



Case study

Pegasus Sdn Bhd (Pegasus) is a Malaysia-incorporated company, which has been set up by two Malaysian-resident founders. Pegasus operates in the technology space, developing innovative solutions that customers can use via a mobile phone app or their website. After two years of development, these solutions are now revenue-generating for Pegasus. Pegasus has a number of investors who have invested much-needed capital, but the founders have retained a significant stake in the business. Pegasus is now looking to expand throughout Asia and subsequently to Europe.

Pegasus is considering setting up subsidiaries in each key target market but is not sure if this is required. It wants to send certain employees to its new target markets and will also need to provide initial funding for working capital. Pegasus is also considering whether to establish some key functions offshore, e.g. software development, as it has heard that personnel costs may be lower.

Certain aspects of Pegasus' business are inherently mobile, including the following:

- ▶ **Mobility of employees:** The majority of its employees (e.g. software developers, marketing, sales and technical personnel) can be located in multiple jurisdictions.
- ▶ The founders are very "hands-on" and intend to spend time on the ground in their new target markets.
- ▶ That said, Pegasus can operate its business in a local country without requiring any personnel to be physically present in that country.
- ▶ **Mobility of tangible assets:** The servers hosting the websites and transactions can be located in multiple jurisdictions around the world. It may not be necessary for Pegasus to maintain a server in a specific market in which it operates.
- ▶ **Mobility of intangible assets:** Rights in the intellectual property which are core to Pegasus' business (e.g. brand, platform) could potentially be owned by a subsidiary in any jurisdiction around the world.
- ▶ **Flexibility in legal arrangements:** Contracts for the use of the Pegasus platform could potentially be signed with any subsidiary around the world. There is generally no requirement for contracts to be signed in a specific jurisdiction, even in relation to sales made to customers in that jurisdiction.



Requirement:

The founders of Pegasus have approached EY teams to identify and explain the key tax issues that could arise as a result of Pegasus' planned offshore expansion. As the representative of EY teams, you are required to make a presentation to the founders. The founders are also interested in any alternative suggestions that could assist to optimize the overall tax position and any relevant commercial issues. In your presentation, assume that the founders may be reluctant to pay you to assist in resolving these issues and include a couple of slides on how you/EY teams can add value to the founders to make paying for your assistance worthwhile.