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**Using tax incentives
to conserve and enhance
biological and landscape diversity in Europe**

*Report prepared by
Clare SHINE*

*Barrister and Consultant in Environmental Policy and Law
Member, IUCN Commission on Environmental Law
Member, IUCN Species Survival Commission*

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Introduction: objectives and methodology

The Council of Europe - through the Bern Convention on European Wildlife and Natural Habitats, the Pan-European Biological and Landscape Diversity Strategy, the Pan-European Ecological Network and the Emerald Network - has a long-established commitment to engaging private actors in conservation as well as state agencies.

This inclusive approach is critical to meet the goal of the Kiev Biodiversity Resolution, endorsed at the Fifth Environment for Europe Ministerial Conference (Kiev, May 2003), to halt biodiversity loss in the pan-European region by 2010. Equally important is new and creative thinking about conservation policy options adapted to different sectors and groups.

This report looks at ways in which tax incentives may help to promote conservation of biological and landscape diversity in Europe. It complements earlier work by the Standing Committee to the Bern Convention, in particular:

- de Klemm C. and Shine C., *Legal measures for the conservation of natural areas: contractual and incentive measures* (1996) Council of Europe Nature and Environment n  82
- Shine, C. *Private or voluntary systems of natural habitat protection and management* (1996) Council of Europe, Nature and Environment n  85
- Recommendation No. 71 (1998) concerning guidelines for the protection and management of habitats through private or voluntary systems.

The report outlines how tax incentives relate to other conservation policy options (Part I) before describing existing measures in and beyond Europe that directly benefit landholders (Part II) or create an enabling climate for the conservation sector (Part III). Part IV provides some indicators for the design of tax measures. Part V sets out conclusions and provides draft elements for a future recommendation to Council of Europe Member States on the development of fiscal incentive policies to support measures for biodiversity protection. The Council of Europe intends to develop these key themes in 2005/2006 during an international symposium on the role of fiscality and financial support for programmes for biodiversity conservation.

The report draws heavily on information supplied by Council of Europe Member States in response to a questionnaire circulated in April 2004 (see Appendix), followed by individual country contacts. However, the response rate was very disappointing despite repeat requests (replies were received from only 14 countries). The data in the report is thus far from exhaustive and further research would be needed to give a more comprehensive picture of European tax measures. In addition, many of the responses received were fairly general: frequently, there is no country data providing quantitative or qualitative information about the effectiveness of measures already in place.

Wider research was carried out through desk research and direct contact with representatives of other jurisdictions and major conservation organisations.

I. OVERVIEW OF CONSERVATION POLICY OPTIONS

Any discussion of tax measures needs to be seen in relation to other conservation policy options, selected by each country to suit its specific characteristics, legal and administrative systems and socio-cultural context. Avoiding duplication and ensuring effective use of available resources is essential, particularly because resources for conservation are always scarce.

A. Regulatory measures

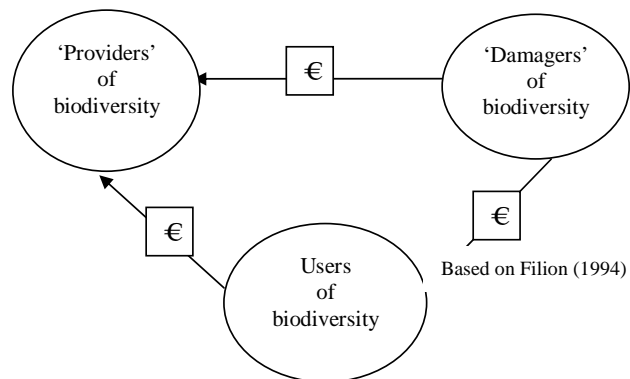
Binding regulatory measures are the longest-established and most familiar environmental policy option throughout the world. Typically they include development restrictions, control of potentially damaging processes and activities, creation of protected areas in which certain uses are controlled and protection of certain habitat types and species. They set the baseline for minimum norms of protection which can be strengthened over time.

Exclusive reliance on ‘command and control’ tools has serious limitations. They take time to draft and adopt and, if not properly negotiated with affected groups, can generate strong opposition. They can be prohibitively expensive if compensation is payable to affected landowners and often prove difficult to monitor and enforce. Because they are purely restrictive, they do not provide a basis for active conservation of land or resources. They do not promote public participation or partnerships nor encourage innovation.

B. Non-regulatory measures: the growth of incentives

Incentive measures help to modify behaviour and encourage private individuals, organisations and businesses to participate actively in conservation. Their importance is recognised by the Convention on Biological Diversity, which requires Parties to adopt economically and socially sound incentives for the conservation and sustainable use of components of biodiversity (Article 11).

A well-designed incentive framework should ensure that as far as possible, resources flow in ways supportive to conservation (see diagram). In practice, a significant percentage of incentive flows go in the wrong direction and contribute, directly or indirectly, to reduction of biodiversity.



Perverse incentives are usually unanticipated side effects of policy measures designed to achieve other objectives. A well-known example concerns incentives to drain wetlands for agricultural production, still in place in some countries. Until 1990 French farmers benefited from reduced land tax on drained land for twenty years.

Positive incentives to motivate stakeholders can be monetary (direct payments, cost sharing, tax advantages) or non-monetary (recognition, awards for outstanding performance). For example, the Forest Stewardship Council’s certification scheme for sustainably-produced timber provides an important market-led incentive for the forest sector to adapt its practices to meet changing consumer demand. In Poland, over 4 million hectares of State forest land are now FSC-certified and major European corporations are important buyers of these forest products.

Disincentives are mechanisms that internalise the costs of use/damage to biological resources to discourage activities that deplete biodiversity (consistent with the Polluter Pays principle).

The Box summarises the main incentives and disincentives used around the world.

Incentives and other mechanisms for environmental protection		
<small>Adapted from Global Biodiversity Forum 13, San José May 1999: Workshop on Wetlands and the Private Sector</small>		
<i>Financial/economic incentives</i>	<i>Legal/political incentives</i>	<i>Other mechanisms</i>
Credits and loans	Removal of perverse subsidies	Certification
Guarantees	Pollution fines	Awards scheme
Tradeable permits	Deposit refund schemes	Eco-labelling
Debt-related instruments	Taxation	Corporate commitments
Venture capital	Direct grants	Charters
Joint implementation	Positive subsidies	
Concessionary loans	Capacity building	
Royalties	Conservation easements	
Export credit	Mitigation banking	
User fees/charges	Zoning	
Government loans	Tradeable/transferable quotas	
Donations	Performance bonds	

In the European context, the most common positive incentives are direct grants, subsidies and payments. Many payment schemes not only seek to enhance biodiversity but also to increase opportunities for public access and recreation. The main beneficiaries tend to be farmers and foresters (not landowners in general) and, to a varying extent, private conservation organisations (NGOs). Other incentives include contracts with certain land-use sectors (e.g. forestry grants for planting native woodland) and user groups (e.g. cooperative management of grazing land).

Unsurprisingly, the European countries which have pioneered use of conservation incentives tend to be those with longer traditions of government support for private conservation. However, a much larger group of countries are now developing agri-environment measures, which take the form of contractual payments for more environmentally sensitive management in agricultural production systems and are usually paid over 5-10 years. These form an integral part of the reformed EC Common Agricultural Policy (CAP), within the framework of Council Regulation (EC) No. 1257/99 on Support for Rural Development. EU Member States routinely target such measures at ecologically important sites including Special Areas of Conservation within the Natura 2000 network.

A few countries outside the EU have broadly comparable national measures. Switzerland provides “ecological compensation” subsidies for appropriate management of “usable agricultural land” (*Ordonnance fédérale sur la qualité et la mise en réseau des surfaces de compensation écologique sur la surface agricole utile*).

C. Where do tax incentives fit in?

All countries have broadly similar mechanisms for taxing work, income, savings, sales and property ownership or transactions. The differences lie in the mix and targeting of taxes, the level of tax imposed and the balance between national and local taxes (and regional taxes in countries with a federal structure). The effect of the tax system on natural resource management is often under-appreciated.

Environmental taxes¹ are a relatively new arrival in the fiscal toolbox. These are nearly all disincentives in the form of taxes, fees and charges applied to an environmentally harmful tax base (e.g. mining, landfill, discharges to water and air). Some provide incentives for product substitution (e.g. lead-free petrol, energy efficient products and technologies).²

¹ The OECD defines “environmentally related taxes” as any compulsory, unrequited payment to general government levied on tax-bases deemed to be of particular environmental relevance.

² In its 6th Environmental Action Programme, the European Community called for a broadening of the range of policy instruments beyond environmental legislation to include increased use of market-based instruments, such as environment taxes, aiming to internalise external environmental costs and thereby stimulate both producers and consumers towards

Positive tax incentives to conserve natural heritage are still rare in Europe, although indirect benefits may flow from sectoral incentives e.g. for forestry. Very few countries have taken systematic steps to adjust tax frameworks to promote an enabling climate for conservation and to cater for the different needs of the public, corporate and private sector.³

“Tax relief” is used in this report to refer collectively to exemptions, reductions and credits/rebates.

Countries with a policy preference for public ownership of protected areas have tended to offer less to private actors than countries with more mixed land ownership where nationally important biodiversity values are often located on private land. However, exclusive reliance on public conservation efforts is increasingly difficult in changing political and legal circumstances: the privatisation of land in eastern Europe, the expansion of area-based conservation tools beyond conventional protected areas (e.g. within the Natura 2000 network). Reflecting these changes, recent laws in Moldova and Latvia make it possible for private entities to own protected areas.

Countries may also have a strong preference for direct grants rather than fiscal measures. Ireland’s response to the questionnaire stated that tax-based measures for priority areas for conservation run contrary to the principle that taxes should, so far as possible, be applied at a low rate to a wide base. Grant supports can provide a more targeted mechanism for the delivery of defined policy objectives and can be distributed by way of competition to prioritise deserving projects, whereas tax reliefs can be availed of by all who meet the conditions of the particular scheme. Tax reliefs reduce the tax base and make reform of the tax system much more difficult: they may also tend to favour the better-off in society as the taxable income of the beneficiary must be sufficient to absorb the relief.

These are constructive points which go beyond the scope of this report. However, it should be noted that most direct grant schemes operating in European countries – and elsewhere - have a dominant agricultural focus: far fewer incentives are available to other categories of landholder.

On the other hand, several countries are giving increased attention to ecological tax incentives and have adopted or are preparing legislation to make tax reliefs available to a wider range of landowners. France has recently conducted a full review of tax measures that affect natural heritage⁴ but this has not yet been published. In Germany, reform of the local land tax regime to include ecological elements was first proposed in 1998 and is now under active consideration, but it is too early to predict the outcome of the current negotiations.

II. TAX MEASURES THAT DIRECTLY SUPPORT LANDHOLDERS

Owners and occupiers of land of conservation interest are subject to real property taxes as well as personal taxation on general assets. The more that the fiscal system favours development or intensification above less productive land-uses, the less likely that conservation will be a viable land-use decision, particularly for individuals.

Tax policy can be designed to keep land of conservation interest in private hands under appropriate management safeguards. This may be particularly suited to ‘land rich, cash poor’ landowners for whom other tax benefits may not be available and where the land is often the major asset of their family. It can also protect conservation value of land when it is transferred by making tax reliefs repayable if management practices are not kept up by the new owner.

limiting environmental pressure and towards responsible use of natural resources.

³ Note that Swiss tax law defines tax as a payment to finance the provision of general public services, assessed by reference to the basis of the taxpayer’s economic situation and not in return for a particular service or advantage. Based on this definition, Switzerland has no fiscal incentives linked to *in situ* biodiversity management.

⁴ Commissioned during the development of France’s Sustainable Development Strategy and jointly written by National Inspectors of the Finance and Environment Ministries: its recommendations are currently under consideration within government.

A. Real property taxes

1. Property transfer taxes (registration fees and stamp duty)

Taxes on property transfers are routinely levied at the national level and often at provincial and/or local levels. The level may vary depending on the value and type of property. Registration tax is usually also payable upon the transfer of real property interests.

No respondent country provides specific stamp duty reliefs for land of biodiversity interest. France provides for a 75% reduction in *droits de mutation* for forests covered by a sustainable management contract approved and monitored by the *Office National des Forêts* (ONF). Its recent ecological tax review (see Introduction) proposes the extension of stamp duty relief to all transfers of Natura 2000 sites.

The United Kingdom considers that since stamp duty reliefs would be upfront at the point of purchase, they could result in significant compliance costs to ensure that the land was used for the required purposes.

2. Local land taxes (rates)

a. Differential rates for conservation

Rates are levied by local authorities based on an assessment of the rateable value of the land. The level of tax varies according to the permitted use of the property. Binding restrictions on land-use (*servitudes* in civil law systems) may reduce the assessed value of a site, leading – in some countries – to a reduction not only in rates but also taxes on general assets.

Rate reliefs are routinely applied to encourage particular activities or uses, often linked to regeneration or economic development. They may also be applied to land of conservation interest to reduce ongoing management cost to landholders.

Most respondent countries provide some kind of rates relief for conservation purposes, though there are some notable exceptions (e.g. Hungary, Norway, Switzerland). However, these measures are fairly limited in scope and it proved difficult to obtain information about the total area benefiting from reliefs and the degree to which local authorities exercise their discretionary powers to grant reliefs. Some general observations may be made.

- **The tax base must include undeveloped land**

At the risk of stating the obvious, the land concerned must be subject to land tax. This is not always the case. In Ireland, land (i.e. the undeveloped surface of the earth) used for agriculture, horticulture and forestry is not rateable and thus not subject to a recurring annual charge or tax. This definition of land also excludes hills, mountains and other areas with limited or no agricultural production (e.g. peat bogs and rocky areas such as the Burren, an internationally important limestone pavement site).

- **Land ownership may affect the potential to use rates as an incentive**

In the Russian Federation, there is little scope to use rates as an incentive because nearly all categories of statutory protected areas are managed by state institutions exempt from land tax.⁵ General powers exist⁶ to grant exemptions or reductions to other users e.g. owners and occupiers of land in natural parks (close to IUCN category II or V) and state natural *zakazniks*, but voluntary reserves remain extremely rare. Regional authorities may establish land tax reductions in their budgets e.g. the Act on Specially Protected and Reserved Areas of Chita Oblast (1997) gives an exemption to owners/occupiers of land in protected areas used exclusively for conservation or recreation.

⁵ Act on Payment for Land (1991).

⁶ Federal Act on Specially Protected Natural Areas (1995).

Poland exempts lands and buildings in national parks and nature reserves used for nature conservation purposes from rates,⁷ whether owners are public or private (15% of national parks are privately owned).

- **Rates reliefs are usually limited to statutory protected areas**

Several countries link tax code provisions to protected area legislation: protected area classification triggers the tax incentive, reducing discretion at the local authority level and promoting consistency for larger sites that straddle boundaries between different municipalities. An advantage of this approach is greater legal certainty for landholders and less need for technical expertise at the municipal level. A possible disadvantage is the narrow focus on conventional protected areas – which already benefit from binding land-use restrictions – to the exclusion of other areas managed for conservation within e.g. Natura 2000 or PEEN networks.

Latvia provides for reduction or exemption of land tax (1.5% of the cadastral value of real estate) for land within the Specially Protected Nature Territory (SPNT)⁸ as well as buildings in the SNPT used for nature conservation. Full exemptions are granted where economic activity is prohibited, essentially for nature protection.

The position is broadly similar in Lithuania⁹ and Moldova¹⁰: in each case the municipality may grant an exemption for land in all categories of protected areas, subject to management that complies with the provisions of relevant environmental protection legislation. In Sweden, protected areas are zero-rated for tax.

Germany is considering possible reforms to the rating system to integrate ecological criteria for land valuation. Under existing arrangements, applications for an exemption or reduction from the *Grundsteuer*¹¹ may be made for any land of public interest (*Gemeinnützigkeit*¹²) for cultural, scientific or historic reasons or nature conservation, provided that the revenues gained from the land are below the costs. Restrictions exist in cases where the land is in agricultural use. Tax reliefs are not limited to particular statutory categories but a site's legal status can be a criterion to decide whether it is of public interest.

The French ecological tax review has formally proposed the extension of rates relief to all Natura 2000 sites (see further II.2.b).

Outside Europe, some recent laws make limited provision for extending rates relief to private land under conservation management.

South Africa's Property Rates Act 2004 exempts private land classified as protected areas (IUCN types I, II and IV), provided no commercial or agricultural activity takes place on them. "Commercial activity" is understood to exclude small-scale sustainable enterprises based on biodiversity but this will become clearer once the Act is implemented from early 2005. However, the exemption does not extend to land of conservation interest outside declared protected areas. Moreover, the Act encourages a municipality not to grant rebates to rural land that is not used for agriculture and does not provide for rebates for land under environmental management (e.g. alien species control, a critical issue in much of South Africa). Several municipalities have nonetheless adopted policies to encourage such actions:

⁷ Act on Local Taxes and Duties of 12 January 1991 (articles 7.1.8, 7.4, 7.5).

⁸ Law on Real Estate Tax (in force since 1 January 1998).

⁹ Law on Protected Areas (4 December 2001, No IX-628. Article 32.4, 32.7, 32.8). Data is not available on the percentage of private land in private areas.

¹⁰ Act on Natural Areas Protected by the State.

¹¹ A municipal tax created under federal legislation (Grundsteuergesetz, 7 August 1973 (BGBl I, S.965) as amended by Art. 21 G v. 19.12.2000 I 1790, (http://bundesrecht.juris.de/bundesrecht/grstg_1973/inhalt.html): Articles 3, 6, 32, 33).

¹² Defined in Art. 52 Abgabenordnung of 16 March 1976 (BGBl. I, S. 613; 1977 I, S. 269), as amended by Art.8 of the Law of 20.12.2001 (BGBl. I, S. 3794). http://bundesrecht.juris.de/bundesrecht/ao_1977/

the Treasury is therefore developing guidelines in this area with NGO input.¹³

In Brazil, the municipality of Petropolis (Rio de Janeiro) established a rates exemption in July 2004 for owners of land in Permanent Preservation Areas and Private Natural Heritage Reserves (components of the National System of Conservation Areas). The policy underpinning this incentive is to strengthen protection of a major ecological corridor in Mata Atlântica and reduce soil erosion.¹⁴

- **rates reliefs can target specific habitat types**

No incentives of this kind were cited by respondent countries. However, France is currently developing legislation that would exempt wetlands included in the National Inventory from land tax and provide a 50% reduction for other wetlands included in municipal lists and subject to five-year management agreements. The draft Rural Development bill¹⁵ was approved on first Parliamentary reading and will be further considered in October 2004.

Native vegetation is targeted under South Australia's Heritage Agreement Scheme. Landholders receive rate rebates and direct grants in return for signing a contract with the State Government to ensure the conservation in perpetuity of native vegetation and wildlife habitat on a specified area of land. The Agreement is registered on the title deeds and runs with the land. If the land is sold, the tax benefits are available to a purchaser who complies with the provisions of the Agreement. In the event of breach, the accumulated value of the exempted taxes becomes payable with immediate effect. By 2004, over 1,200 Heritage Agreement were in place, covering an area of over 565,000 ha of the State's original vegetation.

This Scheme is of extra interest because the permanent character of Agreements reduces the vulnerability of rare habitats during transfer of ownership and provides direct incentives for new landholders to continue sound management practices.

- **rates reliefs can target specific sectors**

Productive sectors like forestry frequently benefit from favourable tax measures. These were rarely designed with biodiversity in mind and may function as perverse incentives. On the other hand, they can provide indirect incentives where they are tied to forestry legislation that provides for conservation and sustainable use of forest biodiversity.

Poland has recently aligned its forest taxation with biodiversity protection objectives. It provides for a 50% reduction of forest tax in protected forests (those designated for protection of water and soil resources), including those in nature reserves and national parks.¹⁶ The reduction is available to both public and private owners. 39% of Polish forests (3.5 million hectares) are classified as protected, of which 2.4% are privately owned.

Latvia applies specific provisions to calculating the cadastral value for agricultural land and forests. In forests subject to use restrictions, quality assessment points per plot are reduced by 50% (for a prohibition on main use or clear cuts) or 100% (for a prohibition on main use and thinning). These points are one of the multipliers in the formula for calculating the cadastral value of forest plots, which means that forest cadastral value can be reduced by 50% or 100%, thus reducing the basis on which real estate tax is levied. Cadastral value is recalculated every ten years but a land owner may request a recalculation at an earlier date.

¹³ Source: personal communication Mark Botha. See also Botha M. Incentives for Conservation on Private land: Options and Opportunities. Report of February 2001 available from <http://www.botanicalsociety.org.za>.

¹⁴ Information provided by the International Institute for Environment and Development, based on Brazilian source.

¹⁵ Projet de loi sur le développement des territoires ruraux

¹⁶ Act on Forest Tax of 30 October 2002 (art. 4.3).

France has revised its rates reliefs for all forest owners in line with sustainable management objectives. Exemptions during the period of regrowth have been increased to 50 years (from 30 years) for broadleaved species except poplar, stay at 30 years for conifers and reduced to 10 years (from 30) for poplar plantations. Exemptions have been extended to natural regeneration programmes to promote forest biodiversity.¹⁷

- **differential tax rates may penalise non-sustainable land uses**

A counterpart to reducing tax on conserved land is to increase tax rates for non-sustainable land-uses. This may be difficult for political and socio-economic reasons: increased rates for economically productive activities may deter investment and place the municipality at a competitive disadvantage, especially if neighbouring authorities take a different approach.

Germany seems to have gone furthest towards aligning rates in accordance with the environmental impact of different land uses: as noted, the inclusion of specific ecological criteria in the *Grundsteuer* is currently under high-level consideration.

An example of potential perverse incentives is found in the Russian Federation's Land Code (2001) which provides for penalties where agricultural lands are used for non-agricultural purposes as well as tax incentives for developing undeveloped land.

b. Revenue implications for local authorities

Local tax exemptions reduce the tax base and thus the resources available to a municipality. Where municipalities are required to grant rates relief to nationally-classified areas of conservation, they have less discretion in setting their own tax policy. Municipalities with a higher percentage of natural areas may suffer greater revenue loss.

Where revenue loss proves significant – not usually the case, to judge from the responses to the questionnaire – States may need to develop mechanisms to reallocate funding to affected municipalities. One possibility would be to adjust the criteria for intergovernmental fiscal transfers (which govern distribution of revenues to local level) to take account of natural heritage criteria.¹⁸

No compensatory mechanisms exist in Germany, Lithuania, Moldova, the Russian Federation or Latvia, which notes that this makes municipalities unwilling to allow rates reductions. In Poland, the State compensates a municipality for lost tax revenues from national parks and nature reserves, but not for the reduction of forest tax paid in protective forests.

Switzerland compensates local authorities for major loss resulting from the designation and protection of sites of national importance for hydraulic forces, although this is not technically a tax measure. The Federal Law on Use of Hydraulic Energy (LFH; RS 721.80) provides that the beauty of sites must be conserved intact if in the public interest: this requirement is not limited to sites already listed in a federal inventory. The Federal Office of Water and Geology assesses compensation by reference to loss of annual hydraulic tax revenues: this is payable under a public law contract under which the local authority undertakes to guarantee the required protection measures for 40 years. The level of compensation also depends on the financial capacity of the local authority concerned.¹⁹ Contracts have now been drawn up for 8 sites or valleys, under which 3.13 million Swiss Francs per year will be paid over 40 years.

Outside Europe, one initiative is of particular interest (see Box).

¹⁷ Loi no 2001-602 du 9 juillet 2001 d'orientation sur la forêt.

¹⁸ e.g. the French ecological tax review proposes that the finance allocation system (*Dotation globale de fonctionnement*) should incorporate criteria linked to management of natural heritage.

¹⁹ Ordonnance of 21 December 1973, which generally governs payments to the Cantons.

Tax-based compensation to municipalities (Brazil)

Brazil's federal government compensates states whose tax base is reduced due to large-scale land-use restrictions to protect watersheds. The *ICMS-Ecológico* programme gives municipalities an incentive to create protected areas in their jurisdiction as they receive extra tax revenues for each area under an ecological tax mechanism designed in cooperation between different tiers of government and NGOs.

For more information, see Grieg-Gran, M. *Fiscal Incentives for Biodiversity Conservation: The ICMS Ecológico in Brazil* International Institute for Environment and Development DP 00-01 December 2000.

With regard to revenue implications:

- some countries have no data on the area of land subject to tax relief or the amount of lost revenues since relevant legislation came into force;
- others indicate relatively minor implications. In the Russian Federation, rates revenue in rural areas in 2001 accounted for only 0.23% of total tax revenues: the average payment for the use of land plot was 5.35 euros per hectare source.²⁰ Germany describes the local *Grundsteuer* as a relatively small tax of minor importance for the tax-payer.
- France estimates that the proposed rates exemption for wetlands would cost an estimated €10-15 million and the possible extension of rates relief to all Natura 2000 sites about €35 million. The question of whether the State would reimburse municipalities is still wide open and will need to take account of ongoing changes to the French system of decentralisation.²¹
- South Africa's Property Rates Act 2004 has no specific compensation mechanism. However, the estimated maximum revenue loss for any municipality is less than 1.6% of their rates budget, which could be covered by marginally higher rates in the rest of the municipality or by a higher intergovernmental fiscal transfer.²²

B. Personal and general taxes

These sections outline tax incentives during ownership and on disposal of property.

1. Income tax

Income tax reliefs may be linked to land management practices and/or to the donation of interests in land. General incentives for charitable donations are covered in Part III.

a. Reliefs linked to land management practices

Reliefs can be calculated on the basis of income foregone or on the basis of tax credits for expenses incurred in works on the land. This type of relief is available in several European countries for the built heritage e.g. for listed or classified buildings.²³ In contrast, there seem to be few equivalent measures for Europe's natural heritage.

²⁰ *Federal Service for Land Cadastre of Russia*. Data on land transactions and payments (Moscow 2002).

²¹ Personal communication, Michel Badré.

²² Personal communication, Mark Botha.

²³ See Recommendation 1634 (2003) *Tax incentives for cultural heritage conservation* (Council of Europe Parliamentary Assembly) and the accompanying Report of the Committee on Culture, Science and Education (Doc 9913 rev., 13 November 2003) <http://assembly.coe.int/Documents/WorkingDocs/doc03/EDOC9913.htm>.

Most respondents (e.g. France, Hungary, Ireland, Latvia, Lithuania, Poland, Russian Federation, Sweden, United Kingdom) do not provide reliefs specifically linked to conservation. Sweden considers that reduced income tax for entrepreneurs working with management missions in protected areas would certainly increase the amount of well-managed land and be a good incentive for area-based initiatives.

The French ecological tax review has proposed – by analogy with reliefs France already provides under cultural heritage legislation – that a proportion of works carried out in Natura 2000 sites should be deductible from income tax. A rough cost estimate is €5-10 million per year, bearing in mind that a significant number of sites are in public ownership and would not be liable to this tax.²⁴

With regard to capital allowances, the United Kingdom has first-year allowance schemes to encourage investment in green technologies for energy-saving and water-efficiency but none directly related to spending on land to promote its use for conservation.

Outside Europe, there are some innovative measures but these tend to be linked to agriculture (i.e. they play a similar role to agri-environment measures in Europe). South Africa provides offsets to farmers in return for mandatory management activities e.g. clearing invasive plants, preventing soil erosion. Proposals to extend these benefits to all landowners, subject to safeguards, are under consideration.²⁵

In 2004, the American State of Oregon introduced the Riparian Lands Tax Credit Programme which gives farmers an income tax credit equal to 75% of the market value of crops foregone when riparian land (up to 10.6m from a stream) is voluntarily taken out of farm production to minimise water pollution, habitat degradation, and stream bank erosion. Oregon also operates the Underproductive Forestland Tax Credit Programme which offers a tax credit equal to 50% of the cost of reforestation on underproductive forestlands. The policy objective of this programme is not to increase or improve wildlife habitat although there may be incidental benefits.

b. Reliefs on donation of property interests (conservation easements)

Income tax reliefs are one of a bundle of reliefs that may be available to individual or corporate landowners who forego certain rights to use or develop their land in order to secure its long-term conservation. Policy instruments such as conservation easements (covenants/servitudes)²⁶ cater for a variety of situations e.g. where landowners do not want to sell their land on the open market or see it developed, but cannot afford to donate it. Providing tax reliefs on the donation of conservation rights to certain land can allow land to be retained in the family while securing priority areas for conservation at a negligible cost to the State.

The basic procedure in countries with enabling legislation is as follows:

- the landowner gives or sells a conservation easement to the ‘easement holder’: this is usually a government agency, but could be a private organisation or municipality;
- the easement is registered as a land charge in the land registry and runs with the land for a fixed or indefinite term. The landowner retains title and may sell, bequeath or donate the land. Subsequent owners are also bound by the terms of the easement;
- the landowner agrees not to exercise certain rights in order to preserve the site's conservation values. S/he may be asked to implement a conservation plan with technical assistance and, in some cases, to contribute to stewardship costs;

²⁴ Supra., note 21.

²⁵ Personal communication, Mark Botha.

²⁶ For information on their evolution and legal aspects, see Shine, C. *Private or voluntary systems of natural habitat protection and management* Council of Europe, Nature and Environment n°85.

- the easement holder is responsible for monitoring and enforcing the terms of the easement and usually has reasonable rights of access for inspection, data collection etc.;
- if the landowner breaks the terms of the easement, enforcement proceedings may be taken (this usually constitutes a breach of contract enforceable in the civil courts).

Tax incentives for easements are most developed in common law jurisdictions outside Europe, notably in the United States, Canada and Australia. They are a rapidly-expanding conservation option in parts of Latin America, facilitated by conservation organisations such as the The Nature Conservancy.

At least nine American States²⁷ provide income tax credits for donation of land of conservation interest but only three of these require the land be certified as conservation-worthy before a tax credit is allowed.

For example, the New Mexico Land Conservation Incentives Act 2003 (in force January 2004) creates a tax credit against state income tax liability for individuals and corporations that donate land or easements to government open-space programmes or environmental organisations such as local land trusts. The donor may deduct half of the appraised value of the donation from state income tax, up to a maximum credit of \$100,000. Tax refunds are not allowed if the amount of the credit exceeds the taxpayer's annual tax liability, but taxpayers can spread the credit over twenty years to use the entire credit. Credits must first be approved by a committee which includes representatives of the energy, minerals and natural resources and agriculture departments, the commissioner of public lands, the Game and Fish Department and a representative of the farm and ranch industry.

Australia provides reliefs for conservation covenants with a native vegetation focus.²⁸ Landowners may claim an income tax deduction for any decrease in land value resulting from a covenant (entered into without payment) that:

- is in perpetuity (preferably attached to the title of the land);
- has been approved by the Minister for the Environment and Heritage, directly or as part of an approved programme;²⁹
- results in a loss of market value of more than \$5000 or is attached to land acquired less than 12 months before the covenant was made; and
- is entered into with a deductible gift recipient (eligible organisation) or a national or local government body or agency.

The value of land donations made to date is \$403,214 and the estimated revenues foregone are approximately \$161,286.³⁰ Covenants eligible for income tax reliefs automatically qualify for Capital Gains Tax reliefs (see II.B.4 below).

Income tax relief on ecological gifts in Canada

Canada's Income Tax Act was amended in 1996 (ss.110.1(1), 118.1(1), 207.31) to promote 'ecological gifts'. Covenants, easements and servitudes are the only partial property interests mentioned in the law and the Canada Revenue Agency has been reticent about granting incentives for other property interests. A test case involving the acceptability of a *profit à prendre* as an ecological gift is expected in 2005.

²⁷ California, Colorado, Connecticut, Delaware, Maryland, New Mexico, North Carolina, South Carolina, Virginia.

²⁸ Income Tax Assessment Act 1997 as amended in October 2001; divisions 30, 31, 104, 116.

²⁹ Eight government covenanting programmes have been approved, each based in a single State. For Environment Australia's guidelines for approval of programmes, see <http://www.deh.gov.au/biodiversity/programs/covenanting/index.html>

³⁰ Personal communication, Paul Hardiman (Australian Department of Environment and Heritage).

Over 400 donations of fee simple or partial interests in land have been made (over 31,000 hectares valued at over \$97 million). This area is modest in comparison to government protected areas programmes, but the lands donated are often in highly productive lowlands where other protected areas are scarce. Provincial statutes govern the property law aspects of such donations: by the late 1990s most Canadian provinces had necessary legislation.

Environment Canada notes difficulties in calculating the value of tax revenue forgone because the precise tax credit available to donors varies by province and each donor's tax situation is different: some may not use all reliefs available to them (e.g. on Capital Gains Tax). A rough estimate, calculated by applying the 44% tax credit available to residents of British Columbia to the whole country, comes to \$42.68 million or \$1,376 per hectare (not including staff time and resources). This figure compares favourably with the cost of acquiring similar lands for conservation purposes under other programmes.

(source: personal communication, Blair Hammond. The following report will soon be available on the North American Wetlands Conservation Council (Canada) website: Atkins, Hillyer and Kwasniak (2004) *Conservation Easements, Covenants and Servitudes in Canada: A Legal Review* (<http://www.terreshumidescanada.org/main.html>).

2. Wealth tax

Little information was provided by respondents. France provides for a direct reduction of wealth tax (*impôt sur la fortune*) but only for forest owners having undertaken sustainable management commitments. Sweden provides indirectly for such relief: because land in protected areas is zero-rated for tax purposes, the reduced cadastral value leads to lower wealth tax. Under Swedish law, landowners only pay wealth tax on property with a rateable value higher than 100,000 Euros.

Wealth tax does not exist in some European countries e.g. the United Kingdom.

3. Value added tax on conservation-related expenditure

A detailed study of VAT rules was outside the scope of this report.³¹ Most respondent countries do not provide reductions of VAT for such expenditures (e.g. France, Hungary, Latvia, Lithuania, Moldova, Poland, Sweden, United Kingdom). In Ireland, a reduced VAT rate applies to agricultural service generally and the purchase of such items as nursery plants and garden stock, but not specifically to actions for biodiversity conservation.

The Russian Federation's Fiscal Code (2000) defines certain works and services as tax-free, including works and services covered by the Federal Act on Charity and Charitable Organisations; forest fire control; and sale of booklets and tickets by cultural and natural institutions, including zapovedniks, botanical gardens, zoos, protected areas and landscape parks.

VAT is a matter of supranational competence for EU Member States. Framework legislation³² is in place to harmonise national laws governing the uniform basis of VAT assessment. This authorises reduced rates or exemptions within the territory of a country for certain activities of public interest and supplies of goods used wholly for an exempted activity. It would be necessary for Member States to work directly with the EU authorities on the specific question of reduced VAT for natural heritage conservation and with a view to introducing parallel schemes in non-EU countries.³³

³¹ Note that the French ecological tax review did not cover VAT issues.

³² Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes - Common system of value-added tax: uniform basis of assessment, as amended.

³³ A recommendation to this effect is included in Recommendation 1634 (2003) *Tax incentives for cultural heritage conservation* (Council of Europe Parliamentary Assembly).

4. Capital gains tax

Capital gains tax (CGT) is the tax payable upon disposal of an asset where the owner has made a chargeable gain (i.e. if the asset is worth more than when it was acquired). It may also be payable in respect of gifts of certain assets. Many laws provide for CGT relief in certain cases e.g. the sale of the principal place of residence.

One policy option is to provide CGT relief on sales or gifts of land and partial interests in land to public or private conservation organisations.

No incentives are available in Germany, Hungary, Ireland, Latvia, Lithuania, Poland, Russia or Sweden. Sweden notes that more favourable taxation of capital gains in the context of land purchase for protected areas would probably facilitate negotiations with landowners.

The United Kingdom does not provide CGT reliefs for general sales or gifts of land for conservation³⁴, but these are available for land of outstanding historic, scenic or scientific interest classified as a "heritage asset". Inheritance tax reliefs also apply to such land (see II.B.5).

Outside Europe, CGT reliefs are widely applied to the sale or donation of easements.

In Australia, conservation covenants subject to income tax relief (see II.B.1 above) automatically qualify for CGT reliefs. CGT reliefs are also available where a landowner receives money for granting a covenant, in recognition of the fact that the landowner has suffered some loss in the land's value by entering into the covenant. A portion of the cost base of the land is taken into account when working out the capital gain.

In Canada, the Revenue Agency treats the donation of property as a 'deemed disposition' potentially subject to CGT. The actual amount subject to tax will depend on whether the disposition is considered a capital gift or an 'ecological gift' (see II.B.1). This is an important distinction because for capital gifts 50% of any deemed capital gain is taxable, compared to 25% for ecological gifts. The removal of all CGT on Ecological Gifts is seen as the next major step in improving the tax incentives for donation of ecologically sensitive lands.³⁵

The United States legislature is currently considering draft legislation on Conservation Tax Incentives. This would amend the Internal Revenue Code of 1986 to allow landowners to exclude half of the capital gains from the sale of land or an interest in land or water to a government agency or private, nonprofit land trust for conservation. The taxpayer or member of the taxpayer's family must have owned the land or interest for three years prior to the sale: the receiving organisation would have to provide the taxpayer, at the time of acquisition, with a written undertaking of specified conservation purposes. CGT relief would also apply to the sale of corporate stock if the fair market value of the corporation's land or interests in land exceeds 90% of its total assets during the 3-year period preceding the sale. The estimated annual cost to the Treasury would be \$66 million while protecting land valued at up to \$150 million.³⁶

5. Inheritance tax (death duties)

Inheritance tax (IHT) is levied on estates whose total value exceeds a defined threshold. Where the resulting tax burden is high, those who inherit the property may have to sell off all or part to pay the tax demand. For natural and cultural heritage properties, such disposals may lead to their division and/or change of use and possibly to irreversible harm.

Very few countries have specific incentives to address this risk. Within Europe, the United Kingdom has

³⁴ Non-sectoral reliefs are available where the land is a "business asset" used for the purpose of a trade, profession or vocation.

³⁵ Personal communication, Blair Hammond (Environment Canada).

³⁶ Joint Committee on Taxation, 2001.

been the pioneer. There is an outright exemption for gifts in lifetime or on death, including but not limited to heritage quality land. In addition, conditional exemptions are available in certain circumstances (see Box).

In France, land may be donated in lieu of death duties (*dation en paiement*) to the *Conservatoire de l'Espace Littoral et des Rivages Lacustres*, a public body established in 1975³⁷ to acquire land of natural or landscape value along the coast and lakeshores. Acquired sites are managed under contract by local authorities, other public bodies or approved NGOs. About six donations to the *Conservatoire* have been accepted so far, totalling around 100 ha. Since July 2001, a 75% reduction of death duties is available for the donation of forest land to the French State's public forest domain.³⁸ No forest donations have been approved so far but several cases are under consideration. In both cases, these donations in lieu of tax are conditional on the competent state agencies approving the land as suitable for donation.

Inheritance and Capital Gains Tax reliefs for "heritage assets" (United Kingdom)

UK policy is to enable heritage assets, including land of outstanding historic, scenic or scientific interest, to remain in private hands as far as possible, rather than being acquired by the State or public bodies, and to be conserved for the general benefit of the community. The Inland Revenue determines what assets qualify for relief, based on advice from the statutory heritage agencies. "Conditional exemption" from IHT (and CGT, where applicable) is available where the property:

- remains in private hands;
- is transferred, provided that the new owner undertakes to preserve and maintain the transferred assets and allow public access to them;
- is sold by private treaty to Schedule 3 bodies (see below). For sales of heritage quality land, the benefit of the tax exemption is split between the taxpayer and the acquiring body in the proportion 10:90;
- is offered in lieu of tax to settle an existing tax bill. Land accepted in lieu of IHT is allocated to an appropriate heritage body (e.g. National Trust) to maintain it.

The owner is usually expected to agree a land management plan with the appropriate heritage agency which monitors compliance. The deferred tax charge may be triggered by either of two events: the sale of the property or breach of undertakings by the owner.

Bodies listed in Schedule 3 to the Inheritance Tax Act 1984 as amended include conservation bodies that are not already charities, such as the Royal Botanic Gardens, Kew and the statutory conservation agencies. The list also features the National Trust for Places of Historic Interest or Natural Beauty (England and Wales), the National Trust for Scotland, local authorities and government departments, but not other conservation NGOs.

Note: This tax regime dates from 1975 when capital transfer tax replaced estate duty and was carried through to inheritance tax when it replaced capital transfer tax. See further the Inland Revenue's website (www.cto.eds.co.uk).

³⁷ Act of 10 July 1975, as incorporated into the Rural Code (article R243-1 to 243-33) and amended by articles 18 and 19 of the Landscape Protection and Enhancement Act (*Loi sur la protection et la mise en valeur des paysages*) of 8 January 1993.

³⁸ Loi no 2001-602 du 9 juillet 2001 d'orientation sur la forêt.

6. Intestacy

All countries apply general rules for legal succession where the deceased does not leave a will (testament): the property usually passes to the next-of-kin (legal successors) or, if there are none, to the State. Where this affects land of conservation interest, it is obviously desirable to ensure continuity of management.

In Sweden, the property goes to the National Foundation for Inheritance and upon application, may be transferred to an appropriate body for conservation e.g. as a nature reserve.

No other countries indicate specific rules in such situations. Several respondents indicate that it is generally open to the beneficiaries of heritage land (under a will or as next-of-kin under an intestacy) to redirect their legacy in favour of a conservation agency. In this situation:

- in Germany, no death duties are paid if the agency is approved as pursuing public interests;
- in Hungary, a protected area may pass to the State Treasury under certain circumstances and the natural park directorate can apply for the managing right;
- in Ireland, the gift of land by the next-of-kin may qualify for exemption from gift tax on the basis that it was taken for public purposes.³⁹ Where the land passes to the State because there are no next-of-kin, the Minister for Finance⁴⁰ has the discretion to waive all or part of the State's rights, upon terms that may include the payment of money. The person in whose favour the State's rights are waived is considered to have taken an inheritance directly from the intestate disponer and not a gift from the State.

III. Tax frameworks that support the conservation sector

A. Tax status of private conservation organisations

Favourable tax treatment for organisations working for biodiversity conservation is a key component of an ecological tax framework. This is essentially a national matter: conservation NGOs are usually subject to the same legal and fiscal arrangements as other organisations deemed to be working in the public interest. Existing discrepancies between European countries tend to reflect the way in which the voluntary sector is regarded in the country concerned.

Germany has established an enabling environment for charitable organisations. Non-profit/public utility associations, organisations and foundations are generally exempt from gift-tax, death duties, corporate income tax, occupational (business) tax and capital gains tax. In areas in which they act commercially, they are exempt from VAT or pay a reduced rate (7% instead of 16%).

Private foundations can help leverage charitable giving and act as intermediary between the public and private sectors, notably in the area of corporate sponsorship for particular programmes. They are less developed in Europe than, for example, in the United States, but the *Centre européen des fondations* (founded in 1989) is working to promote greater recognition at the national and European level of the contribution foundations can make. Its 2003 work programme included work on a draft European status for foundations backed by fiscal proposals.

³⁹ s.76 Capital Acquisitions Tax Consolidation Act 2003.

⁴⁰ s.73(2) Succession Act 1965.

One example of a pan-European foundation is the EECONET Action Fund⁴¹ which funds the purchase or long-term lease by conservation agencies and NGOs of natural sites that contribute to the Pan-European Ecological Network, as well as urgent protection and restorative measures in countries where purchase/lease is not permitted. The Fund has supported 77 projects in 15 countries covering around 158,870 ha.

B. Incentives for donations

Responses to the questionnaire indicate wide variations in the availability of incentives for charitable donations. None were cited by Hungary, Ireland, Lithuania, Poland or the Russian Federation.

In countries that do provide incentives, the starting point is usually to make donations deductible from personal and/or corporate income tax up to a set financial threshold or fixed percentage of taxable income. Most reliefs cited by respondents are available to both personal and corporate donors. Recipients are usually limited to registered charities or approved bodies. In Italy, tax-deductible donations may be made directly to protected area management bodies.

In Latvia, donations to NGOs for any purpose are deductible from personal or corporate income tax provided that the NGO is included in the the list of such organizations approved by the Cabinet of Ministers. However, no environmental NGO has been included in the list. Germany provides for an tax exemption of up to 1.848 € per year provided that this income is generated from activities for organisations with aims of public interest.

Moldova provides relief on donations for philanthropic purposes up to 10% of taxable income. In Russia, up to 3% of taxable corporate income may be deducted for financial transfers to zapovedniks, national parks, dendrological parks and botanical gardens. These organisations are not liable to tax on their main (conservation-related) activities.⁴²

At the higher end of the scale, France provides for an income tax reduction of 60% of the value of private monetary donations to works of public interest, up to 20% of net taxable income. Sums above this threshold can be carried forward over four years. Corporate donations to approved conservation organisations (*organismes agréés*) qualify for 50% relief up to a certain threshold. The United Kingdom's gift aid scheme enables charities to reclaim basic-rate tax deducted and higher-rate tax payers to claim relief on the difference between the basic and higher rates, which can encourage a higher rate of contribution.

The United Kingdom's Landfill Tax Credit Scheme gives landfill operators a 90% tax credit against donations to 'environmental bodies', capped at 6.8% of the operator's landfill tax liability. Donations may only support projects consistent with the Scheme's objects, which have been amended to include delivery of biodiversity conservation for UK species habitats in the vicinity of landfill sites.⁴³ Contributions are at the operator's discretion but it is expected that most projects in this category will contribute to local and national biodiversity action plans.

Australia: legislation to encourage charitable donations

Under the Income Tax Assessment Act 1997 as amended in 2000, any taxpayer can claim an tax deduction for gifts of property (land, buildings, shares, vehicles, machinery) valued at more than \$5000. Deductions may be "apportioned" over up to five years so that tax benefits are not lost when a donor's income in a single year is less than the value of the gift e.g. a gift of land worth \$100,000 can be split into five deductions of \$20,000 and claimed over five years, particularly advantageous to those

⁴¹ Established in 1995 as a joint venture of the European Union of Site Management Organisations (Eurosites), the European Union for Coastal Conservation and the European Natural Heritage Fund. It was formally registered as a Foundation in 1999.

⁴² Federal Act on the taxation of corporate income of enterprises and organisations (1996 as amended).

⁴³ See www.lfcs.org.uk/objects/objects.asp.

whose incomes are less than the value of the donation. The reliefs are available to any taxpayer (individual, trust, or company) subject to company and trust laws/legislation.

Conservation bodies may also benefit from reliefs on capital gains and inheritance tax.

In the United Kingdom, CGT relief is available to donors of assets to charities and certain other bodies. Where gifted property is sold on later, the chargeable gains position will depend upon the status of the body. The Crown, local authorities and charities are exempt from tax on chargeable gains.

Inheritance tax exemptions are available for all bequests to charity in the United Kingdom. France's recent Act on Sponsorship, Associations and Foundations⁴⁴ makes tax relief available for testamentary gifts to approved private foundations.

Regarding donations of land and interests in land, the prevailing situation in Europe seems to be that donations of conservation land to legal persons are legally possible (e.g. under recent legislation in Lithuania and Moldova) but without particular incentives (except in a tiny number of countries). Unsurprisingly, donations do not take place.

C. Initiatives to simplify giving

1. Guidance and information

An enabling climate goes beyond the mere existence of tax reliefs. The countries with more dynamic voluntary conservation sectors all highlight the need for close working partnerships between NGOs and state agencies. The latter can provide practical guidance on ways to encourage gifts from the donor community and on managing conservation properties e.g. Environment Canada produces handbooks in support of programmes to increase the amount of charitable giving to conservation organizations.⁴⁵ It also assists with training, and provides some financial help with the costs of appraisals.

This pragmatic approach can maximise the 'added value' of the private conservation community and ensure that best use is made of available incentives. This is not always the case e.g. the French ecological tax review found that the existing (generous) regime for charitable donations in France is under-used by conservation NGOs and therefore did not recommend the creation of new powers to receive gifts under special tax relief.⁴⁶

Information tools are also essential to build awareness of existing incentives and reach a wider audience of potential donors. Another common characteristic of countries that prioritise conservation incentives is the availability of accessible online guidance and financial indicators. In Australia, for example, factsheets are located on the Department of the Environment and Heritage's website⁴⁷ and in 'Biodiversity Kits' produced by States and territories that run approved covenanting programmes.

2. Administrative procedures

For donors, streamlining the giving process removes at least one hurdle to charitable giving. The Charities Aid Foundation (CAF)⁴⁸ provides many options to facilitate contributions. In the United Kingdom alone, CAF handles over £250 million of donated funds on behalf of individuals, companies, trusts and other charities and checks that all recipient organisations are eligible to receive tax-effective funds. Its procedures to facilitate personal donations – which could be adapted to national systems as appropriate – include:

⁴⁴ *Loi relative au mécénat, aux associations et aux fondations* of 1 August 2003.

⁴⁵ See http://www.cws-scf.ec.gc.ca/ecogifts/intro_e.cfm and the Green Legacies Guide (http://www.stewardshipcentre.bc.ca/green_legacies_web/index.asp)

⁴⁶ Personal communication, Michel Badré.

⁴⁷ <http://www.deh.gov.au/biodiversity/publications/fact-sheets/incentives.html>.

⁴⁸ An international NGO established in 1924 which aims to provide specialist financial services to charities and their supporters and to maximise the resources of charities (<http://www.cafonline.org/>).

- gift vouchers;
- personal Legacy Accounts to receive bequests;
- the Give As You Earn payroll giving scheme, which enables employees to make donations straight from their gross salary to any UK charity of their choice. It offers charities the advantage of long term regular support, unrestricted funds and reduced administration;
- Personal Charitable Trusts whereby higher-paid employees can place a minimum of £10,000 into a trust to be invested by CAF and give away the income to selected charities.

CAF also operates Company Accounts into which a company pays a gross sum offset as a charge against income, thereby reducing Corporate Tax liability in a single transaction. The cost of all donations, including administration, is offset against profits and made tax-effective. The budget can be rolled over into the next accounting period as all payments into the account are considered charitable donations at the point of receipt.

3. Transnational donations

It should be possible for donors to contribute to conservation programmes elsewhere in Europe without losing domestic tax relief. Transnational donations need rigorous quality assurance mechanisms.

One option may be to contribute to larger conservation NGOs with European networks (e.g. BirdLife International, Wetlands International). Another could be to support and extend formal mechanisms for transnational giving: one example is described in the Box.

“Transnational Giving Europe”

Under this partnership between four European charitable foundations (Fondation de France, Charities Aid Foundation (UK), Maecenata Institut (Germany) and Oranje Fonds (Netherlands), the foundation in the donor’s country contacts the foundation in the country to which the donation is to be made, which carries out checks on the recipient organisation. Where this assessment is positive, the donation is made to the foundation in the country of origin in return for the necessary tax relief documentation. Moneys are then transferred to the recipient foundation. A 5% charge for administrative costs is levied (2% for the foundation in the country of origin, 3% in the recipient country to cover monitoring and assessment).

D. Earmarking tax revenues for conservation

Most European countries now have environmental legislation that provides for taxation of damaging activities and/or levies on concessions for use of natural resources, consistent with the polluter/user pays principle.⁴⁹ In many countries, particularly in Eastern Europe, all or part of the proceeds go to a general environmental fund that may be used as distribution mechanism for funding specific programmes.

However, almost no respondent countries ‘earmark’ tax revenues specifically for conservation. Treasury departments often oppose such mechanisms on the grounds that it limits government’s flexibility and locks in certain spending priorities. From a conservation perspective, this is unfortunate as earmarking can contribute towards more stable funding for conservation and also stimulate innovative approaches to revenue generation.

One option is to impose a levy on all property transactions to fund the acquisition of land of conservation interest. Legislation is necessary to institute such a tax. Existing laws of this kind, most

⁴⁹ e.g. the Russian Federation’s Federal Act on Environmental Conservation (2002).

developed in the United States (see Box), routinely exempt transfers to government agencies and charities from this levy, provided that the property is to be held for the charitable objectives of that organisation.

Using transfer taxes to finance acquisition (United States)

At both State and local level, revenues generated by property transfers and local developments are used to finance the purchase of ecologically important sites and natural areas for public benefit. In Massachusetts, the Martha's Vineyard Land Bank levies a 2% transfer fee on most property transactions. It was set up by state legislation in 1984 to reverse the creeping privatisation of natural coastal areas: after 20 years, the land bank owns 54 properties on nearly 1000 hectares.

Another option – not mutually exclusive - is a specific tax on new buildings to raise conservation funds. This kind of disincentive is particularly satisfying because it taxes the land base consistent with the user pays principle and can complement measures to divert development away from sensitive areas.

Taxing new buildings to protect sensitive natural areas (France)

Each *département* may levy a *taxe départementale d'espaces naturels sensibles* on the construction or extension of most categories of buildings, up to 2% of the total value of the proposed construction (Act of 18 July 1985). About 71 out of 100 *départements* have established this tax, at rates varying from 0.5 to 2%. Total annual revenues are between 100-120 million Euros (about 5-6 million Euros for each of the biggest *départements*).

As part of the necessary safeguards for an earmarked tax, use of revenue is tightly controlled. Proceeds must be used to protect sensitive natural areas and footpaths or to finance acquisitions e.g. by the *Conservatoire du Littoral*. Areas acquired with the proceeds of this tax are automatically subject to certain restrictions in the public interest.

The French ecological tax review considered this to be France's most important and efficient fiscal tool for natural heritage which has stood the test of time well. The review proposed the extension of the tax to all *départements* and the imposition of a minimum rate.

France also includes a nature protection levy on motorway tolls (*péages*)⁵⁰ and has recently adjusted its *taxe de séjour*⁵¹ legislation to include natural heritage conservation amongst its permitted purposes. However, the latter tax is not considered particularly effective, partly because its collection involves so many individuals.⁵²

Western Australia has established a statutory Water Rights Trust Account into which a set percentage of tax savings resulting from public utility tax deductions is redirected from the General Fund each year. Funds are used to purchase or lease water rights to improve in-stream flows in waters supporting fish stocks listed as threatened or endangered under federal law or qualifying for protection under other statutes.⁵³

In North Carolina (USA), the Natural Heritage Trust Fund is financed by receipts from the annual fees for car licence plates and a percentage of the State's share of stamp duty (rising from 15% in 1991 to 25% by 1996). Revenues provide extra funding for state agencies to acquire and protect the state's ecological and cultural heritage and to inventory its natural areas: about \$12 million is available each year. Money not spent in one fiscal year may remain in the Fund i.e. it does not revert to the State's general fund.

⁵⁰ Art.49, Act no. 95-101 of 2 February 1995, known as the « loi Barnier »..

⁵¹ Charged on accommodation for non-residents, it raises about €120 million annually, mostly reinvested in tourist facilities.

⁵² Personal communication, Michel Badré.

⁵³ <http://www.ofm.wa.gov/reports/water/watertax/watertax.pdf>.

E. Tax relief on environmentally-friendly investment

Respondents were asked whether tax reliefs were available for investment in 'green' funds. None cited specific measures.

In the Netherlands, an innovative tax exemption on investments in approved green funds was established in 1995 to support organic farming (characterised by low economic gains and high risks). Designed to help close the profitability gap between traditional and organic production, the exemption allows investors in these projects to contract loans at reduced interest rates (usually about 2% less than commercial rates), providing a financial advantage to organic farms over traditional ones. The funds have been heavily supported by the Dutch people.⁵⁴

The Netherlands has seen considerable innovation between government, banks and the biodiversity sector in setting up national green funds. The European Association of Co-operative Banks is now exploring opportunities for creating biodiversity investment funds. Research by the European Centre for Nature Conservation suggests that harmonisation of rules between European countries, and the introduction of government incentives such as fiscal incentives and public green funds, would assist financial institutions to further increase their investments in biodiversity relevant projects and programmes.⁵⁵

IV. Practical indicators for designing tax incentives

As with all policies involving taxpayers' money, countries need to provide clear objectives and criteria, consistency and accountability when developing conservation tax reliefs. The procedure for selecting appropriate incentives should include comparison of different options with regard to cost-effectiveness, administrative simplicity and ease of implementation and monitoring.

A. Objectives

Strategic objectives for tax reliefs might range from expanding ecological networks and opportunities for public access to keeping conservation land in private ownership to reduce direct management cost to the State.

For Eastern and Central European countries, it may be appropriate to use tax reliefs in a proactive way to encourage owners of recently privatised land to adopt or continue appropriate management. In countries where significant areas of forests are privately managed under leases or concessions, as in the Russian Federation, tax reliefs might be linked to sustainable management commitments to enhance forest biodiversity.

Another objective could be to stimulate private or corporate investment in conservation programmes and to raise the profile of biological and landscape diversity in economic, financial and land use sectors.

Alternatively – but less desirably – tax reliefs may be used to compensate landholders affected by new regulatory restrictions. Reliefs to ease the pain of compliance should be phased out once new requirements become accepted as an environmental norm.

B. Quality assurance mechanisms

To be credible, land-related tax reliefs should apply to sites of real conservation value, be appropriately valued and be backed by safeguards against change of use and other violations.

⁵⁴ Bellegem, T. Van, Beijerman, A., Eijs, A., Boxtel, M., Graveland, C., Wieringa, H. *Green Investment Funds: Organic Farming* (Dutch Case Study for OECD/ENV/EPOC/BIO, November 1997).

⁵⁵ Drucker, G., Roberts, J. and Wolters, R. (2002). *Biodiversity and the Financial Sector – a relationship with mutual advantages*. ECNC Technical report series.

1. Criteria for selection

Reliefs can apply to all sites within a specific category (e.g. statutory protected areas, sites covered by approved covenants) or be awarded on a case-by-case basis.

Linking reliefs to existing categories may be administratively simpler, avoid duplication of effort and be more predictable for landholders and national tax authorities. Categories could be international (e.g. Special Areas of Conservation in the Natura 2000 network, sites in the Pan-European Ecological Network) or national (e.g. wetlands included in a national inventory; sites identified as priority conservation areas in national, regional or local plans.).

On the other hand, this approach may not be flexible enough to cover buffer, restoration and corridor zones that fall outside statutory categories or natural areas earmarked for the creation or expansion of larger protected areas.

Discretionary (case-by-case) allocation is more labour-intensive but makes it possible for state agencies to target reliefs at properties whose conservation value has been individually verified for this purpose. This is important at least for cases with major revenue implications (e.g. capital gains and inheritance tax exemptions on larger sites).

Objective criteria are essential to this kind of decision-making. They have been developed in Australia⁵⁶ and under Canadian legislation on ecological gifts (see Box).

Canada's national criteria for identifying ecologically sensitive lands

Before any donation of partial property interests, Environment Canada assesses individual properties using criteria based on conservation biology principles: it is under no obligation to certify a given property. The criteria include:

- areas identified, designated or protected by a local, provincial, territorial, national or international system or body as ecologically significant or ecologically important;
- natural spaces of significance 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
- municipal or rural lands that are zoned or designated for biodiversity objectives;
- 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.

Some of Environment Canada's regional agencies have further elaborated these national criteria. One challenge has been to ensure consistency of decision making in each of these administrative regions, both with regard to certification of ecological sensitivity and also to decisions concerning disposition and change in use. Good communication and cooperation between staff is essential for this purpose (source: personal communication, Blair Hammond).

2. Valuation of donated land

Assessing the market value of donated land and interests in land is complex. In the United States, which probably has most experience in this area, there have been several disputes as to the accuracy of stated market values between the land trusts and land donors on one side and US taxation authorities on the other.

⁵⁶ Covenants eligible for relief under the Income Tax Assessment Act 1997 (amended October 2001) must meet departmental guidelines for determining whether "environmental values" subject to covenant are of high significance/ quality.

In Canada, to address similar concerns within the Canada Revenue Agency, Environment Canada set up an expert panel of private sector property valuers, a lawyer and a conservation planner to advise the Minister of Environment on developing a process to fairly determine the market value of donated properties. Now known as the Appraisal Review Panel, it reviews every valuation submitted to the Ecological Gifts programme and recommends an appropriate value that the Minister should certify for the purposes of the Income Tax Act. The Panel has also helped develop official guidelines for valuations and provides training to private sector valuers on appraising Ecological Gifts.

An evaluation and audit of the Canadian system indicates success in protecting national revenue interests, but disadvantages include a slower donation process (irritating to some donors and recipient groups) and significant contract expenses (with the Panel members). Environment Canada is working to streamline the process and reduce costs.

In Australia, the Commissioner of Taxation through the Australian Valuation Office assesses the decrease in market value of land arising from the donation of a conservation covenant. This determines the amount of the deduction, which can be spread over five years. A tax-deductible fee is charged for this valuation.

3. Organisations eligible to receive donations

Where the State forgoes tax revenue in return for donations to State agencies or NGOs, procedures are needed to ensure that recipient organisations are well-managed with appropriate public interest objectives. The position is fairly straightforward as regards monetary donations to recognised charities but more delicate for donations of land or interests in land. Recipient bodies must have sufficient technical, administrative and financial resources to take on the managing and monitoring of the land on a long-term basis.

In the few European countries that do offer significant reliefs for land transfers, legislation usually names specific organisations. Donations in France are directed at the State agencies for coastal conservation and forests (*Conservatoire du Littoral, Office National des Forêts*). In the United Kingdom, the National Trusts are the only private organisations eligible to purchase heritage quality land by private treaty or receive it on behalf of the State in lieu of tax.

Outside Europe, a striking feature is the availability of tax reliefs to a wider range of organisations. This more flexible approach facilitates community engagement in conservation and innovation in response to local priorities. On the other hand, it raises important questions about the capacity of smaller organisations to handle the legal and financial aspects of donation correctly and to monitor the acquired interests.

By far the most open framework is found in America, where over 1300 local or State private land trusts have protected about 2.77 million hectares to date and growing by over 200,000 hectares each year. To a certain extent, the quality assurance role is carried out by the national Land Trust Alliance which represents these trusts collectively. The Alliance sets guiding Standards and Practices for ethical performance and has developed a Strategic Plan for 2004-2008 which aims to expand the pace of land conservation through tax incentives, defend the permanence of conservation easements and ensure that the work of land trusts is as strategically directed as possible.⁵⁷

In Canada, organisations eligible to receive ecological gifts (approximately 158) must be federally registered charities with “the conservation and protection of Canada's environmental heritage” amongst their purposes. There is huge diversity within the sector, with some groups being very capable, professional and well financed, whilst others are volunteer based and with limited resources. Land trusts and conservancies are significantly more sophisticated in some regions than in others.⁵⁸

⁵⁷ For further information, see www.lta.org.

⁵⁸ Personal communication, Blair Hammond. For an overview of stewardship in Canada, see http://www.stewardshipcanada.ca/sc_national/console/stewCanAgenda/Comp-e_feb2003.pdf.

In Australia, an eligible organisation must be included in the Register of Environmental Organisations, set up in 1992 to remove the need to amend the tax law each time an organisation was granted “deductible gift recipient status”. Entry on the Register allows an organisation to seek tax deductible donations from donors wishing to take advantage of new reliefs under the Income Tax Assessment Act 1997 as amended in 2000. However, the only private heritage organisations currently on the Register are the various National Trusts.

4. Sanctions and safeguards

Where property remains in private ownership, tax reliefs should be conditional on the landowner complying with the terms of an agreed management plan or conservation easement (preferably permanent). Monitoring procedures should be in place and non-compliance should lead to forfeiture of reliefs and the obligation to pay the accumulated tax reliefs.

Respondents gave little information about this aspect. Moldova indicates that its tax exemption for landowners in statutory protected areas requires management to be consistent with protected areas legislation, but this is not backed by specific sanctions for non-compliance.

Where conservation expenditures are income-tax deductible, a safeguard prior to making the tax credit could be certification by the supervisory agency that the work undertaken by the landowner complies with the terms of an agreed management plan.

Where land is sold or donated, tax relief should be conditional on appropriate guarantees for long-term management. The most secure way is to establish strict procedures to regulate alienation of acquired sites, as in the United Kingdom (National Trusts) and France (*Conservatoire du Littoral, Office National des Forêts*). At least once country, Moldova, prohibits the disposal of land in designated protected areas.⁵⁹

At the pan-European level, the EECONET Action Fund (see III.1 above) only supports acquisition of sites designated as inalienable and given maximal protection, including the implementation of a management plan executed in co-operation with the local organisation and one of the Fund’s Partners.

In Canada, the Revenue may penalise a municipality or charity for unauthorised disposal/change of use without prior approval from Environment Canada.⁶⁰ To date, this has been avoided by promoting close dialogue with recipient organisations, who are aware that federal penalties would damage their standing within the donor community and could even lead to loss of charitable status. Environment Canada has already handled several requests for disposal/change in use and is developing national policy on how to deal with future requests.

V. Conclusions and recommendations

At the pan-European level, tax incentives for biodiversity conservation are under-developed and do not make a targeted contribution to strengthening ecological networks. There are wide disparities between countries and despite some interesting national initiatives, existing measures are generally fragmented and poorly integrated into conservation policy ‘toolkits’.

Whereas regulatory frameworks in European countries are now broadly similar, there is little sign of movement towards a common view of ‘positive’ ecological taxation. ‘Negative’ taxation of environmentally harmful activities is more developed - the fiscal stick is ahead of the fiscal carrot - but takes relatively little account of impacts on natural systems.

⁵⁹ A complementary policy option is to establish rights of preemption (first refusal) over land in defined areas of ecological interest that is offered for sale. In Latvia, the State has the right of preemption over private property in the SPNT that comes on the market. It need not exercise these rights if the property is not of special biodiversity importance.

⁶⁰ s.207.31 Income Tax Act.

Europe's relative lack of vitality in this area is in striking contrast to the dynamism of the conservation tax incentive sector in Australia, North and Central America and, more recently, South Africa.

A. Current constraints on biodiversity-friendly tax policy

Key constraints identified during the preparation of this report include:

- lack of a coherent or comprehensive 'vision' at the national or supranational level;
- political resistance especially to the creation of new taxes, linked to current pressure on public finances;
- lack of user-friendly and easily-available information on existing tax reliefs;
- unfavourable tax treatment of landowners managing land for conservation compared to other land-use sectors, with biodiversity often not the main purpose of available reliefs;
- few policies to retain conservation land in private ownership and avoid damaging division, disposal or change of use;
- existing measures focus more on compensation than positive conservation gain;
- uneven levels of incentives to contribute to the public and private conservation sector;
- lack of incentives to increase corporate social responsibility in the area of biodiversity and landscapes.

B. Opportunities identified

Most respondents consider that tax incentives could make a positive contribution to the implementation of European ecological networks by helping to finance necessary technical measures.

Support was specifically expressed for reduction of personal/corporate tax for owners/occupiers who manage land for conservation (Hungary), rates exemptions for owners of land in the approved national ecological network (Lithuania), capital gains tax reduction to promote land acquisition for protected areas (Sweden) and better targeting of environmental tax revenues at the local level to address poverty in resource-rich regions (Russian Federation).

Available data, though incomplete, suggests that the revenue implications of adjusting taxes to take account of ecological criteria are quite low (see II.B.2). At one level, this reduces the incentive element of certain tax reductions or exemptions. On the other hand, it could make it easier to reorientate tax frameworks to reward commitment to biodiversity conservation and, conversely, to increase the charge on activities damaging to natural systems. Even minor tax adjustments can help to change behaviour and contribute to a culture of support for conservation, notably in the business sector.

C. Recommendations

Fiscal policy should be based on the principle that managing land to conserve and enhance European biological diversity is a public interest activity that deserves recognition and concrete support.

Cooperative efforts are needed at the national and European levels to support the development of tax policies supportive of landholders, municipalities and the public and private conservation sector. Tax-based tools should allow for flexibility and innovation, avoiding duplication with other types of incentives.

1. Tax systems should support conservation as a viable land-use option for landholders

1.1 Remove anomalies that give unfavourable tax treatment to land managed for biodiversity

Countries need to identify and phase out perverse incentives that discourage or penalise active conservation, in particular tax systems that reward drainage or development of sensitive natural areas.

1.2 Promote conservation gain across other land-use sectors by linking sectoral tax incentives to compliance with sustainable management practices

Countries need to increase consistency between different policy areas affecting biodiversity and promote maximum conservation benefit from existing incentive mechanisms.

1.3 Reduce the cost of conservation to landholders through tax reliefs for areas designated for protective management

1.3.1 Adjust levels of stamp duty and rates payable on land acquired and/or managed for conservation, subject to appropriate quality assurance mechanisms

1.3.2 Provide for deduction of expenses incurred in land management and restoration where carried out in accordance with agreed management prescriptions

1.3.3 Consider the extension of tax reliefs to voluntary nature reserves where this will help to achieve strategic conservation targets, particularly at local level

1.4 Facilitate the maintenance of land of conservation value in private ownership

1.4.1 Provide relief from inheritance and capital gains taxes, subject to prior valuation of the land to ensure its ecological importance and adequate long-term monitoring

1.4.2 Develop incentives for the sale or donation of partial interests in land to conservation agencies or associations, adapted to the requirements of national legal systems

1.5 Develop accessible information resources on incentives, including tax reliefs, to assist landholders to make informed choices about land management options

2. Tax systems should facilitate and strengthen the work of the conservation sector

2.1 Actively promote donations for conservation by introducing and extending personal and corporate tax reliefs that are administratively simple for donors and recipients

2.2 Recognise and enhance the contribution that private conservation organisations can make to management and monitoring of land for biodiversity

2.2.1 Ensure that conservation purposes are recognised as ‘public interest’ so that organisations can benefit from general tax advantages available for charities in the country concerned

2.2.2 Consider an accreditation system to make qualified conservation organisations eligible to receive tax-deductible gifts or transfers of land or interests in land, subject to restrictions on the future use or disposal of such land

2.2.3 Strengthen the capacity of the private conservation sector to work with landholders and potential donors and make best use of existing incentives, by providing guidance and practical support from state agencies

2.3 Develop revenue generation mechanisms that can provide additional funding for acquisition

and/or management of priority areas for conservation

2.4 Provide incentives for business, in partnership with the conservation sector, to sponsor and engage in programmes for long-term management of biological and landscape diversity

2.5 Explore tax mechanisms to facilitate the development of small-scale sustainable enterprises that might not otherwise be viable, including but not limited to tax relief on approved 'green' funds

3. Pan-European cooperation should lead to a shared vision and greater efficiency of tax policy for biodiversity conservation

3.1 Within governments, strengthen dialogue and cooperation between Treasury and conservation departments to progressively integrate ecological criteria into tax systems

3.2 At the European level, cooperate through further research and information exchange on positive fiscal mechanisms for natural heritage conservation

3.2.1 Collect detailed country information on natural heritage tax incentives and develop a database as a guide to good practice, using existing resources as far as practicable

3.2.2 Make tax relief available on donations to international conservation organisations and programmes in other countries by developing coordination and quality assurance mechanisms such as "Transnational Giving Europe"

3.3 Work directly with European Union institutions to promote recognition of natural heritage protection in future European legislation on value-added tax, in order to secure VAT reductions on expenditure for maintenance and restoration of land for biodiversity. Encourage the implementation of parallel arrangements in other European countries.

APPENDIX

Questionnaire circulated to Contracting Parties

The Council of Europe has commissioned a report into the use of fiscal incentive policies to promote conservation of biological and landscape diversity in Europe. The report will provide an overview of existing national measures and, as far as possible, identify and evaluate examples of good practice. It will form the basis for a draft recommendation to Member States of the Council of Europe on the development of positive fiscal policies to complement regulatory and contract-based measures for conservation.

Accurate and up-to-date information is needed to make the report as constructive as possible. We would therefore be most grateful if you could fill in this questionnaire with regard to your country.

General note

For each of the specific categories below, please provide available details about:

- eligibility (e.g. agricultural or all rural lands; certain kinds of protected areas etc.)
- quality assurance mechanisms (must land be certified as being of conservation interest? Must management be carried out in accordance with an agreed plan or formal programme?)
- monitoring (e.g. audit by a conservation agency or other approved body?)
- level or percentage of tax benefit
- duration of tax benefit
- sanctions for non-compliance.

Property taxes (rates/local land taxes)

5. Are exemptions or reductions available to owners/occupiers who manage land for conservation?
6. If so, do these vary depend on the legal status of the land (European designated site, statutory protected area, voluntary reserve etc?)
7. What are the revenue implications for the receiving authority: does a mechanism exist (e.g. perequation) to compensate a municipality for lost revenues?

Transfer taxes (sales, gifts, death, intestacy)

4. Are there incentives to sell, give or bequeath land for conservation (or property rights in such land, under a conservation easement)? Examples could include exemption or reduction of:
 - a. registration fees (stamp duty)
 - b. gift tax
 - c. death (estate) duty?
5. Which organisations are qualified to receive such land (e.g. state agencies, private bodies such as conservation non-governmental organisations (NGOs)). What are the criteria for approving private conservation organisations (e.g. length of establishment, size of membership, level of scientific expertise etc.).
6. If the property is resold, can the owner benefit from reduced capital gains tax, if applicable?
7. If an owner of land of conservation interest dies intestate, can the land be transferred to a conservation agency?

Personal taxes

8. Are owners/managers who manage their land for conservation entitled to:
 - a. income tax reductions or credits?
 - b. if so, how is this calculated? (e.g. credit for income foregone; tax credits for expenses incurred in maintenance and/or capital works?)
 - c. reduction of wealth tax (where applicable)
9. Is Value-Added Tax (VAT) payable at a reduced rate for approved conservation works?

Tax benefits for donations and investments for environmental purposes?

10. Are donations of land/property rights to conservation agencies and/or NGOs:
 - a. deductible from personal income tax?
 - b. deductible from corporate income tax (corporation tax)
 - c. exempt from capital gains tax (where applicable?)
11. Are specific exemptions available for investment in 'green' funds?

Additional information

12. Does your country " earmark " specific tax revenues or levies for conservation purposes?
13. What are the main opportunities and/or constraints to using tax incentives for conservation in your country?
14. What contribution do you think that tax incentives could make to biodiversity conservation and the strengthening of the Pan-European Ecological Network?

We thank you in advance for answering these questions and look forward to receiving a reply at your earliest convenience. In order to allow time for processing the information, the deadline for completed questionnaires is **4 June 2004**.