

IPI Briefing Memo: Current Legal Status, IOO and Alternatives

Current legal situation as “International NGO”

In a decision of 11 June 2010, the Austrian Federal Minister of Foreign Affairs (Bundesminister für europäische und internationale Angelegenheiten) granted the International Peace Institute the status of a “Non-Governmental International Organization” (“NGO”) within the meaning of the Federal Law on the Granting of Privileges to Non-Governmental Organizations.

Benefits resulting from NGO status:

- Privileged financial transactions: Entitled to freely, without being subject to financial controls and provisions, (i) purchase, hold, and dispose of any currencies, (ii) dispose of assets in any currency, (iii) purchase, hold, and dispose of funds, securities, and gold, and (iv) transfer its funds, securities, currencies, gold into, out of, and within Austria.
- Exemption from foreign employees regulation: Exemption of employees of NGOs from the rules governing the employment of foreigners (i.e. obtaining of working permits).
- Potential additional benefits (see Alternative 2): The NGO can apply to the Federal Minister of Finance (Bundesminister für Finanzen) for the recognition of having the status “of public’s interest” (Gemeinnützigkeit) within the meaning of Section 34 et seq of the Federal Tax Law (Bundesabgabenordnung).
 - Potential exemption from the municipality tax (“Kommunalsteuer” amounting to 3% of the salaries paid to employees working in Austria). This exemption only applies to organizations that promote certain health and social care objectives.
 - Corporation tax (Körperschaftsteuergesetz) requirements do not apply to nonprofit organizations
 - Donors may deduct their donations to non-profit organizations from their tax base for US tax purposes

IOO

While donor countries Switzerland, Luxembourg and Liechtenstein have confirmed their support of the IOO application, the approval process in the host country, Austria, has been delayed due to personal changes in the key decision making positions.

Effort necessary to obtain legal status

- Step 1: Approval of Austrian Foreign Ministry
- Step 2: Negotiation of Host Country Agreement
- Step 3: Negotiation of Donor Country Agreements

Benefits

- Depend highly on negotiations and agreement reached with host country (Austria)
- While the UN has obtained far reaching benefits, KAICIID had not achieved benefits of similar scope; therefore, it is key to focus on the negotiation of the host country agreement
- Potential benefits could entail: tax breaks on sales tax for inventory, rent, office supplies, cars, breaks in social security charges etc.

Issues

- Limited visibility on tax benefits in Austria
- Uncertain when new legal form will be introduced

Alternative 1: “International Institution” – GAVI Model

The Austrian Foreign Ministry is currently negotiating with ‘Sustainable Energy 4 All’ about a new legal form to be created in Austrian law, which shall be based on the legal form of GAVI, an international institution headquartered in Switzerland.

Legal form and status

- **New legal form** to be created by Austrian Legislation under the supervision of the Austrian Foreign Ministry.
- The new legal entity will be created to serve the needs of newly established International Organization with headquarters in Vienna, ‘**Sustainable Energy 4 All**’. It shall be based on the legal form of GAVI in Switzerland (GAVI Model)
- **GAVI is a Swiss Foundation with international institution status in Switzerland and public charity status in the United States**
- At the moment bilateral negotiations are ongoing.

Effort necessary to obtain legal status

- Step 1: Await legislator’s release of legal status and its legal and tax implications
- Step 2: Application at Austrian Foreign Ministry

Benefit

- Potential tax breaks
- Potential breaks on contributions for social security for employees

Issues

- Limited visibility on tax benefits in Austria
- Uncertain when new legal form will be introduced

Alternative 2: “Gemeinnützigkeit” / “NGO of Public Interest”

In addition to the current legal status of an international NGO, IPI’s Vienna branch could apply for the status of “Gemeinnützigkeit” which means “of public interest”

Legal form and status

- “Gemeinnützigkeit” is an additional status any Austrian legal entity or branch of an International entity can obtain
- Apart from the IOO status the most tax efficient form under Austrian law

Effort necessary

- Application for status; an Austrian law firm has offered to manage the process with limited resource requirements
- Process to obtain legal status of "Gemeinnützigkeit" will take 1-6 months

Benefits

- The "-public-interest" status ('Gemeinnützigkeit') would **exempt IPIs Vienna office of capital gains tax** from interest income (which is subject to 25% tax in Austria). If IPI received interest income or capital gains from Austrian bank deposits, a "ofpublic-interest" status may allow for an exemption from the 25% Austrian withholding tax.
- Potential exemption from the **municipality tax** ("Kommunalsteuer" amounting to 3% of the salaries paid to employees working in Austria). This exemption only applies to organizations that promote certain health and social care objectives.
- **Corporation tax** (Körperschaftssteuergesetz) requirements do not apply to nonprofit organizations
- **Donors may deduct their donations to non-profit organizations from their tax base for US tax purposes**

Issues

- Lacks tax breaks of the UN IOO status (i.e. on rent, inventory, cars, etc.) and breaks on social security payments