Virtual Case Experience Corporate Tax

Model Work Task 4

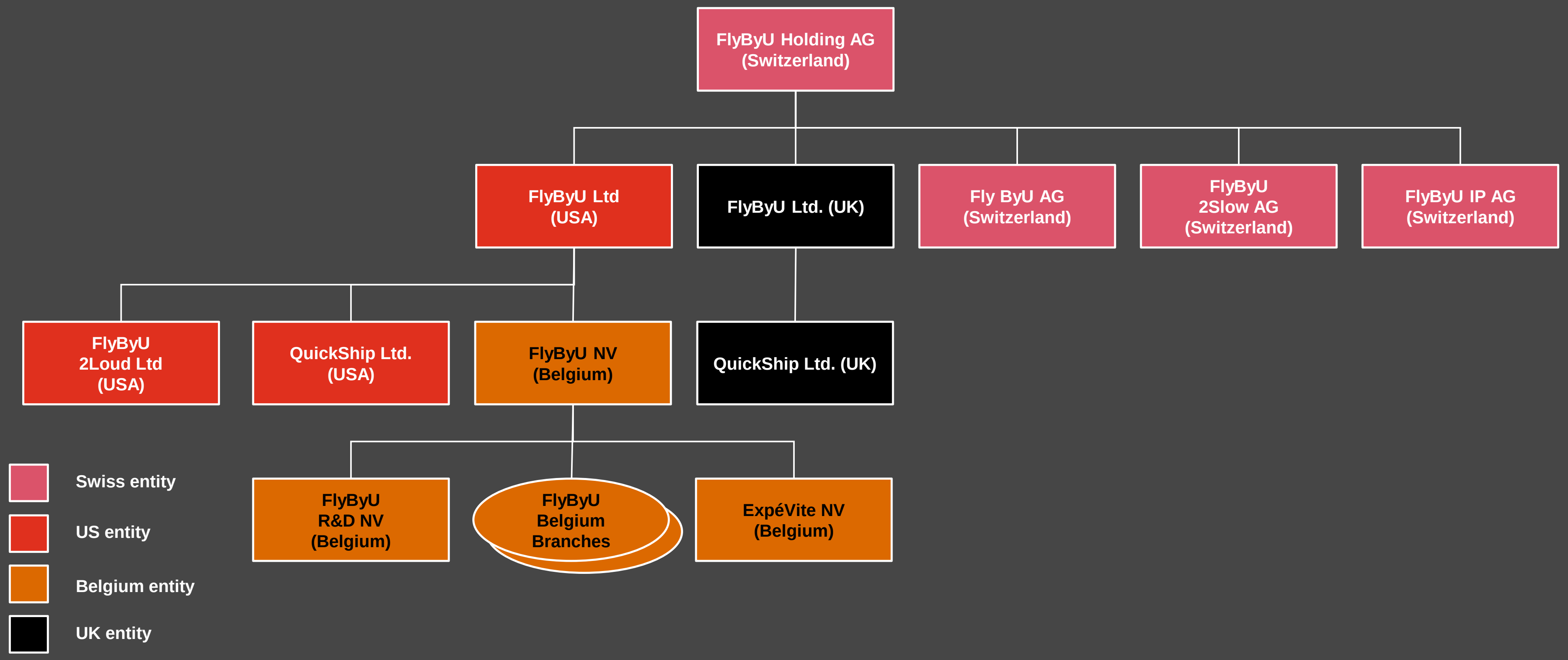
pwc

FlyByU Group

Initial ideas to optimise the group structure

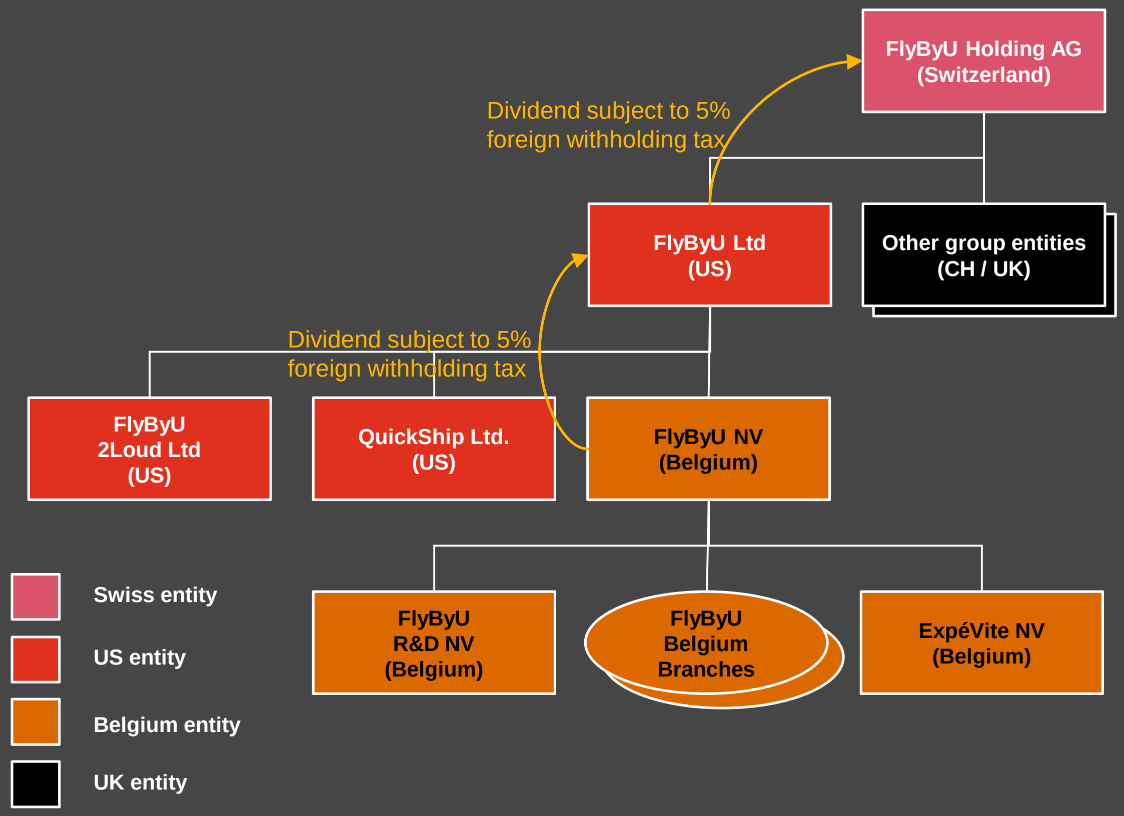
Contents

FlyByU Group Structure



All investments are wholly owned, if not indicated otherwise

Optimisation of FlyByU Group Structure



Optimisation of withholding tax situation

The Belgian sub-group is currently held via an US intermediary holding company. This is not ideal for the repatriation of profits made by the Belgian entities to Switzerland:

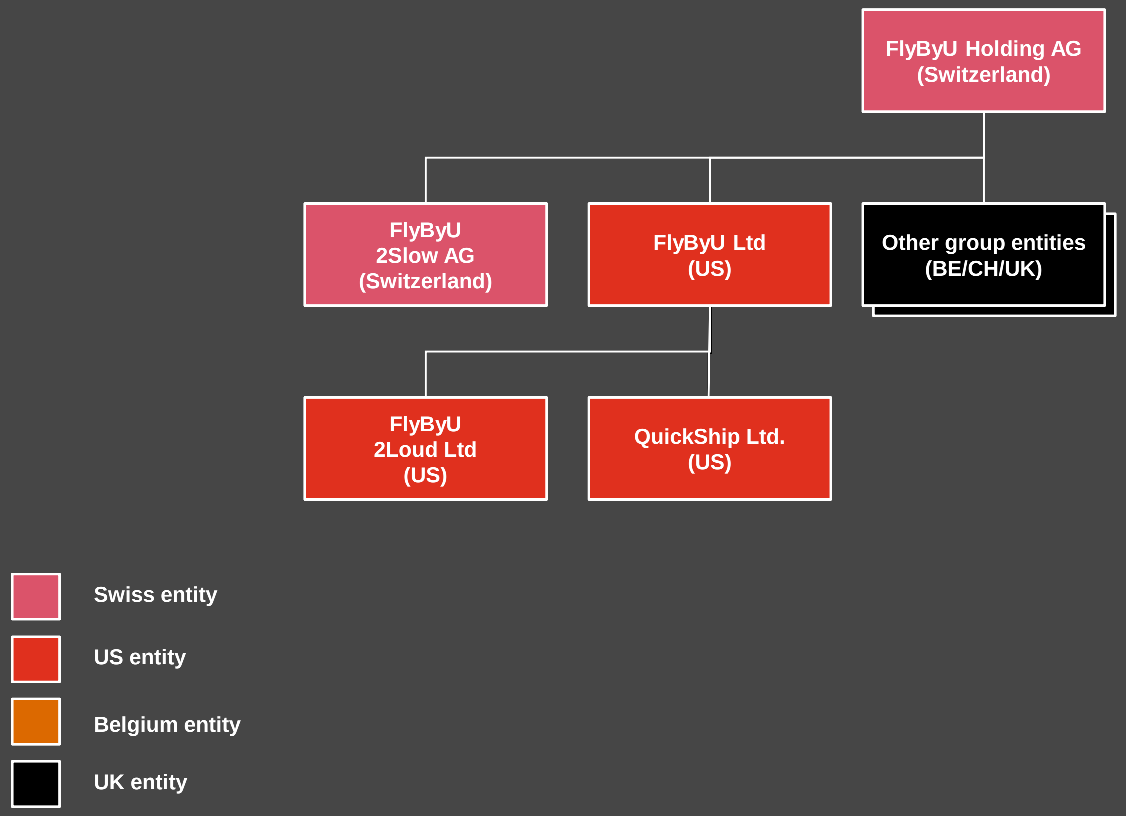
1. Belgium generally levies a 30% withholding tax rate on dividend payments. According to the Double Tax Treaty between Belgium and the US the withholding tax is reduced to 5%, i.e. 5% of the withholding tax is non-refundable and in principle a final tax burden (foreign tax credits may be available in the US).
2. The US generally levies a 30% withholding tax rate on dividend payments. According to the Double Tax Treaty between the US and Switzerland the withholding tax is reduced to 5%, i.e. 5% of the withholding tax is non-refundable and in principle a final tax burden (de facto no foreign tax credit available in Switzerland as qualifying dividends are exempt).

However, according to the Double Tax Treaty between Belgium and Switzerland the withholding taxes on dividends would be fully refundable in case the minimum holding period of 1 year is fulfilled. From a Belgian perspective the reduction to 0% should be possible as it can be demonstrated that the Swiss entity has the intention to hold the investment for at least 1 year.

Therefore, it should be analysed whether it makes sense to transfer the shares in FlyByU NV from FlyByU Ltd (US) to FlyByU Holding AG (Switzerland).

On a side note: It should be checked with PwC Belgium, whether Belgium has anti-abuse regulations similar to the Swiss old reserves practice (Altreservenpraxis) in place as well as whether the planned transfer could have any other adverse tax consequences in Belgium prior to the implementation.

Optimisation of FlyByU Group Structure



Elimination of dormant entities

Since FlyByU 2Slow AG (Switzerland) and FlyByU 2Loud Ltd (US) are dormant, it should be analysed whether it still makes sense to keep those entities. Based on our experience the worldwide annual average costs of maintaining a legal entity amounts to between CHF 20'000 – CHF 40'000.

FlyByU 2Slow AG

The simplest way to eliminate FlyByU 2 Slow AG would be to merge it into a Swiss sister entity or alternatively into its swiss parent entity. In case a merger should not be desired (e.g. due to legal reasons such as liability, etc.) also a liquidation would be feasible, which requires more time and is more complex from a legal perspective.

FlyByU 2Loud Ltd

It should be analysed together with PwC US what the easiest approach to eliminate the entity would be (merger versus liquidation). The decision on the approach should be made taking into consideration also legal and business reasons.

Cost Benefit Analysis – Reduction of number of legal entities	
Assumptions	
- Annual average costs of a legal entity of CHF 20'000 – CHF 40'000	CHF 30'000
- Number of redundant legal entities	2
- Discount factor (conservative assumption)	15%
Total cost savings	CHF 400'000

International Centralisation of Intellectual Property

Transfer of Intellectual Property

Taking into consideration that the software platform of the recently acquired FlyByU NV (Belgium) is a key asset for the future success of the group it would make sense to transfer this to the Swiss FlyByU IP AG in order to centrally manage the platform and to be able to control how the platform shall be further developed and improved in the future. However, such transfer has to be made at an arm's length price and will likely result in a capital gain at the level of the Belgian entity. Our transfer pricing colleagues estimate the fair market value to be in the area of CHF 50m.

Value Added Tax implications

VAT costs can be considerable in case of large transactions. In principle the VAT rate that applies on IP in Belgium is 21%, since it does not fall under any of the reduced rates. Accordingly, it has to be analysed whether the Belgian entity is obliged to levy VAT on the planned sale of IP to Swiss FlyByU IP AG. Should this be the case it should be possible that FlyByU IP AG files an application on refund with the competent Belgium tax authorities (as the IP is transferred from Belgium to Switzerland). [Subject to confirmation by PwC Belgium].

For Swiss VAT purposes a transfer of IP qualifies as service and is therefore subject to 7.7% VAT (acquisition tax) at the level of FlyByU IP AG provided that the Belgian entity is not registered for VAT purposes in Switzerland. However, as Swiss FlyByU IP AG is probably registered for Swiss VAT purposes the entity should be able to deduct the full VAT amount as input tax. Accordingly, the envisaged transfer should not have any adverse VAT implications.

VAT Summary	
Net Transfer Price	CHF 50'000'000
21% (refundable) Belgian VAT	CHF 10'500'000
7.7% Swiss VAT	CHF 3'850'000
Deduction of Input Tax	-CHF 3'850'000

Research and Development Agreement

The Belgian-based research team can continue their work in Belgium as long as all employees in leading positions with regard to DEMPE functions are employed at FlyByU IP AG and are working in Switzerland. Going forward the Belgium research and development team (i.e. the non-leading functions) could continue their work in Belgium based on a contract R&D agreement. Under this agreement the Swiss FlyByU IP AG will remunerate the Belgian entity for its contract R&D activities, which will be conducted by the Belgian entity as defined by the Swiss entity. It is important that such structure is effectively implemented and realised to make sure that the Swiss entity is the economic owner of the software platform.

Thank you

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