PearTree

New Alternative Minimum Tax (AMT) Negative Impact on Donations

The new Alternative Minimum Tax (AMT) legislation comes into force on January 1, 2024, resulting in the material reduction in donations made to charities unless through our collective advocacy the legislation is rolled back in whole or in part.

What is AMT

Introduced in 1986, AMT is a parallel tax calculation that applies to high income earning taxpayers, defined as of Jan 1, 2024 as those earning more than $173,000 annually, who could otherwise pay little to no tax due to various deductions and credits. The AMT is "alternative" since taxpayers calculate both the amount of their regular tax as per the T1 return net of entirely proper and legitimate deductions and credits and then calculate the AMT adding back into income a list of deductions such as carrying charges and capital gains, and disallowing certain credits. Taxpayers are required to pay the higher of either their regular tax, or the AMT.

By way of a simple example, if the regular tax payable is $100,000 but the AMT calculation results in tax owing of $120,000 then the taxpayer pays the $120,000 and carries forward the $20,000 as a tax credit usable in the next seven years, after which the AMT credit expires.

Historically, donation tax credits were deducted in the same manner both under the AMT calculation and the regular taxes calculation, thus having no effect on the outcome. Under the new rules, 50% of the credit – including cash donations – is deducted against AMT vs 100% of the credit being deducted under the regular tax payable. If we use the same example as above, if you donate $100,000, the regular tax payable of $100,000 is reduced by a $50,000 donation credit, while the AMT of $120,000 is only reduced by a $25,000 donation credit. In this case $45,000 of AMT will be paid.

In 2006, capital gains tax was eliminated on the donation of publicly listed securities. The 2006 tax incentive resulted in billions more donated to charity largely supporting health care. Under the new rules, 30% of the capital gain will be added back into income. A 30% add back will reduce donations. Note that the rules related to the capital gains on flow-through shares differ, and they will also be negatively impacted by the proposed new rules.

The potentially devastating AMT impact results from the nature and timing of the largest donations to charity. More often than not, the major transformational gifts are made when there is a one-time economic event such as the sale of a business, a property, or a C-suite retirement. In these circumstances AMT is not a timing issue, it is, more likely than not, an absolute additional tax which invariably will result in a material reduction in donations to public charities, the largest segment being health care. When charities, such as hospitals, lose out on major gifts because of AMT, will government be there to close the gap?

In comparing real life 2023 examples of current donations then recalculated for 2024 AMT demonstrates the negative impact. Please see the webinar and presentation deck to a PearTree webinar entitled 'AMT – Taxing the Rich's Generosity'. The four slides are entitled '4 Horsemen of the AMT Apocalypse' found at **https://www.peartreecanada.com/video-resources/amt-taxing-the-richs-generosity-tax-law-updates/**.

It is widely accepted in the charitable sector that 90% of donations come from 10% of donors. According the Statistics Canada in 1998, 25.8% of tax filers donated to charity. In 2021 that number has fallen to 17.7%. At the same time, in 1998 donations totalled $4.3 billion, and in 2021 that number was $11.8 billion. According to Budget 2023, a very small number of taxpayers – 25,693 Canadians – will be affected by the new AMT rules; unfortunately, it is that same small group of wealthy Canadians who support the charities and are bound to donate less, likely a lot less. As philanthropy allows for the distribution of wealth within society, it is the charities and those served by charities that will suffer most. Even if the impact of the AMT changes (by conservative estimate) amount to a 5% reduction in overall donations, charitable sector revenues will decline by over half a billion dollars.

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Impact of AMT on Flow-Through Share Donations

Donation of flow-through shares (FTS) are particularly affected by the new rules. We know for a fact and have offered to share the data with government – thus far without response – that those using this approach give more to charity while simultaneously funding exploration jobs in Canada's northern & remote communities. Under the new AMT rules effective in 2024, donors of FTS will require at least 1.5x more income to maintain the same level of donation. Otherwise stated, if income remains the same, the donation amount contracts by over a third. Those who donate $100,000 annually in this format can only donate $67,000 all other factors remaining the same.

By way of demonstrating the impact on the resource sector while highlighting just how few high-income Canadians fund so much, in April 2022 the federal government introduced a new Critical Mineral Exploration Tax Credit as an add-on to the FTS regime. From April 2022 to March 31, 2023 fewer than 1,100 PearTree clients subscribed for $225 million of FTS, funding critical mineral exploration including lithium and copper, on average subscribing for $239,000 in FTS. To make full use of the credits, subscribers required just over $800,000 of T4 or other high rate taxable income. Every PearTree client advisor runs the AMT calculation and subscribes to that limit. Had the 2024 AMT rules been in place in 2023, the same 1,100 investors would have reduced their average subscription to $159,000 thus reducing the total investment in northern resource job creation from $225 million to $150 million (and with corresponding reduction in the donation of the FTS given away to fund social causes). The total of FTS issuance funding critical minerals across Canada for the same period was $350 million so PearTree clients funded 64% of all FTS critical mineral exploration in Canada. Tax incentives work. The notion that tax disincentives will not have a contracting impact on FTS exploration and donations isn't rational.

Take Action

There are numerous campaigns which you can join. Imagine Canada, one of the top advocates for the charitable sector, will generate an automatic letter to your member of parliament. It's worth the full read but the bottom line submissions are:

- Release government projections done to estimate the impact of the proposed changes to the AMT calculation on charitable sector revenues. Include the anticipated impact on donor behaviour per income category.
- Maintain the current 0% inclusion rate for capital gains on donations of publicly listed securities.
- Maintain 100% of the charitable donation tax credit in the calculation of the Alternative Minimum Tax.

See: https://www.imaginecanada.ca/en/public-policy#campaign

As importantly, contact your accountant now. Understand how the AMT will impact you, your family, and your philanthropic goals. Armed with that information and assuming the AMT will negatively impact your support for charities, arrange for a meeting with your member of parliament. If you are giving a third less to the local hospital, tell that to your parliamentarian and ask specifically, will the federal government make up the difference? There are many ridings won by fewer than 2000 votes. If you are in one of the swing ridings you might remind the incumbent if part of the ruling two parties that bad policy has consequences.

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