**Ombudsman’s Online Diary – July 2019 Case**

**A specific point worth knowing when selling unlisted securities in an equity savings plan: what to do in case of a deferred payment?**

Tax rules concerning the payment of the transfer price of unlisted securities held in a French equity savings plan (PEA) are very clear. The information provided by the account keeper to its client must be just as clear to avoid all risks of misleading the client. This is because the transfer price must be paid in full, within two months after the transfer, without fail.

Although the client selling the securities can make a deferred payment of the transfer price,[[1]](#footnote-1) he or she must in that case pay a sum equivalent to the share of the deferred price in the equity savings plan. Otherwise, the plan will be closed.

**The facts**

Mr. X. owned unlisted securities in an equity savings plan. After selling these securities, his account keeper closed the plan. Mr. X. considers that this was a discretionary decision and has asked for the plan to be reopened. He referred the case to me.

**The investigation**

I queried the bank about the closing of the savings plan and was informed that this had been done because on 30 September 2015, Mr. X. had sold the unlisted shares that he held in his equity savings plan, with a payment in two instalments, without deeming it necessary to inform the bank of this.

After the first receipt of the proceeds of the sale of his shares on 30 September 2015, Mr. X. had indeed paid back the proceeds of the transfer on the same day, after receiving the payment. He did not think that the deferred nature of this payment could result in a tax irregularity involving his equity savings plan.

However, the French official tax bulletin (*Bulletin Officiel des Impôts*) clearly specifies that the full proceeds from the sale must be paid back to the equity savings plan, as soon as the transfer of the securities has been completed. In the event of a staggered or deferred payment, it is specified that the holder of the plan must cover the price difference not yet paid with a cash payment to ensure that the total sum of the proceeds from the sale is placed in the equity savings plan:

*“When the sale price of the securities listed on a PEA is subject to a deferred or staggered payment, this transaction is considered as a divestment which in principle entails the closure of the plan*.

*However, in this event, and in order to avoid the closure of the plan, the holder of the equity savings plan may, within two months after the transfer, make a cash payment to the credit of the cash account of the equity savings plan, equivalent to the deferred portion of the transfer price*.”[[2]](#footnote-2)

I pointed out to the bank that the specific letter of commitment signed by Mr. X when he subscribed for his unlisted securities only mentioned the obligation to pay the proceeds from the transfer of his securities immediately into the equity savings plan.

I informed the bank that this wording could be understood both as
“*immediately after the transfer”*, and “*immediately after the receipt of the proceeds of the transfer”*. In the event of doubt in the interpretation of a term of a contract offered by a professional to a consumer, it must be interpreted in the sense that is most favourable to the consumer.[[3]](#footnote-3)

In this instance, the case shows that the client had paid back the funds as soon as he received the first deferred payment, and that the equity savings plan had been closed before the date agreed for the second deferred payment.

I therefore contacted the bank on several occasions. Initially, it offered to compensate the client for half the taxes due as a result of the closure of the equity savings plan before the five-year holding period (since social security charges had to be paid in any event, their payment could not constitute a loss resulting from this closure).

Although I did not think it possible to return to the previous situation by reopening the plan, I felt that this compensation was insufficient.

**Recommendation**

I therefore recommended that the bank compensate its client for all the taxes that he paid as a result of the closure of the equity savings plan. This is because I felt that the closure could have been avoided if Mr. X. had been sufficiently informed to take the measures compatible with the regulations of the equity savings plan. Conversely, I agree with the bank’s analysis leading to its refusal to reimburse the social security charges paid, since they would have been due at any event.

The bank eventually accepted my proposal for a payment amounting to €4,586.50.

**Lesson to be learned**

**For investors:**

Investors must be aware, once they plan to dispose of unlisted securities held in an equity savings account with deferred payment, that they should be able to pay the equivalent of the transfer price within two months after the transfer, without fail, otherwise the plan will be closed due to tax irregularities.

**For banks managing equity savings plans:**

In any event, the bank must ensure that it provides clear and complete information on this obligation in the letter of commitment to avoid the risk of misleading its customer.

1. Deferred or staggered payments of this kind may frequently occur, as in this case where part of the transfer price was used as a liability guarantee for the purchaser of the unlisted company's securities. [↑](#footnote-ref-1)
2. BOI-RPPM-RCM-40-50-50-20120912 [↑](#footnote-ref-2)
3. Article L.211-1 of the French Consumer Code [↑](#footnote-ref-3)