Submission to the Special Senate Standing Committee on the Charitable Sector

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Main issue: Highlighting the potential unintended consequences to charities of lifting the capital gains tax on all donated private securities and real estate.

The Nature Conservancy of Canada (NCC) protects areas of natural diversity for their intrinsic value and for the benefit of our children and grandchildren.
Introduction

The Nature Conservancy of Canada (NCC) is pleased to be provided with the opportunity to submit a written brief to the Special Senate Standing Committee on the Charitable Sector.

NCC is Canada's leading not-for-profit, private land conservation organization, and with the help of its partners, has successfully conserved more than 1.1 million hectares of important green space from coast to coast since 1962. As a leading national land trust, NCC partners with many stakeholders, such as individuals, corporations, universities, think-tanks, local land trusts and other conservation organizations, and all levels of government. Land conserved and protected by NCC is typically acquired through land purchase and donation. Many of the donated lands have been designated as ecologically significant under Canada's Ecological Gifts Program (EGP).

The Ecological Gifts Program provides a way for Canadians with ecologically sensitive land to protect nature and leave a legacy for future generations. Made possible by the terms of Canada’s Income Tax Act and the Taxation Act (Quebec), the program offers significant tax benefits to landowners who donate land, or a partial interest in land, to a qualified recipient. Recipients ensure that the land’s biodiversity and environmental heritage are conserved in perpetuity. Between the inception of the EGP in 1995 and October 31, 2016, 1,260 ecological gifts valued at over $807 million have been donated, protecting more than 180,000 hectares of wildlife habitat. Many of these ecological gifts contain areas designated as being of national or provincial significance, and many are home to some of Canada's most at-risk species.

NCC has received more ecological gifts than any other organization and now holds a quarter of all properties donated under the EGP. That equates to more than 350 land donations, totalling more than 143,000 hectares and valued at more than $389 million. As of June 2018, these lands are also home to 96 species (Species at Risk Act - Schedule 1) and 112 species listed by the Committee on the Status of Endangered Wildlife in Canada.

The EGP is a powerful tool. It is helping Canada reach its goals of engaging private landowners in conservation, and meeting domestic and international targets for land conservation, including conserving 17 per cent of our land and fresh water by 2020. It directly supports commitments to the Pan-Canadian Approach to Transforming Species at Risk Conservation. The program is so important and so beneficial that NCC urges the Committee to take into consideration the impact that proposed changes to the Income Tax Act will have on the ability of the EGP to continue to be an effective policy instrument. Specifically, we are concerned about the removal of the capital gains tax from all charitable gifts of private company shares and real estate, and how this will impact the integrity of the EGP.

1 EGP program overview: https://www.canada.ca/en/environment-climate-change/services/environmental-funding/ecological-gifts-program/overview.html
2 Species at risk includes species with the following status: special concern, threatened and endangered.
The Potential Impacts of Removing the Capital Gains Tax from Private Securities and Real Estate Gifted to Charities

Currently, the following three types of properties and assets are exempt from capital gains tax if they are donated to charities:

1) Publicly listed securities;
2) Certified cultural property donated to certain designated institutions or public authorities; and
3) Ecologically sensitive land, or easements on such land, if donated to a public charity under Environment and Climate Change Canada's Ecological Gifts Program.

Many significant habitats and species are found on private property, particularly in southern Canada. This is where most Canadians live, work and play and where the landscape is most fragmented and disturbed. Much of the land is in private hands, and, as a result, working with landowners is essential to protecting Canada’s biodiversity. This is why members of the public, environmental groups, provinces and municipalities support the creation of the EGP.

The tax incentives under the program are simple:

- A tax credit is issued at the rate of 15 per cent to the first $200 of the donor’s total gifts for the year, and 29 per cent on the balance.
- The taxable portion of the capital gains is reduced to $0.
- Landowners can carry-forward their tax receipt for their donations for 10 years. This provision gives landowners who are land-rich, but cash-poor, the ability to maximize the benefit of their gift.
- Additionally, in most provinces, a reduction in federal tax payable will also reduce provincial tax.

Together, these provisions can encourage and incentivize a landowner to donate their ecologically important land to a conservation charity. It is important to note that the EGP was developed not as a tax policy designed to encourage philanthropy, but out of environmental policy, as a lever to encourage protection of privately owned land.

Canadians are generous and engaged community members who have close ties to their churches, hospitals, universities and other very worthy institutions/organizations. Many of those entities also support their activities in part or in whole with charitable gifts. Seeking ways to encourage citizens to support charitable endeavours is admirable and should be applauded; however, the proposed changes to make all gifts of land exempt from capital gains tax will likely have unintended, negative consequences.

To begin, some but not all landowners fully appreciate the special nature of their natural lands. When they are evaluating their charitable options, they commonly choose their recipients based on personal relationships and affinity, but for many people, the tax advantages of the EGP provide them with the motivation to more deeply analyze how they will direct their gifts. In our experience, when a landowner understands that their properties have the potential to help achieve local and national conservation goals and receive a tax benefit, they are more than willing to explore having their lands certified as an ecological gift.
If all gifts of land are rendered equal by changes to the capital gains tax provisions, then it is reasonable to assume that many of these ecologically sensitive lands will be donated to non-conservation charities, where donors may have a pre-existing affinity. Those lands may be held as open spaces by the charity, but more likely, in order to maximize the value of their gifts, charities will sell lands for the highest market value-use, which is undoubtedly, development.

Losing these lands to development or purposes other than conservation has a compounding negative impact. Primarily, lands that meet the criteria of the EGP are not like any other gift of land. These lands have been identified as those that, if protected, will assist Canada in meeting its policy goals, and will fulfill the wishes of donors who are dedicating their legacies to our nature, wildlife and wild spaces. These lands protect species that in many cases are losing their ability to survive in ever-developing landscapes. These lands provide communities with clean drinking water, corridors for wildlife movement and places for people to recharge, relax and pass on their love for Canada’s biodiversity to their children and grandchildren. These are not just any gifts of land and so, finding incentives that set them apart from other gifts of land is paramount.

Conclusion
In NCC’s experience, engaging with conservation colleagues around the globe, Canada’s approach to realizing biodiversity goals through policy and tax mechanisms has made us the envy of other countries. Maintaining a tax-advantage for ecologically sensitive lands is a proven and established method of helping to meet Canada’s conservation goals while also engaging and enabling Canadians to contribute to biodiversity protection.

As Canada’s leading not-for-profit, private land conservation organization and the single largest recipient of lands under the Ecological Gifts Program, we know first-hand the benefit of the special tax incentives. We urge the Committee to consider the negative impact that lifting the capital gains tax on all donated private securities and real estate would have on this policy instrument and the wild lands it helps to secure in Canada.

Thank you for the opportunity to share our perspectives with the Committee.

Sincerely,

Lisa McLaughlin
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