DRN-4170069

The complaint

Mr W and Mrs W, as trustees of the TMW Settlement [‘the trustees’} complain that EFG Private Bank Limited trading as EFG Harris Allday {‘EFG’} provided incorrect information about how the distribution for a holding in an investment portfolio should be treated.

What happened

In late 2021, EFG received a notification of a distribution for an investment in a company I will call ‘A’ and recorded the distribution as a return of capital in the tax report it issued for that year. After the trustees accountant queried this, the nominee for company A later suggested it had received guidance that the distribution should be treated as income and not a capital withdrawal.

The trustees complained that EFG was responsible for the incorrect reporting and that EFG should pay the additional accountant costs the trustees had incurred in clarifying the how the distribution should be reported. EFG didn’t uphold the complaint and said it had relied on how the distribution had been reported and that it wasn’t authorised to provided tax advice.

The trustees brought the complaint to the Financial Ombudsman Service. One of our Investigators looked into things and didn’t consider it unreasonable that EFG reported the distributions in the way it did, and that EFG doesn’t need to reimburse the additional accountancy fees incurred by the trust. The trustees asked that an Ombudsman decides the complaint.

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.

The crux of this complaint is that the trustees believe EFG incorrectly reported the tax position of the distribution and is responsible for understanding the nature of the investments it holds for the trust. I understand the trustees will be disappointed with my final decision, but for very much the same reasons as the Investigator I’ve decided not to uphold this complaint. I will now explain why.

EFG provide a number of caveats and warnings in the reports it provides that the information shouldn’t be relied on to complete a tax return, and that further investigation may be necessary. And, while it doesn’t specifically address return of capital as a distribution, the glossary page in the tax report talks about gains realised from products like structured products (which this appears to have been) and that they might be reportable as income and not gains. EFG says these aren’t included in the tax voucher and the trustees should contact their tax adviser. It also mentions that with respect to offshore funds, some further information will or may be required, which the trustee or their accountant will need to get themselves.

After the tax treatment of the distribution had been questioned by the trustees accountant, EFG worked with the accountant and contacted the nominee for company A to request clarity on how the distribution should be reported. I think this was a reasonable step for EFG to take and demonstrates it proactively attempted to resolve the position. In a telephone call, the nominee suggested that how the distribution is treated isn't a totally black and white situation - even saying there was no natural income produced - but later emailed EFG and the trustees accountant to say it had received its own guidance and that going forward distributions should be recognised as income. It also suggested that the trustees seek their own tax advice in this regard.

I'm persuaded it wasn't unreasonable for EFG to rely on the information it had received from the nominee for company A referring to the distribution as a *"… Partial Return of Capital."* EFG provide a number of caveats and warnings that the reports it provides shouldn't be relied on to complete a tax return, and further investigation may be necessary. And, while it doesn't specifically address return of capital as a distribution, the glossary page in the tax report talks about gains realised from structured products and that they might be reportable as income and not gains. It says these aren't included in the tax voucher and the trustees – in this case - should contact their tax adviser.

I acknowledge the trustees concerns that EFG ought to have a better understanding of the likely tax treatment of the investment it holds for the trustees. However, whilst I don't think EFG can rely on saying it doesn't give tax advice, it makes it reasonably clear that income detailed in its reports doesn't take into account the tax status of the trust, and that if the trustees have any doubts, they should consult their tax adviser. I don't think the information EFG provided in its report was misleading, and, in the circumstances of this complaint, even if EFG had presented the distribution in a different way, it would likely still have to caveat that the trustees seek tax advice anyway. So, unfortunately, I think any additional costs incurred by the accountant in assessing any liability the trustees had in relation to the distribution are likely to have been unavoidable.

My final decision

For the reasons outlined above, I've decided that EFG Private Bank Limited trading as EFG Harris Allday hasn't done anything significantly wrong, and I haven't upheld this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W as trustees of the TMW Settlement to accept or reject my decision before 5 December 2023.

Paul Lawton
Ombudsman