

By the Judgment of 1st July, 2015 No. 19-II/2015 the Constitutional Court gave appraisal of constitutionality of the provision of Sub-Item 4 of Item 1 of Article 162 of the Tax Code of the Russian Federation

The contested provision was the subject-matter of consideration to the extent to which the question is solved on its basis about increase by a tax-payer – supplier of goods (works, services,) having concluded an agreement of insurance of the risk of non-fulfilment of contractual obligation by the purchaser, of the tax base on value added tax (hereinafter referred to as VAT) on the sums of insurance payments, received by him in connection with violation by the purchaser of the obligation to pay for goods (works, services), sale of which is recognized as an object of taxation with this tax.

The Constitutional Court recognized the contested provision as not conforming to the Constitution of the Russian Federation to the extent to which it allows to demand from the tax-payer – supplier of goods (works, services), having concluded the said insurance agreement inclusion in the tax base on VAT, apart from the cost of sold goods (works, services) of the sum of insurance payment, received by him in connection with violation by the purchaser of the obligation to pay for goods (works, services), if such tax-payer has calculated (paid) tax from operation on sale of these goods (works, services) at the moment of their shipment.

Until the appropriate legislative amendments are made, excluding the possibility of double taxation in the event of use by the tax-payer – supplier of goods (works, services) of the agreement of insurance of the risk of non-fulfilment of contractual obligations by the purchaser for the protection of his property interests, the contested provision is subject to application bearing in mind legal positions of the Constitutional Court of the Russian Federation formulated in the present Judgment.