

The complaint

A company, which I'll refer to as D, complains that American Express Payment Services Limited unfairly withheld company funds for USA federal tax.

What happened

D has a merchant account with American Express to accept card payments for its business.

D became aware that in 2023 and 2024, American Express had withheld part of the company's takings for tax reasons.

American Express explained that customers with any US address held in their records must complete a tax form so as not to be taxed by the IRS via American Express. A beneficial owner of D had a US address on record. As D didn't complete the required form, the tax was taken. D complained that it didn't know that this would happen. American Express said that it tried to contact D three times by phone in 2023 but couldn't get through. It said that these calls, had they been successful, would have explained the tax implications and the process to stop the payments being taken.

D received a refund of the 2024 funds direct, but it had to claim the 2023 funds back from the IRS.

D incurred legal costs in getting its funds back from the IRS, plus costs for depositing the cheque issued in dollars. D said it also suffered a shortfall in the repayment because of changes in the exchange rate. D calculated this loss to be over £2,960.

After the complaint was referred to us, American Express offered £1,450 as a gesture of goodwill to cover D's accountancy fees.

Our investigator recommended that, in addition to the compensation already offered, American Express should pay D the difference between the amount taken by the IRS and the amount D received back, plus the fee for depositing the cheque. He gave these reasons, in summary:

- Although American Express tried to make contact, the investigator didn't think three attempted calls was sufficient, given the potential financial impact of not understanding the implications for US tax.
- It's clear that D would have taken action to mitigate the risk had it been fully informed by email or post.
- D also asked for interest for a UK tax repayment plan to be paid. But the investigator thought this was part of running the business, so he didn't recommend that American Express should pay it.

American Express didn't agree with the investigator's conclusions. It said that it appreciated

that D may have experienced inconvenience and additional expenses, but American Express can't be held responsible for the running of a merchants' business. It also said that D's calculation of the shortfall did not seem accurate, "as the pound is stronger than the dollar." American Express restated its offer of £1,450.

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 that, I've reached the same conclusions as the investigator, and for largely the same reasons.

I accept that American Express has obligations under US tax regulations. It's common ground that given the US address of a company shareholder, the tax would be withheld from transactions if D didn't fill in the appropriate form. But I agree with the investigator that American Express didn't do enough to alert D to the need to complete the form. D had no reason to know that US tax would otherwise be withheld, and this was a significant risk to its cashflow. American Express clearly thought at the time that it was important that D should be told about the matter – it tried calling three times on separate days in order to inform the company. But after failing to get through, it just gave up. In the circumstances, I don't think that was fair or reasonable.

When D found out about the funds withheld, it took action to correct its position and to recover the tax taken. I'm therefore satisfied that, had American Express at the outset communicated with D by email or post after failing to get through by phone, then D would have completed the required form in time to prevent the tax from being withheld. So I think American Express should compensate D for the losses which flowed from the failure to alert the company to the US tax risk.

I therefore agree that American Express should pay D for the fee for depositing the cheque, and for the difference between the amount taken by the IRS and the amount D received back.

American Express argues that D's loss calculation is incorrect because the pound is stronger than the dollar. I don't accept this reasoning. In my view, what would drive the amount lost by D would be the difference between the exchange rate used at the time the tax was withheld and the exchange rate used at the time the refund cheque was deposited in 2025.

Looking at the general movements in dollar to pound rates between 2023 and 2025, I think it's more than plausible that the dollar was worth more on average when the tax was taken than when the cheque was deposited, leaving D with a loss. The effect of any spread would add to this loss.

In any event, the loss doesn't need to be calculated from scratch, because the outcome is shown by what D actually paid and got back. The total originally withheld, in pounds, and the corresponding amount received into D's bank account as a refund, in pounds, are both easily determined. If the sum withheld is larger than the sum refunded, then the difference is D's loss, and is the amount that should be paid to D for its currency conversion loss. .

My final decision

My final decision is that I require American Express Payment Services Limited to pay the following to D:

(1) The difference between the amount, in pounds, withheld for tax in 2023, and the corresponding sum received into D's bank account as a refund, in pounds (if the sum withheld was larger than the sum refunded).

(2) £60.50 to cover the fee for depositing the refund cheque.

Interest should also be paid on (1) and (2) at 8% simple per annum from the date the refund cheque was deposited up to the date of settlement of this complaint.

American Express Payment Services Limited should also pay D the £1,450 it has already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 8 October 2025.

Colin Brown
Ombudsman