DRN-5026016

The complaint

Mr W complains that Computershare Investor Services Plc ('*Computershare*') unreasonably deducted $2,445.05 tax from his share sale on 25 January 2024, when it hadn't deducted it from a sale of the same shares the previous week.

What happened

Mr W first undertook an online trade on 19 January 2024, placing an order to sell 70 shares for a business I'll call 'I', using Computershare's employee share dealing platform, EquatePlus. A contract note was uploaded to EquatePlus the following day.

Computershare requires UK taxpayers to complete a W-8BEN form (a Certificate of Foreign Status of Beneficial Owner for US Tax Withholding and Reporting), otherwise share sales will be subject to additional taxation as a US taxpayer. When Mr W undertook his first share sale, he held a valid W-8BEN. Computershare also has a duty to comply with the Foreign Account Tax Compliance Act ('*FATCA*') and the Common Reporting Standard ('*CRS*') – these make up part of the framework for sharing tax information between different jurisdictions and applies to trading US shares.

On 24 January 2024, Mr W added a nominated bank account to his share dealing account (from a UK GBP to a US Dollar account). Consequentially, this invalidated his W-8BEN form.

On 25 January 2024 at 1.23am, Computershare sent Mr W an email asking him to log into EquatePlus and take further action in relation to his share dealing account. Mr W says this email was received at 12.32am on 26 February 2024. The email was headed "*CRS & FATCA Self-certification grace period*". Computershare says this was an automated response to the bank account change, and along with updated certification, a new W-8BEN would be required.

On 25 January 2024 at 4.33pm, Mr W placed another trade for the sale of 52 I shares.

On 27 January 2024 at 1:27am, Mr W received a further email headed "*immediate action is required: incomplete W-8BEN self-certification*". That email again asked Mr W to log into EquatePlus and take further action in relation to certifying his share dealing account.

On 29 January 2024, sale proceeds of $10,187.10 were paid to Mr W less Backup Withholding ('*BWH*') tax of $2,445.05. Mr W then contacted Computershare to query the deduction. He was given contact details for its specialist tax reporting team.

On 30 January 2024, Mr W contacted Computershare's tax reporting team. He explained that he had been told by Computershare that BWT was only applicable to US taxpayers, so the $2,445.05 had been deducted in error and it needed to be refunded to him.

After waiting for a reply from the relevant team and then being told conflicting information about how to obtain a refund, Mr W complained to Computershare on 9 February 2024.

On 6 March 2024, Computershare rejected Mr W's complaint. It said that because Mr W had

not filled out a new W-8BEN to certify his tax status at the time of the trade, he was charged BWH tax. A W-8BEN form was used to report any non-US persons that holds US stock or shares. Any shareholder, that has US stock but are not considered a US person will need to complete a W-8BEN form. If this form is not present at the time of a trade, the shareholder will be subject to additional US tax charges. Mr W had to reclaim the tax from the Internal Revenue Service ('*IRS*').

Up to late April 2024, Mr W exchanged a series of emails with Computershare, explaining how he remained unhappy with the tax deduction – which he felt ought to be returned to him by Computershare, because it had made the mistake in passing the tax liability to him. Mr W also contended that the record of emails Computershare had provided him merely reaffirmed the title of the emails he had already evidenced.

However, Computershare was not prepared to change its view on the complaint. It said its stance was that Mr W would have to reclaim any tax that he had overpaid from the IRS.

Mr W thereafter brought his complaint to this service. He said Computershare had not provided any evidence to show that an email of 25 January 2024 had been sent to him regarding the W-8BEN. Therefore, he took the view that at the time of the second share sale, his documentation was correct, meaning Computershare had wrongly deducted BWH tax from his share sale net proceeds.

One of our investigators then reviewed the complaint, but he did not think it should succeed. He said he believed that the change in bank account caused Computershare to apply BWH tax to the trade, as it did not have current W-8BEN certification. Computershare was entitled to make this deduction, and Mr W's recourse was to reclaim it from the IRS.

Mr W said he did not accept the investigator's view. He revisited the complaint chronology and said he felt the key question had not been addressed. In his view, this was: when did Computershare send him a W-8BEN email to inform him that it had expired his existing W-8BEN tax form? He said he only received the W-8BEN email of 27 January 2024. The 25 January 2024 email was about CRS and FATCA (a framework required by the Organisation for Economic Co-operation and Development ('*OECD*')), which differed from W-8BEN.

Mr W also contended that it as only upon receipt of the second email that he logged into his EquatePlus account. Therefore, he provided the requested W-8BEN evidence on 27 January 2024 at 8:36am. He also said that at the time of the share sale, Computershare had not made him aware of any certification issues and there were no outstanding tasks on his EquatePlus account.

Our investigator reviewed the further submissions, but his view remained the same. He said that the email Computershare sent on 25 January 2024 had a title regarding CRS and FATCA self-certification, but the body of the email asked Mr W to update his details on EquatePlus – and this included the W-8BEN. That was since Computershare operated an automated system.

Mr W still disagreed. He resubmitted his same key points but also noted that the W-8BEN expiry email was received two days after his share sale was placed – so he could not have known to resubmit it before that time. He asked for the complaint to be escalated, and that all of his key evidence should be reviewed by the deciding ombudsman.

Computershare did not make any further submissions. The complaint has now been passed to me for review.

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.

I thank the parties for their considerable patience whilst this matter has been awaiting referral for review by an ombudsman, given the current demand for our service.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make independent findings on what I believe to be fair and reasonable to both parties in the circumstances; this does not follow a prescribed format or require chronological assessment of the complaint history. I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

In reaching my decision, I will take into account relevant law and regulations, regulator's rules, guidance, standards and codes of practice, along with what I consider good industry practice at the relevant time. And where the evidence is incomplete, inconclusive, or contradictory, I'll make conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence before me and the wider surrounding circumstances.

I do recognise Mr W's depth of feeling about this matter, and I understand that this situation has been frustrating for him. However, having reviewed matters carefully, I've reached the same overall outcome as the investigator.

I note that Mr W originally sought to dispute that the BHW tax applied in any circumstances, irrespective of his tax certification status – as he could not ascertain from his own research that it applied to the sale of shares. However, Computershare's tax reporting team confirmed the correct position as follows:

> "*The W-8BEN is a US tax form and the FATCA/CRS form is linked to OECD requirements, therefore they have different rules as they relate to different tax legislations. The W-8BEN can be used for US-sourced dividend income but is also a way of declaring the participants non-US status. Where a participant has US indicia on file (in this case, a US bank account) under IRS rules, we are required to deduct US tax from either the dividend or sale, where the participant does not have a valid US tax form in place (W-9 or W-8BEN). Because [Business I] pay[s] US sourced dividends, the participant would be subject to 30% non-resident alien tax (NRA) on their dividends and 24% US Backup Withholding tax on any sales without a valid US Tax form in place. Under IRS guidance we expire the W-8BEN when a change in circumstance takes place as we are required to immediately start deducting US tax where US indicia has been located on file. The participant would have been sent an email as soon as the system expired the W-8BEN*."

Accordingly, this meant that once Mr W changed his banking details on his EquatePlus account to a US-based bank account (for understandable reasons that he has explained), he would be treated as a US participant – irrespective of his residential status in the UK. And until that position had been restored, the possibility of BWH tax would apply to the sale of US shareholdings.

What Mr W says is that he did not receive appropriate notice of the W-8BEN being invalid, and this meant he placed his second sale on 25 February 2024 without any acquired knowledge that his change of bank account would have affected his taxation position, since the W-8BEN email wasn't received by him until 27 January 2024.

I accept Mr W has shown us a print screen of which sets out that the first email with the CRS and FATCA subject heading was received by him on 26 January 2024. However, I have also seen evidence of dispatch from Computershare dated 25 January 2024 at 1.23am. The reason for this timing was because an automated mail was dispatched by Computershare's system, once it became clear that the W-8BEN was no longer valid.

I can also see that the second email with the W-8BEN as the subject heading was noted on Mr W's print screen copy as received on 27 January 2024. Accordingly, Mr W sent an email response to Computershare later that morning confirming he was a UK citizen.

However, I am also mindful that each of these emails asks Mr W to log in to EquatePlus, and complete outstanding tasks to verify his tax status, with appropriate information being provided. Notably, the second email said, "*if you have already resolved these inconsistencies please ignore this email.*"

I do not place the same weight that Mr W does on the emails themselves. Though from Mr W's end it seems they were unusually received notably later than they were sent – which is not an expected standard with electronic communications – it remains the case that the requirement within each was to log into the EquatePlus account, and that is something Mr W had to do in any event, in order to place the trade for the second sale.

And I believe that, on balance, by the time Mr W logged into his EquatePlus later in the afternoon of 25 January 2024 in order to sell additional I shares, the outstanding tasks relating to recertification of his residential/tax status would have been open for his review. I am persuaded by that because though Mr W has said he provided his W-8BEN form *after* receiving the reminder email of 27 January 2024 – the evidence shows he completed it one day before; the form is signed and dated as 8.29am on 26 January 2024. What Mr W did is follow up with an email on 27 January 2024 which addressed Computershare's assertion that the form contained inconsistencies.

Given the date on the W-8BEN form itself, I consider Mr W must likely have known of the requirement to restore a valid W-8BEN status before he received the email, since he signed a form that predates the email by one day.

Furthermore, Computershare has explained how its system is set up in such a way that When Mr W completed the sale on 25 January 2024, he would have also been shown the deductions that were applicable on the transaction – which included the withholding tax, as that is a requirement of the online share dealing service. I am satisfied that this was the most likely version of events, as any order (with values and deductions) is shown on the online trading system before being confirmed by the shareholder.

On balance, I have not seen clear, objective evidence that Computershare acted unfairly in applying a required BWH tax deduction to the sale of the I shares, where the status of the W-8BEN had been invalidated and had yet to be reconfirmed. This was not due to any fault of Computershare. The status was lost because of Mr W's change to a US-based bank account. Whilst it is unfortunate that Mr W decided to place a trade the next working day before the taxation status was resolved, I cannot conclude that Computershare acted unfairly in relation to that trade by making appropriate deductions based on the information available at the time of the sale and prevailing IRS rules (that Mr W had US indicia on file).

It follows that I do not believe Computershare needs to do anything further to resolve this complaint. If he hasn't done so already, Mr W should liaise with the IRS in respect of recouping the overpaid BWH tax.

My final decision

Despite my sympathy for Mr W's circumstances, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 24 March 2025.

Jo Storey
Ombudsman