

Tax incentives for conservation of land and forests – reviewing Australian and Canadian experience

**Scientific Conference
on Energy and Climate Change**
12 October 2017, Athens, Greece

**Dr Evgeny Guglyuvatyy
Southern Cross University
Australia**

Background

- Australia's forests and woodlands are home to more than half of terrestrial biodiversity and they are a large store of terrestrial carbon.
- Australian climate policy significantly relies on forests and land use to reach its mitigation target.
- Across Australia, about 50% of the remaining native forest has been estimated to be severely degraded.
- The main causes for the decline in biodiversity and forest health are drought, fire, disease, pests and weeds, while stressors such as clearing, fragmentation and climate change are considered to underlie and further exacerbate these problems.

Background

- The significant part of the Australian legislation governing forests is state- or territory-based, with the exception of a few federal acts.
- Some commentators argue that the Australian forest policy lacks credibility, as it fails to protect native forests and does not provide an incentive to landholders for the sustainable management and conservation of forests.
- There is an enormous challenge for forest governance in Australia that has not yet been solved.

Background

- In Australia, as in some other industrialised countries, a significant part of native forest is privately managed, thereby creating an additional layer of complexity in terms of forest management and conservation.
- Private landholders need to be provided with effective incentives for conservation of native forests.
- The largest part of Canadian native forest is managed by provinces rather than privately. Nonetheless, Canada has one of the largest forest areas in the world and quite advanced forest regulations.

Background

- Literature generally confirms that using taxation incentives to stimulate private sector conservation has the potential to promote social objectives and increase private conservation of land and forest
- This study examines the tax incentives for forests and land conservation currently offered in Australia, compares them with similar mechanisms and regulations in Canada, examines their effectiveness or otherwise, and draws conclusions about potential reforms that should be considered to support Australia's land and forests conservation.

Tax incentives

There are different types of taxation provisions that can be used to encourage private conservation of land and forest. This paper discuss most commonly used tax measures that are grouped as follows:

- General deduction provisions
- Specific or targeted deduction provisions
- Exemptions and special concessions

General deductions

- Tax deductions is one of the key considerations that may encourage conservation.
- Under Australian and Canadian tax law, a general deduction is only available if the expense is incurred in producing assessable income or in carrying on a business. For example, landholders carrying on a business on their land can deduct the cost of rates and land tax from their assessable income.
- Some conservation activities may involve producing income through financial incentives provided by various conservation schemes, but generally conservation of land is unlikely to represent income-producing or business-related activities therefore, the general deduction would not cover the conservation of land or forests.

Specific or targeted deductions

- One of the most relevant provisions providing deductions related to conservation covenants or some other permanent protection instruments registered on title is Division 31 of ITAA97.
- A conservation covenant can be defined as a voluntary agreement between a landholder and an authorised body (normally a Covenant Scheme Provider) that aims to protect the natural, cultural and/or scientific values of the land.
- The landholder owns, uses and lives on the land but the natural values of an area are conserved by the landholder with assistance of an eligible Covenant Scheme Provider.

Specific or targeted deductions

- Eligible taxpayers holding a conservation covenant could be entitled to a deduction under Division 31. The deductible amount is the difference between the market value of the land before entering into the covenant agreement and the market value of the land directly after that.
- A deduction is only available where there is no payment received in return for entering into the covenant.
- Therefore, the deduction is not available in cases where a landholder enters into a covenant and also participates in the National Landcare Program that provides certain grants.

Specific or targeted deductions

- The Canadian *Income Tax Act* also provides some specific tax incentives to encourage conservation that protect natural values of land.
- The tax incentives are delivered via the ecological gifts program (EGP) for gifts of interests in environmentally sensitive land made to qualified conservation charities, federal, provincial, territorial and municipal governments.
- To qualify under the EGP, land donated as an 'ecological gift' must be 'ecologically sensitive land'.

Specific or targeted deductions

- Canadian individual taxpayers who make gifts to entities qualified under the EGP obtain a non-refundable tax credit.
- Canadian corporate donors are treated differently from individuals. In particular, corporations are not entitled to the tax credit and instead are able to deduct the value of an ecological gift from their income.
- The Australian tax regime provides the 5-year limit for deduction that could be extended to at least 10 years, as in Canada, allowing land-rich, low-income landholders to utilise the deduction under Division 31 more effectively.

Specific or targeted deductions

- There is an additional incentive for ecological gifts of property under the Canadian tax regime. In particular, split-receipting rules recognise a gift for income tax purposes where a landholder receives a partial payment for transfer of property that is environmentally sensitive land.
- Under the split-receipting approach, a landowner in effect receives two benefits; that is, a payment for permanently protecting environmentally sensitive land and a tax deduction.
- Hence, the split-receipting rules distinguish the private benefit – that is, the consideration received for conservation of the land – and the ‘charitable’ (public) benefit of transferring the land for conservation purposes and reducing its fair market value.

Exemptions and special concessions

- The Capital Gains Tax (CGT) regime may also cover conservation-related transactions and conservation covenants in particular.
- In Australia, entering into a conservation covenant over land triggers CGT; that is, CGT provisions will apply as if the covenant is a sale or gift of the land.
- In cases where no payment is received, a capital loss equal to the costs incurred in granting the covenant will arise.
- If a payment is received for entering into a conservation covenant landowners may be entitled to access some general CGT concessions or exemptions

Exemptions and special concessions

- Under the Canadian tax regime, gifts of land are deemed disposition of capital property that can result in taxable capital gains.
- Under paragraph 69(1)(b) of the Income Tax Act a taxpayer who is gifting a property shall be deemed to have received payment equal to fair market value of the property.
- However, the Canadian tax regime exempts ecological gifts from capital gains tax. Hence, qualifying ecological gifts are completely excluded from capital gains tax.

Taxpayers comments

- Trust for Nature conducted a survey of private landholders enquiring about environmental market schemes and private land conservation.
- Generally, participants in environmental market schemes and land conservation are impacted by the complexity and fragmentation of the tax treatment of landholders.
- Specifically, one of the landholders remarked: ‘The tax implications are so complex. Nearly all of it is disadvantageous ... That is a deadly serious point: those who are going to be committed to [these types of projects] are going to be useless at the complexities! ... It’s pathetic how complex government makes it for us.’

Taxpayers comments

- Such critique relates to uncertainties in terms of tax liability, complexities of the tax provisions and generally taxation of conservation activities which are public interest in nature.
- The Canadian study conducted by Hossain and Lamb (2011) explored the effectiveness of tax incentives on charitable donations in Canada. Their research suggests that tax incentives significantly affect donations in Canada.
- A more recent study by Parachin (2012) observed that the proportion of Canadian taxpayers who acknowledge tax incentives as an influential encouraging factor has progressively increased.

Recommendations

- Generally, the Australian tax system facilitates some incentives encouraging private conservation of land but there are also a number of impediments distracting conservation.
- One of the possible lessons from the Canadian experience could be the introduction of more beneficial CGT provisions, which would provide a straightforward exemption for the land that is donated for conservation.
- Specifically, the CGT exemption for land conservation would be very helpful for Australian taxpayers involved in conservation activities.

Recommendations

- The Australian and Canadian tax regimes may be improved if the expenditure of landholders involved in conservation would be deductible from their assessable income earned, irrespective of source of income.
- One of the major weaknesses of the Australian tax system is that, in some cases, it fails to recognise the public interest character of private conservation.
- Where a landholder receives some consideration in return for entering into a conservation covenant the Australian tax regime classifies such transactions as private in nature and the tax benefits do not apply.

Recommendations

- The Canadian split-receipting approach is a valuable method of recognising and accommodating both the public and private interest character of environmentally beneficial transactions.
- A necessary step for Australian tax policy which would help to recognise public and private interest in conservation transactions would be the prompt introduction of a split-receipting mechanism that works well in the Canadian system.

Conclusions

- A tax incentives system must ensure a certain degree of simplicity and certainty, it must be able to provide consistent support and incentive to biodiversity conservation, it must provide flexibility in its approach and it must be effective in the sense of being beneficial and transparent for taxpayers.
- The Australian system does not always achieve all of these goals; the Canadian system scores considerably better on them.

Conclusions

- These measures, for Australia and Canada, may not fix all the problems related to biodiversity conservation that exist in each of the countries; however, at least they may go some way to ensuring that the tax incentives addressing land conservation are improved in both countries.

Questions?