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CREATING A GREEN LEGACY: THE ECOLOGICAL GIFTS PROGRAM

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A. INTRODUCTION

Private lands are becoming increasingly important to the protection of Canada's environmental heritage and biodiversity. As an incentive for landowners to help protect the environment, the *Income Tax Act* ("ITA") provides favourable income-tax treatment for gifts of ecologically sensitive land and partial interests in land through the Ecological Gifts Program (EGP) administered by Environment Canada.

The EGP enables individual and corporate landowners to protect their ecologically-sensitive land forever by donating it, or certain interests in the land, to eligible recipients and receiving enhanced income tax benefits in return. These tax benefits include the provision of tax credits or deductions, and a reduction in the taxable capital gain realized on the disposition of the property. Since the EGP's inception in 1995, hundreds of Canadians have donated such ecological gifts valued at more than $110 million. Nearly half of these gifts contain habitats designated as having national, provincial, or regional importance, and many include rare or threatened habitats that are home to species at risk.[1]

[1] Environment Canada, *Ecological Gifts Program: A legacy for tomorrow...a tax break today* (available at http://www.cws-scf.ec.gc.ca/egp-pde/).

B. REQUIREMENTS

For donors to receive the tax benefits associated with the EGP, the ITA requires that Environment Canada or a designated authority certify the following:[2]

- that the land, including a servitude, covenant or easement, is ecologically sensitive and its conservation and protection is important to the preservation of Canada's environmental heritage;
- that the recipient is qualified to receive the gift, eg. territorial, provincial or federal departments or agencies, a municipality, or a registered charity whose main purpose is the conservation and protection of the environment; and
- what the fair market value of the gift is.

Once a donor has identified the land subject to the gift and a qualified recipient, information regarding the ecological sensitivity of the land must be filed with Environment Canada. After the property is determined to be ecologically sensitive, as defined by national, provincial or territorial criteria, which are outlined in *The Canadian Ecological Gifts Program Handbook 2005*,[3] the donor may apply for certification of the value of the donation. The donor must submit an independent appraisal of the fair market value of the donation to Environment Canada, along with a signed application form. If the donor agrees with the fair market value that Environment Canada is prepared to certify, the donation can then be completed (i.e. the title to the land can be transferred or the conservation easement, covenant or servitude registered). Once Environment Canada has evidence of this, a Statement of Fair Market Value will be sent to the donor and the recipient can issue an official tax receipt.

C. TAX BENEFITS

The tax benefits related to the donation of ecological gifts are more significant than those attributable to ordinary gifts, including the removal of the upper donation limit and a reduction in the taxable capital gain realized on the disposition of the property. Further, on May 13, 2005, amendments to the ITA were passed by Parliament, which include provisions that allow for split-receipting in respect of donations to registered

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[2] Definition of "total ecological gifts" in subsection 118.1(1) (paragraph 110.1(1)(d) if a corporation).
[3] Available through the Environment Canada website at http://www.cws-scf.ec.gc.ca/egp-pde/default.asp?lang=en&n=6E9B56B5.

charities.[4] These provisions also apply to ecological gifts and will facilitate the donation of ecologically sensitive land by providing even more flexibility to donors.

Corporate donors may deduct the amount of their ecological gift directly from their taxable income,[5] while the value of an individual's ecological gift is converted to a non-refundable tax credit. The tax credit is calculated by applying a rate of 16 per cent to the first $200 of the donor's total gifts for the year and 29 per cent to the balance.[6] Unlike other charitable gifts, there is no limit to the total value of ecological gift donations eligible for the deduction or credit in a given year. Further, any unused portion of the donor's ecological gifts may be carried forward up to five years.

Donors of ecological gifts also receive a reduction in the taxable capital gain realized on the disposition of the relevant property.[7] Donors who dispose of capital property, such as land, may realize a capital gain—a portion of which is taxable—where the deemed proceeds of disposition exceed the property's adjusted cost base (usually the original purchase price of the land). For most gifts the taxable portion is 50 per cent of the capital gain but for ecological gifts the inclusion rate is only 25 per cent. Donors may also reduce their capital gain by electing to make the designated amount of the gift somewhere between its fair market value and its adjusted cost base (however, this designated amount will also be used for the purpose of calculating the tax credit or deduction).[8]

To benefit from these provisions, donors must include the following in their income-tax returns: a Certificate for Donation of Ecologically Sensitive Land (or, in Quebec, a Visa pour dons de terrains ou de servitudes ayant une valeur écologique); a Statement of Fair Market Value; and an official receipt for income tax purposes from the recipient.

[4] For more information, refer to *Charity Law Bulletin* Nos. 76, 77, 68, 23 available at www.charitylaw.ca.
[5] Subsection 110.1(1).
[6] Definition of "total gifts" in subsection 118.1(1).
[7] Paragraph 38(a.2).
[8] Subsection 43(2).

D. EXAMPLES[9]

The following are examples involving donations by individuals rather than corporations and do not take into account provincial income tax implications. It is assumed that the gift in each scenario qualifies as an ecological gift and that there are no other inclusions in or deductions from taxable income for the donors other than those inclusions and deductions indicated in the example. The unadjusted federal personal income tax rates applicable in 2003 are applied in each example. The examples do not take into account that the donor will be entitled to other non-refundable tax credits, such as the basic personal exemption or credits relating to Canada Pension Plan or Employment Insurance contributions.

Generally, the amount of the donation claimed in respect of the non-refundable donation tax credit would be determined after taking into account the non-refundable tax credits that the taxpayer is entitled to claim that are not eligible to be carried forward. In all cases, it has been assumed that the landowner is applying as much of the value of the donation as possible to generate tax credits during the year of the donation. The amount available for carry forward has been calculated based on this assumption, even though the donor has the option of using less than the maximum amount in the year of the gift, if he or she wishes. In addition, it is assumed in every scenario that the adjusted cost base ("ACB") of the property is its acquisition cost. In reality, there may be a number of factors other than acquisition cost that affect a person's ACB for tax purposes.

The tax implications of any transaction, including making an ecological gift, depend on the circumstances of the transaction as a whole and on the taxpayer's individual circumstances. The tax implications of making an ecological gift, therefore, cannot be considered in isolation. All donors, whether corporations or individuals, are strongly advised to obtain independent tax advice when considering making an ecological gift to ensure that all tax implications of the gift are clearly understood.

[9] These examples are based on examples provided in *Ecological Gifts Program: Donation and Income Tax Scenarios* (Environment Canada, 2004).

1. Island Property – Outright Donation

Susan is the owner and operator of a small consulting firm in Kingston and earns $80,000 a year. Thirty years ago she purchased an undeveloped two hectare property on an island in the Thousand Islands for $200,000. The property, which has water frontage and magnificent views of the St. Lawrence and the Islands, has a FMV of $600,000 today. Although not particularly large, the island is home to a number of important species of birds, pitch pine and beach fern. Susan has decided not to build her retirement home on the island because she feels it would be too remote for an older woman living alone. However, she would like to ensure that these and other natural features on the property will be permanently protected. Impressed by the efforts of the Canadian Thousand Islands Heritage Conservancy in working with local landowners to link fragmented shorelines and island habitats, Susan decides to donate her land to the Conservancy as an ecological gift.

Environment Canada has certified that the land meets its criteria regarding ecosensitivity and that the FMV is $600,000:

Capital gain	$400,000		($600,000 - $200,000)
Taxable capital gain		$100,000	($25% of $400,000)
Self-employment income		$80,000	
Taxable income		$180,000	
Net federal income tax		$44,895	(Calculated using 2003 rates)
Claim eligible amount	$154,900		($445,100 remains for future use)
Donation tax credit		$44,895	
Tax payable		$0	

Because the donation is an ecological gift, Susan is not limited to being able to use only 75% of the gift to reduce her income tax payable in the year of the gift, she may use the entire eligible amount of the gift, $600,000. However, she only needs to claim $154,900 of the gift, which will result in a non-refundable donation tax credit of $44,895, eliminating her net federal income tax and leaving her with $445,100 to claim in subsequent years.

2. Mountainside Property - Donation with Split-Receipting

Tim owns a 20 hectare forested mountainside property in the Eastern Townships, near the Vermont border. When he inherited the land from his grandmother Gwyneth 20 years ago, it was valued at $40,000. Today, it is worth triple that amount ($120,000). Tim earns $60,000 a year as a college instructor. While she was alive, Gwyneth was extremely active in the Magog Naturalists Club, and encouraged the use of her land for many wildlife surveys and recreational activities. Tim is too busy to spend much time managing the property or taking part in the naturalist club's efforts. He also has a number of large, unexpected expenses which he has difficulty meeting on his salary. However, he would like to ensure that Gwyneth's legacy is cared for in the same spirit and with the same conservation goals as it was by his grandmother. He decides to take advantage of the new split-receipting rules and transfer the property to a local conservation organization for an amount below its appraised FMV. He will transfer the property as an ecological gift to be maintained in its natural state, with the stipulation that local naturalists, hikers and cross-country skiers continue to be allowed access to it for recreational purposes. The conservation organization has agreed to pay $70,000 for the property.

Environment Canada has certified that the land meets its criteria regarding ecosensitivity and that the FMV is $120,000. Under the new split-receipting rules, a donor may receive a tax credit for a gift in circumstances where the donor has received some advantage in return. The eligible amount of the gift indicated on the donation receipt in those circumstances would be the amount by which the value of the property transferred to the recipient exceeds the amount of the advantage provided to the donor.

FMV of the property	$120,000
Amount of advantage	$70,000

Eligible amount of gift $50,000

The capital gain must be allocated between the eligible amount of the gift and the amount of the advantage. As the eligible amount of the gift represents 42% of the value of the property transferred ($120,000), 42% of the capital gain ($33,600) is allocated to it. The taxable capital gain in respect of the eligible amount of the gift is 25% of $33,600 ($8,400). The remaining 58% of the capital gain

($46,400) is allocated to the advantage. The taxable capital gain in respect of the advantage is 50% of $46,400 ($23,200).

Capital gain	$80,000		($120,000 - $40,000)
Taxable capital gain		$31,600	($8,400 + $23,200)
Employment income		$60,000	
Taxable income		$91,600	
Net federal income tax		$19,511	(Calculated using 2003 rates)
Claim eligible amount	$50,000		
Donation tax credit		$14,474	
Tax payable		$5,037	

E. CONCLUSION

The income tax benefits of making an ecological gift vary greatly depending on the financial situation of each donor. The ITA requirements and tax implications of making an ecological gift are becoming more complex and care should be taken to ensure that all legal and tax implications of the gift are clearly understood. However, individual and corporate landowners interested in protecting nature by donating ecologically-sensitive land, or interests in that land, to an environmental charity will, in return, receive enhanced income tax benefits in addition to the satisfaction of knowing that they have made a real contribution to greening their environment .