Credit Rates by Income Class

(1988)

Income Class ($)	Average Donation for Taxfilers Claiming Donations[100] ($)	Average Federal Charitable Tax Credit[101] ($)	Average Federal Charitable Tax Credit Rate[102] (%)	Federal Marginal Tax Rate (%)
1–25 000	333.37	81.44	24.4	17
25 000–50 000	453.39	115.22	25.4	17–26
50 000–100 000	772.91	203.14	26.3	26–29
100 000–250 000	2100.39	583.66	27.8	29
Over 250 000	9542.42	2739.60	28.2	29

Source: Calculated from figures in Revenue Canada, *Taxation Statistics 1990: 1988 Tax Year* (1990) table 2.

above this level, however, the average rate at which charitable contributions were credited differed very little from that rate that would have resulted from a deduction at the federal marginal tax rate, which at the time was 17 per cent on income up to $27 500,

[100] Calculated as the aggregate of charitable donations reported by taxfilers in the income category, divided by the number of taxfilers in the income category claiming the charitable donations credit.

[101] Calculated as the aggregate value of tax credits received by taxfilers in the income category divided by the number of taxfilers in the income category claiming the charitable donations credit.

[102] Calculated as the aggregate value of tax credits received by taxfilerstax filers in the income category divided by the aggregate value of charitable donations reported by taxfilers in the income category.

26 per cent on income from $27 500 to $55 000, and 29 per cent on income exceeding $55 000.

With an additional incentive for low-income taxpayers to contribute to charitable organisations, one might have expected to see an increase in the average amount and/or frequency of charitable contributions among this income group. As Table 2 indicates, although the average amount contributed by donors with incomes less than $50 000 increased from 1987 to 1988, the percentage of tax filers with incomes less than $50 000 who claimed the credit decreased. More significantly, for taxpayers with incomes greater than $50 000, both the average amount donated as well as the percentage of taxfilers

Table 2

Average Donation and Donation Frequency by Income Class

(1987 and 1988)

Income Class ($)	Average Donation for Taxfilers Claiming Donations ($)		Percentage of Taxfilers in Income Class Claiming Credit (%)	
	1987	1988	1987	1988
1–25 000	317	333	18.9	17.7
25 000–50 000	416	453	50.0	47.8
50 000–100 000	801	773	69.2	66.8
100 000–250 000	2362	2100	76.7	73.7
Over 250 000	11 866	9542	79.4	73.8

Source: Calculated from figures in Revenue Canada, *Taxation Statistics 1989–90: 1987–88 Tax Years* (1989–90) table 2.

claiming charitable gifts decreased noticeably.[103] Overall, however, aggregate donations claimed by taxpayers increased substantially from 1987 to 1988, growing by 16.3 per cent from $2.27 billion in 1987 to $2.64 billion in 1988.[104]

As a result, as might have been expected from a measure that replaced an income-related deduction with a credit based on amounts donated, the reform appears to have shifted the distribution of charitable giving — and tax incentives associated with these gifts — from higher-income donors to lower-income donors. As Table 3 indicates, this pattern endured until the mid-1990s, as average donations continued to increase among lower-income groups, while average donations among higher-income groups continued to decline before eventually recovering to 1987 levels only by 1996.

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[103] Although other factors undoubtedly contributed to these results, the most significant of which was a reduction in the top marginal rate of federal income tax from 34 per cent to 29%, per cent, which increased the price of charitable giving for high-income taxpayers. Since the top marginal rate of 34% per cent applied to income exceeding approximately $65 000, the reduction of this rate to 29 per cent and the conversion of the deduction to a credit with a maximum rate of 29 per cent significantly increased the price of charitable giving for taxpayers with incomes above this amount.

[104] Calculated from figures in Revenue Canada, *Taxation Statistics 1989–90: 1987–88 Tax Years* (1989–90) table 2.

Table 3

Average Donation by Income Class

(1989 to 1996)

Income Class ($)	Average Donation for Taxfilers Claiming Donations ($)							
	1989	1990	1991	1992	1993	1994	1995	1996
1–25 000	345	345	362	371	392	387	415	425
25 000–50 000	455	472	480	485	501	498	531	552
50 000–100 000	779	752	749	758	754	739	763	833
100 000–250 000	2047	2108	2100	2068	2100	1741	2040	2271
Over 250 000	9688	9535	10324	9317	8717	8026	10 378	12 728

Source: Calculated from figures in Revenue Canada, *Taxation Statistics 1991–98: 1989–96 Tax Years* (1991–98) table 2.

During this period, aggregate donations claimed by taxpayers continued to increase — rising from $2.93 billion in 1989 to $4.12 billion in 1996, an average annual increase of approximately 5 per cent — despite little growth during the economic downturn of the early 1990s.[105]

At the same time, however, as Table 4 demonstrates, the percentage of donors in all income classes but the highest continued to decline during this period. It is not clear what

[105] Calculated from figures in Revenue Canada, *Taxation Statistics 1991–98: 1989–96 Tax Years* (1991–98) table 2.

precipitated this general decline, but there is no evidence that the switch from a deduction to a credit was a cause.

Table 4

Frequency of Donations by Income Class

(1989 to 1996)

Income Class ($)	Percentage of Taxfilers in Income Class Claiming Donations (%)							
	1989	1990	1991	1992	1993	1994	1995	1996
1–25 000	17.7	17.7	17.5	16.0	15.5	14.1	14.3	14.0
25 000–50 000	46.4	46.5	45.8	44.7	43.1	41.3	41.6	42.8
50 000–100 000	65.2	65.2	65.2	65.2	63.6	59.1	60.1	59.6
100 000–250 000	73.5	74.8	73.7	75.1	73.7	67.1	73.0	72.5
Over 250 000	75.6	76.3	77.1	76.4	75.2	72.1	75.6	77.2

Source: Calculated from figures in Revenue Canada, *Taxation Statistics 1991–98: 1989–96 Tax Years* (1991–98) table 2.

Capital Gains Exemptions on Gifts of Property and Increased Income-Related Ceilings

While the conversion of the charitable deduction into a credit increased average donations by lower-income groups and decreased average donations among higher-income groups, more recent amendments have reversed the trend by exempting gains on gifts of property and increasing income-related ceilings on the percentage of a taxpayer's income that can be sheltered by the charitable credit.

Gifts of property became taxable in Canada in 1972, when the federal government introduced a tax on capital gains, which were not included in the concept of income that Canada inherited from the United Kingdom. Following the recommendation of the Royal Commission on Taxation, the new rules applied to accrued gains on the transfer of capital property, which are deemed to have been disposed of for proceeds equal to fair market value.[106] As a result, it followed that a taxpayer donating property to a charity could claim the full value of the property in computing the amount of the charitable deduction (and later credit) but would have to pay tax on the capital gain resulting from its disposition.

Before the new rules were enacted, concerns were expressed about imposing a tax on gifts of property to charities.[107] According to House of Commons and Senate Committees examining the proposed legislation, gifts of property to charities should not be subject to tax as a capital gain but should be deductible only to the extent of their cost to the donor, not their market value at the time of the gift.[108] Although the federal government initially rejected these proposals, the *ITA* was amended in 1972, shortly after the new rules came into effect, to allow taxpayers making gifts of property to elect any amount between the cost of the property and its fair market value at the time of the gift, which would apply

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[106] *ITA* ss 69(1)(b) (which applies to gifts inter vivos), 70(5) (which applies to capital property transferred at death).

[107] See the discussion in Bird and Bucovetsky, above n 39, 23–8.

[108] See ibid 25.

both to determine the amount of any capital gain recognised for tax and the amount deductible as a charitable contribution.[109]

While this amendment was consistent with the recommendations of the Commons and Senate Committees, it did not go as far as others, most notably representatives from private museums, recommended. Emphasising the need to compete for donations with museums in the United States, these representatives suggested that gifts of property should be non-taxable and fully deductible based on their fair market value at the time of the gift, as was the case (and continues to be the case) in the United States.[110] On this basis, the *ITA* was amended in 1977 to exempt from capital gains tax any gain on a gift to designated institutions of 'cultural property' certified under the *Cultural Property Export and Import Act*.[111]

Notwithstanding considerable criticism of this approach in the United States,[112] more recent amendments have expanded on this rule by introducing further exemptions for gifts of property. In 1997, the *ITA* was amended to reduce the amount included in respect

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[109] See former s 110(2.2), added by SC 1973–74, c 14, s 35(7). This rule is now s 118.1(6) of the *ITA*.

[110] See Bird and Bucovetsky, above n 39, 24–5.

[111] See *ITA* s 39(1)(a)(i.1), inserted by SC 1974–75–76, c 50, s 48, proclaimed in force from 6 September 1977.

[112] See, eg, Andrews, above n 21, 372 (explaining that this approach is arbitrary and inequitable since '[t]he magnitude of the subsidy is a function of the amount of unrealized appreciation in relation to the basis of the property and the taxpayer's rates of tax, being the greatest for taxpayers in highest brackets and with the most appreciation'); and Goode, above n 17, 167 (observing that this approach 'tempts some donors to place excessive values on their gifts, occasionally with the collusion of recipient institutions'). For a more recent critique, see Colinvaux, 'Charitable Contributions of Property', above n 83.

of gains on gifts of publicly-traded securities to half of the amount that would otherwise be included.[113] According to the federal budget announcing this partial exemption, it was introduced to 'provide a level of tax assistance for donations of eligible capital property that is comparable to that in the US'[114] in order to 'facilitate the transfer of capital property to charities to help them respond to the needs of Canadians.'[115] A similar rule was enacted for gifts of ecologically-sensitive land in 2001,[116] and gifts of both types of property were made fully exempt in 2006.[117] Most recently, some have suggested that this treatment should be extended to gifts of real estate and private corporation shares,[118] and the House of Commons Standing Committee on Finance recently recommended that 'the federal government explore the feasibility and cost of eliminating or lowering the

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[113] *ITA* s 38(a.1), inserted by SC 1998, c 19, s 6, applicable to gifts made after 18 February 1997. For critical assessments of this incentive, see Lisa Philipps, 'Thinking Critically about the Taxation of Capital Gains on Donated Public Securities (or Looking Paragraph 38(a.1) in the Mouth)' (2003) 51 *Canadian Tax Journal* 913; David G Duff, 'Special Federal Tax Assistance for Charitable Donations of Publicly Traded Securities: A Tax Expenditure Analysis' (2003) 51 *Canadian Tax Journal* 925.

[114] Department of Finance (Canada), *Tax Measures: Supplementary Information* (1997). Although donations of property are fully exempt from capital gains tax in the US, the Canadian Department of Finance explains that a 3/8 inclusion produces a comparable level of tax assistance in Canada due to the fact that the top marginal rate of tax in Canada is greater than that in the US, resulting in a lower tax price of donations in Canada than in the US.

[115] Ibid.

[116] *ITA* s 38(a.2), inserted by SC 2001, c 17, s 22(3), applicable to gifts made after 27 February 2000.

[117] SC 2006, c 4, s 51(1), amending *ITA* s 38(a.2), applicable to gifts made after 1 May 2006; SC 2006, c 28, s 4(3), amending *ITA* s 38(a.1), applicable to gifts made after 1 May 2006.

[118] See, eg, Malcolm Burrows, 'Unlocking More Wealth: How to Improve Federal Tax Policy for Canadian Charities' (e-Brief, C D Howe Institute, 15 September 2009).

capital gains tax on charitable donations of real or immovable property or the shares of private corporations to charities.'[119]

In addition to these measures, other amendments have eliminated any income-related ceiling on creditable gifts of ecologically-sensitive land,[120] and increased income-related ceilings on creditable gifts of other kinds of property from 20 per cent to 75 per cent,[121] and to 100 per cent of taxable capital gains resulting from gifts capital property.[122] In each case, these amendments were designed to 'encourage larger donations to charitable organizations'.[123]

As Malcolm Burrows explains, these measures reflect a shift in Canadian policy regarding tax incentives for charitable contributions away from efforts to increase the number and amount of modest gifts paid out of ordinary income toward measures designed to encourage substantial donations of property.[124] Although the reasons for this shift are not entirely clear, they presumably include the view that gifts of capital assets

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[119] House of Commons Standing Committee on Finance, Parliament of Canada, *Tax Incentives for Charitable Giving in Canada* (2013) 25.

[120] *ITA* s 118.1(1) (definition of 'total gifts' para (d)), as amended by SC 1997, c 25, s 26(1).

[121] *ITA* s 118.1(1) (definition of 'total gifts' para (a)(iii)), as amended by SC 1997, c 25, s 26, applicable after 1995, and SC 1998, c 19, s 22(14), applicable after 1996.

[122] *ITA* s 118.1(1) (definition of 'total gifts' para (a)(iii)), as amended by SC 1998, c 19, s 22(14), applicable after 1997.

[123] Department of Finance (Canada), *Tax Measures: Supplementary Information* (1996). See also Department of Finance (Canada), *Tax Measures: Supplementary Information* (1997), suggesting that the increased ceiling would 'encourage more donations by providing an enhanced ability to claim tax assistance in the year of donation for the most generous donors.'

[124] Burrows, 'Charitable Tax Incentives in Canada', above n 9.

are more price elastic than gifts out of ordinary income, justifying an additional incentive as a cost-effective way to finance the charitable sector in an era of government restraint.

Although the extent to which these measures have increased the aggregate amount of charitable giving, as opposed to altering its form, is not entirely clear, aggregate donations claimed by taxpayers increased substantially following these reforms, from $4.12 billion in 1996 to $5.7 billion in 2001 and $9.5 billion in 2007 — representing an average annual increase during these years of almost 8 per cent — before the global financial crisis caused donations to decline in 2008.[125] While positive economic circumstances during this period were probably the most significant contributor to these increases, higher ceilings and exemptions for gifts of property may also have played a part.

As with the shift from a deduction to a credit in 1988, these measures also affected the distribution of charitable donations by income class, but in a way that favoured charitable donations by high-income taxpayers but not low- and middle-income taxpayers. As Table 5 illustrates, before the global financial crisis caused average donations by all income classes to decline in 2008, average donations by donors earning less than $25 000 increased only slightly from 2001 to 2007 while average donations by donors earning over $250 000 increased during these years from $14 474 to $18 631.

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[125] Calculated from figures in Canada Revenue Agency, *Income Statistics and GST/HST Statistics: 2001–08 Tax Years*, table 2 <http://www.cra-arc.gc.ca/gncy/stts/t1fnl-eng.html>.

Table 5

Average Donation by Income Class

(2001 to 2008)

Income Class ($)	Average Donation for Taxfilers Claiming Donations ($)							
	2001	2002	2003	2004	2005	2006	2007	2008
1–25 000	496	499	527	544	547	537	543	532
25 000–50 000	703	752	807	853	894	905	887	866
50 000–100 000	938	1012	1134	1139	1276	1354	1301	1217
100 000–250 000	2230	2473	2714	2475	2644	2729	2607	2366
Over 250 000	14 474	15 053	16 432	16 257	16 792	18 185	18 631	16 844

Source: Calculated from figures in Canada Revenue Agency, *Income Statistics and GST/HST Statistics: 2001–08 Tax Years* (2003–10) table 2 <http://www.cra-arc.gc.ca/gncy/stts/t1fnl-eng.html>.

As Table 6 further demonstrates, higher ceilings and the exemption of capital gains on gifts of ecologically-sensitive land and publicly-traded shares also appear to have resulted in only a modest reduction on the percentage of high-income taxpayers claiming the charitable contributions credit, which continued to decline for all other income classes.

Table 6

Frequency of Donations by Income Class

(2001 to 2008)

Income Class ($)	Percentage of Taxfilers in Income Class Claiming Donations (%)							
	2001	2002	2003	2004	2005	2006	2007	2008
1–25 000	11.8	11.1	10.6	10.4	9.8	8.6	7.2	6.9
25 000–50 000	34.6	32.9	32.6	33.6	32.7	32.1	30.0	29.2
50 000–100 000	51.2	50.3	49.2	50.2	49.3	47.3	44.9	44.2
100 000–250 000	66.6	62.8	66.1	67.1	66.0	62.8	61.3	59.5
Over 250 000	75.1	75.0	76.6	77.3	76.6	74.4	73.6	73.3

Source: Calculated from figures in Canada Revenue Agency, *Income Statistics and GST/HST Statistics: 2001–08 Tax Years* (2003–10) table 2 <http://www.cra-arc.gc.ca/gncy/stts/t1fnl-eng.html>.

Finally, as Table 7 indicates, the share of charitable donations made and charitable tax credits obtained by low- and middle-income groups declined sharply from 1996 to 2007, while those of the highest income groups increased significantly during this period.

Table 7

Shares of Charitable Donations and Charitable Tax Credits by Income Class

(1996 and 2007)

Income Class ($)	1996		2007	
	Share of Charitable Donations (%)	Share of Charitable Tax Credits (%)	Share of Charitable Donations (%)	Share of Charitable Tax Credits (%)
1–25 000	17.0	16.1	4.4	4.0
25 000–50 000	32.5	32.0	19.5	18.8
50 000–100 000	26.5	26.5	29.7	29.4
100 000–250 000	11.3	11.8	19.0	19.2
Over 250 000	12.7	13.6	27.4	28.5

Source: Calculated from figures in Revenue Canada, *Taxation Statistics 1998: 1996 Taxation Year* (1998) table 2; Canada Revenue Agency, *Income Statistics and GST/HST Statistics: 2008 Tax Year* (2010) table 2 <http://www.cra-arc.gc.ca/gncy/stts/t1fnl-eng.html>.

Although many factors undoubtedly account for these changes, including increases in the concentration of income and wealth over the last two decades, expanded exemptions for gifts of property and higher income-related ceilings on creditable contributions have also played a significant part. As a result, as Table 8 illustrates, the percentage of charitable contributions made and charitable credits obtained by donors with incomes exceeding $250 000 is significantly larger than their percentage of all taxfilers, donors and even taxable income, while the inverse is the case for donors with incomes less than $50 000.

Table 8

Shares of Taxfilers, Donors, Taxable Income, Donations and Credits by Income Class (2007)

Income Class ($)	Share of Taxfilers (%)	Share of Donors (%)	Share of Taxable Income (%)	Share of Charitable Donations (%)	Share of Charitable Tax Credits (%)
1–25 000	43.5	13.1	14.4	4.4	4.0
25 000–50 000	28.4	35.7	17.6	19.5	18.8
50 000–100 000	19.6	37.0	37.4	29.7	29.4
100 000–250 000	4.6	11.8	17.3	19.0	19.2
Over 250 000	0.77	2.38	13.3	27.4	28.5

Source: Calculated from figures in Canada Revenue Agency, *Income Statistics and GST/HST Statistics: 2008 Tax Year* (2010) table 2 <http://www.cra-arc.gc.ca/gncy/stts/t1fnl-eng.html>.

Conclusion

Experience in Canada over the past 25 years illustrates the pursuit of two very different approaches to the encouragement of charitable gifts: (1) the replacement of a deduction with a credit, which was intended to 'increase fairness by basing tax assistance on the amount given, regardless of the income level of the donor'; and (2) the introduction of capital gains exemptions on gifts of property and increased income-related ceilings on creditable donations which are intended to 'encourage larger donations to charitable organizations'. While the survey of theoretical literature in this chapter explains the rationales for these different approaches, the empirical analysis demonstrates the effects

of these different approaches on aggregate charitable donations and on the distribution of donations and tax benefits among different income classes.

Given my conclusions above about the rationale for tax-assisted charitable giving, it is not surprising that I generally support the 1988 reform that converted the charitable deduction to a credit, but am troubled by more recent reforms introducing capital gains exemptions for gifts of property and increasing income-related ceilings on creditable donations. While the former resulted in a more equitable distribution of charitable donations and charitable tax credits, encouraging a more diverse and pluralistic charitable sector, the latter has accentuated a trend toward philanthropic 'paternalism' in which charitable organisations increasingly come to depend on a small number of extremely affluent donors to support their activities. At the same time, increases in income-related ceilings may allow these donors to effectively opt out of paying most income taxes by making charitable donations that shelter other income from tax, potentially undermining support for the public sector and the tax system more generally.[126]

At the same time, it is important to recognise that none of these reforms appear to have addressed the greatest risk to a diverse and vibrant charitable sector resulting from a long-term decline in the percentage of taxfilers in all income classes to report contributions to

[126] On the important role of an income-related ceiling on the deduction (or credit) of charitable contributions, see Peter J Wiedenbeck, 'Charitable Contributions: A Policy Perspective' (1985) 50 *Missouri Law Review* 85, 115 (explaining that the existence of a maximum limit on deductible — or creditable — donations in any year 'reflects a judgment … that although charitable contributions are important and should be encouraged, every taxpayer should bear part of the burden of supporting the government').

charitable organisations. Financial assistance is, of course, not the only nor always the most valuable way to contribute to a charitable purpose. Individuals may make monetary and non-monetary contributions that they do not (or cannot) claim for tax purposes. However, apparent declines in the frequency of charitable giving documented in Tables 4 and 6 suggest a disturbing trend which calls for creative thinking about effective policy responses. Although tax policy may play a limited role in this response, one potentially promising initiative is a "First-time Donor's Super Credit" announced by the Canadian federal government in its 2013 Budget.[127] Based on proposals for a so-called 'Stretch Tax Credit' that would help renew Canada's donor base by providing an enhanced tax credit for new donors[128] this new credit will increase the value of the federal charitable donations tax credit by 25% on the first $1,000 of donations claimed by taxpayers if they or their spouses have not claimed the charitable contributions tax credit in any taxation year since 2007.[129] As a result, Canada has introduced yet another charitable tax measure for other countries to study and evaluate.

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[127] James M. Flaherty, Minister of Finance, *Jobs, Growth and Long-term Prosperity: Economic Action Plan 2013*, (March 21, 2013), 237, available at <http://www.budget.gc.ca/2013/doc/plan/budget2013-eng.pdf>.

[128] See Imagine Canada, 'Stretch Tax Credit for Charitable Giving' <http://www.imaginecanada.ca/node/221>.

[129] According to the Budget, this credit is available in respect of donations made on or after March 21, 2013 and may be claimed only once in the 2013 or subsequent taxation year before 2018.