

Market value and shares listed on AIM (Lecture P1348 – 18.12 minutes)

There was an interesting case heard earlier this year under the name of *Close v HMRC* (2022) by the First Tier Tribunal on the meaning of 'market value', the meaning of which one might have thought was relatively well settled.

In 2003/04, a Mr Close (C) and two others gifted their shares in Readybuy plc to a charity and claimed income tax relief under what is now S431 ITA 2007 based on the market value of the shares on the date of the gift. The company had recently been the subject of a placing and admission to AIM. On the date of C's gift, the shares were dealt in at a price of 53.25p each. Accordingly, that was the figure used by C and one of the others in calculating their relief. The third individual made a gift some three months later and used a share value of 50p for his relief. One would have assumed that all this was reasonably conclusive, but unfortunately that was not the case.

The legislation states that, to be eligible for relief, it is necessary for the taxpayer to donate an interest in a 'qualifying investment'. This term is understood to include shares or securities which are listed or dealt in on a recognised stock exchange. It was common ground that the shares in Readybuy plc were dealt in on a recognised stock exchange (i.e. AIM) and so were regarded as qualifying investments. However, AIM shares are not treated as 'quoted' or 'listed' – they count as 'unquoted' for all tax purposes – and the relevant valuation criteria for these purposes are set out in S273 TCGA 1992. In other words, the market value of such a share is 'the price which the asset might reasonably be expected to fetch on a sale in the open market'.

HMRC opened enquiries into the 2003/04 tax returns of C and the other two appellants on various dates in 2005. Remarkably, closure notices were not issued until 2017 and 2018 in respect of the three parties. The closure notice for each taxpayer amended their relevant self-assessment to show relief based on a market value of the shares at the date of gifting of 14.66p per share. The obvious effect of these closure notices was that the income tax relief available to the three individuals was significantly reduced – hence their appeals.

Prior to issuing the closure notices, HMRC had obtained a report from a professionally qualified member of their Shares and Assets Valuation Department which concluded, as mentioned above, that the value of each share in Readybuy plc at the relevant valuation date 'cannot be more than 14.66p'.

Subsequently, another valuation expert – an independent chartered accountant – valued the shares at 8.05p each. He arrived at this figure using conventional valuation bases involving all the artificial assumptions required to value unquoted shares for tax purposes. Interestingly, he was unable to explain why the AIM prices were so high since such a value could not be justified by the normal analysis of turnover, profits and so on. As a result, HMRC readjusted the three taxpayers' income tax relief to this lower figure. In C's case, this process gave rise to the following results:

Shares gifted	123,000
Date of gift	8 September 2003
Relief claimed	£65,497
Adjusted relief	£18,032
HMRC's readjusted relief	£9,901

In the event, the First Tier Tribunal broadly agreed with the conclusions reached by the second valuation expert. However, the judge felt that this person had not given sufficient weight to one key piece of evidence. As a result, he summarised his decision with these words:

‘Taking into account all the evidence and submissions, in my judgment the highest price a reasonably prudent purchaser would have paid for the shares in Readybuy plc . . . would have been 12.1p per share.’

This was the market value which the judge fixed for C and the other two parties and gave a final relief figure for C of £17,343. It might be worth noting that such a figure was very close to the acquisition price which the parties paid for their shares at the time of the placing!

One eminent tax expert has made the following comment about this valuation:

‘The . . . odd thing is that this conclusion was reached in the face of a value on AIM of 53.25p. When looking at the definition in S273 TCGA 1992, we must look at the price which the shares might reasonably be expected to fetch on a sale in the open market. When the shares are sold on AIM at 53.25p each, it is difficult to see why this is not the relevant price.

The only conclusion which makes sense is that the (Tribunal) did not trust the AIM price to be sufficiently genuine to override the value which would apply if there were no such AIM transactions.’

In the speaker’s view, an important point to be aware of is that a flotation on AIM does not – per se – cause the value of a company to increase.

Contributed by Robert Jamieson