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Employee savings schemes: construction of a building that is not attached to the main residence does not entitle beneficiaries to early release

There are several situations in which employee savings can be released, one of which is an extension of the main residence. However, a “garden studio” type of construction sold as a turnkey project is not eligible for early release on the grounds of extension when it is not attached to the main residence. However, I have observed that investors are often unaware of this particular point, which I think is necessary to highlight in order to avoid any future frustrations.

The facts

Mr L. reported that he had submitted a request to his employee savings account keeper for the early release of part of his employee savings plan to finance what he considered to be an extension to his main residence.

However, this release was refused on the grounds that the planned construction was not contiguous to his house. The project involved the installation of a prefabricated studio with a bedroom and bathroom on his property, but located 10 metres from the house.

Mr L. said that he had repeatedly asked the account holder for the legal basis for his refusal, but had not been given the answer. He argued that he had not found the concept of

contiguity to be a condition for the release of funds, but only that of the creation of new living space,^[1] which was the situation in this case.

Mr L. therefore asked me to intervene, in order to obtain the right to early release of his employee savings plan. He emphasised that without access to the sums invested, his extension project could be compromised for lack of funds.

The investigation

The account keeper involved in this case confirmed his refusal, although while stressing that he himself was questioning the validity of his position, as he was receiving an increasing number of requests for this type of release.

After a careful analysis of the issue, I observed that contiguity did not appear to be a condition for early release, especially since the Guide to Employee Savings, an interministerial circular, does not impose this requirement in the case of an extension resulting from renovations, whereas it is expressly provided for in the case of acquisition for extension.^[2]

I therefore contacted the General Directorate for Labour, as I do when the application of certain provisions relating to early release requires an opinion from it as the competent authority in the matter, and asked it to let me know its position on the release of employee savings assets when the extension is the result of work on a construction not adjoining the main residence.

In its written reply, the General Directorate for Labour told me that such circumstances do not entitle the holder to a release of the assets and that employee savings account keepers cannot therefore release the assets when the planned construction is not contiguous to the main residence.

This is because this condition applies to cases of extension by acquisition and the Directorate General of Labour is of the opinion that the case of extension by construction should be aligned with that of extension by acquisition by applying a condition of contiguity, in order not to create a distortion between the two situations. As it stands, this interpretation of the law may be seen as regrettable, and a reflection on changes to the law would be welcome.

Recommendation

In light of the position of the Directorate General of Labour, I told Mr L. that while I clearly understood his disappointment, I had no way of asking his account holder to have his assets released.

Lesson to be learned

Garden buildings are increasingly appealing to households who want to create additional living space for different reasons: to accommodate an ageing parent (adapted studios can be offered), house an adult child who is still in school or set up an office, which has become essential with the development of teleworking.


However, as this case shows, investors should be aware that they will not be able to benefit from the early release option to finance their project if the planned extension is not contiguous to the main residence, even though it will create new living space.

To raise the awareness of investors to this issue and to avoid any future frustration, employee savings account keepers must draw attention to this point on their website and/or dedicated information sheets. Currently, they only too rarely state that to qualify for early release, the construction must be adjoining to the main residence. It would be useful to add this case, which is far from being merely theoretical, to the list of excluded events - i.e. events that do not allow for the early release of savings - that generally appears on this type of sheet.

[1] In order for the application for release to be admissible, the extension of the main residence must effectively result in the creation of new living space within the meaning of Article R.111-2 of the Construction and Housing Code.

[2] Guide to employee investment plans: "As regards more specifically the case of extension, Paragraph 8 of Article R. 3324-22 of the Labour Code provides for the possibility of early release for extension operations that require a building permit or, to take account of measures to simplify town planning procedures, those subject to a prior declaration of works, provided that they result in the creation of a new living area within the meaning of Article R.111-2, paragraphs 2 and 3, of the Construction and Housing Code (which excludes in particular comfort rooms, garages, basements, cellars, terraces, outbuildings such as swimming pools, etc.). In the case of acquisition for extension, this acquisition must be adjacent to the main residence."

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