

**By the Judgement of 29 April 2020 No. 22-II the Constitutional Court of the Russian Federation appraised constitutionality of Article 193, para. 1 and Article 195, para. 4 of the Tax Code of the Russian Federation and Article 20, para. 5 of the Federal Law “On State Regulation of the Production and Turnover of Ethyl Alcohol, Alcoholic and Alcohol-containing Products and on Limiting the Consumption (Drinking) of Alcoholic Products”**

The interrelated challenged provisions were the subject of consideration to the extent that on their basis it is decided the issue of the legal fate of the remaining ethyl alcohol residues of the organization in case of expiration of the license for the production, storage and supply of produced ethyl alcohol, as well as the occurrence of an excise tax object in case of shortage of such products and the choice of the excise tax rate to be applied in such a case from among those established by law.

The challenged provisions were recognised as not contradicting the Constitution of the Russian Federation.

At the same time the Constitutional Court indicated that, taking into account the laws establishing the legal basis for the payment of excise taxes, the occurrence of this tax obligation as such is not due to the presence (absence) of a taxpayer license to carry out certain types of activities.

The detection of a shortage of alcohol-containing and alcoholic products (including when the fact of its destruction by the taxpayer itself was unproven) indicates the impossibility for the taxpayer to confirm, and for the tax authority, to refute the commission of a specific business transaction from those specified in Article 193 of the Tax Code of the Russian Federation and, accordingly, the presence or absence of the right to apply a zero tax rate. The application of an excise rate of 0 percent in this case would make sense of the qualification of the deficiency as an object of taxation and lead to abuse by the excise tax payer, while the receipt of the amount of the excise tax from the potential counterparty of the tax payer to the state budget is also not ensured in such a case.