

## **Monthly case for thought – July 2018**

**Please note, early employee savings plan release to purchase or extend a main home owned via an SCI is not permitted**

Early release from an employee savings plan to purchase or extend a main home is subject to very strict rules. The beneficiary must be the employee him/herself, as a physical person. These assets may not be released to finance the purchase or extension of residential property held via an SCI (non-trading real estate investment partnership). The following mediation case in which the saver did not realise until too late that the expected release would not be permitted is a case in point.

### Facts

In August 2017, several months after work had started to extend her main home, Ms J, the holder of an employee savings plan, asked her account holder for details of how to obtain early release. She was informed that her request would probably be approved if she provided the necessary information.

In October 2017 she sent her early release request. This was however rejected by the account holder on the ground that the extension was being made on behalf of an SCI.

After complaining in vain to the firm, she sent me a mediation request stating that the family SCI had been formed solely in order to purchase her main home, that she was the only person financing the extension and that the invoices for the work were made out in her name.

### Investigation

I examined the case in the light of employee savings plan regulations and of the documents provided by Ms J and her account holder, who I interviewed.

The account holder pointed out that the Guide to Employee Savings Plans<sup>1</sup> states that early release is not permitted to allow an SCI owned by the holder of an employee savings plan to purchase, build or extend residential property, irrespective of whether that property is the holder's main home.

The account holder confirmed that on 27 August 2017 Ms J contacted its dedicated call centre for plan holders, which provides information on how to manage employee savings plans. On that occasion she told them that she wished to request the release of funds in order to extend her main home but did not say that her main home was legally owned via an SCI. The telephone operator therefore told her what documents she needed to send in.

The account holder told me that in October 2017 Ms J sent in her request together with the following documents:

- an invoice for structural work dated 2 August 2017 and made out in her name;
- a declaration in her name;
- a building licence dated 18 April 2017 made out in the name of the SCI represented by Ms J.

In the light of the last document, the request for early release was rejected by the account holder.

The firm believes it provided her with clear and non-misleading information on the type of proofs that had to be sent together with the request.

---

<sup>1</sup> Issued by the Ministry of Work, Employment and Social Dialogue, the Ministry of Social Affairs, the Ministry of Finance and Public Accounts, the Ministry of the Economy, Economic Regeneration and the Digital Economy, updated in July 2014; [http://travail-emploi.gouv.fr/IMG/pdf/Guide\\_ES-juin2014\\_MAJ-10-JUILLET2014.pdf](http://travail-emploi.gouv.fr/IMG/pdf/Guide_ES-juin2014_MAJ-10-JUILLET2014.pdf)

## Recommendation

I initially believed that the information given to the saver was not incorrect. She had not stated that her home was in fact owned through an SCI and as a result the telephone operator had given her the standard list of documents needed to make a request.

Later however I decided that the 27 August 2017 call had not formed the basis for Ms J's decision to begin extension work since the invoice for structural work and the request for a building licence gave dates that were long before the telephone conversation took place.

I therefore decided that the account holder had been justified in rejecting the request.

## Lessons

- I must firstly draw the attention of all employees with savings plans to the fact that while ownership of property via an SCI does indeed offer some significant financial, legal and fiscal advantages, it also presents some drawbacks. More specifically, some of the benefits offered by an employee savings plan are restricted to physical persons.  
Early release is not permitted to purchase or extend an SCI because the owner of the residential property is not the saver but the SCI. While the property in question may well be the saver's main home, he/she is in fact the owner only of shares in the SCI. Although Ms J wished to fund the extension work from her personal savings, in law the extension was for the benefit of an SCI of which she is just one of the shareholders.
- I must secondly invite firms to educate their employees and must encourage telephone operators to ask employees who have a savings plan more questions to prevent unpleasant surprises, and to inform them that early release in favour of an SCI is not possible - because this is not an unusual form of main home ownership.