



Association
of European
Businesses

Press-release

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The Association of European Businesses is concerned about the Astellas Pharma case and its implications for the business environment

The Association of European Businesses in the Russian Federation (AEB), which brings together more than 600 European companies operating in Russia, expresses its concern regarding following situation.

In AEB member companies cases have arisen where the tax authorities have permitted the imposition of tax on profits of foreign companies from preparatory and (or) auxiliary activities in the event that these activities happen to also benefit third parties.

In particular, in the Astellas Pharma case, the tax authorities, recognising that the foreign company was itself interested in preparatory and auxiliary activities (advertising and marketing of goods supplied to the Russian Federation, registration of medicines in Russia, etc.) claim that these activities were also beneficial to third parties (in the present case - the Russian trading company). In this case, the activity is recognised as being beneficial to third parties and leads to the permanent establishment of the foreign company in the Russian Federation with the corresponding tax burden.

The Association believes that this approach cannot be considered justified for the following reasons. Firstly, the foreign company in the Russian Federation conducted the above-mentioned activities through a representative office solely for its own benefit and for marketing its own goods in the Russian Federation. The fact that such activities also benefit third parties does not mean that the foreign company provides related services to third parties. The foreign company conducted its work regardless of the presence or absence of third party interests. Moreover, the trading company did not approach the foreign company to order the relevant services.

Secondly, the approach applied in the case creates the conditions for double taxation. Following the logic of the tax authorities, the costs incurred by a foreign company through its representative office for preparatory and auxiliary activities shall be taxed twice: income tax on foreign company, and tax on non-sale income for a Russian organisation - the alleged beneficiary of the income.

The AEB is concerned that such practices create significant risks for foreign companies, whose representative offices carry out preparatory and auxiliary activities for the head office, in order to market goods of the corresponding foreign companies in Russia. In fact, the very existence of preparatory and auxiliary activities is being put under question.

"The Astellas Pharma case is causing serious concern amongst European businesses in Russia. For business to be successful stable rules are required, a uniform approach on the part of the tax authorities to the application of the provisions of the Tax Code, and uniform law enforcement and judicial practice on tax disputes. The importance of a professional examination of the Astellas Pharma case in terms of the business climate cannot be overstated," said the CEO of the Association of European Businesses Frank Schauff.

For more information, please contact Svetlana Kuskova, PR manager/press-secretary by email on: svetlana.kuskova@aebrus.ru

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