

Natural Legacies: Your educational guide to conservation in BC

Cross-Border Conservation Gifts by U.S. Taxpayers: Fact Sheet for Donor Advisors

PURPOSE OF THIS FACT SHEET

This fact sheet provides information to tax and legal professionals who advise conservation-oriented U.S. taxpayers who own land in Canada. There are bi-national tax incentives to encourage these landowners to protect their Canadian properties. Those incentives are especially relevant in the context of estate planning and for high-net-worth individuals. Gifts of Canadian land, conservation easements and remainder interests by U.S. taxpayers (known as Cross-border Conservation) must comply with Canadian and U.S. tax law and conservation procedures. Landowners and their advisors need to be aware of the rules or risk potentially expensive mistakes. Key considerations include:

Almost any transfer of appreciated land (or an interest in land) in Canada, whether or not there is cash consideration, will trigger a Canadian capital gains tax liability. This includes bequests, gifts to family members or donations. It is critical that U.S taxpayers and their advisors are aware of this liability, and plan accordingly.



Cross-Border Conservation is a project of the Land Trust Alliance of BC with the financial support of The Vancouver Foundation, The McLean Foundation, Sitka Foundation, and The Province of BC.

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Tax Implications:

- U.S. donors generally cannot receive a tax deduction against U.S. income as a result of a charitable gift to a Canadian charity.
- However, a charitable gift to a Canadian “prescribed donee,” such as American Friends of Canadian Conservation, is deductible because it is a U.S. charity.
- There may be two Canadian and one U.S. government agencies involved in reviewing the donation and subsequent claim for a tax benefit: the Canada Revenue Agency (CRA), the Ecological Gifts Program of Environment and Climate Change Canada (EcoGifts), and the Internal Revenue Service of the U.S. Department of Treasury (IRS).
- Land donations to a U.S. or Canadian charity may produce a capital gains tax liability, as though the land or interest in land had been sold. This liability can be reduced or eliminated if:
 - The property is ecologically significant, and the donee is an eligible Ecological Gift Program recipient.
 - The donee is a Canadian charity or government agency, or a U.S. organization such as American Friends that has been granted prescribed donee status in Canada.
- If the donor has Canadian-source income, gifts to Canadian charities may provide income tax deductions against Canadian-source income on the donor's U.S. tax return.
- Conservation gifts to a U.S. charity that is also a Canadian prescribed Donee, such as American Friends, can provide a tax benefit against U.S.-source income.
- Under U.S. tax law, the fair market value of conservation gifts are eligible income tax deductions. The deduction may be carried forward and used over five subsequent years for gifts of fee title and ten years for conservation easement gifts.

Partial interest donations such as conservation covenants must meet specific U.S. tax law requirements for “qualified conservation contributions” to avoid gift taxes and significant estate tax problems and to ensure eligibility for certain income tax benefits.

- Canadian entities that wish to accept gifts of conservation easements and remainder interests from U.S. taxpayers should qualify with the IRS as a publicly-supported charity.
- Testamentary gifts (bequests) to Canadian charities may provide a U.S. estate tax deduction like a testamentary gift to a U.S. charity.



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Steps and Procedures:

- As non-residents, U.S. donors should obtain special clearance from CRA prior to completing a donation of land or a conservation covenant in order to avoid a 25% withholding mandated by CRA. Canadian lawyers and accountants with non-resident experience know how to request clearance.
- Appraisals of the Fair Market Value of the gift should meet both U.S. and Canadian requirements, including timing requirements. (U.S. tax law contains specific appraisal requirements for "qualified conservation contributions.")
- Donors are required to file income tax returns and forms in both Canada and the U.S.
- Property tax consequences for donating conservation easements vary significantly across Canada. Be sure to investigate the statutes and regulations that will apply to the specific property.
- Land conservation organizations, government agencies, and First Nations can partner with American Friends to secure important conservation gifts from U.S. taxpayers by tapping the incentive of U.S. income tax deduction while also minimizing or eliminating the threat of Canadian capital gains taxes on the gift.
- There can be serious legal consequences for not completing transactions properly.



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Key Steps for Cross-Border Conservation Gifts:

In addition to standard procedures some or all of the following additional steps may be required for cross-border conservation gifts:

1. Canadian donee that wishes to accept a conservation covenant seeks recognition as a qualified donee by the IRS by securing recognition as a publicly-supported charity.
2. Draft conservation easement documents to meet both provincial Canadian easement and/or tax legislation requirements, and requirements of U.S. Internal Revenue Code Section 170(h) for qualified conservation contributions.
3. Prepare a Baseline study that meets Internal Revenue Code Section 170(h) requirements for qualified conservation contributions in the required time frame.
4. Complete title work, including mortgage subordination, as required by Internal Revenue Code Section 170(h).
5. Secure an appraisal of the property rights to be conveyed in accordance with both U.S. and Canadian appraisal requirements.
6. Secure Ecological Gift approval and appraisal review, if the gift is being made through Environment and Climate Change Canada's EcoGift Program.
7. Apply for Certificate of Compliance for Non-Resident Disposition of Real Estate to avoid otherwise mandatory withholding for Canadian capital gains taxes.
8. Supply Canadian Charitable Gift Receipt stating the disposition value.
9. Supply a U.S. Gift Substantiation Letter in accordance with an IRC Section 170(f)(8) if donee is a U.S. charity, together with a Canadian tax receipt.
10. File Canadian Tax Return, as appropriate.
11. File U.S. Income Tax Return, as appropriate.

SUMMARY

Cross-border conservation gifts must address tax regulations and laws from two countries, and the province in which the property is located. The characteristics of the parcel of land, each donor's financial circumstances, the donee's tax status and organizational capacity combine to make every gift unique.

If you have any questions, please contact
American Friends of Canadian Conservation at:
www.conservecanada.org,
info@conserve.canada.org, or call
519-241-4022



Note: This document is not intended to provide tax, legal, estate planning or other advice. It is essential that you obtain independent advice from professional advisors who understand tax and legal issues in both the US and Canada.



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