

### Investing in an ineligible security within the context of a “classic” Plan d’Epargne en Actions (PEA): who is responsible?

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An investor inadvertently invested in a security which was ineligible for that tax wrapper as part of his personal equity plan (PEA). Is it the bank's responsibility to block such an investment, or is the customer's duty to check that the product that he wants to buy is indeed eligible for the PEA?

#### The facts

In 2013, Mr F bought shares in an UICTS<sup>1</sup> within his 'classic' PEA. In 2014, in a discussion with the management company for this product, he realised that the securities were in fact not eligible for the PEA, and he should not have bought them under that tax wrapper.

Mr F therefore contacted his financial establishment to find a solution for these securities as they should not have been in his PEA. His bank explained to him the procedure to follow for ineligible securities in a “classic” PEA: he should transfer them to an ordinary trading account and deposit into his PEA the amount corresponding to the value of the securities removed. The transfer of securities into an ordinary trading account is not without financial impact. It requires realising the capital loss within a tax-exempt wrapper and then being taxed on his capital gains at a later date.

Mr F, who took the view that his bank should have informed him of the ineligibility of these securities within a “classic” PEA, expected a gesture from the bank. However, the bank refused to compensate him on the grounds that the customer alone is liable for the investment he makes. The financial establishment informed him that, as he had failed to sort out his situation himself, and in compliance with regulations, the “classic” PEA would be requalified as an ordinary trading account, and Mr F would then lose all the tax benefits associated with the PEA.



#### The analysis

With this case, I am yet again faced with a dispute with tax consequences that is financial in origin. I had to determine who was liable for complying with the regulations of the “classic” PEA. It was therefore from this viewpoint that I examined all the facts of the case.

First I looked at the tax sanctions for non-compliance with the regulations (i.e. the requalification of the “classic” PEA to an ordinary share account) that exclusively concerned this customer. From this, it was possible to deduce that when buying a security the customer is responsible for ensuring that they are indeed eligible for a “classic” PEA.

Nevertheless, from my point of view, the bank should play a role in ensuring that its customers comply with this regulation. I noted that many banks take the precaution of blocking computer access to information on securities that are ineligible for a PEA. This did not happen in this case.

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<sup>1</sup> UICTS (Undertaking for Collective Investment in Transferable Securities) Security portfolios (shares, bonds, etc.) that are managed by professionals (management companies) and held collectively by individual investors or institutions. There are two types of UICTS: SICAVs (open-ended investment companies) and FCPs (common funds)

Furthermore, in this case, the information provided to Mr F when he bought the securities was incorrect: on the financial institution's website it stated that the security was eligible for a PEA.

### **The recommendation**

It is clear that the customer himself chose to invest in this security and non-compliance of the financial provisions for the "classic" PEA exclusively sanctions the account holder. The account holder is therefore required to verify this point before buying the securities. However, it appears that the information provided on the bank's website could have led Mr F to make the error by suggesting that he could buy this security within a "classic" PEA. I therefore recommended that in the interests of easing the situation the two parties accept to make reciprocal concessions, which was accepted and formalised in a protocol submitted for my approval: the financial institution accepted to pay its customer a sum of €900, in view of the tax risk suffered. In return, the customer agreed to remove the ineligible security from his "classic" PEA.

### **The lesson to be learned**

It is indeed the responsibility of investors to check that the securities they wish to buy for their "classic" PEA are indeed eligible for this tax wrapper. The financial institution is also responsible for ensuring that the information provided on this issue is correct. In addition, one would hope that financial institutions, as part of good practice, systematically block computer access to securities that are ineligible for a "classic" PEA to prevent customers making such errors.

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