

LEGAL, ACCOUNTING AND TAX ASPECTS REGARDING FIDUCIARY CONTRACTS

ASSOCIATE PROFESSOR PhD NICOLAESCU CRISTINA,
UNIVERSITY LECTURER PhD BÎJA MONICA SUZANA
“AUREL VLAICU” UNIVERSITY OF ARAD,
cris.nicolaescu2@gmail.com, monicabija@yahoo.com

Abstract :

The accounting and tax treatment of fiduciary contracts has a very specific character due to the transfer of assets covered by this legal relationship as well as the expenses and incomes generated by the operations carried out under the fiduciary procedure. If the fiscally fiduciary is characterized by a system of neutrality in terms of accounting it must consider the status of the entity under the contract or the settlor, the fiduciary and / or the beneficiary. The present article summarizes the juridical, accounting and fiscal aspects of fiduciary contracts and, through practical examples, the authors' opinion on how to record the specific operations generated by the performance of fiduciary contracts.

Key words: *fiduciary contracts, fiduciary, settlor, beneficiary*

JEL classification : M41 Accounting

INTRODUCTION

According to the Civil Law “*The fiduciary is the legal operation through which one or more settlors transfer real rights, account receivable rights, guarantees or other patrimonial rights or an ensemble of such rights, present or future, to one or more trustees who exert them with a determined purpose in the benefit of one or more beneficiaries*”¹. The same normative act states that: “*these rights form an autonomous patrimonial mass, different from the other rights and obligations in the trustees' patrimonies*”.

Within a fiduciary contract the parties of the legal report are:

- the settlor, the one who transfers the right or the rights;
- the trustee, the one who administers the rights or the goods;

The settlor can be any natural or legal person. However, the situation of a trustee is different. Thus, trustees can be only the professionals, who according to article 3, paragraph 2 of the Civil Law, are all those who exploit an enterprise (credit institutions, investment and investment administration societies, societies which provide financial investment services, assurance and reinsurance societies, notaries public, lawyers and others);

-the beneficiary, the one in whose use the contract is signed and who exercises all the rights; this entity can be the settlor, the trustee or a third party.

¹ Article 773, Law no. 287/2009, regarding the New Civil Law

The object of the fiduciary contract is represented by the transfer of certain rights or an ensemble of present or future patrimonial rights, real rights (ownership rights, administration rights, and others), account receivable rights, mobile and estate guarantees and other patrimonial rights. The non-patrimonial rights cannot form the object of the fiduciary contract. The rights are transferred from the settlor's patrimony into the one belonging to the trustee, but these, together with the liabilities which will derive from their administration will form a separate patrimony, different from the one belonging to the trustee.

According to the Civil Law the fiduciary contract must have the following compulsory elements²:

- real rights, account receivable rights, guarantees and any other transferred patrimonial rights;
- transfer allotted time, which cannot exceed 33 years, starting with its signature date;
- the identity of the parties involved in the legal report;
- the purpose of the fiduciary contract, the length of the trustee's or the trustees' administrative and disposition powers

ACCOUNTING TREATMENT OF FIDUCIARY CONTRACTS

The Accounting treatment of fiduciary contracts was regulated through the OMFP 4160/2015 which completed the OMFP 1802/2014 by introducing new sections, such as section 4.141, named: "The Accounting of the operations carried out within fiduciary contracts".

Thus, according to this normative act, the accounting of fiduciary contracts is determined by the settlor's status, and by the possibility of it being or not the beneficiary of the fiduciary contract.

According to this element which results from the fiduciary contract, we can distinguish the following situations, each requiring a separate accounting treatment:

- a) the settlor has the position of beneficiary as well
- b) the settlor does not have the position of beneficiary
- c) the entity has just the beneficiary position

In general, the operations related to fiduciary contracts refer to the distinct accounting of expenses and income generated by these operations as well as, in certain situations, by the recording of the transfer of assets which represent the object of the fiduciary contract.

For this reason, the OMFP 4160/2015 changes OMFP 1802/2014 by introducing certain accounts, typical for fiduciary contracts, such as: **466 "Reimbursements from fiduciary operations"**, **651 "Expenses with fiduciary operations"** and **751 "Income from fiduciary operations"**.

The account **466 "Reimbursements from fiduciary operations"** is a bifunctional account with the help of which it is possible to reflect in accounting the debts or the receivables which occur between the entities involved in the fiduciary contract and which develop on two synthetic accounts of second degree, such as the liabilities account **4661 "Debts from fiduciary operations"** and the assets account **4662 "Receivables from fiduciary operations"**.

² Article 779, Law no. 287/2009, regarding the New Civil Law

It can be noted that in the case of the expenses and income accounts there were used accounts for exploitation expenses and income from exploitation activities respectively. These develop on synthetic accounts of second degree depending on the moment in which the expenses/income were generated, such as: the settlement of the fiduciary contract, during the on-going of the fiduciary contract or during the liquidation of the fiduciary operations. These accounts are 6511 “*Expenses generated by the settlement of the fiduciary contract*”/ 7511 “*Incomes generated by the settlement of the fiduciary contract*”, 6512 “*Expenses generated by the on-going of the fiduciary operations*” / 7512 “*Incomes generated by the on-going of the fiduciary operations*” and 6513 “*Expenses generated by the liquidations of the fiduciary operations*” / 7513 “*Incomes generated by the liquidation of the fiduciary operations*”.

The accounting elements connected to the fiduciary contracts which are going to be further analysed refer to: the identification of the fiduciary mass and of the elements which form the object of the fiduciary contract, the assessment of these elements, and the accounting of the operations related to the settlement of the fiduciary contract, the on-going and the liquidation of the fiduciary operations from the settlor’s and the trustee’s perspective, and the report of the fiduciary operations in the financial situations belonging to the involved entities.

With respect to the elements which can be transferred within a fiduciary contract, the national accountancy regulation point out that they can be both assets and debts but the Civil Law stipulates that only the patrimonial rights can make the object of the transfer procedure.

In this regard, the Notice no.2008 issued on February 3rd, 2008 by the National Accounting Council in France specifies that the transferred patrimony can contain assets and liabilities elements which can occur in the form a net assets transfer (when the total value of the transferred assets is higher than the total value of the liabilities) or a net liabilities transfer (in the reverse situation). However, it points out specifically that the possibility to transfer only an isolated liability is excluded.

It is also important to note that the elements transferred during the fiduciary operations will form for the trustee a distinct patrimony, which will make the object of a separate bookkeeping different from the one kept for the trustee’s patrimony. As a consequence the trustee will use different accounts to register the operations which are related to these elements. These accounts were introduced in the Romanian accounting by the Order no. 4160/2015. Moreover, these elements will be presented separately in the trustee’s financial situations.

If in the French accounting the most common situation is that of transferred estates with guarantee titles and made available with a free title³, the Romanian practice has not yet consecrated a certain type of fiduciary contracts.

Regarding the assessment of the elements which represent the object of the fiduciary contract, the national accounting regulations stipulate that if the settler does not also possess the status of beneficiary then the elements which form the object of the fiduciary contract are transferred “*at the value at which they are recorded⁴ in the accounting*”, and when the liquidations of the fiduciary operations occurs they will be recognized in the settler’s accounting “*on element categories and at their right value*”.

³ Sallaberry, Xavier (2011). *Fiducie sûreté: traitement comptable et fiscal. Application au transfert des immeubles*, *Revue Française de Comptabilité*, no.439 January 2011;

⁴ point 425³ paragraph (1) of the updated OMFP 1802/2014;

In the French accounting practice this situation is nuanced according to the settler's decision whether or not to keep control over the transferred elements. In the first case, the value used to assess the elements which are transferred within the fiduciary contract is "the accounting value" while in the second situation the "venal value" is used. These values will be used in the both the settler's and the trustee's accounting.

The accounting of the operations connected to the settlement, on-going and liquidations of fiduciary contracts will be presented within a case study. Regarding the report of the financial situations of the fiduciary contract by the involved entities, the settler and the trustee respectively, these will present in the Explanatory notes the elements required by the points 425 5⁵ and 425 6⁶ from the OMFP 1802/2014 completed with OMFP 4160/2015.

THE FISCAL TREATMENT OF FIDUCIARY CONTRACTS

The Fiscal aspects connected with the fiduciary contracts refer mainly to the fiscal treatment of expenses and incomes generated by the fiduciary operations, VAT implications in the case of these operations and the aspects connected with the possible local taxes.

Regarding the fiscal recognition of expenses and incomes which derive from the on-going of the fiduciary contracts for the entities that pay taxes on income, these are regulated through article no. 30 "Fiduciary contracts" in chapter II of "The Calculation of Fiscal Result", Title II, Corporate Tax.

The two paragraphs of the article present separately the situation in which the settler is also the beneficiary – this case is presented in paragraph (1) of article no 30 – and the situation in which the beneficiary is also the trustee or a third party, the situation which represents the main point of paragraph (2) of the same article.

In the first case, according to paragraph (1) of article no. 30, the transfer of fiduciary mass from the settler to the trustee is not considered a taxable operation. As a result, the expenses/income generated from giving/receiving elements which form the fiduciary mass will not affect the fiscal result, only the accounting one.

The same article at paragraph (1), letter b stipulates that the trustee, the one who will conduct the accounting of the fiduciary operations, has to transmit quarterly, on the basis of the expense account, to the settler the expenses and the income generated by the administration of the fiduciary mass. These expenses and income will be treated by the settler according to the regulations of the Fiscal Code and their nature, together with the other expenses and income belonging to the settler.

With respect to the fiscal value of transferred assets and the depreciation of fixed assets which are part of the fiduciary mass, the article applies the same fiscal treatment for both the trustee and the settler.

Paragraph (2) of article no. 30 points out that *"in the case of fiduciary contracts, settled according to the provisions of the Civil Law, within which the beneficiary is also the trustee or a third party, the expenses recorded from the transfer of the fiduciary*

⁵ point 425³ paragraph (2) of the updated OMFP 1802/2014

⁶ Avis 2008-03 du 7 février 2008 du Conseil National de la Comptabilité relatif au traitement comptable des opérations de fiducie;

*patrimonial mass from the settler to the trustee are considered non-deductible expenses*⁷.

If the expenses generated by the transfer of fiduciary mass are non-deductible, then the income generated by this transfer will be total free pay to date.

With respect to the micro businesses which pay income tax and which have the taxable base determined according to the provisions of article 53 of the Fiscal Code, because the income generated by the on-going of the fiduciary contracts, recognised from an accounting point of view in the account 751 *“Income from fiduciary operations”*, are not specifically mentioned as deductions within paragraph (1), meaning that they will be a component part of the taxable base belonging to the respective micro business.

The taxation method of the income obtained by natural people from fiduciary contracts is regulated by article 63. The general rules applied to income obtained from fiduciary operations, presented in chapter I, General dispositions of title IV Income Tax, establish that the income generated from the transfer of fiduciary mass will not be considered taxable income. However, all the other income obtained by the trustee or the beneficiary will be taxed according to the provisions of the Fiscal Code and their nature.

Regarding the VAT implications, since the Fiscal Code does not make any specific reference to this aspect, the inclusion or exclusion of the operations unfolded after settling a fiduciary contract within the category of taxable operations from a VAT perspective will be made separately, depending on the component of the fiduciary mass and the provisions of the fiduciary contract. In accordance with these aspects, it will be established if the operations generated by the respective contract fulfil or not the provisions specified in Chapter number IV of the Fiscal Code in order to be comprised in the scope of VAT.

The status of taxable person recorded for VAT purposes of the entities involved in the fiduciary contract will also be taken into consideration.

The on-going of a fiduciary contract will also have an influence on the local taxes. Thus, for the goods which are part of the transferred patrimonial mass following the settlement of such a contract, one must pay such taxes on buildings, terrains, means of transportation and others.

Regarding this aspect the Fiscal Code points out that *“in the case of natural people and legal people that sign a fiduciary contract according to the provisions of the Civil Law, the local taxes and fees related to the patrimonial fiduciary mass transferred during the fiduciary operation are paid by the trustee to the local budgets belonging to the administrative-territorial units where the goods which represent the object of the fiduciary operation are recorded and by respecting the provisions of the herby title, starting with the first day of the month following the one in which the fiduciary contract was signed*⁸”.

The obligation to register the fiduciary contract with the competent fiscal body belongs to the trustee. This aspect is also mentioned in the Civil Law which states that: *“Under the penalty of absolute nullity, the fiduciary contract and its modifications must be recorded at the trustee’s request within a month from their settlement, with the fiscal body entitled to administer to sums owed by the trustee to the public consolidated general budget*⁹”.

⁷ Article 30, paragraph 2, Law no. 227/2015, regarding the Fiscal Code

⁸ Article 488 of Law no. 227/2015 regarding the Fiscal Law;

⁹ Article 7880, paragraph (1) of Law no. 287/2009 regarding the New Civil Law

The register procedure of the fiduciary contracts is regulated by the Order of Public Administration number 1985/2012, published in the OM 16/2013 which comprises in its appendix the Declaration of registration of fiduciary contracts on the basis of which the fiduciary contracts are recorded by the fiscal bodies in the Registrar of fiduciary contracts.

CASE STUDY CONCERNING THE ACCOUNTING AND FISCAL TREATMENT OF FIDUCIARY CONTRACTS

To follow the accounting method of fiduciary contracts for both the settler and the trustee we will analyse as example a few samples for the situation in which the settler is also the beneficiary of the fiduciary contract and the situation in which the settler is not the beneficiary of the fiduciary contract.

Example Number 1: the settler is not the beneficiary of the fiduciary contract

Let us consider entity A, the settler, which within the fiduciary contract transfers the right to use a building, recorded in its accounting with the value of 120.000 lei, to the trustee, entity B respectively, with the condition that the sums obtained from renting the building to be transmitted to the entity known as C, which holds receivables worth 45.000 lei over entity A. The monthly amortization of the building is worth 1.000 lei per month.

The contract is signed on 01.01.N, for a period of 2 years, the rent charged for the building being equal to 2.000 lei/month and the remuneration owed by the settler to the trustee is equal to 300 lei/month.

Accounting records in the settlers accounting (Entity A)

a) Record of the good transfer procedure:

120.000	6511	=	212	120.000
	“Expenses generated by the fiduciary settlement”		“Constructions”	

Note:

According to the provisions of the updated OMFP 1802/2014 “when the fiduciary contract is settled, the settler who does not have the status of beneficiary transfers in the fiduciary assets and debts at the value at which they were recorded in accounting¹⁰”.

In the French accounting system this transfer is done at the net accounting value, meaning the value entry diminished with the depreciation calculated until that moment for the transferred fixed asset¹¹.

From a fiscal point of view, these expenses will be considered non-deductible expenses, as it is pointed out in paragraph (1), point a, article number 30 of the Fiscal Code.

Regarding the VAT implications of the fiduciary mass transfer, the situation is more complex because up to the present there is no legal provision which can specifically state if the transfer of fiduciary mass within the fiduciary contracts is an operation which can be subject to VAT or not.

Therefore, we consider that we can assimilate this transfer to a transfer with a free title. This operation is not taxable from a VAT point of view.

¹⁰ point 425³ paragraph (1) of the updated OMFP 1802/2014

¹¹ Avis 2008-03 du 7 février 2008 du Conseil National de la Comptabilité relatif au traitement comptable des opérations de fiducie

- b) Recording of income from rents and of expenses with the depreciation of the building transmitted by the trustee through an expense account (monthly recorded operations):

2.000	4662 <i>“Receivables from fiduciary operations”</i>	=	706 <i>“Income from fees, commercial leasing and rents”</i>	2.000
--------------	---	---	--	--------------

1.000	6811 <i>“Exploitation expenses related to the depreciation of fixed assets”</i>	=	4661 <i>“Debts from fiduciary operations”</i>	1.000
--------------	---	---	---	--------------

These income and expenses will be fiscally recognised by the settler.

- c) Debt closing towards entity C (monthly recorded operation)

2.000	401 Entity C <i>“Suppliers”</i>	=	4662 <i>“Receivables from fiduciary operations”</i>	2.000
--------------	---	---	--	--------------

- d) Recording of remuneration towards the trustee and its payment (monthly recorded operation)

300	628 <i>“Other expenses with the services provided by third parties”</i>	=	401. Entity B <i>„Suppliers”</i>	357
------------	--	---	--	------------

57	4426 <i>“Deductible VAT”</i>			
-----------	-------------------------------------	--	--	--

357	401. Entity B <i>“Suppliers”</i>	=	5121 <i>“Bank accounts in lei”</i>	357
------------	--	---	---	------------

Because the fiduciary contract is valid for two years, meaning 24 months, the total sum collected as rest will have a value of 48.000 lei (24 months X 2.000 lei/month) and the settler A’s debt towards the beneficiary known as C will have a value of just 45.000 lei, the last 3.000 lei collected from rents will be transferred towards entity A.

- e) Rent collection after debt payment towards entity C:

3.000	5121 <i>“Bank accounts in lei”</i>	=	4662 <i>“Receivables from fiduciary operations”</i>	3.000
--------------	---	---	--	--------------

- f) When the fiduciary contract expires the building re-enters into the settler’s possession:

120.000	212 <i>“Constructions”</i>	=	7511 <i>Income generated by the settlement of the fiduciary contract”</i>	120.000
----------------	--------------------------------------	---	---	----------------

By virtue of the principle of fiscal neutrality because neither the income generated by taking out the building from the settler’s patrimony when the fiduciary contract was settled were not tax deductible nor will these income be tax recognized for the trustee, they will be total free pay to date.

If the trustee invested in the building during the on-going of the fiduciary contract and these investments have raised the value of the building, these will be recorded in the settler’s accountancy in the credit of account **7513** *“Income from the liquidation of fiduciary operations”*.

If after the on-going of the fiduciary contract the building which has made the transferred fiduciary mass has suffered value loses, these will be recorded in the trustee’s accountancy in the debit of account **6513** *“Expenses with the liquidation of fiduciary operations”*.

Both the income and the expenses from the liquidation of fiduciary operations will be recorded when the fiduciary contract comes to and end the building re-enters in the settler's patrimony and they will be recognized from a fiscal point of view.

- g) Because during the on-going of the fiduciary contract the trustee recorded the depreciation of the building although the expenses were recognized by the trustee, there will be a takeover of the depreciation fund concomitant with the debt closing from the account 4661 "*Debts from fiduciary operations*".

24.000	4661	=	2812	24.000
	<i>"Debts from fiduciary operations"</i>		<i>"Depreciation of constructions"</i>	

Recordings in the trustee's accounting (entity B)

- a) The reception of the building as fiduciary mass

120.000	215	=	7511	120.000
	<i>"Real estate investments"</i>		<i>"Income generated by the settlement of the fiduciary contract"</i>	

From a fiscal point of view these incomes may be total free pay to date.

- b) Rent collection (monthly recorded operation):

2.000	5121	=	4661	2.000
	<i>"Bank accounts in lei"</i>		<i>"Debts from the fiduciary operations"</i>	

- c) Payment of amounts collected from rents by entity C (monthly recorded operation):

2.000	4661	=	5121	2.000
	<i>"Debts from fiduciary operations"</i>		<i>"Bank accounts in lei"</i>	

Since the fiduciary contract is signed for two years, meaning 24 months, the total collected sum as rent will be of 48.000 lei (24 month X 2.000 lei/month), and the settler A's debt towards beneficiary C will of only 45.000, the last 3.000 lei collected from rents will be transferred towards entity A.

- d) Record of the building depreciation (this operation is recorded on a monthly basis throughout the on-going of the fiduciary contract):

1.000	4662	=	2815	1.000
	<i>"Receivables from fiduciary operations"</i>		<i>"Depreciation of real estate investment"</i>	

- e) Recording and collecting the remuneration for the service offered to the settler by the trustee (monthly operation):

357	4111	=	708	300
	<i>"Clients"</i>		<i>"Income from various activities"</i>	
			4427	57
			<i>"Collected VAT"</i>	
357	5121	=	4111	357
	<i>"Bank accounts in lei"</i>		<i>"Clients"</i>	

- f) When the fiduciary contract arrives to its end, the following operations will be recorded: the transfer of the building to the settler and the depreciation registered by the trustee during the on-going of the fiduciary contract:

120.000	6511	=	215	120.000
---------	------	---	-----	---------

	<i>“Expenses generated by the settlement of the fiduciary contract”</i>	=	<i>“Real estate investment”</i>	
24.000	2815		4662	24.000
	<i>“Depreciation of real estate investment”</i>		<i>“Receivables from fiduciary operations”</i>	

Regarding the beneficiary, entity C, this will record the debt settlement towards entity A, the settler when collection the sums from entity B, the trustee.

Moreover, it will record the commitment regarding the total settlement of the receivable towards settler A, as it results from the fiduciary contract, in account off the balance sheet, **8028 “Other Received Commitments”**, having the value of 45.000 lei.

Example 2: The settler also has the status of beneficiary of the fiduciary contract

Let us consider entity A, the settler who within the fiduciary contract transfers the right to use a building recorded in its accounting at the value of 120.000, to the respective trustee, entity B, for it to manage or lease in the settler’s name and advantage. The monthly depreciation of the building is equal to 1.000 lei/month.

The contract is settled on the 01.01.N, for a period of 2 years, the rent charged for the building is of 2.000 lei/month and the remuneration for the owed to the trustee by the settler is of 300 lei/month.

In this situation for recording the expenses and the incomes generated by the on-going of the fiduciary contract, the accounts **6512 “Expenses with the on-going of fiduciary operations”** and **7515 “Incomes from the on-going of the fiduciary operations”** will be used.

Recordings in the settler’s accounting (entity A)

- a) Since entity A will use the building for rent during the two following accounting years, this will be recorded in the settler’s accounting from the constructions category into the category of real estate investments:

120.000	215	=	212	120.000
	<i>“Real estate investments”</i>		<i>“Constructions”</i>	

- b) Monthly, the settler will record the expenses generated by the administration of the building made by the trustee and transmitted via an expense account. These will recorded in the account **6512 “Expenses from the on-going of the fiduciary operations”**.

If actual expenses (for example repairing or other exploitation expenses made by the trustee for the administration/maintenance of the building) are involved, these will be recorded as debts towards the trustee, in the debit of the account **4661 “Debts from fiduciary operations”**, which will be subsequently reimbursed.

The corresponding records will be:

<i>value of incurred expenses</i>	6512 “Expenses from the on-going of fiduciary operations”	=	4661 “Debts from fiduciary operations”	<i>value of incurred expenses</i>
<i>value of incurred expenses</i>	4661 “Debts from fiduciary operations”	=	5121 “Bank accounts in lei”	<i>value of incurred expenses</i>

From a fiscal point of view these expenses will tax deductible. Regarding VAT, in case the trustee’s the incurred expenses will be subject to VAT, these will be re-

invoiced towards the settler, VAT included and the right to benefit from VAT deduction will be transferred from the trustee to the settler.

The expenses with the depreciation or other calculated expenses which do not need a recorded payment will be made in the corresponding accounts.

Since in this situation the building remains in the settler's patrimony, entity A will record the monthly expense with the depreciation, having the value of 1.000 lei:

1.000	6811	=	2815	1.000
	<i>"Exploitation expenses regarding the depreciation of fixed assets"</i>		<i>"Depreciation of real estate investments"</i>	

c) Recording of incomes obtained from renting the building and rent collection:

2.000	4662	"Receivables from fiduciary operations"	=	7512	Incomes from the on-going of fiduciary operations"	2.000
-------	------	---	---	------	--	-------

2.000	5121	"Bank accounts in lei"	=	4662	"Receivables from fiduciary operations"	2.000
-------	------	------------------------	---	------	---	-------

This income will be recognised from a fiscal point of view:

d) Recording the remuneration towards the trustee and its payment (monthly recorded operation):

300	628	"Other expenses with services done by third parties"	=	401. Entity B	"Suppliers"	357
-----	-----	--	---	---------------	-------------	-----

57	4426	"Deductible VAT"
----	------	------------------

357	401. Entity B	"Suppliers"	=	5121	"Bank accounts in lei"	357
-----	---------------	-------------	---	------	------------------------	-----

When the fiduciary contract comes to its conclusion and if the value of the building was changed during the contract (for example the fiduciary invested in the building or on the contrary its value lowered), these differences will be recorded accordingly in the credit of account 7513 *"Income from the liquidation of fiduciary operations"* or in the debit of the account 6513 *"Expenses with the liquidation of fiduciary operations"*.

e) For example, let us assume that the investments made in the building by the trustee during the on-going of the fiduciary contract had a value of 20.000 lei:

20.000	215	"Real estate investments"	=	7513	"Income from the liquidation of fiduciary operations"	20.000
--------	-----	---------------------------	---	------	---	--------

f) If at the conclusion of the contract entity A no longer uses the building for renting then it will record it back in the account 212 *"Constructions"*.

140.000	212	"Constructions"	=	215	"Real estate investment"	140.000
---------	-----	-----------------	---	-----	--------------------------	---------

Recordings in the trustee's accounting (entity B):

Entity B will conduct a separate accounting which will recognize the expenses generated by the administration of the building which represents the object of the fiduciary contracts as well as the incomes generated by its lease.

These will be transmitted to the settler monthly via an expense account.

- a) Monthly, the trustee will transmit the settler the expenses generated by the building administration. Since initially the trustee recognised these expenses as its own exploitation expenses now it will recognise these incomes at the same value in the credit of the account 7512 *“Incomes from the on-going of fiduciary operations”*.

With respect to actual expenses (for example repairs or other exploitation expenses made by the trustee for the administration/maintenance of the building), they will be recorded as receivables towards the settler in the debit of the account 4662 *“Receivables from the fiduciary operations”* and they will be subsequently collected from the settler.

The corresponding recordings will be:

<i>value of incurred expenses</i>	4662	=	7512	=	value of incurred expenses
	<i>“Receivables from the fiduciary operations”</i>		<i>“Incomes from the on-going of the fiduciary operations”</i>		

<i>value of incurred expenses</i>	5121	=	4662	=	value of incurred expenses
	<i>“Bank accounts in lei”</i>		<i>“Receivables from fiduciary operations”</i>		

These incomes will be fiscally recognised by entity B, the trustee. Regarding VAT, in case the expenses made by the trustee will be subjected to VAT, these will be re-invoiced towards the settle, VAT included, and the right for VAT deduction will be transferred from the trustee to the settler.

- b) Recording of the sums generated by the renting of the building and their payment towards the settler:

2.000	5121	=	4661	=	2.000
	<i>“Bank accounts in lei”</i>		<i>“Debts from fiduciary operations”</i>		

2.000	4661	=	5121	=	2.000
	<i>“Debts from fiduciary operations”</i>		<i>“Bank accounts in lei”</i>		

- c) Recording and collection of the remuneration for the services offered to the settler:

357	4111	=	708	=	300
	<i>“Clients”</i>		<i>“Expenses from various activities”</i>		
			4427		57
			<i>“Collected VAT”</i>		

357	5121	=	4111	=	357
	<i>“Bank accounts in lei”</i>		<i>“Clients”</i>		

CONCLUSIONS

The fiduciary contract, a new-entry in the Romanian economic game, folds perfectly on the Romanian economy, offering advantaged to all the participants involved in the operation.

For these reasons, it might be more used in the near future. From an accounting point of view due to the modifications brought by OMFP 4160/2015 to the Order 1802 from 2014, it was created the necessary framework for the accounting of these operations by the introduction of certain special accounts while the accounting practice will solve the specific problems generated by each fiduciary contract.

What it is very important to point out is the fact that the accounting treatment of the operations generated by the on-going of the fiduciary contract depend exclusively on the provisions of the fiduciary contract.

In this regard, the task of the accounting specialist is to transpose in accounting the legal issues of each fiduciary contract, which in many cases can be extremely challenging. However, a good professional is not afraid of challenges; one seeks the and through professional reasoning one manages to overcome them. These challenges make one happy and motivate that person both professionally and intellectually, offering one the satisfaction of a work well-done.

REFERENCES

1. Sallaberry, Xavier, (2011), *Fiducie sûreté : traitement comptable et fiscal. Application au transfert des immeubles*, Revue Française de Comptabilité , no.439, January 2011
2. ***, Avis 2008-03 du 7 février 2008 du Conseil National de la Comptabilité relatif au traitement comptable des opérations de fiducie;
3. ***, Law no. 287/2009 regarding the New Civil Law, republished in the Official Gazette, Part I, no. 505, from July 15th, 2011;
4. ***, Law no. 227/2015 regarding the updated Fiscal Code, 2018;
5. ***, OMFP 1802/2014 for the approval of the Accounting regulations concerning the individual annual financial situations and the consolidated annual financial situations, published in the Official Gazette no. 963. from December 30th, 2014;
6. ***, OMFP 4160/2015 regarding the modification and the completion of certain accounting regulations published in the Official Gazette, no. 21 from January 21st, 2016