

Directive to all 'Periti'

Re: Definition of the Cost of Work for fee calculation purposes

Various members have informed the Council of the Kamra tal-Periti that they are finding difficulty in interpreting VAT legislation in connection with the professional fees chargeable for services rendered, particularly when these are to be calculated on a percentage basis for the design and erection of buildings, as stipulated in the Code of Organisation and Civil Procedure, Chapter 12, Schedule A, Tariff K, Para. 10 and other associated paragraphs; here, it is stated that the calculation of fees is to be made on the basis of, "... the cost of the executed work". The main problem lies in whether the cost of the 'work' on which to charge fees should be inclusive or exclusive of VAT.

Council has discussed the matter at length and has also sought legal and professional advice to assist in the formulation of a clear and unequivocal opinion. It is now in a position to instruct as follows:

Considering that the cost of executed work should also include the cost of VAT, the professional fees due to Periti for their services in the design and erection of buildings is to be based on the "cost of the executed works" as charged according to law, that is, inclusive of VAT, in all cases.

This Directive is based on the following considerations:

- Since the introduction of Value Added Tax Legislation, the advice from the Value Added Tax Department has been to the effect that when the VAT on the cost of the work is recoverable, then the cost is to be considered net of VAT, while VAT is to be included in the cost only if it is not recoverable. This approach is based on the fact that, for tax and accounting purposes, recoverable VAT is not a cost.
- The KTP does not agree that the matter should be viewed only from this aspect. Indeed, Council believes that this approach is incorrect as it raises a number of serious difficulties and anomalies that the tariff could not have meant to produce. The main difficulty is that it is not up to the architect to determine his client's VAT position.
- This interpretation is also untenable on account of the fact that it produces a result where different fees are charged for the same services rendered by periti on different projects. Therefore, Council believes that the correct interpretation is one that is not affected by VAT discrepancies, since VAT considerations depend on the client's circumstances and not on the professional services that are provided.
- Furthermore, Council agrees that Tariff K refers to the cost of the executed work since this is a good indication of the volume of the services and the related liabilities and responsibilities. The normal meaning of cost is the price charged and payable, and that includes VAT and any other underlying taxes. The fact that VAT is in certain cases recoverable can produce a reduction in the costs to a particular client; however, this often occurs at a later stage and is something connected with the client's circumstances and not with the value of the work. Therefore, VAT should in all cases be treated as part of the cost.
- This also applies when there exist agreements between the Value Added Tax Department and clients or developers, such that certificates of payment or payments actually made for executed works, exclude VAT, because there exists some arrangement between the two parties, for reasons of VAT computation or for the simplification of the collection of VAT dues by the Department. The periti is not party to such arrangements and should therefore not suffer a reduction in the professional fees due to him because of such or similar mechanisms put into place, normally to facilitate the collection of VAT.
- Furthermore, the tariff charged by periti as a percentage of the cost of construction is not, in itself, VAT inclusive. This is expressly catered for in item 6(1) of Part One of the Fourteenth Schedule to the VAT Act, which provides that 'The tax chargeable on a supply of professional services shall be an amount resulting to be chargeable for those services in terms of any tariff of fees established under any law in force in Malta.'

The KTP believes that, being a self-regulated body, it is in a position to take upon itself the interpretation of such legislation, acting also upon the opinion of its advisors. It shall also endeavour to incorporate the intent of this directive within the revision of the Tariff that is currently under way and make the appropriate recommendations to the Minister concerned in this regard.

In the light of continued pressures within the marketplace faced by its members, the Council of the KTP has undertaken this review of the Cost of Executed Works in the interest of all warranted members of the profession and in the better interest of the community. The delivery of a professional, prompt and quality service by periti to their employers/clients can only be assured through an adequate level of compensation commensurate with the level and quantity and quality of service provided.

David Pace
President
Kamra tal-Periti