

Virtual Case Experience Corporate Tax

Model Work Task 4 – additional inputs



Step 2 - Tax return



There is no exemption for legal entities without any business activities to the statutory obligation to file tax returns in Switzerland. This means that the Swiss FlyByU 2Slow AG has to file a tax return on an annual basis, even though it is dormant.

Step 3 - Intellectual property transfer

Transactions between related parties have to be comparable to third party transactions (dealing at arm's length principle). The arm's length principle states that related parties should conduct business as if they were dealing with a third party. In case the arm's length criterion is not met, tax authorities could make add backs to the taxable profit of the entity, which does not deal at arm's length.

There are several different transfer pricing methods (Comparable Uncontrolled Price Method, Transactional Net Margin Method, Resale Price Method, Cost Plus Method and the Profit Split Method) to define an arm's length price. Which method is most suitable, depends on the transaction and the respective data available. While in Case 3, a tax exemption was possible to perform a tax-neutral reorganisation due to the statutory reorganisation exemption (i.e. a transfer a tax book value which is not an arm's length price), such transaction is not possible in case assets are transferred from Belgium to Switzerland as Belgium will no longer have the right on taxation. Hence, the IP transfer from Belgium to Switzerland has to occur at fair market value and will trigger exit tax consequences at the level of FlyByU R&D NV, which have to be further analysed.

Further on, in an international reorganisation always Value Added Tax (VAT) aspects have to be considered as well. Just like when you go to buy a product in another country and then want to bring it with you to Switzerland. Only that the tax implications become much more relevant, when the transfer prices are several millions.



Step 5 - Belgian research and development



It is problematic, when income generated from IP such as license income are not allocated to the company, which is the economic owner of the IP. In order to determine the economic owner of the IP, it is analysed, in which entity the so-called DEMPE functions are mainly performed. DEMPE functions are functions that relate to the development, enhancement, maintenance, protection and exploitation of IP. A licensor of IP has to make sure that people with DEMPE functions and in particular people in leading positions in this area are working for the licensor in order to make sure that the company is the economic owner of the IP.

In the case at hand, it is recommendable from a DEMPE perspective that the head of the Belgium research and development team would transfer to FlyByU IP AG in Switzerland. The rest of the research and development team of FlyByU R&D NV can continue to work in Belgium under a so-called contract development agreement with FlyByU IP AG. I.e. FlyByU R&D NV performs research and development activities on behalf of Swiss FlyByU IP AG. Like this Swiss FlyByU IP AG is not just the legal owner of the software platform but also the economic owner.