



**American Friends of
Canadian Conservation**

Fact Sheet for Canadian Appraisers of Conservation Gifts with Cross-Border Tax Consequences

Introduction

American Friends of Canadian Conservation (American Friends) is a U.S. 501(c)(3) publicly supported charity and prescribed donee under Canadian tax law. American Friends protects Canada's natural heritage by working with U.S. taxpayers who wish to conserve ecologically significant land they own in Canada. These "cross-border" conservation gifts of Canadian lands from U.S. donors feature some unique complexities, including specific appraisal requirements.

Donors to American Friends are generally motivated both by their desire to permanently preserve their properties and to avail themselves of Canadian and U. S. tax benefits. In this situation, the donors are U.S. taxpayers and the property they are protecting is in Canada, so they need appraisals that meet both Canadian and U.S. tax law requirements in order to substantiate the value of their gifts. For in-depth information about binational incentives for cross-border conservation, refer to Save Some Green: a handbook for U.S. taxpayers, which is available on the Resources page at <https://conservecanada.org>.

As explained in the publication Save Some Green, U.S. taxpayers can, and do, donate their Canadian property (or a partial interest) to Canadian conservation entities, such as land trusts or government agencies. Although those gifts are not deductible against U.S.-source income, they may be used to offset Canadian-source income declared on a U.S. tax return. In some instances, cross-border conservation donations may also help minimize U.S. estate taxes. Therefore, it may be advisable for appraisals to meet both countries' tax law requirements in all cases.

This factsheet is not intended to provide appraisal, legal or financial advice. Its purpose is to give Canadian appraisers an overview of the U.S. appraisal requirements for cross-border gifts of conservation land or interests in land, such as conservation easements (i.e., restrictions registered on title for conservation purposes) or remainder interests. It also may be useful for U.S. appraisers who are either assisting Canadian appraisers on cross-border assignments or working for U.S. taxpayers who own Canadian lands. However, the primary focus is on U.S. appraisal standards that apply to these gifts and, more specifically, the U.S. Internal Revenue Code (IRC) requirements, which are likely less familiar to Canadian appraisers.

General Appraisal Requirements

Appraisers of cross-border gifts should have their Accredited Appraiser Canadian Institute (AACI) designation from the Appraisal Institute of Canada and have participated in appraisal training through Environment and Climate Change Canada's Ecological Gifts Program (EcoGift).

Valuations for these transactions should address the key appraisal requirements of both the U.S. Internal Revenue Service (IRS) and the Canadian Ecological Gifts Program. This is the case even if the donee is American Friends, which is not a qualified EcoGift recipient. Resources and references for related statutes, regulations and other documents are listed under *Additional Resources* at the end of this document. All appraisals should conform to the requirements of the Canadian and U.S. Uniform Standards of Professional Appraisal Practices or, in Quebec, Les Normes De Pratique Professionnelle Des Evaluateurs Agrees.

Depending on how the cross-border conservation gift is structured, and the nationality and type of the donee, as many as three agencies could be involved in establishing appraisal criteria and reviewing valuation reports: the Canada Revenue Agency (CRA), EcoGifts and the IRS. The IRS has very specific requirements for appraisals, particularly for conservation easements. In Canada, the requirements are not as exacting, except for appraisals associated with EcoGifts.

U.S. Appraisal Requirements

To ensure tax deductibility for the donor, the IRS requires that ***the appraisal must be commissioned by, paid for and prepared for the benefit of the donor, not the donee.***

U.S. tax law requires the completion of a "qualified appraisal" whenever a taxpayer claims a U.S. federal income tax deduction for non-cash charitable gifts of appreciated property exceeding \$5,000, including real estate or interests in real property. A qualified appraisal is conducted by a "qualified appraiser" in accordance with "generally accepted appraisal standards" that meet the requirements of the Treasury regulations and additional guidance prescribed by the IRS. See IRC Section 170(f)(11)(E)(i). It is essential that appraisals comply fully with all the definitions outlined below. Generally accepted appraisal standards are consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice (USPAP).

A "qualified appraisal," is defined in Treasury Regulation §1.170A-13(c)(3)(i) as an appraisal that:

1. Is made not earlier than 60 days prior to the date of contribution. (This is almost invariably a challenge for cross-border gifts because the donor will need the valuation well in advance of closing in order to obtain a Certificate of Compliance from CRA.) Appraisers, donors and donees should anticipate that an update of the initial report will likely be necessary in order to meet this criterion.
2. Includes certain information, which is described below under "Appraisal Contents".
3. Is prepared, signed and dated by a "qualified appraiser."

4. Does not involve a prohibited appraisal fee, such as a fee based on the percentage of the valuation.

The Pension Protection Act of 2006 defines a “qualified appraiser” under IRC §170(f)(11)(E)(ii) and (iii) as an individual who:

1. Has earned an appraisal designation from a recognized professional appraisal organization, awarded on the basis of an appraiser’s demonstrated competence in valuing the type of property for which the appraisal is performed, or has otherwise met minimum education and experience requirements. (IRS Notice 2006-96 further defines these phrases.)
2. Regularly performs appraisals and receives compensation.
3. Meets other requirements as may be prescribed by the U.S. Secretary of the Treasury.
4. Demonstrates verifiable education and experience in valuing the type of property subject to the appraisal (i.e., conservation easements or gifts of conservation land).
5. Is not an individual who has been prohibited from practicing before the IRS during the prior three years.

In addition, the Treasury Regulations further define a “qualified appraiser” as a person who:

1. Holds himself or herself out to be an appraiser or performs appraisals on a regular basis.
2. Because of his or her qualifications, is qualified to make appraisals of the type of property being valued.
3. Is not an excluded individuals (e.g., the donor, a related party to the donor or a party to the transaction, including a broker, in which the donor acquired the property being appraised).
4. Understands that an intentionally false overstatement of property value may subject him or her to a penalty for assisting in an understatement of tax liability.

Penalty Provisions

Significant IRS penalties exist for appraisers, donors and charities involved in misstatements of appraised value. If the claimed value of the property based on an appraisal results in a substantial or gross valuation misstatement, the Pension Protection Act imposes a penalty on any person who prepared the appraisal and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for a refund. There are also penalties for a donor who underpays taxes as a result.

Appraisal Contents

The appraisal will be used to establish the value of the conservation gift when the donor files his tax returns in the U.S. and Canada. The appraisal must be based on comparable sales or other recognized appraisal methodology and/or opinions of experts. In instances where the donor is receiving partial payment and donating only a portion of the total value

(known in the U.S. as a “bargain sale” and in Canada as a “split receipt”) the appraiser should verify that the value of the interest being conveyed exceeds the sales price.

In most cases, a cross-border conservation gift should be supported by a full narrative appraisal. The appraisal may not contain any unsupported assumptions or conclusions. Hypothetical conditions must be identified and are only accepted where necessary for a reasonable analysis of the property.

To meet both Canadian and U.S. appraisal requirements, a qualified appraisal should include the following components (See also Treasury Regulation Section 1.170A-13(c)(3)(ii)):

1. A description of the property in sufficient detail to determine that the property appraised was the property donated.
2. Information about the physical condition of the property.
3. The date (or expected date) of donation.
4. The terms of any agreement or understanding entered into (or expected to be entered into) by the donor and donee that relates to the use or sale of the donated property.
5. The name, address and identifying number of the qualified appraiser. Note that often two ID numbers are required: the appraiser’s social security number and the employer’s ID number. The appraiser must secure a U.S. Employer Identification Number (EIN) if the donor is going to claim a U.S. tax deduction. See the *Additional Resources* for more information.
6. A detailed description of the qualifications of the appraiser addressing the criteria for a “qualified appraiser” outlined above.
7. A statement that the appraisal was prepared for income tax purposes.
8. The date on which the property was appraised.
9. The appraised fair market value on the date (or expected date) of contribution.
10. The method of valuation used to determine fair market value, such as the income approach or comparable sales approach.
11. The basis for the valuation.

For cross-border conservation gifts donated through the Canadian EcoGifts Program, all appraisals must be reviewed by a national appraisal review panel, and the value must be certified by the federal Minister of the Environment. Additional documentation is required. See guidelines listed under *Additional Resources*.

Special Considerations for Conservation Easement Appraisals

Gifts of conservation easements and conservation remainder interests in Canada by U.S. taxpayers should be structured to meet the requirements of a *qualified conservation contribution* under the IRC if the donor intends to pursue income or estate tax deductions.

Section 170(h) of the IRC and Treasury Regulation Section 1.170A-14 provide additional background on these gifts and related appraisal considerations.

In cases where there are substantial sales of land encumbered with comparable easements or similar restrictions, the value of the conservation easement must be substantiated with such sales. Otherwise, conservation easements are appraised on a “before and after” basis. The “before and after” valuation method is accomplished by doing two valuations: (1) the value of the property before the granting of the conservation easement (the “before value”); and (2) the value the property will have after the granting of the conservation easement (the “after value”). The value of the conservation easement is the difference between the before value and the after value. However, each appraisal problem and assignment has unique circumstances that must be considered on an individual basis.

An objective assessment of the before value of the property must take into consideration both the current use of the property and the likelihood (whether remote or immediate) that the property may be developed in the future. Further consideration must also be given to any effect from zoning, conservation, historic preservation or other laws that already restrict the potential use of the property. If the conservation easement has no material effect on the value of the property, or if it increases the value of the property, then no tax deduction is permitted.

If a conservation easement allows for any development, any objective assessment of the “after” value of the property (i.e., the value of the property *after* the easement is put in place) must consider the effect of the development. In some cases, an easement permitting development might allow for higher use than is currently available on the property but is less than the potential highest and best use of the property.

Two special rules apply to valuation of conservation easements donated by U.S. taxpayers when other adjacent or nearby property is owned by a family member or a related party.

Rule 1. The “contiguous property” rule. When the donor and/or the donor’s family owns lands that are contiguous to the property that will be protected with the donated conservation easement, the appraiser must utilize specialized valuation techniques. In essence, the appraiser is required to evaluate whether the value of all the contiguous lands is affected as a result of the conserved status, not just the value of the encumbered property. Accordingly, the value of the easement is the difference between the fair market value of the entire contiguous parcel of property before and after the restriction. “Family” is defined in IRC §267(c)(4) to include an individual’s brothers and sisters, spouse, ancestors and lineal descendants. See especially IRS Chief Counsel Memorandum No. 201334039 (August 23, 2013)

Rule 2. The “enhancement” rule. If the donor grants a perpetual conservation easement and it *increases* the value of any other property owned by the donor or a related person, whether or not the property is contiguous, then the amount of the deduction for the conservation contribution must be reduced by the amount of the increase in value (the “enhancement”) of the other property. “Related person” has a broader meaning than “family.” The IRC §§267(b) and 707(b) definitions of a

“related person” include not only “family,” but also corporations, trusts and partnerships where the donor and/or “related persons” control such an entity.

Adjusted Cost Basis of the Conservation Easement

In most cases, the CRA will require verification of the conservation easement’s adjusted cost basis, in addition to its fair market value. The adjusted cost basis is essentially the cost of acquiring the property, typically the purchase price and certain acquisition expenses. This information should be provided by easement donors, in consultation with their tax advisors.

Determining the adjusted cost basis of land may be simple when it can be supported by documents such as deeds, purchase and sale agreements, and real estate or tax records. However, the determination is complicated in situations where the appraiser is asked to value a property that was previously burdened by a conservation easement. The appraiser is required to place a value on what an easement was worth when the landowner acquired the property in order to determine the adjusted cost basis of the easement itself.

Recognizing this challenge, the CRA may accept a proportional value method for the conservation easement valuation. The appraiser determines the current fair market value of the entire property and of the conservation easement. The proportionate value of the conservation easement is then determined. For example, if the appraiser determines the current value of the conservation easement is one-third of the fair market value of the property, then the conservation easement’s adjusted cost basis can be considered to be one-third of the land’s adjusted cost basis. The donor and donee should assess this proportional value and be sure it seems reasonable. Ultimately, the CRA determines whether this calculation is acceptable.

Alternatively, the appraiser can appraise the conservation easement as of the date the landowner purchased the property, but this approach may be more challenging for an appraiser and may cost more, particularly if the donor acquired the property many years prior.

Appraisal Timing

U.S. tax law requires that the effective date of the appraisal be no more than 60 days prior to the date of the contribution. This requirement is a vexing aspect of cross border conservation appraisals because the donor needs to have a completed report in advance of the contribution to accompany his application to CRA for a Certificate of Compliance. (See the Resources section of American Friends’ website, <https://conservecanada.org>, for more information.)

Securing the appraisal early enough to secure the Certificate of Compliance, which American Friends requires before closing the conveyance, but within the 60-day period, is extremely difficult. For U.S. tax purposes it will generally be necessary to update the appraisal so that the effective date either falls within the 60 days or is the date the gift is made.

American Friends requires that a draft appraisal be completed and available for its review as part of its due diligence investigations. The IRS requires that the donor receive the final appraisal report before the due date, including extensions, of the U.S. tax return on which he claims a deduction for the gift of the property or property interest. However, in order to facilitate preparation of the Form 8283 that must accompany the U.S. tax return the final appraisal should be delivered at least 90 days before the filing deadline.

The CRA advises that the appraisal be completed no more than six months before the effective date of the donation for Canadian tax purposes. Because of this discrepancy between the appraisal timing requirements for U.S. and Canadian tax filings some donors and appraisers are opting for two appraisal reports – one for each country. This approach does not involve substantially more work because the USPAP and CUSPAP requirements are similar. Each of the reports would contain the same fundamental information and conclusions but the purposes would be different, the final appraised amount would be expressed in the currency of the country in which the report will be used and the idiosyncratic wording required by the IRS would be incorporated only into the U.S version.

Appraisals prepared for use with Ecological Gifts must undergo an appraisal review by the national Appraisal Review Panel before the gift is accepted into the program. Working with a certified Canadian donee, the donor submits an *Application for Appraisal Review and Determination* to Environment Canada as part of the EcoGift process. In this case, the appraisal's effective date may not be more than six months prior to application. If the donor has already made a gift, the donor has three years to request a valuation and request a tax deduction. Note that American Friends is not an approved EcoGift recipient because it is not a Canadian registered charity.

If any of these timing requirements are not met for Canadian purposes, the appraiser must verify in writing that there has been no material change in use of the property, and no material change to the market value. Alternatively, a new appraisal may need to be completed, or the appraisal updated. The written confirmation or updated or new appraisal must be submitted with the Ecological Gifts application or any tax return filing.

IRS Form 8283

U.S. tax returns claiming a deduction resulting from the contribution of property (including conservation easements) valued at more than \$5,000 must be accompanied by IRS Form 8283, Noncash Charitable Contributions. The 8283 includes a summary of the appraisal that established the value of the donated property. The appraiser must sign the 8283 so it is important that appraisers are aware of this U.S. requirement. (The donee organization must also execute the Form 8283 to indicate that it received the gift.)

If the value of the property contribution exceeds \$500,000, the Form 8283 must be accompanied by the complete appraisal of the property, not just a summary.

Key components of the Form 8283 include the following:

Section B. Donated Property over \$5,000

Name and taxpayer identification number of the donor.

Part I – Information on Donated Property

1. Type of property donated [i.e., *qualified conservation contribution* e.g. conservation easement or *other real estate* e.g. remainder interest or fee-interest ownership].
2. Description of the property including the legal description, and/or PIN, together with an overview of the conservation values of the property.
3. Brief summary of the overall physical condition of the property at the time of the gift.
4. Appraised fair market value of the donated property interest on the date of contribution.
5. Manner of donor's acquisition of the property (purchase, gift, etc.) and the date of donor's acquisition.
6. Donor's cost or adjusted basis in the donated property or property interest. For an easement donation, indicate whether the basis calculation relates to the underlying property or the easement. See preceding discussion under "Adjusted Cost Basis of the Conservation Easement".
7. For bargain sales [i.e. split receipts], the amount of consideration received by the donor.
8. Amount claimed as a deduction.

Part III – Declaration of Appraiser

1. Name, address and tax identification number of the appraiser or appraisers (if more than one). The appraiser or appraisers (if more than one) must have and provide a U.S. Employers Identification Number (EIN).
2. Declarations by the appraiser pertaining to the transaction and his or her qualifications:
 - a. The appraiser is not the donor, donee, a party to the transaction, employed by or related to the donor or donee. If regularly used by any of the foregoing parties, whether he or she performed most appraisals for other persons during the tax year.
 - b. The appraiser holds him or herself out to the public as an appraiser or performs appraisals on a regular basis.
 - c. Because of his or her qualifications (as described in the appraisal), the appraiser is qualified to make appraisals of the type of property being valued.
 - d. The appraisal fees were not based on a percentage of the appraised property value.
 - e. He or she understands that a false or fraudulent overstatement of the property value may subject him or her to the penalty under IRC §6701(a) (aiding and abetting the understatement of tax liability) and that substantial or gross valuation misstatement may subject him or her to penalties under IRC §6695A.

- f. The appraiser is not barred from presenting evidence or testimony by the Office of Professional Responsibility.

Part IV – Donee Acknowledgement (to be completed by the charitable organization)

1. Name, address and tax identification number of the donee.
2. Authorized signature of donee, acknowledging receipt of the gifted property and making certain declarations (acknowledgement does not represent agreement with the claimed fair market value):
 - a. It is a qualified organization under IRC §170(c) and that it received the donated property as described in Part I (including date of donation).
 - b. If it sells, exchanges or otherwise disposes of the property within three years, it will file Form 8282 and give donor a copy.
3. Whether the organization intends to use the property for an unrelated use.

In accordance with best practices in the land conservation community, American Friends and most donee organizations will sign the Form 8283 only if the information in Part I and Part 3 are complete. If the organization believes that the property has not been accurately described, or valued, it may refuse to sign the form. If it has significant reservations about the value of the gift, the organization would correctly be concerned about its credibility or standing with the IRS.

Donor Attachment to Form 8283

For a qualified conservation contribution, such as a conservation easement or remainder interest (but not for fee title gifts), the donor must attach a statement to Form 8283 that:

1. Identifies the conservation purposes furthered by the donation.
2. Summarizes the appraisal methodology used in valuing the donation.
3. Shows, if before and after valuation is used, the fair market value of the underlying property before and after the gift.
4. States whether the donor made the donation in order to get a permit or other approval from a local or other governing authority and whether the donation was required by a contract.
5. If the donor or a related person has any interest in other nearby or contiguous property, and if so, a description of that interest.

Conclusion

Cross-border conservation transactions may involve a U.S. or Canadian donee. The choice of donee is generally determined, at least in part, by whether the donor can utilize a U.S. income tax deduction. In those instances, it is especially important that the appraisal is done by a qualified appraiser and the report conforms to all the applicable U.S. standards in order to substantiate the deduction.

Even when the donee is a Canadian entity, it may still be advisable for the appraisal to follow the guidelines.

To learn about cross-border conservation, and the binational tax incentives for conserving ecologically significant Canadian land, visit <https://conservecanada.org>. Or contact Sandra Tassel, American Friends of Canadian Conservation, 360-515-7171, sandra.tassel@conservecanada.org.

Additional Resources

Actuarial Valuations, Publications 1457, 1458 and 1459 (for valuing remainder interests). U.S. Department of the Treasury, 2009. www.irs.gov

Appraising Conservation and Historic Preservation Easements, by Richard J. Roddewig. Appraisal Institute and Land Trust Alliance, 2011. www.landtrustalliance.org/training/publications

Charitable Contributions, Publication 526. U.S. Department of the Treasury, 2010. www.irs.gov

Determining the Value of Donated Property, Publication 561. U.S. Department of the Treasury, 2007. www.irs.gov

Ecological Gifts Program. Guidelines for Appraisers, Environment Canada, Canadian Wildlife Service. www.cws-scf.ec.gc.ca/egp-pde/

IRS Form 8283 and Instructions for Form 8283. U.S. Department of the Treasury, 2013. www.irs.gov/pub/irs-pdf/f8283.pdf and www.irs.gov/pub/irs-pdf/i8283.pdf

Tax Benefits and Appraisals of Conservation Projects, Larry Kueter and Mark Weston. Land Trust Alliance, 2007. www.landtrustalliance.org/training/publications

Relevant Statutes, Regulations and IRS Guidance

Internal Revenue Code

Section 170(f)(11). *Qualified appraisal and other documentation for certain contributions*

Section 170(h). *Qualified conservation contribution*

Sections 267(b) and 267(c)(4). *Losses, expenses, and interest with respect to transactions between related taxpayers*

Section 707(b). *Transactions between partner and partnership*

Section 6662. *Imposition of accuracy-related penalty on underpayments*

Section 6695A. *Substantial and gross valuation misstatements attributable to incorrect appraisals*

Section 6700. *Promoting abusive tax shelters*

Section 6701. *Penalties for aiding and abetting understatement of tax liability*

Internal Revenue Notices

Notice 2006-96. *Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions*. http://www.irs.gov/irb/2006-46_IRB/ar13.html

Notice 2007-50. *Guidance Regarding Deductions by Individuals for Qualified Conservation Contributions*. http://www.irs.gov/irb/2006-46_IRB/ar13.html

IRS Chief Counsel Memorandum No. 201334039 (8/23/2013)

Pension Protection Act of 2006 (PL 109-280)

Section 1206. *Encouragement of Contributions of Capital Gain Real Property Made for Conservation Purposes*

Section 1219. *Provisions Relating to Substantial and Gross Overstatements of Valuations*

U.S. Treasury Regulations

1.170A-12. *Valuation of a remainder interest in real property for contributions made after July 31, 1969*

1.170A-13. *Recordkeeping and return requirements for deductions for charitable contributions*

1.170A-14. *Qualified conservation contributions*