Options for Benefits Agreement Revenue

Background:

- Tr'ondëk Hwëch'in enters into benefits agreement with project proponents
  - E.g., Goldcorp to develop Coffee Gold Project
- Benefits agreement can result in payment of significant amounts to TH government
- Elected leaders consulting membership what to do with those revenues

Overview

Options in a nutshell:

1. Bank account/Annual budget for expenses.
2. Segregate in a special TH government account for specific purposes.
3. Put into a trust
   A. Existing Tr'ondëk Hwëch'in Trust, or
   B. New trust.
4. Transfer to an NPO (non-profit organization).
5. Transfer to a charity.

Overview

Considerations:

- What should funds be used for?
- How much control by Council over use of funds?
- How much control by General Assembly over use of funds?
- How important is simplicity?
- How important are tax and OSR concerns?

Can divide funds among multiple options.

Option 1. Regular TH Government Bank Account

Pros:

- Additional funds available annually for programs and services.
- Easy to access and repurpose funds.
- No additional costs or complexity.
- No income tax concerns.

Cons:

- Funds depleted when project ceases.

Option 2. Segregated TH Government Account

Pros:

- Could put legislative parameters around use of funds.
- Funds can be invested to earn interest or other income.
- Few additional costs and low complexity.
- Should be exempt from income tax.

Cons:

- TH laws limiting use of funds can be changed.
- Income earned on investment could affect federal funding (OSR).

Option 3 A. Existing Tr’ondëk Hwëch’in Trust

Pros:

- Uses existing legal structure so little additional cost or complexity.
- TH Trust allows a broad range of investments to earn a return on investment.
- Trustees operate independent of Council.

Cons:

- Require consent of trustees to contribute.
- Funds would be subject to the overarching restriction that they be used for “social, community or economic development activities of direct benefit to the Tr’ondëk Hwëch’in”.
- Trustees operate independent of Council.
- Trustee discretion whether to distribute (subject to Guiding Principles).
- Exposed to risks of other investments in trust.

Option 3 B. New Trust

Pros:

- Fund can be legally restricted for specific purposes set out in the trust indenture.
- Option to preserve capital for future generations
- The trust can be set up so as to provide Council or General Assembly with authority to require distributions from the trust to the TH government

Cons:

- Additional cost and complexity in the establishment and ongoing operation of a new Trust.
- Avoiding negative tax and OSR consequences may limit the TH’s flexibility to direct the use of the Funds, or income earned on the Funds, for its purposes
- Future OSR rules unknown so difficult to plan for
- Finding trustees

Option 4. Non-Profit Organization

Pros:

- Funds are legally restricted for the purposes of the non-profit.
- Council can be the Directors and control distribution of the Funds

Cons:

- More significant cost and complexity in the establishment and ongoing operation of a non-profit
- The use of the funds would be limited to non-profit compatible purposes
- If the Funds are held to invest and generate income, the society may not qualify as a non-profit for tax purposes, so a non-profit would not facilitate maintaining or growing the capital for the benefit of future generations

Option 5. Charity

Pros:

- Funds can be restricted for specific purposes (provided the desired purposes fall within the specific categories permitted for a charity)
- Flexibility to have Council be the Directors and control distribution of the Funds
- Charities can hold funds to invest and generate income
- Registered charities are exempt from income tax (and unlikely to effect federal transfers to TH govt)

Cons:

- Significant cost and complexity in the establishment and ongoing operation of a registered charity.
- Funds must be used for a charitable purposes only, which will reduce flexibility as to the use of any returns on investments earned on the Funds.
- When wind up, assets can only go to qualified donees

Summary:

- Multiple options available
- More than one option possible
- Best option(s) depends on goals
- Recap of Options:
    1. Bank account/Annual budget for expenses.
    2. Segregate in a special TH government account for specific purposes.
    3. Put into a trust
    4. Existing Tr'ondëk Hwëch'in Trust, or
    5. New trust.
    6. Transfer to an NPO (non-profit organization).
    7. Transfer to a charity.

Further Information on Trusts

Trusts (general)

- Flexible investment vehicle.
- Why use?
    - Keep separate from other government assets.
    - Preserve for future generations.
    - Prevent change in use of funds.
- Can make trustees more or less independent of Council or General Assembly.
- A trust is by default taxable on its income (48%), but there are techniques available to make tax exempt.
- Income inside Trust, or Distributions to TH government, could have implications for federal funding to TH government (OSR).
    - Changes are underway for OSR policy so it is difficult to predict future OSR implications for income earned in existing TH Trust or in a new trust

Existing Tr’ondëk Hwëch’in Trust

- Designed to be at arm’s length from TH government:
    - Trustees have wide discretion
    - Has a protector who can:
        - Replace trustees
        - Appoint a successor
        - Approve certain fees payable to trustees
        - Approve certain distributions that would otherwise not be permitted
    - General Assembly approves Guiding Principles (which constrain trustee discretion to make distributions) and (after Sept 24 2019) can replace Protector
    - Council could recommend Guiding Principles or replacement protector for General Assembly approval
    - Limited ability to amend trust terms
- Assets in this trust include settlement funds, shares in Chief Isaac corporation