

## The complaint

Mr G complains about the amount of tax he's paid on dividends received from shares he holds in his account with HSBC UK Bank Plc.

## What happened

In 2019 Mr G purchased shares in Diversified Energy Company PLC ("DEC") via his account with HSBC. DEC is a company based in the US which is listed on the London Stock Exchange. Mr G later bought shares in DEC via another platform, and in October 2021 realised that when he received dividends, HSBC deducted a higher rate of tax from the dividend payment (30%), than the other platform did (15%). After raising this with HSBC, in December 2021 it was explained that in order to reduce the tax paid on the dividends, Mr G would need to complete a W-8Ben form and Forms A and B.

Mr G provided various versions of these forms between February and June 2022 and by 30 June 2022 HSBC were able to set his account to show his W-8Ben was registered. Mr G received three dividends from DEC following that – in July, September December. For the July dividend, tax initially wasn't deducted at all, but in September HSBC wrote to Mr G to explain they should have deducted 30% and rectified it. The September dividend had 30% deducted and in December 2022 HSBC rectified it, as Mr G should only have paid 15% tax on it. The December dividend was paid correctly with 15% deducted, and the subsequent dividends have also been paid correctly.

Mr G raised several complaints over 2021 and 2022 about the problems he experienced and about the tax deductions. He also felt HSBC ought to have asked him to complete the W-8Ben when he initially bought the shares. HSBC upheld various parts of his complaint and paid compensation as follows:

- 18 November 2021 - £50 for a short delay in paying a dividend on 8 October 2021.
- 10 December 2021 – £50 for not addressing all Mr G's points in the November reply.
- 16 June 2022 - £50 for sending letters to Mr G's London address, despite knowing he wouldn't be there to receive them.
- 24 August 2022 - £300 for not explaining how the withholding tax on Mr G's DEC holding worked sooner.

However, HSBC also told Mr G in August and November that the DEC holding would always be taxed at 30% despite the W-8Ben form. Mr G remained unhappy and brought his complaint to our service, where it was looked into by an investigator. The investigator found that the tax on the dividends he'd received from September 2022 onwards ought to have been 15% not 30%, but that the earlier one were correctly paid with 30% deducted. She also found that for the problems Mr G had encountered HSBC ought to pay a further £200 compensation. HSBC agree to this, but Mr G remained unhappy. In summary he said:

- HSBC ought to have told him about the benefit of the W-8Ben form earlier, as they now prevent the purchase of US listed shares without a W-8Ben on file.
- He was told to upgrade his trading account to benefit from the W-8Ben, which was costing a monthly fee plus trading fees.

- He had sent the forms in February 2022 and HSBC ought to have accepted them.
- He shouldn't have needed to resubmit the forms in June 2022.
- He was seeking a further amount of £540 to make up for the additional tax he's paid on the dividends received since owning the shares.

The investigator wasn't persuaded to change her mind and so the complaint has been passed to me for a decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so I've reached the same conclusion as the investigator for mostly the same reasons. I'll focus on what I consider to be the main points, rather than commenting on every element of the complaint in detail. I can see Mr G feels strongly about the complaint – and I hope he won't take it as a discourtesy that I don't comment on everything in as much detail as he has, but I can assure him I've read all his comments.

Due to the nature of the platform account, I consider it to be Mr G's responsibility to ensure he understands the products he buys on the platform. This includes understanding the tax implications of any shares he buys. This obligation is set out in the terms and conditions but is also something that I consider to be a reasonable obligation, because Mr G wasn't seeking advice from HSBC. As they were providing what's known as an 'execution only service', the obligations on HSBC are limited. Primarily, they must ensure the information they provide about the account is clear, fair and not misleading.

Although DEC is a US company, their shares are listed on the London Stock Exchange. So, the various forms weren't an absolute requirement prior to purchasing the shares – as they would have been if the shares had been listed on a US exchange. As the forms weren't a pre-requisite of purchase, I'm satisfied HSBC didn't need to proactively make Mr G aware of the tax situation when he bought the shares – including asking him to fill in a W-8Ben form at that time. It was Mr G's responsibility to understand that the company he was investing in was based in the US, and to look into what that might mean for the investment. So, until 2022, I think the tax applied to the dividends Mr G has received from DEC was correct.

Turning to the events of 2022 - there were clearly some initial problems with the forms Mr G submitted to HSBC in February 2022. I'm persuaded that HSBC's reasons for rejecting those forms were fair and reasonable – the quality of the pictures wasn't clear enough. So, I'm satisfied that HSBC deducted the correct amount of tax for the April 2022 dividend, as they didn't have sufficiently complete forms on file at that time.

There were then several problems with HSBC's communication, including letters being sent to the wrong address by HSBC, and asking Mr G to fill in the wrong form. Mr G then had trouble receiving calls and emails from HSBC. I do think it's likely that, but for the problems caused by HSBC during this time, it's possible Mr G would have only paid 15% tax on the dividend he received in July 2022. I understand the difference in tax amounts to less than £50. I know there's been several points put forward by both HSBC and Mr G about whether he received the key communication from HSBC in June 2022. I don't consider that I need to make a finding on this point, and I'll explain why.

I've thought about the £50 loss in light of the amount of compensation offered by HSBC. Prior to our involvement, they'd paid Mr G a total of £450 between December 2021 and August 2022, and following the investigator's opinion, agreed to pay a further £200. I consider this to be a sufficient amount to compensate for the distress and inconvenience

caused *and* the loss Mr G has experienced by being charged 30% on the dividend he received in July 2022. As a result, I'm satisfied I don't need to make a firm finding on whose fault it was that the W-8Ben wasn't registered prior to Mr G receiving the July dividend and I won't be awarding further compensation here.

For clarity, I do think there have been several failings in the service provided by HSBC, which were not compensated for prior to our service's involvement. Most prominently that HSBC told Mr G several times that the DEC shares would attract a 30% reduction regardless of the W-8Ben. HSBC has explained to our service that this meant they receive the dividends with 30% deducted and having a W-8Ben on file means that HSBC would then manually adjust this to 15% before passing the dividend on to the investor. However, the second half of that explanation wasn't given to Mr G and so they've caused him unnecessary confusion.

In addition, the errors with the July and September dividends were caused by errors in the manual adjustments carried out by HSBC. That, combined with the time it took for HSBC to rectify the errors with the dividends, are the main reasons I agree with the amount of compensation offered.

I note Mr G has also raised concerns about the fees he's paid for the upgraded platform account, which HSBC incorrectly told him was required in order to benefit from the W-8Ben. Looking at the difference in fees between that and the account he held previously, the account fees are not more expensive than the account he held prior to the upgrade. So, I don't think he's been caused any financial loss by being told to upgrade.

In summary, I'm satisfied HSBC has caused problems here, and I agree with the amount recommended by the investigator of £200 to put this right. However, I don't think it would be fair and reasonable to award compensation for financial loss for any of the dividends Mr G received prior to July 2022, for the reasons set out above.

### **My final decision**

HSBC UK Bank Plc has already made an offer to pay a further £200 to settle the complaint and I think this offer is fair in all the circumstances. So, my decision is that HSBC UK Bank Plc should pay £200.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 November 2023.

Katie Haywood

**Ombudsman**