

Proposal for the new UsersTCP financial entity and structure

Matters for the ExCo

1. **The ExCo is asked to approve the setting up of a New Zealand (NZ) Incorporated Society as the financial and administrative entity for the UsersTCP.**
2. This course of action is recommended by the Executive Steering Committee is to proceed with setting up a NZ Incorporated Society as the financial and administrative entity for the UsersTCP. The entity would be set up using the services of a NZ lawyer (Norris Ward McKinnon) with guidance from Carl Brandt (tax specialist) in order to ensure that the Constitution covers all the aspects required by the TCP.

Overview

3. In 2020, EnovaSF, the Norwegian contracting party, requested an end to the temporary arrangement in which it managed the TCP's finances. With the appointment of a TCP Operating Agent, the ExCo agreed that a new set of arrangements should be sought, in which the Secretariat would manage the TCP's finances, overseen by the ExCo, represented by the Vice-chair Finance and the Finance Sub-committee. The Vice-chair finance role would become less hands-on, with the role focused instead on oversight of the finances and budget and signing off of invoices from contractors.
4. The Secretariat, along with members of the ESC, have undertaken a review of a number of options for a new entity structure. This included contacting a number of other IEA TCP's to gain an understanding of their structure, and identifying the main considerations for a new structure – legal liability of members, tax implications, future-proofing and ability to operate a bank account and accessibility to the Secretariat.
5. It was clear that every TCP contacted operated under a different structure generally dictated by the laws and rules of the resident country of the Operating Agent/Secretariat, or historical structure options that no longer exist. The ESC undertook deeper enquiries into options in France, Ireland, Norway and New Zealand.
6. The European options raised a number of issues involving VAT, for example, a French company structure would potentially add 20% (the standard rate of sales tax in France) to the Head of Secretariats costs. EnovaSF also received analysis from Deloitte in Norway on this topic; this communication is attached as Attachment 1.
7. The ESC then investigated a New Zealand (NZ) option given that the Secretariat Support role is now NZ based and the new finance reporting arrangements of the TCP include the Head of Secretariat reporting on the TCP's finances and preparing the budget, supported by information provided by the Secretary, who would manage the TCP's accounts, preparing, receiving and recording invoices.

8. Formal advice was received from both a NZ commercial lawyer and a taxation specialist regarding a number of options, with the main focus on a NZ Incorporated Society structure. Attachments 2 and 3 detail the information received from the NZ lawyer.
9. Discussion was had with the taxation specialist by phone and focused on general sales tax (GST) and income tax liabilities. The advice received was that key points concerning non-profit status could be included in the Constitution of the society. Also, income tax is not liable on subscriptions income for a not-for-profit entity in NZ, and an entity only has to register for GST (NZ version of VAT) if it is carrying on a "taxable activity" under the Act (and this appears to be somewhat subjective). With this and the zero rating for overseas supplies it is most likely the entity would be GST exempt.

What is a NZ Incorporated Society?

10. An Incorporated Society is a non-profit organisation that has its own legal identity, separate to that of its members. Details can be found at the following link: <https://is-register.companiesoffice.govt.nz/help-centre/getting-started/about-incorporated-societies/>

Set-up costs

Legal advice for entity options (incl. incorporated society)	\$NZ 1500 (approx. 900 Euro)
Accounting/taxation advice	\$NZ 550 (approx. 350 Euro)
Full set-up of chosen entity by lawyer	\$NZ 2,000 to \$3,000 (1,150 to 1,750 Euro) + disbursements
Limited set-up assistance	\$NZ 1,000 to \$2,000 (575 to 1,150 Euro) + disbursements
Assistance from Carl Brandt Taxation Specialists in reviewing the tax aspects / implications of the Constitution	\$NZ 550 (approx. 350 Euro)
Application fee to incorporate	\$NZ 88.89 (51 Euro)
The Head of Secretariat bank account verification (through French solicitor)	To be determined (first quote: 250 Euro + VAT)
Secretary bank account verification	No cost

Annual costs

11. If no audit required and accounts in cloud-based accounting software – approx. 10 hrs work per annum to prepare statutory filing @ \$NZ 1200 - \$NZ 1500 (700 to 900 Euro)
12. Xero online accounting subscription (multi currency) \$NZ 75 per month excl tax (25% discount for non-profits = \$NZ 64.70 or approx. 38 Euro per month = 450 Euro per year)

Bank Account

13. With the tightening of Anti Money Laundering (AML) legislation globally, opening a bank account that allows non-residents to access and operate it is subject to tight restrictions. However, the ASB bank in NZ has advised that they will accept non-NZ residents AML verification that takes place in their country of residence by taking their ID and address verification to a solicitor who then stamps and certifies a copy as an original, emailing this directly to the bank. Once received along with the Certificate of Incorporation for the Society, a bank account can be opened. Additionally, due to AML restrictions, the recommendation is to have the Head of Secretariat and TCP Secretary verified to operate the bank account.

Recommendation

14. The recommendation of the ESC/Secretariat is to proceed with setting up a NZ Incorporated Society as the financial and administrative entity for the UsersTCP using the services of the NZ lawyer to undertake the full set-up option (with guidance from Carl Brandt tax specialist) in order to ensure that the Constitution covers all required aspects required by the TCP, NZ law and taxation requirements.