The Construction Tax - An Obstacle to Romania's Development

As of January 1, 2025, the construction tax was reintroduced through Government Emergency Ordinance (GEO) 156/2024, with some modifications compared to the version applied between **2014 and 2016 (the so-called "pole tax").** The removal of the tax on January 1, 2017, was justified by the Government as a measure to stimulate the business environment and encourage investments in key economic sectors, as well as due to its relatively modest impact on state tax revenues during its ***three years*** of application.

In its current form, the construction tax will apply to a broader range of taxpayers compared to previous regulations, as the new framework includes constructions in the agricultural sector, those under concession from public authorities, and those held by companies set for transfer to state public ownership. Furthermore, various improvements and refurbishments to leased constructions seem to be included in the tax base, whereas previous legislation explicitly excluded them.

Although set to take effect on **January 1, 2025**, the lack of Methodological Norms for implementing GEO 156/2024 makes it impossible to determine key elements needed for companies to estimate the financial resources required for this tax (e.g., the taxable base). In practice, the only certainty so far is the reporting mechanism— the tax must be declared using Form 100, as stipulated by ANAF Order 193/2015, which takes effect on February 7, 2025.

This document attempts to clarify key aspects of the new construction tax based on the information available to date, outline the most probable method for determining the taxable base, and, importantly, bring to the Ministry of Finance's attention the practical challenges that may arise. Our insights draw from prior experience with tax disputes related to the previous version of the "pole tax" between 2014 and 2016, particularly in the energy sector.

This analysis covers:

- **How will the construction tax be calculated in 2025 (what we know so far);**
- **What is still missing for the tax to become fully operational;**
- **Practical challenges affecting all taxpayers (taxable base, payment deadlines, refurbishment of owned or leased spaces, land improvements, potential unconstitutionality);**
- **Specific issues in the energy sector (investments in wind farms, photovoltaic parks, public lighting infrastructure).**

How will the construction tax be calculated in 2025?

According to GEO 156/2024, the reintroduction of the construction tax requires applying a 1% rate to the value of constructions held in taxpayers' assets as of December 31 of the previous year. Only buildings subject to the building tax under Title IX of the Tax Code are deducted from this value.

The methodological norms related to the definition of constructions under Article 497 of the Tax Code generally exclude tangible assets under construction and, specifically, constructions derecognized by certain taxpayers applying IFRS (in oil, gas, and other mineral substances sectors).

To date, there is an expectation that the taxable base would be the gross book value of the respective constructions, as applied in the previous version of the tax between 2014 and 2016. However, there is no official information to confirm or deny this interpretation, nor regarding a potential determination of the taxable base at net value or even at fiscal value.

Additionally, another key aspect is that the tax will also apply to buildings in industrial, scientific, and technological parks, which, although not exempt from the building tax, will be included in the taxable base for the construction tax. The tax will also be due for constructions in the public and private domain of the state, as well as those leased or provided for use to public institutions or sports facilities.

What is missing?

To become fully operational, it is likely necessary to have (1) methodological norms and (2) a law approving GEO 156/2024. We understand that the tax authorities are working on drafting these norms, with their publication expected in March or, at the latest, by May 2025, when the deadline for filing the tax return is set.

Equally, Ordinances must be adopted by Parliament through a law to remain in effect, in accordance with legislative technical rules. Although GEO 156/2024 has been in force and producing legal effects since January 1, 2025, its continued applicability depends on parliamentary approval.

It would not be at all surprising if the ordinance were approved in an amended form, as occurred with the initial legislation of the pole tax, when Law 11/2015 approving (with amendments) GEO 102/2013 was published on January 13, 2015 (over a year after GEO 102/2013 had been in effect).

Nevertheless, even in the absence of norms, companies should have already started estimating the tax's impact on their annual budgets. In particular, the fixed assets register should be reviewed in detail to identify the constructions included in the taxable base, verify their correct classification, and ensure that accounting policies for initial recognition and subsequent measurement of assets are not only checked but also clarified or redrafted as necessary.

What practical issues exist?

The questions raised below could serve as warning signals for modeling calculation scenarios or even for requesting clearer legislation. From our perspective, there are two types of practical issues:

- Common to all taxpayers (taxable base, payment deadlines, refurbishment of spaces and land);
- Specific to certain industries (with a particular focus on energy infrastructure).

a) Common practical issues

What is the taxable value (taxable base)?

The construction tax applies to the value of constructions not subject to the building tax. A discrepancy between individual taxable bases is immediately apparent, as we know that the value of buildings subject to the building tax is based on replacement cost (under the GEV 500 valuation standard used exclusively for tax purposes). A common base is needed, and this can only be the book value, a clarification that requires mandatory legislative amendment.

Furthermore, since the explanatory note for GEO 156/2024 (i.e., the current source of the construction tax applicable from 2025) does not justify the tax, we refer to the explanatory note for GEO 102/2013 (i.e., the initial introduction of the construction tax in 2014). According to it, legal entities owe building tax under Title IX of the Tax Code for buildings they own, but not for other constructions held in their portfolios.

Thus, the intention was to extend the scope of taxation to other types of constructions beyond traditional buildings subject to local building tax. It further follows from these statements that the new construction tax will not overtax constructions already subject to the building tax, an objective achievable only through a clear separation of building-type constructions (subject to building tax) from other types of constructions (subject to construction tax).

The link between these two asset categories and their respective taxes is a rule of both accounting and fiscal origin, as constructions subject to the construction tax are those in Group 1 of fixed assets under Government Decision 2139/2004 approving the Catalog regarding the classification and normal useful lives of fixed assets ("Catalog").

Thus, to support the definition of a construction under the Tax Code, the Catalog provides principles for classifying assets into groups and subgroups, such that individual groups/subgroups must be interpreted as a "universe" of assets sharing common technical and economic characteristics. In other words, we interpret that the Catalog's application is not arbitrary, just as the various components of an investment objective are not identified randomly but guided by the group/subgroup title and indicative examples provided.

Therefore, it is clear that any construction in Group 1 is subject to the construction tax, but the value to be taxed remains unclear.

The definition of a construction in the Tax Code, based solely on its reference to Group 1 of the Catalog, leaves it to the reader's discretion whether to tax the book value or the fiscal value of these constructions. This ambiguity arises because the Catalog was adopted under both Article 24(19) of the former Tax Code (which governs asset classification and depreciation periods for tax purposes) and Article 8 of Law 15/1994 on the depreciation of capital immobilized in tangible and intangible assets (which governs asset classification and depreciation periods for accounting purposes).

The dual accounting and fiscal origin of the Catalog points to a legislative drafting deficiency, as the reference to the Catalog suggests that these classifications and useful lives serve a dual purpose, making the doubt regarding the taxable value of constructions reasonable — it could be either the book value or the fiscal value. Furthermore, a subsequent question arises: whether this value is gross or net.

Equally, we continue to question—without legislative clarity—whether the relevant value will be the revalued amount or historical cost. The Tax Code taxes the surplus from asset revaluation without allowing recovery of the fiscal cost through depreciation. Such an argument could lead to double taxation (with profit tax and construction tax), which deviates from the stated philosophy of the construction tax to avoid double taxation (with building tax and construction tax).

Moreover, since the accounting policy for recording and valuing assets (cost or fair value) is at the taxpayer's discretion, discrepancies arise, leading to inconsistent taxation of constructions within the same taxpayer category.

It is not possible to legally answer the question regarding the taxable value under the current form of the legislation, and we can only refer, for informational purposes, to one of the previous versions of the regulatory framework for the construction tax, which clearly stated that the taxable value is the one recorded in the debit balance of the corresponding eligible construction accounts.

What is the payment deadline for taxpayers with a modified fiscal year?

According to the new legislation, taxpayers will need to calculate and declare the tax due for the year in which it is owed. Payment will be made in two equal installments: the first by June 30 and the second by October 31.

For taxpayers with a modified fiscal year, the tax applies starting with the fiscal year beginning in 2025. However, they determine the taxable base based on the value of constructions (gross or net, depending on the implementing norms) as of December 31 of the previous calendar year, not the last day of the prior modified fiscal year. For example, under the current legislation, a taxpayer whose 2025 fiscal year starts in March 2025 would need to consider the taxable base as of December 31, 2024 (the calendar year prior to 2025), not February 28, 2025 (the end of their modified 2024 fiscal year). Clarifications are needed, as in some cases, a taxpayer with a modified fiscal year might end up paying the two installments in different fiscal years.

How is the tax determined for improvements to owned or leased spaces?

The previous version of the construction tax legislation excluded improvements, unlike the current form. The retention of improvements in the tax base remains unexplained, as it is inconsistent with the definition of constructions—improvements are not recorded for depreciation based on the Catalog but rather based on the lease agreement (for leased buildings) or capitalized into the value of the building (for owned buildings).

Consider the complex scenario of a tenant who renovates a leased space and notifies the landlord of the improvement costs, expecting them to be included in the building's tax base. The lack of response to the notification (a common observed practice) inevitably leads to potential double taxation of the improvements' value—certainly with the construction tax by the tenant and possibly with the building tax by the landlord. Indeed, even in the absence of any justification in the explanatory note for GEO 156/2024, the explanatory note for the original GEO 102/2013 implicitly reflects the objective of avoiding double taxation of the same asset.

Until further amendments to the tax regulations are made, the issue of determining the taxable value of these improvements remains unresolved—whether it should be the gross or net book value, the revalued amount, or the recorded cost—regardless of the intent behind their taxation.

Land improvements - Classification under the fixed assets catalog vs. fiscal depreciation

Land improvements are recorded from an accounting perspective in account 211 "Land and land improvements." These include fencing, access works, utility connections, etc. For tax purposes, they are depreciated over 10 years without reference to the fixed assets Catalog as a whole. However, from the perspective of classification under the Catalog, many land improvements fall under Group 1, subject to the construction tax (e.g., fencing, utility connections).

Since most taxpayers depreciate land improvements based on tax rules, explicit provisions are needed to exclude them from the taxable base, as otherwise, tax authorities may consider that some works included in land improvements fall under Group 1 of the Catalog and thus become taxable under the special construction tax. In practice, although land improvement components are recorded in account 211 "Land and land improvements," tax authorities may deem some of these as assets falling under Group 1 of the Catalog, making them subject to the construction tax.

The provisions of GEO 156/2024 introducing the construction tax have a retroactive nature

The principle of non-retroactivity in tax law ensures that no tax can apply to past fiscal periods. In this context, the tax is levied on the value of constructions held in taxpayers' portfolios as of December 31 of the preceding year. Consequently, taxpayers are not afforded the opportunity to derecognize or sell certain assets to mitigate their tax burden for 2025. Notably, multiple rulings by the Romanian Constitutional Court have already affirmed that the retroactive application of tax laws is unconstitutional.

b) Issues specific to certain industries (energy sector)

Investments in wind farms

The initial version of the construction tax, correlated with the building tax, was a response to significant (foreign) investments in wind farms, as evident from the extensive tax jurisprudence and subsequent amendments to the Tax Code between 2014 and 2016.

A wind turbine consists of three key components: the rotor blades (which capture wind energy and direct it to the rotor), the rotor shaft/axis (which connects the generator to the rotor), and the generator itself (a device that uses electromagnetic induction to produce electricity). Additionally, the turbine's nacelle houses multiple components listed above: the main shaft, gearbox, braking device, high-speed shaft, electric generator, generator cooling system, and yaw system.

However, most turbines are more complex and also include: a metal tower or pole designed to support the wind turbine and allow specialist access for operation, maintenance, and repairs, and the structure's foundation, consisting of concrete piles to create an anchoring system for stability.

Due to these technical details and characteristics, entirely unrelated to tax legislation sources but of significant investment value, the assembly and installation of wind turbines became a subject of fiscal dispute. This was resolved either in court, often in favor of the taxpayer, or through progressive amendments to the Tax Code, ultimately subjecting them to the building tax.

As of December 6, 2018, the definition of a building for building tax purposes (under Article 453(d) of the Tax Code) was expanded by Law 285/2018 to include "constructions representing wind turbine support towers." Additionally, as of December 24, 2020, Law 296/2020 further amended this definition to include "their foundations."

Thus, there is currently no legislative doubt that the foundation and support tower of a wind turbine are subject to the building tax, and their value is therefore not included in the construction tax calculation.

However, other potential components, such as installations or connectors, will need to be systematically analyzed to determine whether they fall under Group 1 of constructions to assess the total tax obligation related to owning a wind turbine.

Investments in photovoltaic parks

Regarding photovoltaic parks, we anticipate that the new version of the construction tax will generate a series of fiscal controversies.

The taxable value of photovoltaic parks could correspond to any of the following possible scenarios, each resulting in a significantly different special tax:

A first possible classification of a photovoltaic park could be as a unitary, functional assembly forming a single fixed asset recorded in the land register. Order 600/2023 approving the Regulation for reception and registration in cadastral and land register records stipulates that photovoltaic panel systems must be registered as a single functional assembly in the cadastral and point 6 of the Methodological Norms for applying Law 15/1994 states that objects forming a single body are considered unitary fixed assets. Thus, the entire investment value would be subject to the special tax.

A second possible classification of a photovoltaic park could be as an assembly of equipment acting as a single body, and according to Article 3(1)(c) of Law 50/1991, infrastructure works for electricity production and distribution are considered constructions—the tax effect would be similar to the above interpretation.

A third possible classification of a photovoltaic park could consider each component of the investment objective as a separate asset treated individually, given their different economic useful lives and potential replacement at varying intervals. In this case, we would prioritize analyzing the metal support structure of the photovoltaic panels, treated as a construction under Article 537 of the Civil Code, which deems constructions fixed in the ground as immovable—the tax effect would be that only the value of the metal structure would be subject to the 1% construction tax.

As legal norms are subject to strict interpretation, the taxation of constructions within a photovoltaic park relies on definitions in the Tax Code, while the authorization of construction works for the park, for example, is interpreted under Law 50/1991, and registration in the land register uses concepts from Order 700/2014, and so forth.

Accordingly, we believe that the metal support structure of photovoltaic panels will be treated as a construction for the purposes of the construction tax, while the photovoltaic panels themselves, along with other technological equipment, not only do not fall under the construction category (Group 1) but should not be taxed, as they are included in Group 2, technological equipment (either explicitly or implicitly, based on related descriptions). National courts have followed similar reasoning, ruling in favor of taxpayers in numerous cases.

Investments in public lighting infrastructure

A special case of construction under the public/private domain of the state or administrative-territorial units is expressly addressed in Article 498(1) of the Tax Code, which states that the tax is owed by taxpayers who manage, hold in concession, use free of charge, or lease them.

However, it is essential to understand both the nature of the partnership through which such constructions are acquired and the legal status of the entities, units, or operators responsible for delivering these specialized services.

For instance, in the case of public lighting services, it is necessary to align the definitions provided by both the Tax Code and Law 230/2006 on public lighting services.

According to the latter, public lighting services are provided through a technological and functional assembly consisting of constructions, installations, and specific equipment. This establishes the basis for understanding the infrastructure related to public lighting and aligning its components with the construction provisions of the Tax Code.

Thus, under Law 230/2006 (Article 3(l)), the public lighting system is the assembly comprising ignition points, distribution boxes, junction boxes, underground or overhead low-voltage power lines, foundations, line support elements, grounding installations, brackets, lighting fixtures, accessories, conductors, insulators, clamps, fittings, and control, automation, and measurement equipment used for public lighting.

An important distinction is made under Article 2(2)-(3) of this law between the purposes of the lighting service, based on which the person liable to pay the construction tax is identified, namely:

- For public lighting systems exclusively intended for public lighting services, the components are those listed above,

and

- Where public lighting services are provided using elements of the electricity distribution system, elements belonging to the electricity distribution system are excluded from the lighting system (the delimitation between the lighting system and the distribution system being marked by the connection clamp to the distribution system).

Thus, in the case of direct management, local public administration authorities or community development associations, as applicable, directly assume all duties and responsibilities related to the establishment, organization, financing, coordination, administration, management, operation, and functioning of the public lighting service (including the tax obligation).

On the other hand, in the case of delegated management, the authorities enter into a management delegation contract with one or more operators, which may be commercial companies with public, private, or mixed capital, transferring their duties and responsibilities regarding the provision of the service and the operation and administration of the public lighting system.

In this latter case, Law 230/2006 expressly stipulates that, during the term of the management delegation contract, movable or immovable assets belonging to the public or private domain of administrative-territorial units, used for providing the service, are concessioned to the operator awarded the management delegation contract.

Consequently, our interpretation is that operators concessioned the assets used for providing public lighting services are the persons liable to pay the construction tax, with the tax base formed by individually identifying the asset lines received under concession that fall under Group 1 of the Catalog, as constructions are defined in the Tax Code. The exercise of separating and clearly identifying constructions in the balance sheet or off-balance sheet records of operators involved in public utility services will undoubtedly be a laborious one.