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Acquisition of unlisted securities in an equity savings plan (PEA): note that there is no deferred payment option

While unlisted securities can be acquired within a PEA, specific rules must be complied with. This month's dossier sets out the reasons why the law does not provide for a deferred payment option. There is only one exception to the immediate payment rule: when securities are sold.

Facts

Mr X, who holds a PEA account with Bank Y, informed me that he had given instructions for the acquisition of securities in two unlisted companies by sending a complete request to his bank. The first purchase was for a total of €20,284.27, with an immediate payment of €14,999.27 and a deferred payment of €5,285. The second was for €4,715, with deferred payment.

However, the bank refused his request on the grounds that deferred payment is not possible when acquiring unlisted securities in a PEA account.

Following several refusals from the bank, Mr X was forced to purchase the said securities outside his PEA, at a higher tax cost than he had anticipated for the initially planned transaction.



Against this backdrop, the retail investor sought my assistance to find out why his bank had refused his transaction and to have the situation rectified.

Investigation

I contacted Bank Y for comment.

First of all, it confirmed that the transfer agreement sent by Mr X for the acquisition of the unlisted securities stipulated that ownership of the securities was transferred immediately for the entire acquisition, but that part of the payment would be deferred.

However, due to this deferred payment, the bank indicated that it had refused Mr X's request on the grounds that securities must be paid for in full on the acquisition date.

In addition, after checking with its custodian account keeper, Bank Y confirmed that unlisted securities must be settled in full and in cash in order to be eligible for subscription within a PEA.

Recommendation

On reading the transfer agreement, I noted that the acquisition involved all the shares being sold, with immediate transfer of ownership of the securities, which would be released on the date the agreement was signed.

I also noted that it was agreed in the transfer deed that part of the unlisted securities would be subject to deferred payment.

However, after examining this dossier, I noted that the regulations governing the eligibility, registration, transfer and management of unlisted securities in a PEA impose strict rules.

The PEA is structured such that the securities account is backed by a cash account. Any debit movement on one of these accounts is offset by an equivalent credit movement on the other, thus ensuring consistency between the two.

According to the BOFIP^[1], a PEA management body must simultaneously debit the account for the sum of the subscriptions or acquisitions of securities entered in the associated securities account.

The regulations provide for **one sole exception to immediate payment**. When the sale price of securities held in a PEA is deferred or paid in instalments, this transaction is deemed to be a disinvestment, which in principle leads to the closure of the plan.

However, in this case, to avoid closing the plan, the PEA holder may make a cash payment within two months of the disposal, credited to the PEA cash account and equivalent to the deferred portion of the sale price.

Consequently, under no circumstances do the regulations authorise deferred payment when acquiring unlisted securities under a PEA.

Making a subscription with a deferred payment would constitute a breach of the PEA's operating rules, resulting in a debit position prohibited by law and obliging the account keeper to close the account in the event of insufficient funds to cover the acquisition.

This rule aims to maintain the integrity of the PEA by avoiding any form of debit position, which is expressly prohibited.

Furthermore, in the recommendation sent to Mr X, I pointed out that such an acquisition could be likened to an unauthorised short purchase under the PEA, where the transfer of ownership of the securities would take place on a date specified in the agreement, while payment would take place at a later date.

However, all short purchases are prohibited by the regulations^[2] in order to preserve the financial coherence of the PEA account. I have also noted that Bank Y's general terms and conditions explicitly recall this prohibition.

Consequently, I considered that in refusing to register the unlisted securities in Mr X's PEA, on account that some of them were subject to deferred payment under the transfer agreement, his bank had acted in accordance with the legal and contractual requirements.

I therefore informed Mr X that, in view of these factors, I could not satisfy his request.

Lesson to be learned

A PEA is designed to be in credit at all times. Retail investors should be aware that securities can only be purchased if sufficient funds are available immediately, meaning that any deferral of payment is prohibited.

Although the rules governing the eligibility, registration and management of unlisted securities in a PEA are strict, requiring that the securities be paid for in full and in cash at the time of acquisition, there is one exception to this rule that allows for deferred payment.


This exception only applies to the disposal of securities already acquired and registered in the PEA, provided that a compensatory payment is made. I have already had occasion to point this out (July 2019 dossier: A specific point worth knowing when selling unlisted securities in an equity savings plan: what to do in case of a deferred payment?)

In this case, although the transfer agreement provided for an immediate transfer of the securities, the partial deferred payment for some of the securities led the bank to refuse to register them in the retail investor's PEA.

[1] Bulletin Officiel des Finances Publiques: BOI-RPPM-RCM-40-50-20-20 paragraph 20 [Official Journal of Public Finances].

[2] BOI-RPPM-RCM-40-50-30

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