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Stock market orders: What precautions should be taken to ensure that transactions are recorded before 31 December?

During this end-of-year period, it is not uncommon for some investors to want to realise their capital losses so that they can be offset for tax purposes. However, given the time required for settlement, the principles of which have recently been amended, it is possible that the transaction, once completed, might not be booked in the current year but in the following year. This is the situation in the case submitted to me that I am presenting to you this month.

The facts

Mr V., a client of institution A, explained that on 31/12/2019, he sold 2,700 X shares, a sale that generated a capital loss of more than €40,000.

He pointed out that on his securities account statement dated 31/12/2019, these 2,700 shares were no longer shown. However, institution A had not booked the capital loss in the 2019 tax year.

Mr V. argued that the failure to recognise this capital loss in 2019 had adverse consequences from a tax perspective insofar as his total capital gains in 2019 were €45,000, an amount against which he could not offset the aforementioned capital loss. According to Mr V.'s calculations, this equated to a financial loss of around €13,000.



Mr V. therefore requested my intervention to have the capital loss posted in the 2019 tax year.

Investigation

After reviewing Mr V.'s request, it was clear to me that this case needed to be examined in the context of the provisions of Article L. 211-17 of the Monetary and Financial Code, which states that:

“I. – The transfer of ownership of financial securities results from the book entry registration of those securities in the buyer's securities account or from the account entry of those securities for the benefit of the buyer in a distributed ledger system referred to in Article L. 211-3. [...]

III. – Where transactions in financial securities are concluded on a regulated market or a multilateral trading facility and the account of the buyer's custody account-keeper, or the account of the agent of this custody account-keeper, is credited on the books of the central depository, the book entry registration provided for in I takes place on the effective trade settlement date specified in the operating rules of the settlement system.

This date shall be no later than the second day that the settlement system is open for business after the trading date, except in the cases provided for in point 2 of Article 5 of Regulation (EU) no. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories”.

On reading this article, I noted that the fixed period of two days previously provided for in Article 570-2 of the AMF General Regulation (deleted in October 2018) was now a deadline, with the actual trade settlement taking place no longer on D+2, but no later than two days after the trade.

Given that institutions now have a certain amount of flexibility, I felt it was good practice to inform clients in advance, especially for orders placed at the end of the year, considering the tax consequences that may result.

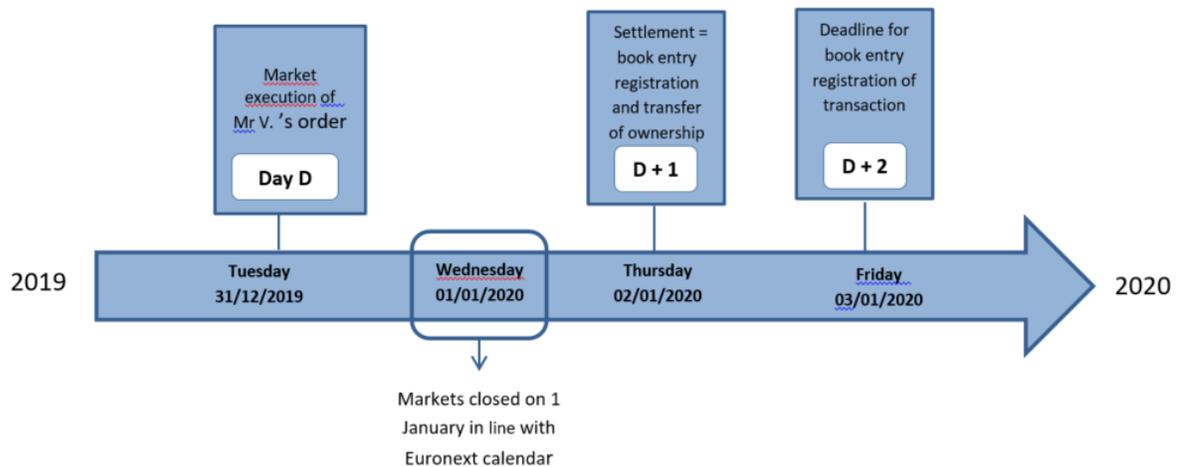
I therefore contacted institution A to ask for its comments, in particular on the time required for settlement applied by this institution (for a security admitted to trading on a regulated market) and to request any information it provides to its clients on this subject.



In response to my request, institution A informed me that securities settlement is carried out by its account-keeper on D+1. In this particular case, therefore, settlement took place on 2 January 2020. Institution A therefore considered that it had complied with the regulations and that it was therefore not possible to recognise Mr V.'s capital loss in 2019.

Institution A added that it had sent an email to its clients informing them of the cut-off dates for sales of securities with an impact on the 2019 tax year. It specified that this email, a copy of which was sent to me, advised clients to consult the Frequently Asked Questions, which clearly stated that, for "cash sales of securities admitted to Euronext markets", clients had "until close of trading on Friday, 27 December 2019".

Based on the information provided by institution A, it was clear to me that the book entry registration of Mr V.'s order, executed on Tuesday, 31 December 2019 (D) and completed on 2 January 2020 (i.e. on D+1, excluding Wednesday, 1 January 2020, which was not a trading day), did take place within the prescribed maximum period of two days after trading, in accordance with the provisions of Article L. 211-17 of the Monetary and Financial Code.



Furthermore, it is worth repeating that Article 570-3 of the AMF General Regulation states that: "The trade shall be recorded in the accounts of the buyer and the seller as soon as the custody account-keeper is informed that the order has been executed. This accounting record shall be regarded as book entry registration and imply transfer of ownership as of the effective trade settlement date determined in accordance with Article 5 of Regulation (EU) no. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories URL = [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0909&from=EN]". [1] It also states that, in accordance with tax regulations, the transfer of ownership is the event giving rise to taxation.

With regard to the transaction's accounting record, I therefore explained to Mr V. that the transaction amount had in fact been recorded on 31 December, i.e. as soon as the accountant was aware of it, in accordance with Article 570-3. However, and the wording of the aforementioned article is unambiguous on this point, I made it clear to Mr V. that "this accounting record shall be regarded as book entry registration and imply transfer of ownership as of the effective trade settlement date", i.e. no later than D+2 (in this case, D+1, on 2 January 2020).

Lastly, I noted that institution A had also taken care to inform its clients of the deadline by which they had to place their orders to ensure that they were booked in 2019. This communication, which I have reproduced below, is clear and understandable to me:

What are the cut-off dates for the sale of securities with an impact on the 2019 tax year?

For cash sales of securities admitted to Euronext markets, you have until close of trading on **Friday, 27 December 2019**.

Recommendation

In the light of these elements, I informed Mr V. that I had not found any evidence to allow me to qualify as abnormal the recognition and book entry registration of the transaction in respect of which, moreover, he had been informed in advance of the potential tax consequences of placing an order at the end of the year. In this case, I took the view that no regulatory breach had been committed by institution A and that I could not therefore find in favour of Mr V.

Lessons to be learned

First of all, I must point out that I have no jurisdiction in taxation matters and am therefore not permitted to intervene when the objection is tax-related. I can, however, take up the case if the substance of the dispute (in this case the date on which a stock exchange transaction was recorded) is not tax-related but rather has tax consequences, which was the case here.

Furthermore, as I highlighted in a [previous Case of the Month](https://www.amf-france.org/fr/le-mediateur-de-lamf/journal-de-bord-du-mediateur/dossiers-du-mois/execution-dordres-de-bourse-en-fin-dannee-attention-aux-consequences-fiscales) URL = [https://www.amf-france.org/fr/le-mediateur-de-lamf/journal-de-bord-du-mediateur/dossiers-du-mois/execution-dordres-de-bourse-en-fin-dannee-attention-aux-consequences-fiscales], retail investors should not wait until the last moment to place their stock market orders if



they want them to be posted in 2020 for tax purposes and should bear in mind the days when the stock market is closed over the year-end period.

For the end of 2020, the market operator has already provided [the following information](#)

URL = [<https://www.euronext.com/en/trade/trading-hours-holidays>]:

On Thursday, 24 December 2020 and Thursday, 31 December 2020, trading will take place for half a day only with the following closing times: on the Euronext Amsterdam, Brussels, Lisbon and Paris cash markets, all instruments will close at 14:05 CET (Warrants and Certificates will close at 13:55 CET).

Remember too that 25 December and 1 January are traditionally days on which the stock market is closed.

Lastly, it is good practice for retail investors to keep an eye on the information published by their account-keeper on this subject and, if they have any doubts, particularly relating to the time required for settlement of their orders, they should keep their account-keeper informed about any anticipated transactions.

[1] “As regards transactions in transferable securities referred to in paragraph 1 which are executed on trading venues, the intended settlement date shall be no later than on the second business day after the trading takes place.”

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