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Tax Policy Branch
Department of Finance Canada
90 Elgin Street
Ottawa Ontario
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Dear Sir or Madam,

Re: Proposed changes to the taxation trusts and estates – Deloitte's comments

We are writing to provide our comments on the proposals regarding the taxation of trusts and estates that were released on January 15, 2016. We commend the Government for releasing the proposals with the opportunity for stakeholders to provide feedback. This approach allows for practical issues to be considered and helps ensure that Canadian tax legislation is effective in achieving the underlying policy objectives.

In general, the estate donation and spousal and common-law partner (and similar) trusts proposals are welcomed as they add flexibility in challenging circumstances. However, we have one concern and a related recommendation.

Our concern is with respect to charitable donations in the context of spousal and common-law partner (and similar) trusts. As there is a deemed year-end at the time of the death of the beneficiary of such a trust, changes to the donation rules have been introduced to allow the trust to claim a charitable donation tax credit for donations required to be made upon the death of that individual under the terms of the trust. The proposals extend the time for making the donation to the trust filing due date, which is now 90 days after the calendar year in which the beneficiary dies, rather than the date of the year-end of the trust.

While this extension is a positive measure, we believe that from a practical perspective it is not adequate. Estate administration is complex and, depending on the circumstances, it could be impossible to determine the contents and value of an estate and make the necessary donations within that time period or even a much longer time period. We therefore recommend that the time period in the context of the spousal and common law partner (and similar) trusts be the same as the proposed changes related to graduated rate estates, 60 months.

A spousal or common-law partner (or similar) trust is, in many cases, an extension of a taxpayer's last will and testament. Consequently, its administration is characterized by all of the complexities of the decedent's estate. Similar to the case of an estate, the administration of a spousal or common-law (or similar) trust can take several years, especially if there are any legal challenges or the estate contains significant non-liquid assets, such as shares in private companies.

In many cases, significant income arises only in the year of the beneficiary's death, as a result of the deemed disposition. Therefore, if the donation cannot be made before the trust's filing due-date, effectively the donation tax credit will be lost.

We therefore respectfully request that the proposals be amended to extend the time period for making donations eligible for the charitable donations tax credit in the case of spousal and common-law (and similar) trusts to 60 months as is the case for other estates.

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Deloitte is committed to making a significant contribution to help shape Canada's tax policy. We would welcome the opportunity to meet with you to discuss our recommendation. Please feel free to contact the undersigned with any questions or to arrange a meeting.

Yours truly,

Deloitte LLP

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Copy to:

Mr. Brian Ernewein, General Director, Tax Policy Branch, Department of Finance Canada