

### Employee investment undertakings: it's useful to be fully informed of the special conditions for an early release when buying a main residence

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Buying your main residence is often a good occasion to use your employee investment undertaking. The unavailable assets in employee investment undertakings can be released early since the law explicitly provides that this is one of the 9 possible cases. A mediation case draws our attention to the fact that it is possible, on the one hand, to make an exception to the rule of a single<sup>1</sup> payment for an early release and, on the other hand, to have a better understanding of the amount the employee is entitled to withdraw without constituting an over-financing of the purchase. I will further explain this subject in the following case.

#### The facts

Employee of company X, Mr G held a PEE (corporate savings plan), for which he requested an early release<sup>2</sup> in May 2013 for the reason: "purchase of main residence".

When his assets were reimbursed, he realised that not all of his employee savings account had been released, in particular his share of profits for 2012 of €1,600. Therefore, in October 2013, he submitted a new request to his employee savings account manager for an early release of funds.

Nevertheless, the account manager refused to release the additional money on the basis that only the funds mentioned in the financing plan<sup>3</sup> were eligible. However, since the investments for 2012 were not mentioned in Mr G's financing plan, they could not, according to the account manager, be subject to the requested release.

Mr G. did not understand this explanation. He did not see how he could have included the provisional amount of the investment for 2012 in the financing plan to support his initial request in the month of May. Indeed, at the time this was not yet known, a fact that the account manager did not contest.

He therefore asked me to intervene in order to release the funds of the assets concerned.



#### The analysis

I questioned the account manager on several occasions, who initially did not want to give a favourable response to Mr G's request. He was, in fact, of the mind that Mr G should have included a forecast for his profit share in 2012 by obtaining this information from his employer.

The account manager stressed that he was obliged to ensure that by releasing the funds the saver was not over financing the purchase of his main residence.

While this regulatory constraint that binds the company is absolutely correct, I considered that it could nevertheless not restrict the rights of the saver: the inter-ministerial circular of 14 September 2005 concerning employee investment undertakings sets out **the possibility for savers to release their entitlement to company**

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<sup>1</sup> The same key event cannot give rise to successive releases.

<sup>2</sup> Money invested in a PEE or PEG is unavailable for 5 years or more depending on the conditions of the plan. However, to take account of different life circumstances, the law provides for cases where the beneficiary may request a full or partial release of the assets before the normal maturity date.

<sup>3</sup> To release the funds in the savings plan for buying or enlarging the main residence the saver must provide a financing plan.

**profits for the previous financial year which have not yet been determined or individualised on the date the release was requested.**

As an exception to the rule of a single payment, the regulation therefore provides for the possibility of an additional reimbursement.

Before reimbursing the saver, the financial institution must ensure that the following conditions have been met:

- the date of the release event (in this case, the purchase of the main residence) must occur after the closure of the financial year in question;
- and for the purchase of the main residence, the additional amount must not place the saver in a situation of over-financing his transaction.

It was this last condition that Mr G's account manager cited for not releasing the additional funds. According to the account manager, whenever a financing plan fails to mention the amounts, the transaction is considered to be over financed.

Considering the practise of this account manager, it is difficult to apply and likely to completely undermine the saver's rights. I thus conducted an analysis of the practises of other account managers. I thereby observed that to ensure that savers are not placed in a situation of over financing the transaction. Other establishments concluded that the total amount released (i.e. the amount released at the initial request in addition to the remaining amount yet to be released) should not be higher than the deposit mentioned in the financing plan.

Therefore, after a detailed examination of Mr G's case, I once again questioned the account manager in order to explain my position and the practises of the other establishments, which in my view didn't expose savers to a risk of over-financing the purchase.

## **The recommendation**

Given the conclusions of my investigation, I recommended, and the account manager accepted, carrying out the repurchase of Mr G's profit share for 2012, without this additional request constituting an over-financing of his purchase, on the grounds that he was not in a situation to include these amounts in his financing plan at the time.

## **The lesson to be learned**

The early release of an employee savings account before five years is only possible if justified by exceptional limited circumstances provided for by the law. To prevent abuse, the circular put safety nets in place such as the rule of a single release, a six-month time scale with relation to the event to make the release request and the ban on over financing. Account managers are right to be vigilant, they should not, however, make it impossible for employees to exercise their rights **to request an additional release of their profit sharing entitlement for the last financial year, which was neither known nor individualised on the date that the initial release request was made.**

It is fortunate that good practices are widespread within the same industry. I further observed that the release request form of this account manager has been changed to reflect this understanding.

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