American Friends of Canadian Conservation

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

Introduction

American Friends of Canadian Conservation (AFCC) is a U.S. 501(c)(3) publicly supported charity and prescribed donee under Canadian tax law. AFCC protects Canada's natural heritage by working with U.S. taxpayers who wish to conserve ecologically significant land they own in Canada through a charitable donation that will be tax deductible in the U.S.

Donors to AFCC are motivated both by their desire to permanently preserve their properties and to avail themselves of Canadian and U. S. tax benefits. Accordingly, they need appraisals that meet both Canadian and U.S. tax law requirements 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 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 of lands donated by U.S. taxpayers to meet both countries' tax law requirements even if the gift is going to a Canadian organization.

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 or covenants. It also may be useful for U.S. appraisers who are 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 ideally have participated in appraisal training through Environment and Climate Change Canada's Ecological Gifts Program (EGP) .

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 (EGP). This is the case even if the donee is AFCC, 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 Norms De Pratique Professionnelle Des Evaluateurs Agrees. Appraisals should include language indicating that the report meets the requirements of both countries.

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), EGP and the IRS.

U.S. Appraisal Requirements

In order for a gift to be tax deductible in the U.S., the IRS requires that ***the appraisal 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).

Appraisals used to substantiate the value of a gift of conservation property on a U.S. tax filing must comply 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 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 be necessary. The effective date of the updated appraisal will be the date of the gift.
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.

Appraisal reports should include an exhibit or addendum that addresses the above definitions for a "qualified appraiser" such as the appraiser's CV, resume and list of clients/assignments.

In addition, the appraiser should certify his/her qualifications. An example is attached to this fact sheet.

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 should be a full narrative report in which the Fair Market Value is based on comparable sales or other recognized appraisal methodology and/or opinions of experts.

The appraisal must 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 U.S. income tax purposes. It is acceptable to show Canadian capital gains taxes as another purpose of the appraisal. No other purpose is appropriate.
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.

Note that the Fair Market Value should be shown in $CAD and $USD if the appraisal will be used for tax purposes in both countries.

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.*

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 AFCC's website, https://conservecanada.org, for more information.)

Securing the appraisal early enough to secure the Certificate of Compliance, which AFCC 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 is within the 60 days or is the date of the gift.

AFCC requires that a draft appraisal be available for its review as part of its due diligence investigations. 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. (For more information on the Form 8283, see below.)

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 opt 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 contains 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 AFCC 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.

Penalty Provisions

Significant IRS penalties exist for appraisers, donors and charities involved in misstatements of appraised value. The Pension Protection Act imposes a penalty on any person who prepared the appraisal containing the misstatement and who knew, or reasonably should have known, the appraisal would be used as part of a U.S. tax return and claim for a tax deduction. There are also penalties for a donor who underpays taxes.

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, AFCC 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.

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. When the U.S. deduction is a motivating factor, it is especially important that the appraisal is done by a qualified appraiser (as defined in U.S. regulations) and the report conforms to all 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 American Friends of Canadian Conservation at info@conservecanada.org or (360) 515-7171.

SAMPLE

Appraiser’s Certification & Qualified Appraisal declaration

As required by Standards Rule 2-3(a) of the *Uniform Standards of Professional Appraisal Practice* (USPAP), I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective future interest in the property that is the subject of this report and have no personal interest or bias with respect to the parties involved in this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- I am a Designated Member of the Appraisal Institute and licensed as a Certified General Appraiser in ________________.
- The reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and Standards of Professional Practice of the Appraisal Institute, as well as the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.
- As of the date of this report, I have completed the continuing education requirements for Designated Members of the Appraisal Institute.
- The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- No one has provided significant appraisal assistance to the person(s) signing this certification, although factual information has been relied on, as provided by:
    - the client, for the property owner, as to the present condition of the subject property and building improvements;
    - local real estate brokers, as to subject market conditions, supply and demand trends, and relevant transaction data.
- I have not previously appraised the subject property within the past three years.
- I inspected the subject property on _______________________ .

Qualified Appraisal Declaration

As required by 26 CFR § 1.170A-17(b), I declare that, because of my education and experience, I am qualified to make appraisals of the type of property being valued. My professional appraisal qualifications, including my verifiable education and experience, are detailed in an Addendum to this appraisal report, *Professional Qualifications of the Appraiser*.

As required by 26 CFR § 1.170A-17(a), I declare:

- I understand that my appraisal will be used in connection with a U.S. tax return and/or claim for tax refund.
- I also understand that, if there is a substantial or gross valuation misstatement of the value of the property claimed on the return or claim for refund that is based on my appraisal, I may be subject to a penalty under section 6695A of the Internal Revenue Code, as well as other applicable penalties.
- I affirm that I have not been at any time in the three-year period ending on the date of the appraisal barred from presenting evidence or testimony before the Department of the Treasury or the Internal Revenue Service pursuant to 31 U.S.C. 330(c).

In addition:

- The appraisal was prepared for U.S. federal tax purposes.
- The methods of valuation used to determine fair market value, such as the sales comparison approach, are described in the appraisal report.
- The specific basis for the valuation, including specific comparable sales transactions or statistical sampling, including a justification for using sampling and an explanation of the sampling procedure employed, is described in the appraisal report.

Respectfully submitted,

[Insert name, designations, license number, contact information, and EIN]

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*