



Newsflash

How does the kilometre charge affect ongoing contracts?

On 1 April 2016, the long announced kilometre charge system entered into force. After the technical risks, more practical questions are being raised, such as the possibility to bill eventual extra costs.

Whether these costs can be billed or not depends firstly on the nature of the co-contracting party. If this concerns a 'private' client, it should be verified whether billing these costs is possible with respect to the specific contract. In principle, this will only be possible if a price revision clause is included in the contract, allowing price revision based on (amongst others) charges, taxes or other unforeseen circumstances.

If it concerns a contract concluded following a public procurement procedure, the General Contracting Conditions will apply. Article 56/1 of the General Contracting Conditions allows the billing of certain changes in charges and taxes. However, this will only be possible when a double condition is fulfilled, namely:

- the change will only apply to contracts for which an offer was submitted, at the latest, 10 days after the charge or tax's publication in the Belgian Official Journal. It was therefore almost impossible to take the charge into account for determining the price upon drafting an offer;

- furthermore, the charge or tax cannot be included (directly or indirectly) as an index in the price revision formula.

This implies that, for each contract, it should be determined whether the offer date falls before the charge's publication in the Belgian Official Journal. If so, it should be checked whether a price revision formula was included in the contract, in which case it should also be determined whether the kilometre charge is (in)directly reflected in an index of this formula. A price revision request based on the kilometre charge will only be possible if no price revision formula was included, or if the charge is not reflected therein (directly or indirectly). Moreover, it is up to those liable to paying the charge to prove that additional costs were actually incurred for the specific contract's execution.

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