



Cross- boundary donations for private land conservation in the EU

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Why Cross Border Conservation is Critical

- Interconnected world
 - Citizens interested in conservation in countries other than their own.
 - Land uses in own country have impacts elsewhere.
 - Landscape scale conservation – transboundary initiatives
 - Think globally – act locally
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What is Cross Border Conservation

Fact pattern one:

Owner of land in one country wants to see land protected in another jurisdiction.

~outright conveyance of land as a gift

~conveyance of a conservation easement

Fact pattern two:

Donor/taxpayer in one country wishes to make a financial contribution to a charitable conservation organization in another country

Relevant Excerpts from US Tax Law

- ✓ Contributions made by taxpayers are deductible against otherwise taxable income.
 - ✓ To qualify as a charitable contribution: gift must be *“to or for the use of a charity created or organized in the US”*
 - ✓ *Land gifts*
 - ✓ *Cash gifts*
 - ✓ *Easement gifts*
 - ✓ Conflicts may arise with tax treatment in other countries where gifts of land may trigger capital gains tax on such transfers.
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Case Study I– US and Canada Tax Treaty

- + In 1984 US and Canada ratified a tax convention that supersedes domestic tax legislation in both countries.
 - + The country where the property is located has the primary right to tax gains on the disposition of the property.
 - + A US or Canadian taxpayer can deduct a contribution to a US or Canadian conservation charity to the extent it would have been eligible for a tax deduction to a US/Canadian charity but limited to the extent of source income in that country.
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Case Study II

“American Friends of...” Organizations

Organizations may obtain favored tax status in the US and other jurisdictions or have a charitable purpose to support a charity in another country.

Best example: American Friends of Canadian Conservation

- > organized as a US domestic charitable corporation with US tax exempt status AND secured status as a “prescribe donee” for Canadian tax purposes.
 - > Project examples involve US landowners who wish to protect land they own in Canada and wish to obtain a US tax deduction.
 - > conservation projects in Nova Scotia, Ontario, British Columbia and elsewhere along the Canadian US Border.
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Case Study III International Conservation Organization

US taxpayers-donors cannot ‘direct’ a US charity to give or use their gift abroad—cannot act as a ‘pass-through’ without jeopardizing the tax treatment of the gift.

- in such cases, donors must make such gifts subject to a non-legally binding understanding as to how the gift is to be used.

- TNC and the American Friends of Canadian Conservation accept such gifts but retain the discretion to make transfers as they deem appropriate.

Gifts by US private foundations may be made to foreign charities but are subject to “expenditure responsibility” – the foundation must conduct due diligence to satisfy itself that the recipient entity would have been eligible to receive a charitable contribution under US tax law.

Prospects for a Universal Solution?

Might there be potential for amendments to:

- United Nations Model Conventions

- Organization for Economic Co-operation and Development (OECD)

- Model Tax Convention on Income and Capital

- possible provisions in the Conventions on Climate Change and/or

- Biodiversity

- UCN's Transboundary Conservation Specialist Group

- World Commission on Protected Areas (WCPA)

Are there prospects for an EU Directive on this issue?

Suggestions for Possible Follow-up Research

1. Assemble data about cross boarder land ownership

Characterizing the extent of opportunity or challenge – how many landowners/donors are there who are interested in another? How big is the opportunity to offer incentives to people in one country trying to help conservation in another?

2. Assemble data about fiscal impact of charitable giving.

3. Seek and collect examples of mechanisms from other parts of the world

what the policy or legal mechanism is that you are using or have used or are proposing to use to facilitate these kinds of transactions? What is the role of incentives in facilitating such transactions?

4. Identify constituents/stakeholders needed to build support for changes to the laws.

Thank you
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