

Tax & Legal Weekly Alert

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The value of the national average gross salary used for establishing the social security state budget for year 2020 is RON 5,429.

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It is regulated the legal framework necessary for setting up occupational private pension schemes and occupational private pension funds.

The 222 and 224 forms can now be submitted online

Starting with December 17, 2019, forms 222 and 224 regarding the individuals who obtain salary income from abroad for activities performed in Romania, can be submitted to the relevant authorities in electronic version.

The new Law no. 243/2019 on alternative investment funds will enter into force in January 2020

Law no. 243/2019 on alternative investment funds, amending and supplementing certain normative acts (AIF Law) was published in the Romanian Official Gazette no. 1035 as of 24 December 2019, Part I, and will enter into force on 24 January 2020.

AIF Law establishes a new specific legal framework with respect to the alternative investment funds (AIFs), more detailed than the previous one, which introduces new requirements regarding their authorisation and functioning. As against the regime of the alternative investment funds managers (AIFMs), regulated by a common EU legal framework (through Directive 2011/61/EU on alternative investment fund managers), AIF Law is part of a national strategy for diversifying this type of collective investment undertakings that aims to address the requirements of the Romanian investors and the particularities of the Romanian market.

The average monthly gross salary income for 2020

The value of the national average gross salary income for 2020, used for the development of the social security state budget, was set to RON 5,429. The value is used for calculating certain social security contributions, and for computing the level of pensions.

The Law regarding the social security state budget for 2020 was published in the Official Gazette no. 3 on January 6, 2020.

Law on occupational private pensions

The Romanian authorities issued and published the Law transposing Directive (EU) 2016/2341, which creates the conditions for obtaining an occupational private pension by any employee. The purpose of such pension schemes is to create supplementary and distinct schemes to the other types of pensions granted in Romania.

The occupational private pension is supposed to be an optional scheme.

The Law establishes the elements necessary for setting up occupational pension schemes and occupational pension funds, including aspects related to their general management. The aim is to guarantee an additional level of security for future retired individuals, by allowing the set-up of occupational private pension schemes by any interested employers.

Among the most important aspects regarding the occupational pension system are:

- the participant to an occupational pension fund can be any person who obtains salary income or salary assimilated income and who fulfils the conditions stipulated in the scheme/prospectus of the occupational pension fund, the individuals having mandate or management contracts, as well as the individuals who carry out independent activities. Employees of one or even multiple companies may participate in the same occupational pension fund;
- an occupational pension scheme can be established by each employer who wishes and has the financial capacity to offer such benefits to its employees;
- the employer establishes the terms and conditions regarding the participation in an occupational pension scheme for all its employees through the collective labour agreement. In the absence of a collective labour agreement, the employer establishes the terms and conditions through the individual employment contract or other type of contract under which the employee carries out the activity;
- the contribution to a fund can be divided between the employee and the employer and it cannot exceed one third of the monthly gross salary or salary assimilated income and at the same time cannot exceed, together with the other deductions that may be applied, half of the net salary income or salary assimilated income;
- the employer and employee's contributions are due, collected and transferred by the employer based on the employee's written agreement for joining the fund;
- the employer can establish different amounts of contribution to the pension fund for its employees based on their seniority, position or salary rights;
- the participants will be able to transfer the value of their personal assets from one fund to another occupational or voluntary pension fund, without penalties;

- an individual can remain a participant to a fund although his/her contractual relationship with the employer is ceased, and will accumulate his/her personal assets at the moment when the pension right is due.

Also, the Law refers to the provisions of Law no. 227/2015 regarding the Fiscal Code for determining the income tax deductibility of the amounts representing the contributions to the occupational pension schemes.

The Law enters into force at 30 days after the publication in the Official Gazette.

The 222 and 224 forms can now be submitted online

Two of the forms regulated by Order no. 3780/2017 can now be submitted to the competent authorities also online:

- 222 form - informative statement regarding the start/end of activity performed by individuals in Romania, obtaining salary or salary-assimilated income from abroad;
- 224 form – tax return regarding the salary and salary-assimilated income obtained from abroad by individuals performing activity in Romania.

Their electronic version was published on the National Agency of Fiscal Administration website on December 17, 2019, without updating the Order for establishing the methodology for signing and submitting it.

[For further questions regarding the aspects mentioned in this alert, please contact us.](#)



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The new Law no. 243/2019 on alternative investment funds will enter into force in January 2020

Scope

The AIF Law regulates the set-up and functioning of the AIFs in Romania, as collective investment undertakings other than the collective investment undertakings in transferable securities (OCIU), and applies to:

- OCIU incorporated in Romania, which, before the entering into force of Law no. 74/2015 on alternative investment funds managers (AIFM Law), were required to apply for the registration with the Financial Supervisory Authority (FSA), according to Law no. 297/2004 on capital markets (Law no. 297/2004);
- OCIU incorporated in Romania, which, before the entering into force of AIFM Law, were not required to apply for the registration with the FSA, according to Law no. 297/2004;
- financial investment companies (FIC);
- Fondul Proprietatea S.A. (Property Fund).

The set-up and authorisation of the AIFs

AIFs are subject to the FSA's authorisation and may be incorporated as follows:

- contractual AIFs (CAIFs), without legal personality (according to the provisions on simple companies of the Romanian Civil Code); or
- investment companies AIFs (ICAI Fs), structured as joint stock companies (according to Law no. 31/1990 on companies).
- CAIFs and ICAIFs may be structured by several compartments (sub-funds), each of them subject to the FSA's authorisation requirements and whose assets are segregated and cannot be subject to any claim from the creditors of another sub-fund.
- **The functioning of CAIFs – key aspects**
- CAIFs may be managed by: (i) a Romanian AIFM, (ii) an AIFM from another Member State (notified to the FSA), (iii) an AIFM from a third country (according to the provisions of the AIFM Law);
- CAIFs may issue several classes of units, which may be admitted to trading on a Romanian trading venue, in compliance with the applicable legal provisions;
- The fund unitholders gain rights and obligations within the value and the proportion of the CAIF's assets held by them;
- an AIFM which manages the CAIF's assets is its legal representative, and is liable severally or jointly with the CAIF's depositary towards the fund unitholders or other third parties for any breach of the AIF Law, the FSA regulations or any other breach related to the CAIF's management;
- AIFM may hold, on behalf of a CAIF, shares in the share capital of a limited liability company or a joint-stock company, as the case may be, and such shares shall not be included in the AIFM's assets and shall not be subject to any claim from the AIFM's creditors.

The functioning of ICAIF – key aspects

- ICAIF may be managed by: (i) a Romanian AIFM, (ii) an AIFM from another Member State (notified to the FSA), (iii) an AIFM from a third country (according to the provisions of the AIFM Law), (iv) a board of directors and directors/supervisory board and directorship, when the ICAIF is internally managed or self-managed;
- ICAIFs internally managed or self-managed will be authorised under the provisions of the AIFM Law;
- ICAIFs issue nominative shares, and their subscribed share capital is paid in full on their incorporation date;
- ICAIF set-up through public subscription or by raising capital from at least 150 retail investors are required to apply for the admission to trading on a trading venue, within 90 days from obtaining the authorisation from the FSA.

Key rules regarding the issue and repurchase of fund units or shares

- Depending on the possibility to repurchase their fund units or shares, AIFs may be classified as follows:
- open-ended, the shares or fund units of which are, at the request of any of their shareholders or unitholders, repurchased or redeemed prior to the commencement of their liquidation or wind-down in accordance with the procedures set out in their rules or articles of incorporation, prospectus or offering documents; or
- closed-ended, the shares or units of which cannot be repurchased or redeemed in a similar way before their liquidation or wind-down.
- An open-ended CAIF must repurchase its units at least annually. The offering document and the rules of the FIAC may provide the possibility to distribute to the investors, on certain dates or during a calendaristic period, the earning cumulated during a pre-settled period.
- With the purpose to decrease its share capital, an ICAIF may perform, only once during a financial year, share capital returns *pro rata* with the shares held by the investors, subject to the approval by the Extraordinary General Meeting of Shareholders (EGMS). By way of exception, such share capital returns may take place at any time, if the following conditions are cumulatively met:
 - the approval of the EGMS is issued;
 - the return is made exclusively from the own sources of the ICAIF;
 - the ICAIF has recorded profit in the last three financial years, according to its annual audited financial statements.
- An ICAIF may also repurchase its own shares with the purpose to decrease its share capital if:
 - the approval of the EGMS is issued;
 - the repurchase is made exclusively from the own sources of the ICAIF.

For ensuring the investors' protection, the issue and/or repurchase of the fund units may be temporarily suspended upon the FSA's decision or upon the AIFM or self-managed ICAIF's initiative, if the exceptional cases presented in the AIF's rules or articles of incorporation occur, or in other exceptional cases which were not reasonably anticipated on the AIF's incorporation date. The suspension may be prolonged as long as the conditions that determined the suspension are still met.

Types of AIFs specifically regulated by the AIF Law

Besides the two types of AIFs resulted from their form of incorporation (i.e., CAIF and ICAIF), the AIF Law expressly defines two other major categories, AIFs addressed to the retail investors and/or professional (RAIFs) and AIFs addressed exclusively to the professional investors (PAIFs). The fund units or shares of a PAIF may be distributed exclusively to professional investors, except for the private capital PAIFs (subject to specific conditions under the AIF Law).

In addition, depending on their investment policy, RAIFs and PAIFs are classified in more sub-categories expressly regulated by the AIF Law (e.g., diversified AIFs, AIFs specialized in real-estate investments, monetary AIFs).

For each of these sub-categories, the AIF Law imposes specific obligations regarding the permitted investments, the calculation of the asset value, transparency obligations, as well as informing and reporting requirements. In order to ensure an extensive protection for the retail investors, the transparency, informing and reporting obligations, as well as the rules regarding the investment policy and the investment limits imposed to RAIFs are stricter as opposed to those imposed to PAIFs.

Significant transitional measures

Within 3 months from the date of the entering into force of the AIF Law, the FSA shall issue secondary regulations for the application of the AIF Law.

Within 6 months from the date of the entering into force of the AIF Law, subject to the withdrawal of their authorisation, OCIUs incorporated under the previous legislation are required to:

- amend their incorporation and functioning documentation and their activity according to the AIF Law;
- apply for the authorisation of the amendments of the said documents and submit the relevant documentation in this regard.

The authorisation applications of the OCIUs still in progress at the date of the entering into force of the AIF Law will be withdrawn and supplemented according to the AIF Law.

The AIF Law brings also important changes for FICs and the Property Fund. Thus, these entities are now qualified as RAIFs under the AIF Law and their withdrawal from trading from the regulated market operated by the BSE is conditional upon the withdrawal of their authorisation by the FSA. Moreover, within 6 months from the date of the entering into force of the AIF Law, several legal provisions regulating these entities will be repealed, such as:

- Law no. 133/1996 regarding the transformation of the Private Property Funds (Fondurile Proprietății Private) in FICs, published in the Romanian Official Gazette, Part I, no. 237 as of November 1, 1996, as further amended;
- Article 286¹ of Law no. 297/2004, which provides the interdiction of a person to hold alone, or by acting in concert, more than 5% in the share capital of a FIC.

Sanctions and administrative measures

According to the AIF Law, conducting activities or operations that are specific to an AIF, without holding the necessary authorisation is considered criminal offence and is sanctioned with imprisonment from 3 months to 1 year or with a fine.

In addition, breaching the AIF Law provisions may lead to severe sanctions for the AIFMs, ICAIF self-managed and/or the members of their governing bodies. In case of individuals, the fines may range up to LEI 50,000, and in case of legal entities, the fines may range up to 5% of the turnover registered during the previous financial year. Depending on the breach, the FSA may decide also to withdraw the AIF's authorisation.

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