Advance Payment
(from the perspective of the Contractor)

Zaza Bakuradze
Peri LLC
About Peri LLC

- Founded in 1991, Peri is one of the largest developers and construction companies in the infrastructure and renewable energy sectors of Georgia.
- Peri is an official partner of BP and a regional representative of Robbins Company, a US-based developer and supplier of underground machinery (incl. TBM).
Peri LLC Fact Sheet

- Constructed water tunnels - 19.6 km
- Constructed transportation tunnels - 3.0 km
- Rehabilitated & installed water pipelines & sewage systems - 500 km
- Constructed & rehabilitated 11 hydropower plants - 189 MW
- Constructed & rehabilitated transportation roads - 79 km
- Constructed electricity transmission lines - 47 km
- Constructed & installed gas pipelines - 80 km
- Constructed commercial & residential complexes - 10 projects
- Constructed hydro-technical structures - 9 projects
- Currently employs - 700 people
- Also, the company is currently working on 7.5 km ski lift project in Gudauri
The Importance of Advance Payment

- The Advance Payment is crucial for the Contractor, because usually the Works involve Goods (Equipment, Plant, etc.) and mobilization (access roads, camp, etc.).

- To avoid any cash flow deficit of the Contractor, the Advance Payment shall always be reasonable, project-specific and paid on time.

- If the Employer fails to make the Advance Payment on time, the Contractor might be forced to suspend the Works or in the worst case, terminate the Contract. All of this works really bad for the Employer as well.

**Example:**

In tunnel construction contract, payments are usually made based on excavated meters and construction machinery is very expensive, which often has to be ordered and mobilized on Site before commencement of the excavation. Thus, without the adequate Advance Payment, the Contractor will face significant cash flow problems.
The FIDIC conditions define certain clauses, which apply when the Employer fails to make the Advance Payment on time.

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<tr>
<th>FIDIC Clauses (2017 Edition)</th>
<th>Notes</th>
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<tr>
<td>14.8 - Delayed Payment</td>
<td>The Contractor is entitled to receive financing changes.</td>
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<td>16.1 - Suspension by Contractor</td>
<td>If the Advance Payment is not made on time, the Contractor has a right to suspend the Works and ask for the compensation of Cost Plus Profit (if applicable). Although, the Employer might remedy such delayed payment, it will cause the loss of time and money to the Employer (if the Works are considered as a critical path of the overall project, it might even result in the loss of Employer’s profit).</td>
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The Employer Shall Pay On Time

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| 16.1 - Termination by Contractor | If the delayed advance payment is not remedied on time, the Contractor is entitled to terminate the Contract. In this case, the Employer will be in a very difficult position due to the following main reasons:  
- The Employer’s reputation is damaged that affects his/her business and cooperation with other Contractors;  
- The Employer loses time, which is needed to hire another Contractor;  
- The Employer might lose the profit as a result of delayed Works. |
The Employer Shall Pay On Time

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<td>16.4 - Payment after Termination by Contractor</td>
<td>In case the Contract is terminated by the Contractor, the Contractor is entitled to claim “any loss of profit or other losses and damages suffered by the Contractor as a result of this termination”. This means that besides the loss of time, damaged reputation and increased Contract Price, the Employer may suffer additional costs.</td>
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# Key Aspects of Advance Payment Under New FIDIC Edition

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<td>14.2.2 - Advance Payment Certificate</td>
<td>The new edition gives 14 days to the Engineer to issue the Advance Payment Certificate. It’s good that this period is specified. It makes the procedures clearer.</td>
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<td>14.2.3 - Repayment of Advance Payment</td>
<td>The amortization rate of the Advance Payment is kept the same (25% of each IPC). Based on our experience, 25% is a high rate. As a Contractor, in the Red Book, we would prefer to apply the same amortization method as it is defined in the FIDIC Contact for Turnkey/EPC Projects – Advance Payment divided by the Contract Price less Provisional Sums.</td>
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Under the new Georgian Tax Code (valid since January 1st, 2017), the Contractor shall pay VAT (18%) on the received Advance Payment as well. This means that now the Contractor actually gets much less cash than the total amount of Advance Payment, specified in the Contract.

VAT paid by the Employer is not an actual cost and it could be returned back from the Government within few months after such payment occurs.

Under the FIDIC book, Advance Payment is usually calculated as a percentage of the Contract Price, the Contract Price might be specified as net of VAT in order to reduce the Contractor’s overall liability (incl. delay damages) and Retention Money, based on the argument explained above.

Therefore, based on my experience, I would suggest to always exclude VAT from the Contract Price, while the Advance Payment should always include VAT.
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