Green Legacies

A DONOR'S GUIDE FOR BC

UPDATED AND REVISED

Land Trust Alliance
BRITISH COLUMBIA

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INTRODUCTION

The Land

WELCOME TO THE REVISED AND UPDATED edition of *Green Legacies: A Donor's Guide for* BC. Known simply as *Green Legacies*, the original guide was published in 2002. Since then, significant changes to the rules regarding giving to nature have been made. This updated and revised edition outlines those changes, and includes a web edition where future updates will be posted, at www.ltabc.ca and on www.GiveGreenCanada.ca.

The land gives us life,
food and carries water.
Well cared for land gives us good
health and vibrant communities.
We tell stories rooted in the land,
to explain who we are.
The beauty of the land inspires us,
and gives us our spirit.

Sustainability is increasingly recognized as a core value needed in all aspects of our lives. Whether you are a professional advisor or a donor, this guide will provide you with ways to increase the well-being of generations of wildlife and human populations adapting to environmental and climate changes.

Why *Green Legacies*?

Giving to nature through a personal legacy is a choice that directly contributes to conservation of wildlife and wildlife habitat. Over twenty kinds of green legacies are available to increasing the amount and quality of land available to nature.

This updated guide provides a one stop resource for legal, financial and other professional advisors whose clients wish to create their personal nature legacies. The guide shows how to link client goals with advantageous gift planning options and discover the financial benefits of giving ecologically sensitive land and covenants.

The revised and updated *Green Legacies Guide* is a collaborative initiative between Give Green Canada ("G2"), a project at Tides Canada Shared Platform, and the Land Trust Alliance of British Columbia. It is born from a desire to better inform people who care about making a gift to nature in British Columbia.

The need is urgent. By creating personal legacies, individuals, families and businesses can ensure support for British Columbia's natural environment that lasts beyond a lifetime.

Sustainability is increasingly recognized as a core value needed in all aspects of our lives. Whether you are a professional advisor or a donor, this guide will provide you with ways to increase the well-being of generations of wildlife and human populations adapting to environmental and climate changes.

The guide is also evolving. We are excited to be working on a new, forthcoming chapter on giving options to create foodland and farmland trusts. In British Columbia today we face significant challenges related to secure and affordable land access for food production, especially for a new generation of farmers interested in building alternative and sustainable food networks that utilize environmental best practices to enable regional food security. Watch for the new chapter next year in our online edition of the guide.

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Disclaimer:

The information contained in this *Guide* is intended as an introductory general overview and does not constitute legal or tax advice. The accuracy of the information cannot be guaranteed. Applicable federal and provincial laws, CRA interpretation bulletins, administrative practices and the like, change from time to time. Professional advisors should conduct their own research before advising their clients regarding potential charitable gifts. Potential donors are advised to consult with their personal legal and tax advisors before making charitable gifts. The gift planning vehicles summarized in the *Guide* do not include all possible types of planned giving arrangements but rather give an overview.

Thank You

Our appreciation goes to Murray Landa for his oversight and review of the updated text. Murray Landa B.A., LL.B. has over 30 years' experience as a lawyer, consultant and charitable gift planner. He is retired from UBC, where he was Associate Director of Gift & Estate Planning for 12 years. Murray has provided guidance to a number of charities and boards regarding gift planning. He served as a board member of the Canadian Association of Gift Planners Vancouver chapter and as a project committee member of the BC Law Institute's Society Act Reform Project. murray@murraylanda.com.

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Ten Ways that You and Your Gift Can Work for Nature

1 Help landowners steward their properties for nature

Thousands of people are now involved with partnerships and programs that monitor and steward streams, lakeshores and marine shorelines. Other initiatives help individual landowners learn about managing their properties for nature.

2 Restore habitats

Many thousands of volunteers work on-the-ground (and in-the-water) to revitalize wildlife habitat. For instance, they are reclaiming old industrial sites, cleaning up streams and removing and controlling introduced species such as broom.

3 Offer educational activities to learn about our natural world

Through understanding comes action for nature. Most green legacy organizations publish newsletters, offer nature celebration events, sponsor outings and provide expertise to decision makers. These are just some of the ways that groups share their knowledge with their communities.

4 Open children's and teachers' eyes to the wonder of the natural world through school programs

To excite children (and their teachers) about the phenomenal world we live in, conservation groups provide supplementary curriculum materials and guest lecturers in classrooms.

5 Raise funds to permanently acquire and manage private land, when purchasing land is the best alternative to protect threatened wildlife and plant communities

Many conservation groups and land trusts are purchasing and/or receiving gifts of land to steward in perpetuity. Rising land values in valley bottoms and coastal lowlands where most people live, and ongoing maintenance costs, now necessitate more vigorous fundraising campaigns.

6 Work with landowners to use covenants to protect ecologically sensitive areas

Landowners who wish to ensure that future owners will also respect the ecological features of their land can place covenants on special areas. Conservation groups and land trusts are helping landowners complete this process and in many cases, they hold the covenant in perpetuity.

7 Undertake research projects

Many hundreds of volunteers annually contribute to bird studies and water monitoring projects. Others help with endangered species recovery programs. Research projects by conservation groups create credible information and mapping resources for land use planning processes and sustainable resource management policies.

8 Promote public awareness of ecological concerns

Through public awareness programs and through representation in consultation processes, groups actively encourage ecologically sound land and water use decisions and management regimens.

9 Seek the permanent dedication and management of critical habitat on Crown land

Conservation groups across British Columbia are actively encouraging all levels of government to secure Crown lands with high biodiversity values as protected areas, parks, and ecological reserves.

10 Help groups help each other

Some groups offer services such as training, legal expertise and networking assistance to other organizations.

AN URGENT SITUATION

Nature is at Risk in BC

WHETHER LIVING IN URBAN OR RURAL AREAS, generations of British Columbians have discovered special spots… treasured spots that are soul-restoring touchstones in their lives. These places include summer cabins on coastal shores, sage-scented grasslands roamed on horseback, and quiet lakes where trout rise to mayflies. Several decades ago, people began to realize that the province was rapidly changing and wild areas were facing increasing pressures.

Preserving this Natural Heritage

Out of this concern emerged the first generation of conservationists, people who cared enough to meet around kitchen tables and in church basements, starting local sportsmen's and naturalist clubs, and creating public support to protect areas of natural beauty and wildlife habitat. Some groups have been working since the 1960s, lobbying for parks and protected areas, buying private land for wildlife sanctuaries, and enhancing stream and wetland habitats.

Nature conservation and land trust organizations have formed registered societies that have made significant contributions to our communities and wildlife habitats throughout British Columbia. Some have evolved from church basements to corporate board rooms, but the concerns remain the same. They all depend on financial support from private individuals, foundations and corporations. In many cases, government funds are available to match private funds, making public donations even more important and allowing conservation dollars to stretch further.

Nature at Risk

Time is running out.
British Columbia's tremendous natural diversity is concentrated in the southern coast and southern interior—regions that are also home to most of the province's growing human population. Over the next fifteen years, our human population is projected to expand to five million people. That growth will be concentrated in the south, where wildlife and wild places are already stressed. The next two decades are a critical period. Conservation organizations working to preserve and enhance British Columbia's natural areas need your support to mitigate the two major threats to wildlife security: habitat loss and invasions of alien species.

Nature Under Siege

Habitat Loss

It is now clear that the number one threat to such wildlife species as the burrowing owl, badger, marmot, lynx, cougar, and coho is loss of habitat, especially from agricultural and urban development. For example, suburban housing is covering Garry oak meadows outside Victoria, while new vineyards are replacing hundreds of hectares of rare desert grasslands in the Okanagan Valley.

These ecosystems are two of the four most critically endangered plant communities in Canada and both areas are mostly privately owned, and difficult and expensive to protect. Rare species in these areas include many types of wildflowers, butterflies and birds such as sage thrashers and screech owls.

On Crown Lands outside our settlement areas, wildlife habitat is pressured by other land uses, such as timber harvesting, mining activities, some agricultural practices and high impact recreation. Fragmentation of the landscape results both in the loss of important wildlife corridors and in reduced land available for natural ecosystems and the species they support.

Alien Invaders

Invasion by aliens is another serious concern—alien species that is. More than 20% of the plant species and 15% of the freshwater fish species in British Columbia were introduced from other places. Bull frogs and such introduced fish as bullhead and carp wreak havoc with our pond and lake ecosystems; bullheads have even caused the extinction of some species native only to British Columbia.

Alien species have few natural predators, or controls, and can quickly out-compete native species, changing the character of the ecosystem and reducing forage plants for wildlife.

Purple loosestrife, a beautiful garden flower, has taken over large areas of marshland in the province, and Dalmatian toadflax and knapweed have done the same to the dry grasslands of the interior. Scotch broom is decimating the last remnants of Garry oak savannah on southern Vancouver Island.

Nature: Protected Through Philanthropy

Now you've read the bad news and you're asking, what on earth can we do about this?

Even though the situation is urgent, your support can make a difference. Donations need not be restricted to money or land. Gifts of stocks and bonds, life insurance policies, real estate and art can all be converted to much needed financial resources for nature projects.

TYPES OF GIFTS

Giving to Nature

PEOPLE WANT TO BELIEVE we are here for a purpose — that our being here will make a difference now or in the future. Many are concerned about environmental degradation. The preservation of nature and good stewardship of the earth has never been more important.

Public funding for nature cannot keep pace with the needs. Increasingly, concerned philanthropists must take action to save our environmental heritage for present and future generations.

One way to take action is through a planned gift for the environment. In this way, individuals and corporations may leave a lasting green legacy that will preserve British Columbia's unique natural treasures for generations to come.

Planned giving (or gift planning) is the process of designing charitable gifts so that the donor realizes philanthropic objectives while maximizing tax and other benefits. Generally, any gift of significant size made with forethought about the benefit to the charity and the financial implications to the donor and the donor's family is a planned gift.

Professional advisors such as lawyers, accountants, financial planners, trust officers and other professionals are often charitable gift planners as well, playing a significant role in helping clients design charitable gifts as part of their overall estate and financial planning.

Planned gifts are usually gifts of assets. They are sometimes called the "ultimate gift" as they may represent the work of a lifetime.

There are many ways to give. Some gifts are immediate (current gifts), while others take effect in the future (deferred gifts). The federal government has recognized the increasingly significant role that individual and corporate donors can play. With encouragement from the not-for-profit sector, Parliament has significantly enhanced tax incentives for planned gifts.

This has resulted in an increasing array of creative giving arrangements that can be matched to the donor's personal vision for a better world, as well as personal circumstances and motivations. One does not have to be wealthy to be an effective donor. The tools are available for all to use.

An invaluable resource on this topic is the book by Frank Minton, *Planned Giving for Canadians,* available at no charge to members of the Canadian Association of Gift Planners (CAGP).

What is a Charitable Gift?

A gift, for the purposes of the Income Tax Act, is a voluntary transfer of property by a donor to a registered charity without consideration.

The transfer must be made without expectation of return, subject only to the split receipting rules, which provide that, subject to certain conditions, a transfer of property to a charity will be considered a gift even if the donor receives a material benefit in return. See "Split Receipting" on page 11.

INCOME TAX ACT, S. 248 (30-33); CANADA REVENUE AGENCY (CRA) INTERPRETATION BULLETIN IT-110R3 *GIFTS AND OFFICIAL DONATION RECEIPTS*.

General Description of Tax Aspects of Canada's Donation System Regarding Charitable Gifts

Individuals may claim a tax credit for charitable donations including donations to registered charities and the Crown. Corporations receive a deduction rather than a credit, but otherwise the tax rules applicable to corporate and individual donors are generally the same. The federal tax credit is currently 15% of the first $200 of charitable gifts and 29% of gifts in excess of $200, subject to certain limitations.

The maximum amount of charitable contributions made prior to the year of death that can be claimed for credit in any one year is 75% of net income. The contribution limit for in-kind gifts such as real estate that have appreciated in value is 75% of the donor's net income plus 25% of the taxable portion of any capital gain resulting from the gift.

Contributions in excess of the annual contribution limit may be carried forward for up to five years. The donor may choose whether to claim the excess in a particular year, and how much to claim, subject to the annual limit.

The contribution limit for gifts made in the year of death (which includes testamentary gifts) is 100% of net income. Any excess can be carried back one year, subject to the contribution limit.

INCOME TAX ACT, SECTIONS 110.1, 118.1.

What is a Registered Charity? What is a Private Foundation?

Per the Income Tax Act, a "registered charity" is a "charitable organization", "public foundation" or "private foundation" residing in Canada and created or established in Canada, which is registered with the Minister as a charitable organization, public foundation or private foundation.

A "charitable organization" is an organization where more than 50% of the directors, trustees, officers or like officials deal with each other at arm's length and also at arm's length with a person who contributed greater than 50% of the organization's capital and that is not controlled by a person who gave greater than 50% of the organization's capital (or by a person or group of persons that do not deal at arm's length with each other if the person or any member of the group does not deal at arm's length with the person who contributed greater than 50% of the organization's capital).

A "charitable foundation" is a corporation or trust constituted exclusively for charitable purposes and that is not a "charitable organization".

A "public foundation" is a charitable foundation where more than 50% of the directors, trustees, officers or like officials deal with each other at arm's length and also at arm's length with a person who contributed greater than 50% of the organization's capital and that is not controlled by a person who gave greater than 50% of the organization's capital (or by a person or group of persons that do not deal at arm's length with each other if the person or any member of the group does not deal at arm's length with the person who contributed greater than 50% of the foundation's capital).

A "private foundation" is a "charitable foundation" that is not a "public foundation".

Note the control test: the charitable entity will only be designated as a "private foundation" where a person contributes more than 50% of the capital ***and the person also controls the entity directly or indirectly.*** In other words, a foundation won't be disqualified from being a public foundation simply because a person contributes more than 50% of its capital. This makes it easier for community foundations and other new foundations looking to a significant donor for start-up capital.

INCOME TAX ACT, S. 248 (1) RE: DEFINITION OF "REGISTERED CHARITY", S.149.1(1).

Disbursement Requirements and Green Legacies

Charitable organizations, whose investment assets exceed $100,000, public foundations and private foundations must expend 3.5% of investment assets on charitable activities or on grants to other charities or 'qualified donees'.

Where the amount expended on charitable activities exceeds the 3.5% requirement, the excess may be carried back one year to satisfy any deficiency in that year's disbursements, or carried forward five years to count toward the quota in those years (Income Tax Act, s. 149.1 (20)(21).

Watch

Today's more streamlined requirements do not mean that a charity can spend donations for administrative expenses and fundraising costs without limit. CRA will monitor these to ensure that the ratio of fundraising expenses to tax-receipted donations is not excessive.

Note the anti-avoidance rules regarding gifts between charities:

1) A charity's registration may be revoked where a charity has entered into a transaction (including a gift to another charity) whose purpose was to avoid or unduly delay the expenditure of amounts on charitable activities. This means that amounts transferred between charities can generally only be used to satisfy the quota of one charity.

2) Charities are required to disburse on charitable activities or on gifts to arms-length charities 100% of all gifts received from non-arms-length charities in the preceding year. However, if the donor charity designates the gift as a "designated gift", then the gift will not count toward the satisfaction of the donor charity's quota nor increase the recipient charity's quota.

Do not assume that the 2010 federal budget changes to the quota requirements removed the restrictions on pre-existing 10-year gifts. Charities should have legal counsel review the documents, which created the 10-year gifts to determine whether a trust was created and whether the terms of the trust authorize the charity to encroach upon and distribute capital.

Split Receipting

Subject to certain conditions, a transfer of property to a charity will be considered a gift even if the donor or someone related to the donor receives a material benefit in return, whether in the past, present or future. This benefit is referred to in the Income Tax Act as the "advantage".

The conditions are:

1) there must be a voluntary transfer of property with an ascertainable value;

2) the tax receipt must show the eligible amount of the gift (i.e., the value of the donated property less the value of the benefit received (the "advantage");

3) the advantage must not exceed 80% of the fair market value of the donated property. If it exceeds 80%, no tax receipt can be issued unless the donor satisfies the Minister of National Revenue that the transfer was made with the intention of making a gift; and

4) if the benefit does not exceed $75 or 10% of the gift value, it is not regarded as a benefit for tax-receipting purposes. These thresholds do not apply to cash or near-cash benefits.

Charities must value the property being donated, value any goods or services received by the donor (excluding intangible donor-recognition benefits) and then determine the amount eligible for a tax receipt (the "eligible amount"). All this must appear on the tax receipt, which must also contain CRA's name, website and address.

The split-receipting rules have added gift planning opportunities for charities. For example, bargain sales (where a donor sells property to a charity for less than its appraised market value) or gifts of real estate subject to the charity assuming a mortgage are possible.

The rules will reduce the donor's eligible amount on the receipt to the donor's cost of the contributed property if it was acquired within the past three years or within the last ten years where the donor had the primary intention to gift the property at the time of acquisition.

INCOME TAX ACT, S. 248(30-33); INCOME TAX REGULATIONS, S. 3501; INCOME TAX TECHNICAL NEWS #26.

TYPES OF GIFTS

Current Gifts

Outright Gifts of Cash

A donor may give cash to a charity. This is the simplest and most common form of gift.

Benefits to the donor

- The donor receives a tax receipt for the full amount given, subject to the calculation of any advantage which would reduce the eligible amount. Individual donors may then claim the charitable donation tax credit. Corporate donors may claim a tax deduction.
- The donor receives the satisfaction of seeing the gift put to work immediately.

Benefits to the Charity

- This is an assured and readily negotiable gift when received.
- The charity can put the gift to work immediately.

Who

Everyone (any age) who can afford to give up some principal and the interest it earns.

How

The gift is complete when the cheque is delivered or mailed to the charity. Gifts may also be made by money order or credit card.

Outright Gifts of Publicly Traded (Listed) Securities (Including Mutual Funds) to Public Charities

Publicly traded securities include stocks, bonds and mutual funds containing stocks listed on approved stock exchanges. They make excellent charitable gifts. Many are liquid and are usually easy to value.

Benefits to the Donor

- The donor receives the satisfaction of seeing the gift at work now.
- The donor receives an immediate tax receipt for the full fair market value of the donated securities and is taxed on none of the capital gain.
- The donor can use the tax receipt to claim the charitable tax credit. (Corporate donors will benefit from a tax deduction.)

Benefits to the charity

- The charity may sell the donated securities, convert them to cash and put the funds to work immediately, or retain them as an investment.
- The charity, being tax-exempt, is not taxed on the capital gain when it sells the securities.
- If the charity holds the securities rather than selling immediately, the charity will benefit from any further price appreciation. However, many charities sell immediately in order to eliminate stock market risk.

Who

Donors of all ages who hold securities and can afford to donate some to charity. Rather than make a bequest, some elderly donors may wish to simplify their estate, divest some holdings, reduce taxes now or help a good cause now. In other words, they can make their gift earlier, reduce the size of their estate and thereby reduce future probate costs. Employees of publicly traded companies may wish to donate shares through the exercise of employee stock options if the company and the stock market are doing well.

How

The donor instructs his or her broker to transfer (not sell) the securities directly from the donor's account to

the charity's investment account. The transfer is carried out electronically.

Alternatively, the donor may donate by endorsing the security certificates and delivering them to the charity, or by signing a stock power-of-attorney form and then separately delivering the signed form and the securities to the charity.

For receipting purposes, most charities use the market closing price or the mid-point value on the day the securities are transferred to the charity. Each charity has its own policies regarding valuation. It's wise to check with the charity before the transfer is made.

Watch

In order for the donor to qualify for the capital gains tax exemption, the securities must be listed on a "Designated Stock Exchange" as defined in the Income Tax Act. Also, the donor must transfer the securities directly to the charity. If the donor sells and then donates the sale proceeds, the donor will be taxed on 50% of any gain.

The charity must be consistent in its valuation practices, whichever valuation method is chosen.

It is advisable for the donor and the charity to discuss beforehand which securities will be given as the charity must decide if it can accept them. Securities that are liquid and easy to value are preferable.

Subject to certain conditions and an annual limit, an employee of a publicly-traded company may exercise stock options, donate the resulting shares to a public charity or private foundation, and not be taxed on the gain.

INCOME TAX ACT, SS. 248(1), 262.

Creation of Private Foundations: Advantages and Limitations

A donor may create a private foundation and support various charities through grants from the foundation. Individuals with significant wealth are the most likely to create private foundations.

Most private foundations do not conduct charitable work themselves; instead, they make grants to charities that do the work.

See page 10 regarding the definition of "private foundation" under the Income Tax Act.

The motives for creating a private foundation could be any or all of the following:

- The donor's assets can be kept intact.
- The donor retains control of the investment of donated assets. This is especially important if shares in privately owned corporations are contributed.
- The donor's name, or the family name, can be perpetuated through the foundation.
- Solicitations for support may be directed to the foundation rather than the donor personally.
- The foundation may favour certain types of charities or causes the donor cares most about.
- The donor may be reluctant to give a large capital asset to a charity that he or she does not control but is comfortable distributing income (rather than capital) to the charity.
- The donor may wish to involve children and other family members in charitable causes. By helping run the foundation, the children may develop civic responsibility and managerial skills.

Alternatively, a donor may create a donor-advised fund or funds within a community foundation. A donor-advised fund enables the donor to be involved in selecting charities to receive grants. For many donors, this is a much less expensive and easier option than creating and managing a private foundation.

Outright Gifts of Publicly Traded (Listed) Securities to Private Foundations

Some donors may wish to donate publicly traded securities directly to their private foundation for charitable purposes. The foundation then makes grants to various charities.

Benefits to the donor

- The donor receives an immediate tax receipt for the fair market value of the donated securities (subject

to the calculation of any advantage which would otherwise reduce the eligible amount).
- As with gifts of listed securities to public charities, none of the capital gain is taxed.
- Benefits to the charity
- The foundation may retain or sell the donated securities. If it sells them, the foundation pays no tax on the gain.
- Charities can seek grants from private foundations that may be interested in the type of work being carried out by the charity.

Outright Gifts of Shares of a Privately Owned Corporation

Family businesses constitute a high percentage of Canadian business and account for the majority of new jobs. The entrepreneurs who started these businesses are often community-minded. Shares in the family business may constitute most of an entrepreneur's wealth, however, and cash in the company may be needed for operating capital. Thus, a gift of common or preferred shares of a private operating company or holding company (or of a debt instrument) has made it possible for donors to make significant gifts while retaining needed working capital in their businesses.

Gifts of shares in private companies are more attractive when given to a public charity.

PUBLIC CHARITY

If the shares are given to a public charity (a charity other than a private foundation) with which the donor deals at arm's length, the charity may issue a tax receipt for the appraised value of the shares at the time of the gift. The charity secures the appraisal. The donor recognizes the capital gain in the shares at the time of the gift and is taxed on 50% of the gain.

PRIVATE FOUNDATION

A tax receipt is allowed when the foundation sells the shares, not when the foundation receives them. The receipt is for the lesser of the amount realized by the foundation and the fair market value of the shares when they were donated to the foundation. A tax receipt issues only if the foundation sells the shares within 60 months after receiving them. The donor recognizes the capital gain when the shares are donated, but the gain will be held in reserve until the foundation sells the shares. Then the amount of gain recognized will be adjusted based on the actual selling price. Thus, the donor is not taxed on any of the gain until the foundation sells the shares, and the tax credit should exceed the tax on the gain. If a tax receipt is never issued because the 60 month period expires without selling the shares, the donor will not be taxed on the gain.

ANTI-AVOIDANCE

The 2011 federal budget imposed anti-avoidance rules that may affect some gifts of private shares. If the gift is to a private foundation, no tax receipt is allowed when the shares are exchanged for other "non-qualifying securities" even if the exchange occurs within 60 months.

If the gift is to a public charity, and is part of a series of transactions through which the charity will acquire non-qualifying securities of the donor or other person, no tax receipt will be allowed at the time of the gift. The receipt will issue when the charity disposes of the non-qualifying securities for consideration that is not another non-qualifying security, if this occurs within 60 months.

GIFT OF DEBT INSTRUMENT

Sometimes privately owned companies owe their principal shareholder a significant amount of money. In this arrangement, the debt is converted to a debenture paying a market rate of interest and the shareholder (debenture owner) contributes the debenture to the charity (a debenture is an unsecured debt obligation.) The charity then receives regular interest payments from the company, and will receive the principal amount in full when the company redeems the debenture. The value of the debenture is determined by appraisal, which takes into consideration the amount of debt, the interest rate, and strength of the company. The contributed debenture is a non-qualifying security and not an "excepted gift", therefore a tax receipt is not issued until the debenture is sold, and only if sold within 60 months. Per the 2011 budget, no tax receipt will issue if the consideration for the debenture is a non-qualifying security. If a tax receipt can be issued upon sale of the debenture, it would be for the lesser of the debenture's value at the time of the gift and its selling price.

LOANBACKS

In the past, a donor could contribute money to a charity and the charity could loan that money back to the donor. The donor would receive a tax credit and still have use of the money. This practice was considered abusive, and s. 118.1 (16) of the Income Tax

Act was adopted. Now, where the loanback rule applies, the value of the original gift must be reduced by the value of the property loaned to the donor. If the entire amount is loaned back, no tax receipt is allowed.

Benefits to the donor

- Capital gains up to $800,000 are exempt from tax when qualified small business corporation shares are donated.
- Gift of shares to public charity: the donor receives an immediate tax receipt for the fair market value of the shares, as per the information set forth above (page number?).
- Gift of shares to private foundation: the donor may receive a tax receipt in the future, as per the information set forth above on page 10.
- 50% of the gain is taxable to the donor, but the charitable tax credit may exceed the tax on the gain, resulting in net tax savings for the donor.

Benefits to the charity

- The donated shares may pay dividends if the donor gives preferred shares with a healthy dividend that will provide the charity with cash flow prior to sale of the shares.
- The charity may be able to sell the shares in the near term, or it may hold some or all of them for an indefinite period.

Who

This type of gift appeals to philanthropic entrepreneurs.

Watch

Before accepting a gift of private shares, the charity should ascertain when and how the shares will be monetized. For example, will the charity sell to other shareholders, the company itself, or to an external buyer?

Under section 118.1 (18) of the Income Tax Act, a "non-qualifying security" includes shares, obligations, or securities of a corporation or person with whom the donor does not deal "at arm's length". The following are excluded from the definition of "non-qualifying" security:

- shares, obligations and other securities listed on prescribed stock exchanges, and
- amounts deposited with financial institutions.

Under section 118.1 (19), a gift is an "excepted" gift if:

- the security is a share,
- the donee is not a private foundation,
- the donor deals at arm's length with the donee, and
- where the donee is a charitable organization or a public foundation, the donor deals at arm's length with each director, trustee, officer and like official of the donee.

Valuations can be tricky. There are many factors that can affect valuation, including company liquidity, dividend rights, and retractability of shares. It is wise to rely upon qualified professionals for valuation purposes before issuing tax receipts. This helps establish proper value and will be of assistance if CRA wishes to review the transaction.

Gifts of private company shares and debt must be handled with care. Donors and charities must have proper legal and tax advice before proceeding with or accepting these gifts. Before advising clients, advisors must ensure that they are up-to-date regarding possible legislative changes, new developments or other restrictions, and Court and CRA interpretations regarding these matters.

The April 2015 federal budget introduced a new capital gains exemption regarding gifts of real estate and private shares. Individuals and corporations will be exempt from tax on capital gains on the sale of land or private shares to an arm's length buyer if the cash proceeds are donated to a registered charity within 30 days of the sale. *The exemption will apply to sales which occur after 2016.*

The buyer must deal at arm's length with the donor and the charity.

Where a portion of the sale proceeds is donated, the capital gains exemption will apply only to the donated portion.

The 2015 budget also includes further anti-avoidance rules. If, within five years after the sale,

a) the donor (or a person not dealing at arm's length with the donor) directly or indirectly reacquires any property that was sold;

b) regarding shares, the donor (or a person not dealing at arm's length with the donor) acquires shares substituted for the shares that were sold; or

c) regarding shares, the shares of a corporation that were sold are redeemed and the donor does not deal at arm's length with the corporation at the time of the redemption;

then the capital gains exemption will be reversed. The exempted amount will be included in the donor's income in the year of the reacquisition by the donor, non-arm's length person or share redemption.

Per new estate donation rules effective in 2016 (see "Graduated-rate Estates" at page 33), estate donations of private shares to charity will be a "non-qualifying security" because the estate and the charity are not at arm's length from each other. (Under the new rules, the estate is the donor rather than the deceased individual. The estate is a trust. Trust beneficiaries are not at arm's length from a trust. Therefore, the charity is not at arm's length from the estate of a donor who made a gift by will). A gift of private shares which remains possible during life has been rendered extremely difficult if not impossible at death. A legislative amendment is needed to correct this.

Outright Gifts of Tangible Personal Property (Other than Certified Cultural Property)

Tangible property includes art works, books, household furnishings, automobiles, equipment and collections. Investment assets such as real estate, securities and the like are not considered tangible personal property.

Benefits to the donor

- The donor receives the satisfaction of seeing the gift at work now or in the near term.
- The donor receives an immediate tax receipt for the fair market value of the gift, as determined by a qualified appraisal.
- 50% of any capital gain is taxable but the charitable donation tax credit will exceed the tax on the gain, resulting in net tax savings.

Benefits to the charity

- The gift can be retained or sold and the proceeds used for current needs. If the article is certified cultural property, disposition restrictions apply.
- The charity is not taxed on any capital gain when it sells the object.

Who

Owners, generally over age 50, of objects that they no longer intend to use.

How

Tangible personal property may be conveyed to the charity through signature of a legal document and delivery of the object. In many cases, opinions will be needed regarding the object's origins, history and chain of title/ownership. The charity will require an appraisal as well.

Watch

The transfer must be made voluntarily without expectation of return, subject only to the split receipting rules, which provide that, subject to certain conditions, a transfer of property to a charity will be considered a gift even if the donor receives a material benefit in return. See "Split Receipting" on page 11.

Per s. 46(1) of the Income Tax Act, when personal use property (i.e., books, manuscripts, artwork, jewellry) is given, the adjusted cost base is deemed to be the greater of the amount the donor paid for the property and $1,000, and the disposition price is deemed to be the greater of the amount received and $1,000. Thus, if a donor purchased a book collection for $500 and it is now appraised at $1,000, there would be no taxable gain on the donation of the collection.

The value of merchandise or supplies donated as a promotion or for advertising purposes does not qualify as a gift. These items should be deducted as a business expense by the owner. Property of little value to the donor (used clothes, for example) does not qualify as a gift. Contributions of services, time, or skill do not qualify as a gift. A gift must involve the transfer of property.

CRA INTERPRETATION BULLETIN IT-297R2 GIFTS IN KIND TO CHARITY AND OTHERS; IT-110R3 *GIFTS AND OFFICIAL DONATION RECEIPTS.*

Outright Gifts by Corporations

Corporations receive deductions for charitable gifts rather than tax credits. Otherwise, the same tax rules

regarding donations apply to both corporations and individuals.

Charitable gifts may be made by either an operating or a holding company and may include cash, publicly-traded (listed) securities or inventory.

Benefits to the donor company

GIFTS OF CASH, PUBLICLY-TRADED (LISTED) SECURITIES

- If a company donates cash, it receives an immediate tax receipt and a deduction for the receipted amount (subject to the calculation of any advantage which would reduce the eligible amount).
- If a company transfers publicly-traded (listed) securities, it receives an immediate tax receipt for the full fair market value of the donated securities. The company can use the receipt to claim a deduction and won't be taxed on any gain.
- The tax-free portion of any capital gain (100% of the gain if the gift is of listed securities) is credited to the donor company's capital dividend account and can be paid to the shareholders as a tax-free dividend.

GIFTS OF INVENTORY

- A charity may issue a tax receipt for a gift of inventory (CRA Interpretation Bulletin IT-297R2, see especially paragraphs 3, 4, 6 and 8).

The donor company must bring into income an amount equal to the fair market value of the item(s) donated. Therefore, there will be no net tax savings, but the company may derive public relations and advertising benefits from having the charity use the product(s).

CRA INTERPRETATION BULLETIN IT-297R2 *GIFTS IN KIND TO CHARITY AND OTHERS*. CRA WEBSITE: WWW.CRA- ARC.GC.CA.

Gifts of Life Insurance (Ownership Transferred to Charity)

When full ownership of the life insurance policy is irrevocably transferred to the charity and the charity is also made the designated beneficiary of the policy, the donor receives an immediate tax receipt for the cash value of the donated policy. The donor will also receive annual tax receipts for any premiums that he or she pays after the transfer to keep the policy in force.

If the policy is purchased with the express purpose of making a gift, the charity may be named as owner on the application form.

Benefits to the donor

- The donor making premium payments need only make small current outlays that will be leveraged into a much larger future gift.
- If the transferred policy has been fully paid, the donor makes no further capital outlays, yet there will be a large future gift.
- As the charity is the owner and beneficiary of the policy, the insurance proceeds at death will be paid directly to the charity. They are not included in the donor's estate, are not subject to estate probate fees and are less susceptible to will challenges.

Benefits to the charity

- After ownership is transferred, the charity has immediate access to the policy's cash value.
- The charity has received an irrevocable gift.
- If the policy is retained, the charity will receive the death proceeds in the future. Insurance proceeds are often received more quickly than gifts from estates.

Who

Insurance gifts generally appeal to people aged 30 to 60 who have an older policy that is no longer needed, or who want to make a large gift but have limited resources.

How

The donor's insurer provides papers for the donor to sign, transferring ownership of the policy to the charity and also making the charity the registered beneficiary of the policy.

Watch

In order to qualify for a tax receipt, the donor must transfer ownership irrevocably to the charity. The donor cannot get the policy back if he or she suffers a financial reversal in the future.

Check with the charity beforehand regarding its gift acceptance policies regarding insurance. Does the charity accept gifts of insurance and, if so, what type(s)? For example, many charities may prefer gifts of whole life policies rather than term insurance.

There may be taxation issues when a policy is donated. For example, to the extent that the value of the policy when donated exceeds its adjusted cost base, there will be an income inclusion. In other words, any "gain" in the policy will be taxed as fully taxable income, not as a capital gain. Donors should obtain financial planning/tax advice before finalizing such gifts.

After a period of time, some donors may tire of making yearly premium payments, even though they receive annual tax receipts for the premiums. Fully-paid policies or policies where premium payments are no longer required after a clearly defined and relatively short period of time (for example, five years) are advantageous in this regard. For some donors, a one-time lump sum payment may be possible.

If the donor stops paying premiums before the policy is fully paid, the charity has three options:

- continue paying the premiums with its own funds,
- surrender the policy for its cash value, or
- if there is sufficient cash value, convert the existing policy to a paid-up policy for less than the face amount.

Regarding transfer of ownership of existing policies, CRA has issued a technical interpretation, which could, under certain circumstances, result in larger tax receipts than the cash surrender value. However, this will require a policy appraisal which is more complex and expensive. Pending further CRA guidelines, charities should adopt a conservative approach.

CRA INTERPRETATION BULLETIN IT-244R3 *GIFTS BY INDIVIDUALS OF LIFE INSURANCE POLICIES AS CHARITABLE DONATIONS.*

Interest-free Loans

This is an arrangement where a donor loans money to a charity, interest-free. The loan may be repayable after a period of years, or it may be a demand loan repayable whenever the donor requests.

Benefits to the donor

- A donor concerned about a possible personal need for capital in the future could initially make a loan. Later, if the capital is not needed, the donor could forgive the loan or a portion of it and receive a tax receipt for the amount forgiven.
- The donor can count on the funds being repaid (unless he or she forgives the loan or a portion), so the loan will not affect the donor's plan for estate distribution.
- The donor's income will be reduced since the income from the donor's loan is being received by the charity, not the donor. As a result, the donor's income tax and possible federal clawbacks will be lower than if the donor had not made the loan.
- The making of the loan is not a tax-receiptable contribution. It is not subject to the normal contribution limits that apply to a tax-receipted gifts nor are the earnings generated by the loaned funds.
- If the charity invests the loaned funds and uses the earnings for current needs, the donor receives the satisfaction of seeing funds being put to work while the donor is alive. The donor pays no income tax on earnings that accrue to the charity. In other words, the donor has given income to the charity without being taxed on it.

Benefits to the charity

- The charity receives needed funds immediately without incurring the cost of borrowing.
- The charity could invest the borrowed funds and use the interest earnings for current needs or to build endowments. The charity is tax-exempt and pays no income tax on the income.
- The loan might provide needed working capital or cash to purchase ecologically important land until the charity can arrange for long-term financing. In some cases, the loan may eliminate or reduce the need for financing and the associated borrowing costs. Loans designated to specific campaigns or programs can be highly beneficial.

Who

Persons of any age who have sufficient current income but want to preserve their principal for their own future security and/or for their heirs.

How

An agreement specifying the terms of the loan is drafted. The document is signed by the donor and the

charity's authorized representative(s). The funds are forwarded to the charity for its use.

Watch

The charity must ensure it is in a financial position to repay the loan if or when it becomes due. Donors considering a loan should satisfy themselves that the charity is financially and administratively sound, as interest-free loans are often not secured and are backed only by the charity itself.

Commemorative Gifts

People who wish to honour other people or commemorate life's milestones often make donations to good causes in lieu of gifts or flowers. These milestones include weddings, birthdays, anniversaries and the passing of a loved one or friend (in memoriam gift).

These simple gifts, when added together, can result in significant support. Sometimes, a company or other organization will match these gifts, creating an even larger green legacy.

Benefits to the donor

- The donor receives an immediate tax receipt for the full amount given. Individual donors may then claim the charitable donation tax credit. Corporate donors may claim a tax deduction.
- The donor and the celebrants or family receive the satisfaction of seeing the gift put to work immediately.
- The donor knows that the celebrants or family will receive acknowledgment of the commemorative gift.
- When commemorative wishes are included in a will, the donor has peace of mind for the future. The donor establishes a perpetual legacy bearing the donor's name or the names of loved ones.

Benefits to the Charity

- This is an assured and readily negotiable gift when received.
- The charity can put the gift to work immediately.

Who

Everyone (any age) who wishes to make this simple gift and can afford to give up some principal and the interest it earns.

How

The gift is complete when the cheque is delivered or mailed to the charity. The charity will advise the celebrants or family of the donor's gift, and it will advise the donor that the gift has been acknowledged to the celebrants or family.

Gifts of Strip Bonds

A strip bond is a corporate or government bond that pays no current interest to the holder. It is sold at a discount for considerably less than its future redemption value. For example, a bond purchased for $28,000 today may mature at a value of $50,000 in 15 years.

Individuals tend to hold strip bonds in their RRSPs, as such holdings outside an RRSP are taxed yearly on interest accrued during each year even though the bond owner hasn't received any actual interest payments.

Charities are tax exempt, and pay no tax on "interest" that accrues over the years nor when the strip bond is sold.

Benefits to the donor

- The donor receives a tax receipt for the fair market value of the strip bond at the time it is transferred to the charity.
- The donor may be able to provide a future gift many times larger than the current net cost. The donor's modest investment will mature into a large gift to the charity in the future. As with a gift of life insurance, a strip bond gift provides impressive leverage (in other words, a modest outlay results in a large gift).
- Benefits to the charity
- The charity can count on a definite amount being available in the future if it holds the bond to maturity.

- The charity can sell the bond any
- time for its market value at the time.
- The charity is not taxed on bond interest either yearly as it accrues or when it is redeemed.
- Some charities have promoted strip bonds as a way to build future endowments.

Who

This method of giving appeals to middle to upper-income individuals who may have already purchased strip bonds for their own portfolios and also to individuals who are not insurable or who do not like insurance products.

How

These gifts may easily be created in several ways: the donor may donate cash to the charity and instruct the charity to buy a strip bond for the same amount or the donor may instruct his or her broker to buy a strip bond from funds in the donor's account and register the bond in the charity's name, or, if the donor already holds a strip bond in his or her brokerage account, the donor can instruct his or her broker to transfer the bond in-kind directly to the charity's brokerage account.

Watch

To avoid accrued interest taxation, donors should not register the strip in their own name.

With smaller bond purchases, inquire to ensure brokerage fees don't eat into the ultimate rate of return.

Donors should obtain tax advice before proceeding, especially if the gift is of significant size.

Donors should speak with the charity beforehand and the charity should speak with both brokers beforehand to ensure all parties understand and agree upon the gifting process to be used. Good communication among all parties is a must.

Gifts of Ecologically Sensitive Land — Canada's Ecological Gifts Program

Please see the more detailed section on Ecological Gifts on page 43. Habitat loss and degradation are the greatest threats to biodiversity in Canada today. Since many important habitats are found on private property, landowners play a vital role in habitat conservation. This is why members of the public, environmental groups, provinces and municipalities wanted a program to support conservation on private lands. The Ecological Gifts Program (EGP) was created in 1995 to serve this role.

Canada's EGP provides a way for Canadians with ecologically sensitive land to create a natural legacy for present and future generations. It offers significant income tax benefits to landowners who donate land for safekeeping to qualified recipients such as land trusts and other nature conservation organizations. These recipients take on the job of ensuring that the land's biodiversity and environmental heritage are conserved forever.

A proposed gift must be certified by the Minister of the Environment as ecologically sensitive to qualify as an ecological gift. The Minister will also approve the recipient and determine the fair market value of the donation.

Benefits to the donor

Today, donors of ecological gifts enjoy significant tax advantages and the comfort that their gifts are protected in perpetuity. The donors receive a tax receipt from the recipient for the fair market value of their ecological gift and then apply that amount against their net annual taxable income. Corporate donors qualify for a tax deduction while individuals may claim a non-refundable tax credit. Each tax and donation situation is unique and obtaining independent, professional legal and tax advice is strongly recommended.

Other advantages of ecological gifts include:

1) No tax on capital gains for capital gifts

2) No limit on the total value eligible for deduction/credit in any one year

3) A ten-year period to apply the receipt to income.

Benefits to the recipient

The recipient organization receives an outright, irrevocable gift for the purposes of conservation. Land is preserved now for future generations. This benefit is immeasurable.

Who

Gifts of ecologically sensitive land may be donated to eligible environmental charities, which include land trusts and other nature conservation organizations. Over 130 such charities across Canada are eligible under the EGP. To be approved by the Minister of the Environment to receive ecological gifts, charities must

have as a primary mandate the conservation and protection of Canada's environmental heritage.

Gifts may also be made to federal, provincial and territorial governments, Canadian municipalities, and municipal or public bodies that perform a function of government. These groups have the resources and often the experience necessary to manage environmentally sensitive land and safeguard it on behalf of Canadians.

Watch

All potential donors should seek independent legal and tax advice early in the process when considering such gifts.

The recipient must ensure it has the resources and the ability to own and manage the land. Potential donors would be wise to check with the recipient beforehand regarding its policies about acceptance of such gifts. Gift recipients will likely wish to obtain approvals and documentation before accepting the gift.

Land held for development by developers may be characterized as business inventory lands. In such a case, any increase in land value will be viewed by CRA as business income, not capital gains, for tax purposes and would not receive the capital gains exemption. Inventory lands, however, are still eligible for the ten-year carry forward period and no limit on the total value eligible for deduction/credit in any one year.

Any charity, municipality, or municipal or public body that performs a function of government that disposes or changes the use of such land without prior permission of the Minister is subject to a significant tax. For more information about the EGP, please go to ec.gc.ca/pde-egp.

Outright Gifts of Real Estate (Not Certified as Ecologically Sensitive Land)

A donor may give real estate to charity.

Benefits to the donor

- The donor has the satisfaction of seeing the gift at work now or in the near future.
- The donor receives an immediate tax receipt for the fair market value of the donated real estate, as determined by a qualified appraisal.
- 50% of any capital gain on the property is taxable, but the tax credit arising from the gift will exceed the tax on the capital gain, resulting in tax savings for the donor.
- There is no taxable capital gain if the donor donates his or her principal residence (capital gains up to $800,000 are exempt from tax when qualified farm property is donated.)
- The donor is relieved of obligations commonly associated with real estate. After making the gift, the donor no longer has to pay property taxes, maintenance or property management fees, insurance or other ongoing costs.

Benefits to the charity

- The gift of the property is immediate.
- In some cases, the charity may wish to retain and use the property. It may be capable of managing it or arranging for management of it.
- In other instances, the charity may sell the property and use the proceeds for purposes designated by the donor. The proceeds are available as soon as the property is sold.
- The charity is not taxed on any capital gain when it sells the property.

Who

Owners of a principal residence, recreational or investment property who do not need the property or the proceeds from its sale. Some donors may wish to simplify their estate or advance their bequest to the charity by donating real estate now.

Donors with considerable real estate holdings but modest liquid asset holdings will also find this form of giving attractive. The donor is able to fund a significant gift through real estate rather than having to reduce current cash or liquid assets.

Another option is for the donor to give a residual interest in the property now while retaining a life interest. In this way, the donor retains possessionDonors wishing to reduce real estate holdings while increasing their income may wish to consider using the property to fund a charitable remainder trust or charitable gift annuity (see Charitable Remainder Trust, Charitable Gift Annuity.

Individuals with no beneficiaries may find a bequest of real estate to charity (for example, a house, farm or other special property) to be an attractive option

How

The property is appraised and the value is determined. The gift is made by signing and delivering legal documents conveying the property to the charity which are filed in the appropriate Land Title office. The

charity issues a tax receipt to the donor for the fair market value of the donated property. If appreciated property is donated, the amount of the capital gains must also be calculated.

Watch

Many charities prefer not to hold on to real estate, as they lack the resources to manage the property or to arrange for the management of it.

See page 17 regarding British Columbia Property Transfer Tax.

Regarding potential gifts of land by land developers: land held by developers may be characterized as business inventory. Any increase in land value will be viewed by CRA as business income, not capital gains, for tax purposes and would have to be fully included in the donor's business income should the land be donated. This demonstrates again the importance of proper tax and legal advice as part of the gift-planning process.

It's wise to ask the charity beforehand about its policies on accepting gifts of real estate. These gifts can be significant and very beneficial to the charity, but the charity will carefully screen them and accept them only after diligently investigating possible problems and liabilities that may come with the property e.g., contamination, mortgages and other encumbrances, maintenance and repair costs regarding buildings, fencing, landscaping and the like, zoning restrictions and lack of marketability.

The charity will not issue a tax receipt until it is satisfied that the value placed on the property is correct. For large gifts, this may require more than one appraisal. Under the split-receipting rules, the onus is on the charity to ensure it has a reasonable independent appraisal. If the charity has reason to believe the appraisal is inflated, or if it wants corroboration of value before issuing a receipt, it must take steps to protect itself. The penalty can be intermediate sanctions against the charity.

Donors who wish the charity to retain the property for specific purposes or for the long term should satisfy themselves in advance that the charity is well-managed and financially sound enough to carry out the donor's intentions over the long term.

Per the split-receipting rules, bargain sales (where a donor sells property to a charity for less than its appraised fair market value) or gifts of real estate subject to the charity assuming a mortgage are possible. The eligible amount on the tax receipt will be limited to the donor's cost of the property contributed if it was acquired within the past three years or within the past ten years where the donor has a primary intention to gift the property at the time of acquisition.

The April 2015 federal budget introduced a new capital gains exemption regarding gifts of real estate and private shares. Individuals and corporations will be exempt from tax on capital gains on the sale of land or private shares to an arm's length buyer if the cash proceeds are donated to a registered charity within 30 days of the sale. *The exemption will apply to sales which occur after 2016.*

The buyer must deal at arm's length with the donor and the charity.

Where a portion of the sale proceeds is donated, the capital gains exemption will apply only to the donated portion.

The 2015 budget also includes further anti-avoidance rules. If, within five years after the sale,

a) the donor (or a person not dealing at arm's length with the donor) directly or indirectly reacquires any property that was sold;

b) regarding shares, the donor (or a person not dealing at arm's length with the donor) acquires shares substituted for the shares that were sold; or

c) regarding shares, the shares of a corporation that were sold are redeemed and the donor does not deal at arm's length with the corporation at the time of the redemption;

then the capital gains exemption will be reversed. The exempted amount will be included in the donor's income in the year of the reacquisition by the donor or non-arm's length person or share redemption.

Deferred Gifts

Gifts of Life Insurance Proceeds (Charity Named as Registered Beneficiary but Not Owner)

Individuals may name a charity as beneficiary of personal or group life insurance. Upon death, the insurance company will pay the death proceeds directly to the charity. The charity will issue a tax receipt to the donor's estate for the policy proceeds.

Benefits to the donor

- The donor receives the satisfaction of providing for a significant future gift while retaining full ownership (and thus control) of the policy. The donor retains the right to name a different beneficiary.
- Modest premium payments translate into a much larger future gift; this is leverage at its best.
- Upon death, the insurance proceeds will be paid directly to the charity. This occurs outside the donor's estate. The proceeds are therefore not subject to probate fees and are less susceptible to will challenges.
- Upon receipt of the insurance proceeds, the charity will issue a tax receipt for the proceeds to the donor's estate. The receipt may be used by the estate to offset taxes payable by the deceased upon death.
- This method widens the scope and flexibility of estate planning opportunities and makes it easier to use insurance vehicles for charitable giving.

Benefits to the charity

- The charity will receive the insurance proceeds after the donor's death unless the donor changes the beneficiary.
- The insurance proceeds are not subject to income tax.
- The charity often receives insurance proceeds more quickly with a simpler process than gifts from estates.
- This leveraged method of giving helps provide easier access to insurance vehicles for charitable giving.

Who

Adults (any age) whose personal needs and family situation may be subject to change.

Watch

The donor does not receive tax receipts while alive.

The charity has no assurance of a future gift, as the donor may change the beneficiary designation.

The transfer of ownership method, described earlier on under Gifts of Life Insurance (Ownership Transferred to Charity), remains available to donors who wish to receive an immediate tax receipt (resulting in current use of the charitable donations tax credit) while alive. However, CRA has interpreted the absolute assignment of policy ownership to the charity as constituting a gift at the time the ownership was transferred. Where that has occurred, certain conditions of the Income Tax Act regarding eligibility for the charitable donations tax credit regarding direct designation of the insurance proceeds to charity will not have been met (i.e. the charity must not have been the policy owner nor an assignee of the donor's interest under the policy immediately before the donor's death). In other words, if the donor previously transferred policy ownership to the charity, the charity will not be able to issue a tax receipt when it receives the policy proceeds.

Effective 2016, new estate donation rules will apply to gifts made by testamentary beneficiary designation (RRSP, RRIF, TFSA, life insurance).

INCOME TAX ACT, S. 118.1 (5.1) (5.2).

Charitable Gift Annuities

A charitable gift annuity is an arrangement under which a donor transfers a lump sum to a charity in exchange for fixed, guaranteed payments for the life of the donor and/or another person, or, alternatively, for a term of years. All or part of the annuity payments will be tax-free. A gift annuity is fundamentally a combination of an outright gift and the purchase of an annuity.

There are two types of charitable gift annuity: self-insured and reinsured.

- Self-insured: the charity invests the contributed assets and guarantees payments, pledging its own resources as security. These annuities are offered mostly by religious institutions having authority to issue gift annuities either under their charter or by special permission.
- Reinsured (also known as the "Gift Plus Annuity"): an insurance company issues the annuity rather than the charity. The charity works with a life insurance agent on the donor's behalf to arrange for a commercial annuity. Generally, the charity retains 25% – 30% of the contributed amount for its immediate charitable purposes or for endowment, whichever the donor prefers. The balance of the donor's lump-sum contribution is used to purchase the commercial annuity.

Benefits to the donor

- The donor (and/or other beneficiaries) receives guaranteed payments for life (or a term of years), all or partly tax-free.
- The donor's after-tax income often increases significantly after contributing assets to a gift annuity because:
  - gift annuity rates tend to be higher than interest rates paid on GICs and other fixed-income investments (the older the donor, the higher the gift annuity rate); and
  - the annuity payments are all or partly tax-free. (Interest paid on GIC/fixed-income investments is fully taxable.)
- The donor receives the satisfaction of having completed a gift during his or her lifetime.
- The gift annuity is possible for many donors as the minimum required contribution usually does not exceed $10,000 – $20,000.
- The donor is relieved of managing investments and will receive a regular, stable income.
- The donor receives a tax receipt for the excess of the total amount contributed over the cost of purchasing the annuity. The tax benefits to the donor are the same whether the charity self-insures or reinsures a gift annuity. See *Planned Giving for Canadians* for some sample financial illustrations.

Benefits to the charity

- All charitable gift annuities require an irrevocable commitment of principal.
- Self-insured: upon the death of the annuitant(s), the charity has whatever remains of the contribution after satisfying annuity payment obligations. Depending on investment performance and annuitant longevity, this could be 50% or more of the original contribution.
- Reinsured: the charity has whatever remains (usually 25% – 30% of the lump-sum contribution) after purchasing the commercial annuity. If the charity has purchased a commercial annuity with a guarantee period and if the annuitant(s) pass(es) away before the end of the period, the charity will receive the remaining annuity payments.

Who

Donors (usually age 65 and older, with optimum age 75 – 90) who want the security of guaranteed payments that gift annuities offer and who wish to benefit from after-tax rates of return that are significantly better than GICs and Canada Savings Bonds.

Often, the donor has a medium-level income and would like to receive higher dependable income, free of worry. Some donors may use an annuity in place of a bequest to simplify the estate process and reduce probate and other estate settlement fees in the future. Some may contribute by way of a gift annuity and a bequest. Still others start with a modest contribution for a gift annuity

and are so pleased with the results that they make further contributions for additional annuities.

How

The annuity is established by way of a legal agreement between the donor and the charity. The agreement may include provisions dealing with the size of the lump-sum payment, annuity payment frequency and timing, and uses and purposes of the charitable gift. Ordinarily, the donor writes a cheque for the lump-sum contribution. It also makes sense to contribute appreciated listed securities. Per the 2006 Federal Budget, none of the gain in an outright gift of listed securities is taxable. Thus, the portion of the gain attributable to the gift element (i.e., the amount receipted) is not taxed. The includable percentage of the gain arising from the sale of the portion of the securities required to purchase the annuity is taxed. In many instances, the tax credit will offset the tax on the gain, and donors will be able to increase their cash flow.

Watch

Unlike GICs and other fixed-income investments, the capital contributed to establish a gift annuity is irrevocable. The donor cannot get the contribution back and has no control over how it is invested. Annuity payments are fixed and cannot be changed even if interest or inflation rates rise.

Foundations may not incur debt except for current operating expenses and certain other allowable purposes (Income Tax Act, s.149.1 (3)(d), (4)(d)). Gift annuities are problematic for foundations because self-insured and even reinsured gift annuities are viewed as debt obligations by CRA. Thus, it is prudent for a gift annuity agreement to be between the donor and the charity itself rather than the charity's supporting foundation.

Per the split-receipting rules, the value of the annuity payments (premium cost in the case of reinsurance) should not be more than 80% of the amount contributed.

By regulation, BC exempts charities from regulations applicable to the insurance industry if the charity discloses to the donor that the annuity is not insured by an insurance company regulated under the Financial Institutions Act (BC) and that the charity is exempt from the regulatory requirements under the Act. The charity must disclose this in writing when entering into an agreement with the donor.

When considering an annuity arrangement, especially smaller amounts, it is advisable to inquire into the administrative costs that will be associated with the annuity.

It is wise for the donor to consult with his or her legal and tax advisors before finalizing the gift. Both the donor and the charity should have the annuity agreement reviewed and approved by their own legal counsel. Most charities that offer annuities have simple, standard form agreements available and are happy to work with donors and their advisors to ensure that the process of establishing the annuity is straightforward, clear and worry-free.

Not all charities offer annuities, as certain resources are required to administer them. Donors and/or their advisors should check with the charity beforehand about its policies regarding the offering and acceptance of charitable gift annuities.

CRA INCOME TAX TECHNICAL NEWS #26; *INSURER EXEMPTION REGULATION*, BC REG. 366/2007, S.6.

Gift of life insurance funded by commercial annuity ("Insured Annuity")

This is an arrangement where an individual simultaneously purchases a commercial prescribed annuity and a life insurance policy with a face value equal to the amount paid for the annuity.

The donor owns the annuity and receives the payments from it. The charity is named as owner and beneficiary of the life insurance policy.

The after-tax income from the annuity generally exceeds the after-tax income the donor was receiving from investments used to purchase the annuity (e.g. GIC's, term deposits) and the excess cash flow is used to pay the insurance policy premiums.

The charity issues a tax receipt to the donor for the annual premiums paid on the policy.

Upon the donor's death, the insurance company pays the life insurance proceeds to the charity.

Benefits to the donor

- Higher after-tax income, while making a leveraged future gift for the charity.
- The gift moves outside the donor's estate, is not subject to probate fees, and is less susceptible to challenges from heirs than an estate gift.
- Annual tax receipt for insurance premiums paid.

Benefits to the charity

- The gift of life insurance is irrevocable; the charity is assured of a future gift.

- Gifts of life insurance are usually received sooner than gifts from estates.
- No financial risk to the charity. There are few administrative duties once the arrangement has been created.
- Some donors will create this type of arrangement more than once if they like what they see the first time.

Who

Usually donors age 65 or more, with optimum age 75 – 90.

How

Donors should work with a qualified financial/tax advisor to ensure the financial/tax implications are reviewed before proceeding. A qualified financial advisor will also help with the necessary tasks and paperwork required to create the arrangement.

Watch

- This is not a charitable gift annuity. The life insurance policy is the charitable gift.
- The annuity rate and life insurance policy are locked in. The donor can't get the money back if interest rates rise.
- If the donor has health issues, life insurance may not be available or premiums may be very high. Work with a qualified financial advisor with expertise in insurance and annuities; review all the implications before proceeding.
- There is no tax receipt to the donor's estate upon death.

Charitable Remainder Trusts

A Charitable Remainder Trust (CRT) is a planned gift where a donor irrevocably makes a gift to a charity or charities through a trust agreement. The donor contributes cash, securities, real estate or other investments like term deposits or certificates of deposit to the trust and receives an immediate tax receipt for the present value of the donated remainder interest. A trustee manages the trust. If the trust assets are income-producing, the trustee will pay the net income to the donor or other named beneficiaries for life or for a term of years.

When the trust terminates (upon the death of beneficiaries or expiry of the term), the trustee gives the remaining trust assets to the charity.

Additional trust tools such as Alter Ego Trusts and Joint Partner Trusts are available to people aged 65 and older. With an Alter Ego trust, only the settlor (person transferring property into the trust) may receive income from the trust while alive. With a Joint Partner Trust, only the settlor and partner may receive income from the trust. ("Partner" includes a spouse or common-law partner, who may be of the same gender (Income Tax Act, ss. 104(4)(a), 248 (1))).

Benefits to the donor

- The donor receives an immediate tax receipt for the present value of the donated remainder interest. Generally speaking, older donors will receive a larger receipt. See Planned Giving for Canadians for sample receipt calculations.
- Transfer of appreciated property to the trust is a deemed disposition and the donor will be taxed on 50% of any gain. The donor may reduce the taxable gain by electing to value the contributed property below its fair market value (Income Tax Act, s. 118.1 (6)). However, this could cause the trust to pay more tax upon the sale or disposition of the property.
- It may be possible to eliminate capital gains tax entirely at the time appreciated assets are contributed to the CRT by ensuring that the CRT meets the definition of an Alter Ego or Joint Partner Trust.
- If the donor is the income beneficiary, he or she receives regular income from the trust for life or for a term of years.
- If the donor makes the contribution to the trust during his or her lifetime, assets held in the trust are not subject to probate fees and are less susceptible to challenge than a charitable bequest.
- If the trustee is someone other than the donor, the donor is freed from management responsibility for the trust assets.
- The trust agreement can be kept private unlike a will, which may become a public document upon the donor's death.
- A main advantage of Alter Ego and Joint Partner trusts is that capital gain in appreciated property is not taxed when the property is transferred to the trust. Taxation of the gain is deferred until the trustee sells the property or, if not sold, at the settlor's death (or at the survivor's death in the case of a Joint Partner trust). Tax on the gain is paid by the trust.

Benefits to the charity

- While the charity's use of the trust assets is deferred until the trust terminates, it can count on receiving them in the future because the gift is irrevocable.
- The charity will not be taxed on any capital gain whether the property is sold by the trust or eventually distributed to and then sold by the charity. However, the charity's benefit would be reduced by any tax paid by the trust.

Who

This form of gift tends to be attractive to upper-income donors over the age of 60 and especially donors over 75 who want to help a charity or charities, have extensive holdings, are in a high marginal tax bracket (will benefit from immediate tax relief) and have the ability to donate some of their assets. People who wish to receive a steady income for life (or who wish to provide income for a loved one) and be freed of managing investments find this form of giving especially satisfying and beneficial.

How

The trust is created through a trust agreement signed by the donor and trustee. The trustee may be a trust company, an individual named by the donor, the charity beneficiary if it is authorized and able to serve, or the donor.

Watch

To qualify for a tax receipt, contributions to the trust must be irrevocable. Once contributed, the donor has given up control over the assets and cannot get them back. No encroachment on trust assets/invested capital is permitted.

Use an actuary to ensure accurate, objective, third-party calculation of the tax receipt. This provides professional support if CRA questions the valuation.

CRA takes the position that no tax receipt is allowed when a donor makes an additional contribution to an existing charitable remainder trust. It is necessary to create a new trust in order to qualify for a new tax receipt.

The capital gains tax exemption regarding gifts of publicly-listed securities is not available regarding gifts to charitable remainder trusts. CRA takes the position that 50% of any capital gain will be taxed.

A tax receipt is not always the most important consideration. Meeting family needs and goals is paramount.

Acting as trustee brings with it responsibilities such as investing, trust accounting, and tax filings. It is advisable to approach financial institutions in the community to determine their fees, minimum size of trust they will accept, and the ways in which they could work with charities and donors. While some universities and other large charities are willing to act as trustee when named as a remainder beneficiary, it is usually not advisable for charities to serve as trustee.

Most financial institutions will not establish a trust for amounts under $200,000 (in some cases, more) and they charge set-up and ongoing fees to manage the trust. This affects the amount of income the donor receives. There may also be discharge fees when the trust is terminated. If the charity serves as trustee, smaller amounts (e.g., $50,000) may be possible. However, not every charity has the resources to serve as trustee and, in some cases, their internal policies prohibit serving as trustee.

While there may be no capital gains tax when appreciated assets are transferred into an Alter Ego or Joint Partner Trust, there will be tax implications at death, for example:

- Alter Ego Trust: when the settlor dies, any gains in the trust property will be taxable to the trust at the highest individual marginal tax rates.
- Joint Partner Trust: when the settlor's surviving partner dies, any gains in the trust property will be taxable to the trust at the highest individual marginal tax rates.

Beginning in 2016, new taxation rules will affect certain trusts including alter-ego, joint partner and spousal trusts. For example, income/capital gain liability triggered on death will be attributed to the life tenant (or the life tenant's estate), not just the trust itself. This could have a negative effect on the amount left available for heirs.

Trusts are a complex area. As with all planned gifts of significant size, donors should consult with a lawyer and accountant with significant experience in these matters.

CRA INTERPRETATION BULLETIN IT – 226R *GIFT TO A CHARITY OF A RESIDUAL INTEREST IN REAL PROPERTY OR AN EQUITABLE INTEREST IN A TRUST.*

Gifts of Residual Interest in Real Estate

A residual interest gift in real estate is an arrangement where a donor irrevocably gives real estate to a charity while retaining the right to use the property for life or for a term of years.

Benefits to the donor

- The donor retains the right to use the property with the ability to continue using it for life or for a term of years. The gift has no impact on the donor's lifestyle for the donor continues to enjoy the property as before. Married donors could retain use for their own lifetime and also for the lifetime of a surviving spouse. Alternatively, use could be retained for a certain period of time.
- When the property's title passes to the charity (with the donor's life interest registered on title), the donor receives an immediate tax receipt for the present value of the donated residual interest.
- If the use of the property is retained by the donor only, or by the donor and a spouse, the donor must recognize only the portion of the capital gain allocable to the donated residual interest (the donor will pay tax on 50% of any gain attributable to the residual interest). There is no taxable capital gain when the donor gives a residual interest in a principal residence.
- The gift removes the donated property from the donor's estate, resulting in lower probate and other estate-related fees in the future. Also, the donor's wishes are less susceptible to challenge by heirs than if the donor had made a bequest.

Benefits to the charity

- The charity receives an irrevocable gift of the property. The charity's use and control of the property is delayed but is assured in the future.
- When the charity gains complete ownership of the property, it may preserve or use the property or sell it and use the proceeds.
- Whether the charity retains or sells the property, it will not be taxed on any capital gain.

Who

This gift appeals primarily to upper-income donors 60 years of age plus, with the optimum being 75 years of age or older. Usually the donor has extensive holdings and may be planning a bequest to a favourite cause but would like to reduce income tax in the present year without any change in personal living standards.

A donor may wish to donate a residual interest in the donor's principal residence, recreational property or other real estate that the donor wants to see preserved.

How

The property is appraised and the value of the residual interest is determined. Legal documents are signed by the donor and the charity and filed in the Land Title office. The charity issues a tax receipt for the present value of the donated residual interest. If appreciated property is donated, the amount of the capital gains must also be calculated.

The property vests in the charity, subject to the life interest retained by the donor. Upon the donor's death or expiration of the term of years, the donor's right to use the property ceases. The charity then has complete ownership and control of the property.

Watch

Residual interest gifts are irrevocable. The donor cannot regain title to the property. The property has been removed from the donor's estate and will not pass to other beneficiaries.

Valuations can be a sensitive issue. Use an appraiser to value the property. Use an actuary to calculate the donation receipt. Valuations of the property, life interest and residual interest may be reviewed by CRA.

It is not possible to give a residual interest in property other than real estate. If a donor wishes to commit tangible personal property such as artwork to a charity and continue to enjoy it, it is necessary to create a trust and transfer the artwork to the trustee. The donor is not giving a residual interest in the art

itself but rather an equitable interest in the trust. The trustee has a fiduciary duty to the charity to preserve the object and deliver it when the time comes. The Income Tax Act rules that provide beneficial treatment to gifts of certified cultural property will not be available to the donor if a trust is used. Therefore, it makes no sense to transfer certified cultural property to a trust, give an equitable interest in the trust to a charity, and retain the right to use the trust property.

Check with the charity in advance regarding its policies about acceptance of such gifts, including policies regarding who is responsible for upkeep/repairs, property taxes, insurance, etc. while the life interest is in existence[removed].

As with all complex gifts, agreements and other legal documents should be approved by the donor's and the charity's legal counsel before signature.

CRA INTERPRETATION BULLETIN IT – 226R *GIFT TO A CHARITY OF A RESIDUAL INTEREST IN REAL PROPERTY OR AN EQUITABLE INTEREST IN A TRUST.*

Charitable Bequests

A charitable bequest is a gift to a charity made in the donor's will. Such gifts can take a number of forms, including a lump sum of money, a gift of securities, a gift of real estate or personal property, a named percentage or portion of the donor's estate, a named percentage or portion of the residue (amount left after expenses, taxes, and other bequests have been paid) of the donor's estate or any of these subject to a contingency such as the donor not being survived by spouse and children.

Some donors create a trust in their will (a testamentary trust) which, pays income to a spouse or other family member for life or for a term of years, after which the trust remainder is distributed to the charity.

Bequests can be made for various purposes. Some donors prefer to let the charity decide how to use the funds according to the most urgent needs of the time. Others prefer to direct the funds to an endowment or specific programs offered by the charity.

Benefits to the donor

- The donor has the satisfaction of creating a significant legacy that will implement the donor's vision of a better future by helping others the donor cares about.
- The donor retains full control of the gifted property while alive and can change the will at any time as long as he or she has full mental capacity. Only a modest outlay of capital is required for professional fees in planning the estate and preparing the documentation.
- A tax receipt may be issued to the donor's estate for the amount of cash left to the charity or for the fair market value of other property given, resulting in a tax credit on the donor's final income tax return and tax savings to the estate.
- The maximum amount of the gift that can be claimed for credit on the final tax return is 100% of net income in the year of death. Any excess may be carried back one year, subject to the same contribution limit. The preceding year's income tax return is re-calculated and any credit resulting from the carried-back gift will be added to the credit allowed on the final return.
- From a tax standpoint, bequests of publicly-listed securities can be very effective. It's best to empower the executor to select the specific securities to donate. This power is given in the donor's will. This is preferable to naming the specific securities in the will as the donor's portfolio may or may not include the named securities at the time of death. Also, if empowered to do so, the executor could choose the securities with the most capital gain at the time, thereby maximizing tax savings. None of the gain in the publicly-listed securities will be taxed on the donor's final tax return. (If the bequest is paid with

other appreciated property, or if the executor sells appreciated property of any kind and pays cash to the charity, then 50% of the gain is taxable on the terminal tax return).
- While some bequests are complex (depending on the donor's personal situation and wishes) others are remarkably simple and easy to establish with professional assistance. Some gifts are large, others small, but almost everyone can participate in this form of giving.

Benefits to the charity
- Bequests tend to be larger than outright gifts made during the donor's lifetime.
- Many bequests have relatively few restrictions.
- Most bequests can be put to use immediately after they are received.
- The charity can expect to receive a future gift if the will is not changed or successfully challenged.

Who
Adults of any age and of sound mind. Often, people make charitable gifts when revising their wills. Planning opportunities also arise as life's milestones are reached, including the age of 71 when RRSPs must be converted.

How
The donor instructs his or her lawyer regarding the charitable bequest. The lawyer prepares a new will or an amendment to the donor's existing will. To be effective, the new will or amendment must be properly signed and witnessed in accordance with strict legal requirements.

Watch
Per new estate donation rules effective in 2016, gifts by charitable bequest and testamentary beneficiary designations will no longer be deemed made by the *individual immediately before death*. Instead, they will be deemed made by *the estate on the day the property is transferred to the charity*. The charity will issue a tax receipt for the value of the gift as of the transfer date rather than the date of death. Income Tax Act, s. 118.1 (5) (a)(b). See "Graduated-rate Estates" at page 33.

Also per the new estate donation rules, estate donations of private shares to charity will be a "non-qualifying security" because the estate and the charity are not at arm's length from each other. (Under the new rules, the estate is the donor rather than the deceased individual. The estate is a trust. Trust beneficiaries are not at arm's length from a trust. Therefore, the charity is not at arm's length from the estate of a donor who made a gift by will). A gift of private shares which remains possible during life has been rendered extremely difficult if not impossible at death. A legislative amendment is needed to correct this.

When making estate plans, donors must understand what they are doing and do it of their own free will. Estates can be subjected to court challenges, including challenges by certain family members who feel they have not been adequately provided for. Undue influence can also be a concern, especially with some elderly donors. Such matters may affect whether the donor's wishes (including charitable ones) can be carried out.

Donors or their advisors should contact the charity for sample bequest wording. This sample wording tends to be general and should be reviewed by the donor's lawyer before it is used.

Sometimes a caring parent will tell their children of the parent's intention to include a favourite charity in the parent's will. After the parent's death, the children discover that their father or mother did not actually do this (circumstances change, intentions change or the parent did not or was not able to revise their will or sign a new one). Gifts to the children are included in the will, and one or more of the children, remembering their parent's expressed wishes, generously donate part of their inheritance to the charity. The children are sometimes surprised to find that the charity must issue a tax receipt to the child (who in this case is the donor) rather than the parent's estate. When it comes to estate planning, it's important to convert good intentions into action!

Under proposed new rules to become effective in 2016, charitable bequests and beneficiary designations

will no longer be deemed made by the individual immediately before death. Instead, they will be deemed made by the estate on the day the property is actually transferred to the charity. The charity will issue a tax receipt for the value of the gift as of the transfer date, rather than as of the date of death.

Gifts of Retirement Funds (RRSP, RRIF, TFSA) Upon Death

A donor may give all or part of his or her RRSP, RRIF or TFSA to charity upon death. This may be accomplished by direct designation outside the donor's estate.

Benefits to the donor

- The donor retains full access to retirement funds while alive.
- The donor's estate will receive a tax receipt to be applied against tax on the distribution of retirement funds.
- The gift is not subject to probate and other estate settlement fees and is less susceptible to will challenges.
- Because the charitable tax credit offsets any tax on the distribution, the gift passes to the charity tax free.
- The gift is simple to arrange.

Benefits to the charity

- The charity receives a gift in the future if the beneficiary designation is not changed.
- A direct designation gift will often arrive more quickly than gifts from estates and the charity can use the gift immediately. A gift from a RRSP or RRIF may be large, especially if the donor has been withdrawing minimal amounts.

Who

These gifts may be given by all individuals owning a RRSP, RRIF or TFSA. They are especially appealing for single persons without dependents and surviving spouses who have made other provisions for heirs.

Some individuals will pass away prior to converting their RRSP to a RRIF or annuity. If the RRSP beneficiary is other than a surviving spouse or certain dependants, the value of the RRSP will be taxed as ordinary income in the year of death. In that case, a significant portion of the RRSP could be consumed in taxes.

Many single individuals, when they realize the potential shrinkage of their pension accumulations due to taxation, may be inclined to make a charitable gift on death of all or a portion of what is left, to help offset this tax impact.

How

- The donor obtains the appropriate beneficiary designation form from the plan administrator and names the charity as beneficiary of all or a per centage of the account.

INCOME TAX ACT, SECTION 118.1 (5.3)

Watch

See "Graduated-rate Estates" at page 33.

INCOME TAX ACT, S. 118.1 (4) THROUGH (5.2).

Graduated-rate Estates

Effective January 1, 2016, new requirements will take effect regarding the taxation of testamentary trusts (trusts created by will which take effect upon death) and all estates.

Currently, testamentary trusts pay federal income tax using the graduated rates available to individuals. The new measures will apply the highest marginal tax rate to all testamentary trusts and *all* estates, except for an estate designated as a "graduated-rate estate" and qualified disability trusts.

A graduated-rate estate will be taxed using graduated rates for the first 36 months following the individual's death, after which the highest rate will apply.

Charitable bequests will be deemed to be made by the estate at the time the executors transfer the property to the charity, and will be valued at the time of transfer rather than at the date of death.

More tax-planning flexibility will be available to executors regarding allocation of the charitable tax credit between the deceased individual and a graduated-rate estate.

Executors must ensure the estate is designated as a graduated-rate estate. The designation won't happen automatically.

The new rules will also apply to charitable gifts made by testamentary beneficiary designation (RRSP, RRIF, TFSA, life insurance).

Donors should discuss these changes with their executors.

There will continue to be valid, non-tax reasons to create trusts. Donors should consult with their advisors about the effect of these changes upon the donor, the donor's family, and the donor's planning.

Lifetime Gifts of Retirement Funds

A donor may make a gift of retirement funds during the donor's lifetime. The donor would make a taxable withdrawal from his or her RRSP or RRIF and then contribute the proceeds to the charity. The donor is entitled to a tax receipt for the charitable gift. The withdrawal from the RRSP or RRIF account is fully taxable but the charitable tax credit cancels the tax. This type of gift will decrease the donor's retirement income, but that may not be a concern for those with more than enough from other sources.

Additional tax benefits may be achieved by contributing appreciated publicly-listed securities to charity and then making a cash withdrawal from the RRSP or RRIF equal to the value of the contributed securities. The charitable tax credit offsets the tax on the distribution; the donor has obtained cash without paying income tax on the gain in the donated securities.

Before proceeding, donors should consider the effect of any withholding tax applicable to withdrawals.

Endowments

An endowment is an investment fund set aside for the long-term support of a charity. The principal remains invested. Only the income, or a portion of the income, is spent. The income is used for purposes set by the donor or as the organization's board decides.

Endowments must be established with regard to the charitable disbursement requirements contained in section 149.1 of the Income Tax Act regarding disbursement requirements.

Most endowments are built through planned gifts, often through bequests and gifts of publicly-listed securities.

Endowments commonly fall into the following categories:

- General: undesignated bequests, endowment contributions not designated for a named fund or specific program and memorial gifts are often placed in the charity's general endowment. A donor may contribute any amount.
- Institutional restricted: these endowments fund specific permanent ongoing programs. A donor may contribute any amount to the organization's endowment targeted to a specific program or program area.
- Named: these endowments are named for the donor, a loved one or a friend. They are usually created for specific purposes or to support specific programs, with a minimum initial contribution required to create the named endowment. Donors considering such gifts should check with the charity to determine how much is required.

Benefits to the donor

- A named endowment provides a form of immortality for the donor, preserving his or her name or the name of a loved one and standing as a permanent expression of the donor's values. The donor receives a deep sense of satisfaction in setting up a fund that will last forever, has lasting significance for the charity and will outlive the donor. The donor has left a permanent imprint that will have a lasting and ongoing impact.
- The donor receives an immediate tax receipt for all contributions made to endowment(s) during the donor's lifetime. The donor's estate receives a tax receipt for an endowment established and funded through the donor's will.
- Endowments are ideal for donors who do not want to fund current needs but, rather, wish their gift to be preserved and used long after they are gone to assure a perpetual income stream that will support the donor's area(s) of interest, create a lasting legacy and, finally, make a statement about what is important to the donor.
- Subject to the charity's mission and policies, the donor receives the satisfaction of being able to direct that endowment income be used to accomplish purposes important to the donor.

Benefits to the charity

- Endowments provide financial stability. They make long-range planning possible because of a predictable income stream. They protect the charity against inevitable fluctuations in government support, corporate and annual fund support.
- The charity receives an irrevocable gift of capital that it will protect and place in its investment portfolio. The gift provides a regular, perpetual income stream to be used as the donor has directed.
- Endowments help assure the continuation of programs which may be difficult to fund from other sources such as annual appeals.
- Endowment donors usually are, or become, very interested in the charity's work. As their gift is an expression of interest and confidence in the charity's future, close relationships are often built between the charity and the donor. A close

relationship may result in the donor providing additional financial support for the charity.
- Individuals who contribute annually to the charity may be willing to endow their annual gifts. For example, a donor who gives $1,000 every year could assure perpetual support by leaving a $30,000 bequest for an unrestricted endowment. If the funds are invested and earn 3.5% per year, the endowment income would be $1,050 per year.
- Community foundations encourage citizens to contribute to the common good in lasting ways. Community foundations may establish endowments for their own grant making and also provide a service by managing endowments for smaller charities that lack the resources to invest funds on their own.
- An environmental organization might offer different endowment levels for public awareness programs about land acquisitions to preserve natural habitat.

Who

- General endowments: anyone with an interest in the charity and its future.
- Named endowments:middle to upper-income donors with an interest in the charity and its future. Service clubs and associations may also find named endowments appealing.

How

Donors may establish endowments directly with their favourite cause(s) or may fund charitable work through an endowment established with a community foundation. Many donors create an endowment while alive. The donor and the charity sign a simple endowment agreement describing the endowment, its purposes and how it will be funded.

A donor may establish an endowment upon death by including appropriate language in his or her will.

Endowments may be funded in any of the following ways:

- outright donation of cash or other assets,
- gift in the donor's will,
- death benefits or cash surrender value of life insurance,
- remainder interest of a Charitable Remainder Trust,
- residual interest when the donor retains use of a principal residence or other property,
- gift element of a gift annuity,
- proceeds received when a strip bond matures, or
- retirement funds designated for the charity.

Watch

Endowments are not appropriate for all charities. For example, organizations that are relatively new or created to meet a current need that will not necessarily continue indefinitely are not suitable for endowment gifts. Some humanitarian or social agencies must put all resources into the field immediately to meet urgent needs rather than investing the funds.

Endowment gifts are irrevocable. The donor cannot get the funds back.

Endowment agreements and bequest language should provide for the possibility of changed circumstances in the future. Changing conditions and scientific/technological advances may make the original program funded by the endowment obsolete.

The gift will have a more enduring long-term benefit if stated in general terms rather than being too narrowly restricted. The charity needs some flexibility to adapt to a changing world. An endowment to fund research into a specific disease may end up with its original purpose frustrated if or when the disease is cured; it's wise to provide for alternate uses of funds and allow the charity flexibility in case such frustration occurs.

The charity through its policies may set minimum amounts required to create named endowments. Anything less becomes too expensive and administratively onerous to maintain. Donors should check with the charity to determine its minimum required amount.

Some individuals may not be able to contribute the required minimum in one lump sum. Some charities will accept smaller contributions over a period of time (for example, up to five years) under an agreement to invest the contributions in a holding account until the minimum necessary amount is reached. If contributions do not reach the required minimum within the agreed period, no named fund is created and the contributions become part of the general, unrestricted endowment. Donors and advisors considering endowment gifts should satisfy themselves that the charity is well-managed and stable enough to operate over the long term. Think decades into the future. Think "forever".

To sum up, when considering an endowment, always check with the charity regarding its mission, endowment giving options and minimum giving requirements, endowment acceptance policies and procedures and endowment investment policies.

GIFTS OF LAND OR COVENANTS

Tax and Legal Implications

Although the vast majority of land in British Columbia is owned by the Crown, the remaining private land has ecological, cultural and heritage values of such importance that it is easy to forget private land makes up only about five percent of the land base in the province. These are the values that communities frequently want to preserve and protect.

For example, many areas with high biodiversity values and significant ecological features are located in the southern portions of the province on privately owned land. In all parts of the province, humans were drawn to settle in valley bottoms, estuaries and other scenic areas with high environmental values. Much of this land is now privately owned. As the human impact on these critically important areas continues to grow, concerned citizens and conservancy organizations increasingly focus their efforts on ways to provide permanent protection.

There are several options available to the landowner who wants to protect ecologically special property. For example, the landowner might decide to grant a conservation covenant to a conservancy organization or government agency. Alternatively, the landowner might decide to make a gift of the land itself to a conservancy organization or to the government.

Other potential donors may decide to make a gift of cash or property other than land to a conservancy organization to assist the organization in carrying out its conservancy activities. Early in the process of making the decision about whether to make a gift—and what type of gift is appropriate in the circumstances—the donor needs to consider all potential tax implications.

Land and Interests in Land

Land ownership in British Columbia consists of a bundle of separate ownership rights or interests, sometimes called estates. A landowner who is the owner of the fee simple estate, or largest bundle of rights, has the right to:

- exclusively use and occupy the land,
- dispose of the land by sale, gift or will, and
- divide up the bundle of ownership rights and give some of them to others.

A landowner might choose to give away the right to use and occupy land (a lease), the right of passage across the land (an easement) or the right to do something on or with the land (a covenant).

In addition, a landowner could give away only a residual or remainder interest in the land, the interest that remains after a shorter estate or interest ends. An example of a shorter interest in land is a life estate, the right to own, use and occupy land for one's life. A landowner could give away to different recipients both a life interest in the land and the remainder or residual interest in the land. All of these interests could play a part in land stewardship.

A landowner may choose to protect land by giving the land directly to a conservancy organization or government agency or may decide to give away only a partial interest in the land, such as a conservation covenant.

Conservation Covenants

The conservation covenant is one of the most useful land stewardship tools. A conservation covenant is a statutory instrument or legal tool created by section 219 of the Land Title Act. It was designed for conservation purposes and provides the legal basis for

protecting a broad range of ecological, cultural, heritage and other values.

Until 1994, only a provincial or local government body could hold a conservation covenant. The Act was amended in 1994 to allow a conservation covenant to be held by any person designated by the Minister of Water, Lands and Air Protection.

In practice, this means that a conservation covenant can now be held by a non-governmental conservancy organization such as a local conservancy or land trust or a large provincial or national conservancy group. A conservation covenant also can be held jointly by two organizations, one of which can be a provincial or local government agency. Since the 1994 amendment, there has been an explosion of interest in using conservation covenants to protect ecologically important private land in British Columbia.

Essentially, a conservation covenant is a written agreement entered into voluntarily between a landowner and a conservancy organization. It can cover all or just part of a parcel of property. In the agreement or covenant, the landowner promises to protect the land in ways that are described in the covenant.

For instance, the landowner might agree not to subdivide the land or to provide specific protection for important habitat. The conservancy organization holds the covenant and can enforce it if the owner does not abide by its terms. The conservation covenant is registered against title to the property in the British Columbia Land Title Office under section 219 of the Land Title Act. This ensures that it binds future owners of the land, not just the current landowner, since the conservation covenant is intended to last permanently.

A conservation covenant is an effective tool because

- it can be individually tailored to address the particular ecological features of the land on which it is registered and the specific conservation objectives of the parties;
- a landowner can grant a covenant covering only those areas of the landowner's property with special significance and can use the remainder of the property without restriction; and
- since 1994, conservation covenants can be held by non-governmental conservancy organizations that focus their time, energy and expertise on protecting ecologically important parcels of land throughout the province; this allows these organizations to harness the considerable interest that exists in communities in protecting many of the communities' special spaces and relieves some of the burden on government to protect land.

Taxation issues—Income tax

Donating land or other interests in land, including conservation covenants, to protect and conserve the land may have income tax consequences. Similarly, there may be income tax implications arising from cash donations and donations of other property in kind, such as land or conservation covenants. Donations may not only give rise to additional tax liability but also may result in tax benefits, depending on the circumstances. It is important for potential donors to seek independent tax advice about the implications of any donations they may wish to make, as each person's tax circumstances are different. This section focuses on the tax implications of gifts of land and interests in land.

Gifts

A gift is a transfer of property without consideration, that is, without the expectation of any benefit, advantage, right or privilege in return. If the person transferring property to another receives any benefit or advantage—cash, other property or services—in return for the transfer of property, then that transfer is not a gift. Gifts are considered dispositions under tax legislation and therefore are considered to give rise to proceeds of the disposition as if the property making up the gift had been sold.

In other words, even though you did not receive any money as a result of the gift or donation, for tax purposes you are considered to have received payment for the property given away.

If land or a covenant is sold rather than donated to the Crown, to a conservancy organization, or to any other purchaser for conservation or any other purposes, the sale is a disposition like any other and the proceeds are taxed accordingly. For example, there would be no offsetting tax credit in these circumstances.

Tax Credits for Donations

Generally speaking, when you give a gift to a recipient qualified under the Income Tax Act to issue tax receipts (for example, the federal or provincial government, a Canadian municipality or a registered charity within the meaning of the Income Tax Act),

you will receive a tax receipt for the value of the gift. You may then claim a tax credit. The size of the credit is based on both the value of the gift as represented by the tax receipt and your net income for the year. The credit is non-refundable and can only be used to offset any income tax otherwise owing.

The rate at which the credit may be claimed depends on the amount donated. Individuals receive federal tax credits in the amount of 17% of the first $200 of the total amount of charitable gifts in the year and 29% of any amounts over $200. The credit is a federal tax credit and reduces the amount of federal tax payable.

The tax credit is subtracted from the amount of federal income tax that you must otherwise pay for the year. The tax receipt also will be available to reduce provincial income tax, either indirectly where provincial taxes are calculated as a percentage of federal taxes, or directly, as in British Columbia, where the province has adopted an independent calculation of tax and tax credits similar to the federal calculation.

Generally, the tax credit is calculated as a percentage of the value of the gift up to a maximum of 75% of the donor's net income for tax purposes for the year. The rules are different for gifts of capital property and for gifts that qualify under the Income Tax Act as ecological gifts. Each of these will be discussed in more detail later in this chapter.

Any part of the value of the gift that you do not choose to claim in the year the gift is made or are not able to claim because of the income limitation may be carried forward for up to five years. You may use any amount of the balance remaining in each of the following five years to claim a tax credit. This allows you to allocate the amount of the value of the gift to maximum tax advantage based on your income.

NAPTEP: Natural Area Protection Tax Exemption Program

The Natural Area Protection Tax Exemption Program (NAPTEP) is a conservation incentive program currently only available on eligible properties in the Islands Trust area (the Gulf and Howe Sound Islands). Landowners who register a NAPTEP covenant on their land receive a yearly 65% exemption on property taxes on the land within the covenant.

To qualify, a property must have eligible natural features such as relatively undisturbed sensitive ecosystems, habit for rare plant and animal species or special geological features.

Capital Property, Capital Gains and Capital Losses

Land, including interests in land such as conservation covenants, is generally capital property within the meaning the Income Tax Act. If the land or conservation covenant making up a gift is capital property and it is worth more at the time of the gift than it was at the time you acquired it, you may realize a capital gain that attracts income tax.

Simply speaking, the amount of your capital gain is determined by subtracting your original cost of the property and costs of disposing of it from the value of the property at the time of the gift. You must include 50% of the amount of any capital gain in your income for the year. However, the tax on this additional income generally will be more than offset by the tax credit that you will be able to claim based on the tax receipt for the value of the gift.

In the case of a gift of capital property that has increased in value and would therefore give rise to a capital gain, you can designate as the value of the gift any amount between your cost of the property and the fair market value of the property at the time of the gift. The lower the amount designated, the lower the amount of the gain.

Keep in mind that the tax receipt will also be for a lower amount and the corresponding tax credit will be less. There may be circumstances in which you would want to designate a lower value, for example, if you were facing a clawback of income-based benefits such as old age pension benefits that would occur if your income exceeded a particular amount.

In the case of gifts of capital property, the amount against which you may claim a tax credit is the total of

- 75% of your net income for the year,
- 25% of taxable capital gain arising from the gift, and
- 25% of recapture of any capital cost allowance arising from the gift.

(Please refer to the section on Eco-gifting regarding capital gains.)

Capital cost allowance is based on the cost of acquiring the property against which it is claimed. It may be claimed only on depreciable property as defined in the Income Tax Act and is claimed at a rate prescribed in the tax legislation. In effect, it is a prescribed rate of depreciation in the value of property.

It may only be claimed in relation to depreciable property that is acquired for the purpose of producing income. Land is not depreciable property but buildings on land might be, depending on their use.

If the value of land has decreased, donation of the land could result in a capital loss. The deductible portion of capital losses, 50%, may be offset against taxable capital gains. Capital losses may be carried back three years and forward indefinitely.

In some circumstances, for example, where land is inventory of a business such as a land development business, it is not capital property. It is treated for tax purposes like any business inventory. All of any gain on the disposition of the inventory of a business must be included in the taxpayer's income.

It may be necessary for you to have property appraised to determine its fair market value at the time of the gift. Determining the value of the gift is a necessary part of identifying the tax consequences of making the gift. The amount of the tax receipt is based on the value assigned to the gift. The calculation of any gain considered to have arisen at the time of the gift is also based on this value.

Capital Gains Exemptions

Some capital gains are exempt from taxation. Two exemptions are particularly important in relation to gifts of land.

PRINCIPAL RESIDENCE

Generally, the entire amount of a capital gain on the disposition of a principal residence is exempt from tax.8 This exemption is unlimited. To qualify as a principal residence, the residence must be "a housing unit, a leasehold interest in a housing unit or a share of the capital stock of a co-operative housing corporation acquired for the sole purpose of acquiring the right to inhabit a housing unit owned by the corporation" that is owned and ordinarily inhabited in the year by the taxpayer, the taxpayer's spouse or a child of the taxpayer.

A taxpayer must designate a residence as his or her principal residence and only one residence can be designated as the taxpayer's principal residence in any one year.

There may not be a full tax exemption available for principal residences located on more than half a hectare of land. The definition of "principal residence" generally limits the amount of land on which the exemption may be claimed to one contiguous half hectare unless the taxpayer can show that more of the land is necessary to the taxpayer's use and enjoyment of the residence as a residence.

Consequently, if a taxpayer's principal residence is located on four hectares of land and the taxpayer disposes of the principal residence, any gain in the value of the land over and above the one-half hectare may be a capital gain, a portion of which must be included in income for the year.

QUALIFIED FARM PROPERTY EXEMPTION

The disposition of qualified farm property may give rise to the opportunity to shelter the capital gain with a capital gains exemption. Qualified farm property includes real property meeting a number of criteria and used by the taxpayer or a member of the taxpayer's family to carry on the business of farming. Any gains up to the lifetime maximum of $500,000, realized on the disposition of qualified farm property, are exempt from income tax.

"Lifetime" capital gains exemption

The maximum lifetime capital gains exemption available to an individual is $500,000. This does not include any principal residence exemptions; however, it generally will apply to the disposition of qualified farm property.

Valuation of land

If a donor does not elect his or her original cost of donated land as the value of the gift, the basis for obtaining tax benefits from a gift of land or an interest in land is the valuation or appraisal of the land. Income tax and property tax consequences can then be determined on the basis of the appraised value. While determining the value of many kinds of gifts is relatively straightforward, appraising the value of conservation covenants poses challenges not present in appraising the value of the land itself.

Basis of Appraisal

Land is generally appraised at its fair market value. Determining the fair market value involves a consideration of the highest and best use of the land. The highest and best use is the reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value. The highest and best use of land may not be its current use.

For example, a taxpayer may wish to retain vacant land in its natural state to preserve ecological values of the land. However, the land might also be suitable for development of a recreational facility or housing.

If the highest and best use for the land were for a recreational facility or housing, when the land was donated to a conservancy organization, the land would be valued according to this highest and best use and the tax consequences of the donation calculated on that basis.

The Appraisal Process

The appraisal is an important part of the donation process. Unless the donor designates the value of the gift to be the donor's original cost, the appraisal will establish the value of the gift for both the donor and recipient.

The tax consequences of the gift are calculated on the basis of this value. It is important to have evidence of both the original cost of the property and its value at the time of disposition. In the case of a gift, an appraisal report would constitute evidence of the value at the time of the gift.

Although there is nothing in tax legislation about who is qualified to appraise property, it is important to hire a qualified appraiser. A qualified appraiser's valuation is more likely to be accepted by Canada Customs and Revenue Agency and to be supportable if Canada Customs and Revenue Agency challenges the valuation. This provides greater certainty to both the donor and recipient.

Timing of the Appraisal

The appraisal should occur as soon as possible after someone has decided to donate land or an interest in land. This will allow both the donor and the recipient to evaluate the financial consequences, including the tax consequences, of the gift at an early stage. However, because appraisals take into account the current real estate market, the appraisal should not take place so long before the gift as to render the appraisal inaccurate or unreliable by the time the gift is actually made.

Valuing Conservation Covenants

Restricting the use of land by placing a covenant on the land may reduce the value of the land. In these circumstances, the monetary value of the covenant normally would be the difference between the monetary value of the land before the covenant is registered and the monetary value after it is registered.

Although the monetary value of land may decrease upon the granting of a covenant, often the effect is minimal. Any diminution or increase in the value of land on which a covenant has been placed also should be appraised at the time of the gift of a conservation covenant, as the amount of any diminution is eligible for compensation by way of a purchase agreement or a tax receipt. This increase or decrease in value will be taken into account at the time of the disposition of the larger piece of land.

GIFTS OF ECOLOGICALLY SENSITIVE LAND

Canada's Ecological Gifts Program

HABITAT LOSS AND DEGRADATION are the greatest threats to biodiversity in Canada today. Since many important habitats are found on private property, landowners play a vital role in habitat conservation. This is why members of the public, environmental groups, provinces and municipalities wanted a program to support conservation on private lands. The Ecological Gifts Program (EGP) was created in 1995 to serve this role.

Canada's Ecological Gifts Program (EGP) provides a way for Canadians who own ecologically sensitive land to protect nature and leave a legacy for future generations. Made possible by the provisions of the *Income Tax Act of Canada*, the program offers significant tax benefits to landowners who donate land, or an eligible interest or right in land, to a qualified recipient. Outside the Province of Quebec, eligible interests in land are constituted of covenants or conservation easements and can be donated to the program. The eligible right in land considered by the EGP for a donation in the Province of Quebec is a real servitude. Recipients ensure that the land's biodiversity and environmental heritage are conserved in perpetuity.

The EGP is administered by Environment Canada in cooperation with numerous partners, including other federal departments, provincial and municipal governments, and environmental non-government organizations. As a result of this collaborative approach and a dedication to improving the program on an ongoing basis, the EGP continues to provide a means of securing private land for conservation every year.

Ecological gifts and the motivations behind them are as varied as the Canadian landscape. They range from corporations in British Columbia

donating covenants over woodlands to local citizens pulling together to conserve treasured coastal habitat in Atlantic Canada. The motivation for many individual donors is the comfort of knowing that their cherished piece of nature will be cared for and protected into the future.

The donors receive a charitable receipt from the recipient for the fair market value of their donated ecological gift and then apply that amount against their net annual taxable income. Corporate donors deduct the amount directly, while individuals use the sum to calculate a non-refundable tax credit. Each tax and donation situation is unique, and obtaining independent, professional legal and tax advice is strongly recommended.

Other advantages of ecological gifts include:

1) No tax on capital gains for capital gifts

2) No limit on the total value eligible for deduction/credit in any one year

3) A ten-year period to apply the receipt to income

Qualified Recipients of Ecological Gifts

Landowners can donate ecological gifts to eligible environmental charities that are approved by the federal Minister of the Environment, as well as to federal, provincial and territorial governments, municipalities, and municipal or public bodies that perform a function of government within Canada. Most ecological gifts to date have been donated to environmental charities aimed at conserving nature, such as local, provincial or national conservation groups.

Ecological gifts made to private foundations are not eligible for the tax–free treatment of the capital gain arising from the donation of ecological property.

The list of non-governmental organizations that have been qualified to receive ecological gifts totals more than 130 Conservancy organizations not yet qualified to receive ecological gifts may apply to Environment Canada for recipient status.

Certifying Ecological Gifts

An ecological gift is a donation of ecologically sensitive land, or an eligible interest or right in land, to a qualified recipient, that has been certified by the federal Minister of the Environment according to specific national and provincial criteria.

For donors to be eligible to claim ecological gift income tax benefits, the federal Minister of the Environment must also:

- confirm that the ecological gift is made to an eligible recipient; and
- certify the fair market value of the property.

Certification of land as ecologically sensitive

The existing environmental characteristics of the land need to be included in the consideration of what is ecologically sensitive. The following national criteria currently apply:

- areas identified, designated or protected under a recognized classification system;
- natural spaces that are significant to the environment in which they are located;
- sites that have significant current ecological value or potential for enhanced ecological value as a result of their proximity to other significant properties;
- private lands that are zoned by municipal or regional authorities for the purpose of conservation;
- natural buffers around environmentally sensitive areas such as water bodies, streams or wetlands; and
- areas or sites that contribute to the maintenance of biodiversity or Canada's environmental heritage.

Determination of value of ecologically sensitive land

The fair market value of ecological gifts must be determined by the federal Minister of the Environment. The value determined by the Minister is the amount of the tax receipt on which the donor's tax credit will be based. Donors must have the value of the land or conservation covenant comprising the ecological gift appraised and submit an application for determination of fair market value together with the appraisal report to the nearest regional office of Environment Canada. The value of the gift will be reviewed by an Appraisal Review Panel, which will either recommend that the Minister determine the value of the gift to be as contained in the appraisal report or recommend another value.

If the Minister determines that the fair market value of the gift is a value other than that contained in the appraisal report, the donor may withdraw the

application, accept the value as determined by the Minister or seek a redetermination by the Minister of the fair market value. After the Minister's redetermination of the value of the gift, the donor may withdraw the application or accept the value set by the redetermination. After the gift has been made, the donor has the right to appeal a determination of value by the Minister to the Tax Court of Canada.

The *Income Tax Act* specifically provides that, for ecological gifts, the fair market value of the gift of a covenant, easement or servitude to which ecologically sensitive land is subject is the greater of:

- its fair market value otherwise determined, and
- the amount by which the fair market value of the land is reduced as a result of the making of the gift.

Summary of process for donating an ecological gift

1) **Talk to your EGP regional coordinator.** If you are considering making an ecological gift, please start by contacting the EGP coordinator for your region. Email addresses and telephone numbers are available through the EGP website at ec.gc.ca/pde-egp.

2) **Seek professional advice.** Independent financial and legal advisors will help you make the decision that best suits your situation.

3) **Select and meet with an eligible recipient.** This will give you an opportunity to discuss your mutual conservation goals.

4) **Prepare EGP documentation.** Work with your proposed recipient to prepare an ecological assessment to document the ecological value of the property.

5) **Secure an independent appraisal.** This appraisal, by a qualified professional, is required to help Environment Canada determine the fair market value of the donation. Submit your application. You need to apply to Environment Canada.

6) **Receive a Certificate of Ecological Sensitivity.** Environment Canada confirms that the land contains ecologically-sensitive features worth protecting.

7) **Receive a Notice of Determination of Fair Market Value.** Environment Canada provides you with a notice that establishes the fair market value of the donation.

8) **Complete the donation.** Upon formal acceptance of the fair market value, complete the land transfer to the recipient.

9) **Receive your tax forms.** In addition to the Certificate of Ecological Sensitivity provided to you earlier in the process, Environment Canada will issue you a Statement of Fair Market Value so that the recipient can issue you an official donation receipt, all three of which will be used for tax purposes.

EGP staff members are committed to supporting donors and recipients through the application process.

Scenarios

EXAMPLE: Gift of an Ecological Gift—Federal Tax Implications

Sue earns $75,000 per year as an accountant in Prince George. For more than 40 years, she's owned six hectares of property in Campbell River, in a small area with a planning restriction that prohibits development on lots smaller than two hectares.

The land has been in Sue's family for decades, and holds many happy memories of camping and picnicking.

In recent years, wealthy foreign visitors who plan to build homes or cottages have purchased large areas of the Vancouver Island coast. Sue is concerned there may be little undeveloped coastal habitat left.

After speaking to a local environmental group about her options, she decides to keep what's called a life interest in the land so she may live out her days there, and donates the remainder interest to the group as an ecogift.

The group also enters into an agreement with Sue to use and care for the property.

The land, originally valued at $80,000, is now worth $400,000. The remainder interest is worth $250,000. For capital gains purposes, if a piece of property was owned previous to December 31, 1971, the adjusted cost base is determined as of that date.

Here's how the tax savings break down (see "Tax breakdown," following page).

Summary

Many Canadians own eligible, ecologically sensitive land and care about the future conservation of their property. If your clients could benefit from the EGP, visit Environment Canada's website for additional information about how landowners can leave a legacy for tomorrow and receive a tax break today.

Calculation	Example number	Details
Certified fair market value of remainder interest	$250,000	*The certified fair market value of a remainder interest is generally the current appraised fair market value of the gift less the value of the life interest. The Minister of the Environment must certify the value. Gifts of remainder interests must also meet CRA requirements described in IT-226R.*
Taxable income	$75,000	*Income reported for income tax purposes from employment and other sources ($75,000).*
Donation limit or eligible amount in the year of the gift	$250,000	*For certified ecological gifts, the entire fair market value of the donation may be used to claim the related tax credit and reduce the tax payable. However, because tax credits are non-refundable, Sue would not use an amount larger than required to offset her federal tax and calculate the tax credit.*
Net federal tax of the donor	$13,451	*Amount based on 2013 federal personal income tax rates.*
Amount of donation claimed in the year of the gift	$40,770	*Amount calculated to provide a donation tax credit sufficient to completely eliminate the donor's federal tax payable. Any amount of the gift that is not used to generate donation tax credits in the year of the gift may be carried forward and used for up to ten years.*
Federal non-refundable donation tax credit deducted in the year of the gift	$11,795	*Based on 15% of the first $200 and 29% of the balance of the donation amount claimed in the year (assuming a claim for the basic personal exemption with no other deductions, charitable or otherwise).*
Amount available for carry forward	$209,230	*Subtract the amount used in the year of the gift from the eligible amount of the gift ($250,000 minus $40,770).*

Contributors

The following organizations have generously contributed to the publication of *Green Legacies:*

American Friends of Canadian Land Trusts

Purpose: Preserve the natural heritage of Canada, in partnership with Canadian conservation organizations and American owners of ecologically important properties, through special tax status in Canada and the US that incentivize donations of land, conservation easements and philanthropic support essential for effective, permanent protection of places that are cherished by citizens of both countries.
US tax identification number: 20-4817049
Contact:
Sandra Tassel, Program Coordinator
663–702 Kentucky St., Bellingham WA 98229 USA
Tel: 360-515-7171
Email: info@afoclt.org
Web: afoclt.org

BC Naturalists' Foundation

Legal Name: BC Naturalists' Foundation
Purpose: To promote the preservation of the natural environment for future generations through conservation, education and research projects. Donations and bequests received by the Foundation are invested to generate income for grants to naturalists' clubs throughout British Columbia.
Charity No.: 889458840 RR0001
Contact:
President, BC Naturalists' Foundation, c/o BC Nature
1620 Mount Seymour Rd.,
North Vancouver, BC V7G 2R9
Tel: 604-985-3057
Email: manager@bcnature.ca
Web: bcnature.ca/bc-naturalists-foundation/

BC Wildlife Federation

Legal Name: BC Wildlife Federation
Purpose: The BC Wildlife Federation is a province-wide voluntary conservation organization representing all British Columbians whose aims are to protect, enhance and promote the wise use of the environment for the benefit of present and future generations.
Charity No.: 118801315 RR0001
Contact:
BCWF Development Coordinator
101–9706 188th St., Surrey, BC V4N 3M2
Tel: 604-882-9988
Email: dev_coordinator@bcwf.bc.ca
Web: bcwf.bc.ca

Cowichan Land Trust

Legal Name: Cowichan Community Land Trust Society
Purpose: We are committed to conserving, protecting and enhancing the quality of the human and natural environment in and near the Cowichan Valley Regional District.
Charity No. 895964856 RR0001
Contact:
6–55 Station St., Duncan, BC V9L 1M2
Tel: 250-746-0027
Email: info@cowichanlandtrust.ca
Web: cowichanlandtrust.ca, cowichanestaury.ca

Delta Farmland & Wildlife Trust (DF & WT)

Legal Name: Delta Farmland & Wildlife Trust
Purpose: Delta Farmland & Wildlife Trust is a non-profit organization that promotes the preservation of farmland and wildlife habitat on the lower Fraser River delta through cooperative land stewardship with local farmers. Our Stewardship Programs integrate research, education, and financial incentives to promote the sustainable use of agricultural land within the lower Fraser River delta by bringing conservationists and farmers together as "Partners in Stewardship." These programs provide farmers with cost-share funding to establish wildlife habitat and/or invest in long term soil fertility on their farms.
Charity No.: 138397740 RR001
Contact:
Christine Terpsma, Program Coordinator
Anna Wyman, Office Coordinator
203/205–4882 Delta St., Delta, BC V4K 2T8
Tel: 604-940-3392
Email: dfwt@dccnet.com
Web: deltafarmland.ca

Denman Conservancy Association

Legal Name: Denman Conservancy Association

Purpose: To preserve, protect & enhance the human and natural environment of the Denman Island area.
Charity No.: 137698700 RR0001
Contact:
Patti Willis, Co-Chair
P.O. Box 60, Denman Island, BC V0R 1T0

Discovery Coast Greenways Land Trust

Legal Name: Discovery Coast Greenways Land Trust
Purpose: Our mission is to restore, sustain and protect natural areas and critical habitats, particularly ecological and recreational greenways, for the benefit of our community. The operations of Greenways are located primarily in the City of Campbell River and secondarily in the outlying areas from the Oyster River in the south to the mainland in the east, to Chatham Point in the north and the headwaters of any waterways in this area to the west.
Charity No.: 888992534 RR0001
Contact:
Erin Nowak, Operations Manager
P.O. Box 25063 TYEE
208–991 Alder St., Campbell River, BC V9W 0B7
Tel: 250-287-3785
Email: info@greenwaystrust.ca
Web: greenwaystrust.ca

Ecojustice

Legal Name: Ecojustice Canada Society
Purpose: As Canada's only environmental law charity, Ecojustice Canada Society (formerly Sierra Legal Defence Fund) is leading the legal fight for a brighter environmental future. Ecojustice is 100% donor-funded with lawyers in four offices across Canada. Ecojustice represents community groups, non-profits, First Nations, and individual Canadians on the frontlines of the fight for environmental justice.
Charity No.: 134748474 RR0001
Contact:
Jocelyn Anderson, Philanthropy Officer
214–131 Water St., Vancouver, BC V6B 4M3
Tel: 604-685-5618 ext 293
Email: janderson@ecojustice.ca
Web: ecojustice.ca

Fraser Valley Conservancy

Legal Name: Fraser Valley Conservancy
Purpose: The Fraser Valley Conservancy's purpose is to protect biodiversity in the Fraser Valley. We accomplish this by: protecting and preserving land and watercourses that have recognized local and regional ecological value; promoting, facilitating and engaging in land stewardship activities; protecting, preserving and enhancing habitat for native species including rare and endangered species; and, protecting and preserving land of recognized local and regional historic value.
Charity No.: 879282762 RR0001
Contact:
Joanne Neilson, Executive Director
P.O. Box 2026, Abbotsford, BC V2T 3T8
Tel: 604-625-0066
Email: info@fraservalleyconservancy.ca
Web: fraservalleyconservancy.ca

Gabriola Land and Trails Trust

Legal Name: Gabriola Land and Trails Trust (GALTT)
Purpose: The aims of GALTT are to secure, develop, and sustain a network of parkland and trails on Gabriola Island for the benefit of the public, and to preserve sites of environmental, historical, and social importance.
Charity No.: 846205342 RR0001
Contact:
Norman Harburn, President
P.O. Box 56, Gabriola Is., BC V0R 1X0
Tel: 250-247-0273
Email: info@galtt.ca
Web: galtt.ca

Galiano Conservancy Association

Legal Name: Galiano Conservancy Association
Purpose: Our primary purpose is "To preserve, protect and enhance the quality of the human and natural environment" on Galiano Island.
Charity No.: BN886092998 RR0001
Contact:
Jenna Falk, Development Coordinator
RR#1, 2540 Sturdies Bay Rd., Galiano Is., BC V0N 1P0
Tel: 250-539-2424
Email: conservancy@galianoconservancy.ca
Web: galianoconservancy.ca

Habitat Acquisition Trust

Legal Name: Habitat Acquisition Trust
Purpose: Habitat Acquisition Trust conserves nature on south Vancouver Island. We do this through land acquisition, conservation covenants, stewardship, and

education. Together, we are creating a conservation legacy for the South Island.
Charity No.: 889626545 RR0001
Contact:
Paige Erickson-McGee
P.O. Box 8552, Victoria, BC V8W 3S2
Tel: 250-995-2428
Email: hatmail@hat.bc.ca
Web: hat.bc.ca

Islands Trust Fund

Legal Name: Trust Fund Board
Purpose: To protect in perpetuity the vibrant ecology of Canada's islands in the Salish Sea by working in partnership with individuals, island communities, other land trusts, and government agencies. Islands Trust Fund accepts gifts of land, conservation covenants, donations, and planned legacies to protect the rare and natural ecosystems of the islands.
Charity No.: Crown Agency
Contact:
Jennifer Eliason, Manager
200–1627 Fort St., Victoria, BC V8R 1H8
Tel: 250-405-5186
Email: itfmail@islandstrust.bc.ca
Web: islandstrustfund.bc.ca

Land Trust Alliance of British Columbia

Legal Name: LTA The Land Trust Alliance of BC
Purpose: To provide education, research and support services that help land trusts, conservancies and the general public protect, enhance and restore our natural and cultural heritage for all time. LTABC represents 33 land trusts across the province and is Canada's longest standing provincial alliance. Major projects include the 2104 revision of *Greening Your Title*, the 2015 revised publication of *Green Legacies*, promotion of the land trust Standards & Practices and the release of *Natural Legacies: Your Education Guide to Conservation in BC*.
Charity No.: 872062468 RR0001
Contact:
Paul McNair, Executive Director
201–569 Johnson St., Victoria, BC V8W 1M2
Tel: 250-590-1921
Email: paul@ltabc.ca
Web: ltabc.ca

Nanaimo & Area Land Trust (NALT)

Legal Name: The Nanaimo & Area Land Trust
Purpose: to promote and protect the natural values of land in the Nanaimo area
Charity No.: 893193771 RR0001
Contact:
Gail Adrienne, Executive Director
8–140 Wallace St., Nanaimo, BC V9R 5B1
Tel: 250-714-1990
Email: admin@nalt.bc.ca
Web: nalt.bc.ca

Nature Conservancy of Canada

Legal Name: Nature Conservancy of Canada
Purpose: For over 40 years, NCC has been acquiring private lands for permanent conservation in BC and has brought conservation status to more than 960,000 acres to date in BC. With the goal of reaching or exceeding the one million acre-mark by Earth Day 2020, NCC hopes to engage more British Columbians than ever before, working together, to conserve BC's remarkable biological diversity. NCC's mission is to lead, innovate and use creativity in the conservation of Canada's natural heritage. NCC secures important natural areas through their purchase,donation or other mechanisms and then manage these properties for the long term. NCC's work is rooted in conservation science and guided by the belief that our society will be judged by what it creates in the present and what it conserves for the future.
Charity No.: 119246544 RR0001
Contact:
Michael Curnes, Director of Development
825 Broughton St., Victoria, BC V8W 1E5
Tel: 888-404-8428
Email: michael.curnes@natureconservancy.ca
Web: natureconservancy.ca/bc

Salt Spring Island Conservancy

Legal name: Salt Spring Island Conservancy
Purpose: The Salt Spring Island Conservancy protects and enhances the natural values of the island and its surrounding waters by acquiring land or covenants, and by educating landholders and the public toward improved land and water stewardship.
Charity No.: 890063977 RR0001
Contact:
Christine Torgrimson, Executive Director
Office Address: 265 Blackburn Rd.

P.O. Box 722, Salt Spring Island, BC V8K 2W3
Tel: 250-538-0318
Email: christine@saltspringconservancy.ca
Web: saltspringconservancy.ca

The Savary Island Land Trust Society

Legal Name: The Savary Island Land Trust Society
Purpose: To protect natural areas and biodiversity on Savary Island for present and future generations.
Charity No.: 898586425 RR0001
Contact:
Liz Webster, Executive Director
P.O. Box 141, Lund, BC V0N 2G0
Tel: 604-483-4743 or 604-414-0073
Email: silts@telus.net
Web: silts.ca

Swan Lake Christmas Hill Nature Sanctuary

Legal Name: Swan Lake Christmas Hill Nature Sanctuary Society
Purpose: The Sanctuary's vision is to be the leader in the stewardship of healthy, diverse ecosystems, an urban nature sanctuary that brings people and nature together. Its mission is to foster the community's understanding and appreciation of nature through direct experiences inspiring personal action.
Charity No.: 119207157 RR0001
Contact:
Kathleen E. Burton, Executive Director
3873 Swan Lake Rd., Victoria, BC V8X 3W1
Tel: 250-479-0211
Email: kburton@swanlake.bc.ca
Web: swanlake.bc.ca

The Nature Trust of British Columbia

Legal Name: The Nature Trust of British Columbia
Purpose: To acquire and manage ecologically significant land across BC for wildlife, fish, plants and people, too
Charity No.: 108089863 RR0001
Contact:
Deb Kennedy, Development & Communications
260–1000 Roosevelt Cr., North Vancouver, BC V7P 3R4
Tel: 604-924-9771
Email: debkennedy@naturetrust.bc.ca
Web: naturetrust.bc.ca

West Coast Environmental Law

Legal Name: West Coast Environmental Law Research Foundation
Purpose: For over 40 years, WCEL has played a role in shaping BC and Canada's most significant environmental laws, providing legal support to citizens, First nations, and communities on practically every environmental issue imaginable. Our strategy is to protect the environment through law. We have a history of successfully influencing and shaping law reform, because nothing is going to protect the environment better than strong, lasting environmental laws. WCEL makes certain that progressive, stringent environmental laws are created and enforced, and we have had a hand in virtually every significant piece of environmental legislation in BC and Canada.
Charity No.: 119292415 RR001
Contact:
Lucy Hough, Director of Development
200–2006 West 10th Ave., Vancouver, BC V6J 2B3
Tel: 604-601-2511
Email: donations@wcel.org
Web: wcel.org

World Wildlife Fund Canada

Legal Name: World Wildlife Fund Canada
Purpose: Over time, our work has evolved from protecting particular wildlife species and habitats to protecting life on Earth—including our own. Today, our work is about life, because everything we do is about securing the future of healthy, thriving ecosystems. And living, because the choices we make will decide that future—for us and for all species.
Charity No.: 11930 4954 RR0001
Contact:
David Love
410–245 Eglinton Ave. East, Toronto, ON M4P 3J1
Tel: 416-489-4567 # 7242
Email: dlove@wwfcanada.org
Web: wwf.ca/donate/legacy

Give Green Canada ("G2") is a project on Tides Canada's shared platform. The Tides Canada shared platform supports on-the-ground efforts to create uncommon solutions for the common good. Tides Canada is a national Canadian charity dedicated to a healthy environment, social equity, and economic prosperity. Tides Canada's shared platform provides governance, human resources, financial, and grant management for leading environmental and social projects across Canada, allowing projects to more effectively achieve their missions. Tides Canada is recognized by IMAGINE Canada as a leading charitable organization demonstrating best practice in key areas of governance and management.

Contact:

Web: TidesCanada.org

The purpose of Give Green Canada ("G2") is to see a stronger, more resilient conservation, environmental and foodland sector with a diversified funding base and to foster increased support for conservation, the environment and food security by citizens of Canada.

G2 provides mentorships, tools and training for the nonprofit sector and also works with donors and professional advisors to encourage green philanthropy through a clearer understanding of green charitable giving options including gifts of land and testamentary gifts. Our online Toolkit, hosted at Royal Roads University, is considered to be the best publicly-accessible source of information on ecological gifts and planned gifts in Canada.

Contact:

Natasha van Bentum, CFRE,
Director, Give Green Canada ("G2")
Email: vanbentum@gmail.com
Web: GiveGreenCanada.ca
G2 Toolkit:
oer.royalroads.ca/moodle/course/view.php?id=6

Vision: British Columbia: a global model of communities living in harmony with their natural and cultural heritage.
Mission: The Land Trust Alliance "fosters the land trust community, which protects and stewards British Columbia's natural and cultural heritage."

Contact:

Paul McNair, Executive Director
Land Trust Alliance of British Columbia
201–569 Johnson St.,
Victoria, BC V8W 1M2
Phone: 250-590-1921
Email: paul@ltabc.ca
Web: ltabc.ca
Facebook:
facebook.com/landtrustbc

Your facts about BC land trusts ...

While land trusts in BC have largely been formed since 1990, some date back to the late 1930's.

Land trusts conserve private lands for the future benefit of British Columbians and Canadians. From grasslands to forests, shorelines and lakes, the land trusts of your province have saved properties that otherwise would have been lost forever. Here are a few highlights about land trusts:

- More than 1350 properties have been conserved.
- More than 1.4 million acres of land have been protected through the support of land trusts.
- At present, 50 new projects are underway.
- While some land trusts employee professional staff more than 2400 volunteers contribute 30,000 hours to our work each year.
- With more than $15 million in collective endowment funds land trusts continue to report stable or increased funding.
- More than 70% of land trusts report private donations as their number one source of revenue with foundations second at 50%. Fewer than 47% report any government funding.

MAKE A LASTING GIFT TO A LAND TRUST OR ENVIRONMENTAL GROUP IN YOUR WILL

DISCOVER YOUR GIVING OPTIONS.

No matter the size or type, your gift will be leveraged into action by your favourite hard-working environmental or conservation organization.

Our website, **GiveGreenCanada.ca**, offers resources that will help you clarify your goals and discover your options.

DID YOU KNOW? Less than 2 cents of every dollar donated in Canada annually goes to the environment. G2 / Give Green Canada, formerly Green Legacies, is a project of Tides Canada Shared Platform.

G2 is a hub working with donors and advisors and also provides mentorships, tools and innovative training for nonprofits for a stronger, more resilient sector.

To cut out and keep handy.

a project of Tides Canada SHARED PLATFORM

You're invited to visit us at www.GiveGreenCanada.ca. We are a project of Tides Canada Shared Platform. Tides Canada is recognized by IMAGINE Canada as a leading charitable organization demonstrating best practice in key areas of governance and management.

For more information please get in touch with Natasha van Bentum, CFRE Director, G2 / Give Green Canada vanbentum@gmail.com or on Twitter @GiveGreenCanada.

GIVE GREEN CANADA

For environmental and conservation groups: visit our TOOLKIT www.GiveGreenCanada.ca

G2/LAND/SmartStep
with thanks to
National Geographic

Every year 40,000 donors and members financially support our efforts contributing more than $15 million.

Visit ltabc.ca to find a land trust near you. More than 60% of our members have a social media presence as well. Most land trusts produce both a print and e-news on a regular basis. Links can be found on the LTABC website.

Member Land Trusts

Bowen Island Conservancy
Central Okanagan Land Trust
Comox Valley Land Trust
Conservancy Hornby Island
Cowichan Land Trust
Denman Conservancy AssociationDucks Unlimited
Fraser Valley Conservancy
Gabriola Land & Trails Trust
Galiano Conservancy
Garry Oak Meadow Preservation Society
Habitat Acquisition Trust
Haida Ecological Land Trust
Islands Trust Fund
Kootenay Land Trust Society
Malaspina Land Conservancy Society
Mayne Island Conservancy
Nanaimo & Area Land Trust Society
Nature Conservancy of Canada
Nature Trust of British Columbia
North Okanagan Parks & Natural Area Trust
Pender Island Conservancy Association
Quadra Island Conservancy & Stewardship
Quamichan Watershed Stewardship Society
Salt Spring Island Conservancy
Salt Spring Island Water Preservation Society
Savary Island Land Trust Society
Valdes Island Conservancy

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SWAN LAKE
CHRISTMAS HILL
NATURE SANCTUARY

To discuss the possibility of leaving a planned gift to Swan Lake, please contact kburton@swanlake.bc.ca or phone: 250.479.0211 today.

Land Trust Alliance
BRITISH COLUMBIA

GIVE GREEN CANADA

The revised and updated *Green Legacies Guide* is made possible by:

THE LAW FOUNDATION OF BRITISH COLUMBIA