



[2022] UKFTT 36 (TC)

TC 08388/V

Income Tax - Claims for relief on gifts of shares to charity – Market value of shares at gifting dates – Appeals dismissed

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

**Appeal numbers: TC/2018/07247
TC/2018/06424
TC/2018/05343
TC/2018/05344
TC/2018/05342**

Re: Gifts of Shares to Charity – Taskcatch plc

BETWEEN

**ALFRED MICHAEL DWAN
AMANDA DWAN
MALCOLM TERENCE HUNNISETT
ANDREW MARK JOHN OPENSHAW-BLOWER
RICHARD PARKINSON**

Appellants

-and-

**THE COMMISSIONERS FOR
HER MAJESTY’S REVENUE AND CUSTOMS**

Respondents

TRIBUNAL: JUDGE JOHN BROOKS

The hearing took place on 23 to 25 November 2021. With the consent of the parties, the form of the hearing was video using the Tribunal video platform. A face to face hearing was not held because of continued Coronavirus restrictions.

Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

Philip Turner, of Grade A Alternative, for the Appellants

James Henderson and Laura Ruxandu, both of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. The appellants, Mr Alfred Michael Dwan, Mrs Amanda Dwan, Mr Malcolm Terence Hunnisett, Mr Andrew Mark Openshaw-Blower and Mr Richard Parkinson, each made gifts of shares in Taskcatch plc (“Taskcatch” or the “Company”) to charity and claimed tax relief on the basis of the value of the gifted shares as at 31 March 2003 and 5 and 6 October 2004 (the “Gifting Dates”). HM Revenue and Customs (“HMRC”) contend that the values relied upon by the appellants in their respective gift relief claims is overstated and above the market value of the shares at that time.

2. It is agreed that the sole issue in this appeal is the determination of the market value of the relevant shares as at the Gifting Dates. I should also add that in reaching my conclusions, although carefully considered, it has not been necessary to refer to each and every argument or authority cited by or on behalf of the parties.

BACKGROUND

3. Although the appellants relied on the expert evidence of Mr James Hamilton FCA and HMRC on that of Ms Susan Blower FCA in relation to the value of the shares as at the Gifting Dates there was no statement of agreed facts and no witnesses were called to give factual evidence. However, Mr Philip Turner, who appeared for the appellants, confirmed that the following “Key Facts”, which I have taken from HMRC’s ‘Note of Evidence’ (prepared by Mr James Henderson and Ms Laura Ruxandu, both of counsel, who appeared for HMRC) and derived from the documentary and expert evidence were, in essence, not disputed:

Taskcatch

(1) Taskcatch was incorporated on 3 January 2003 under the name Taskcatch Limited. On incorporation, the Company had an authorised share capital of £1,000 divided into 1,000 ordinary shares of £1 each, and one subscriber share issued to Britannia Company Formations Limited.

(2) On 6 February 2003, the subscriber share was transferred to a Mr Currie

(3) On 6 February 2003, Taskcatch sub-divided its existing share capital into 100,000 ordinary shares of 1p each. At the same time, the company’s authorised share capital was increased to £1,000,000, comprising 100,000,000 ordinary shares of 1p each.

(4) On 6 February 2003, the Company issued 4,999,900 ordinary shares of 1p each at par to 23 shareholders including Mr Currie and a Mr Richard Hughes of Zeus who held shareholdings of 25.0% and 23.5% respectively. Mr Dwan, one of the appellants, obtained 500,000 shares at this juncture (the third highest shareholder at the time). The Directors at this time were Mr Currie (Non-Executive Chairman) and Mr Norman Molyneux (Executive Director).

(5) On 7 February 2003, Taskcatch re-registered as a public limited company.

(6) Mr Currie’s services as Non-Executive Chairman were provided under an agreement between Zeus and Taskcatch for an annual fee of £36,000.

(7) Zeus also provided Taskcatch with office accommodation and secretarial services for a fee of £2,000 per month.

Initial Fundraising

(8) On 7 February 2003, Taskcatch issued an offer for subscription (“the Offer”), which was filed at Companies House, of 5,000,000 ordinary shares of 1p at 14p per share with the aim of raising £650,000 after expenses of £50,000.

(9) On 7 February 2003, a supplementary offer for subscription (“the Amended Offer”), which was filed at Companies House, was issued, amending the Offer to 10,000,000 shares at 7p per share, representing 66.66% of the enlarged issued share capital of the Company following completion and assuming full take up. These shares were issued on 14 March 2003. None of the appellants were listed as acquiring shares at this juncture.

(10) Part 1 of the Amended Offer notes that the Company was formed to be a cash shell, to attract businesses seeking admission to AIM, with a focus on small businesses with high growth potential. The Directors’ preferred approach is stated to be the acquisition and simultaneous admission to AIM.

(11) Shareholders subscribing for the Amended Offer were subject to a lock-in from the date of issue until the second anniversary of admission, with a number of exceptions. One such exception enabled the investors to make gifts of shares to charity so long as the charity undertook not to dispose of the shares during the remainder of the lock-in period.

(12) It was a term of the Amended Offer that investors participate in any further fundraising at the time of Admission to AIM which would be equal to 15% of the initial investment.

(13) Taskcatch’s nominated advisor (“Nomad”) and broker was WH Ireland Limited (“WH Ireland”).

Acquisition of Skylark and placing of 375,000 shares – 31 March 2003

(14) On 17 March 2003, Taskcatch issued a Prospectus, which was filed at Companies House, announcing a conditional agreement to acquire Skylark Thornton Limited (“Skylark”), and its admission to trading on AIM (“the Prospectus”). The acquisition of Skylark was conditional on admission to AIM. The shares were admitted to AIM on 31 March 2003.

(15) The acquisition price for Skylark of £1,050,000 was settled by the issue of 15,000,000 shares to Mr Larkin and Mr Lynn (collectively “the Vendors”) at an implied price of 7p.

(16) The transaction granted a collective shareholding in Taskcatch of 49.4% to the Vendors based on the revised shares in issue of 30,375,000.

(17) The Vendors were subject to a lock-in from the date of issue until the second anniversary of the Admission.

(18) On 31 March 2003, Taskcatch placed 375,000 shares (1.23% of the 30,375,000 shares in issue) at 28p per share to existing investors (“the March 2003 Placing”), raising proceeds of £105,000. The existing investors were contractually obliged pursuant to the Amended Offer to acquire these shares. Also, as Ms Blower noted, the funds raised did not cover the costs of the placing which were estimated at £150,000.

(19) On the same day, Taskcatch announced that its market capitalisation, based on the placing price of 28p and 30,375,000 shares was £8.5m.

(20) The Company’s directors on 31 March 2003 were a Mr Molyneux, a Mr King and a Mr Lynn. Mr Lynn was one of the previous owners of Skylark.

Further Placing of Shares – 28 November 2003

(21) On 28 November 2003, the Company allotted a further 321,750 shares at a price of 28p per share to five additional shareholders (“the November 2003 Placing”). Taskcatch announced this placing on 5 December 2003.

Acquisition of Socccercity Limited – 11 December 2003

(22) On 11 December 2003, Taskcatch announced the acquisition of Socccercity Limited (“Socccercity”). According to the relevant agreement, which was filed at Companies House, the consideration was stated as a cash payment of £450,000 and Consideration Shares (1,000,000 ordinary shares in Taskcatch). The value ascribed to the shares is described differently in the following documents:

- (a) the 11 December 2003 public announcement of the acquisition of Socccercity implying a value of 28p per share;
- (b) the Sale and Purchase Agreement, dated 12 August 2004, which refers to a cash payment of £450,000 but did not record any value for the consideration in the form of shares in Taskcatch;
- (c) the audited financial statements of Taskcatch for the year 31 January 2004 which refer to consideration of £969,012, based on a cash payment of £569,012, and a value attributed to the shares of £400,000 implying a value of 40p per share; and
- (d) a Companies House document, filed on 13 August 2004 which recorded the amount paid as 1p per share.

(23) Mr Simon Reynolds, the Vendor of Socccercity was appointed as a director on 11 December 2003, under a three year contract, on annual remuneration of £75,000.

Acquisition of Three Lions Leisure Limited – 13 May 2004

(24) On 13 May 2004, Taskcatch acquired Three Lions Leisure Limited (“Three Lions”) for a consideration of £120,000, of which £100,000 was paid to the vendors to repay outstanding directors loans.

Further Transactions in Taskcatch shares

(25) On 21 June 2004, Mr Larkin disposed of 9,477,232 of his shares (a 29.99% shareholding) retaining an 8% shareholding of 2,522,768 shares. These were purchased by Messrs Currie, Hughes and Salisbury of Zeus. This disposal was publicly announced on 22 June 2004, however, the price was not published. Mr Hamilton, the appellant’s expert, mentioned a (very low) price per share for this transaction in his report (although it is acknowledged that Mr Hamilton’s source is an expert report produced on 7 March 2018 by a Mr Daniel Ryan of Berkeley Research Group for HMRC during the enquiry process).

(26) On 5 August 2004, the Company placed an additional 437,374 shares to private investors at a price of 32p per share (total funds raised of £139,960) (“the August 2004 Placing”).

(27) On 4 October 2004, Mr Hughes disposed of 2,767,166 ordinary shares in Taskcatch, representing approximately 8.61% of the issued share capital of the Company, retaining 1,497,586 shares in Taskcatch, representing approximately 4.66% of the issued share capital. This disposal was publicly announced by the Company on 6 October 2004, although the price was not published. A price (3.3p) for this transaction is referred to in the report of the Appellant’s expert.

(28) On 4 October 2004 Mr Currie disposed of 2,742,166 shares in Taskcatch,¹ representing approximately 8.53% of the issued share capital of the Company. He

¹ Although the appellants contend the Company’s Share Register (which does not appear to have been included in the Hearing Bundle) states that Mr Hughes disposed of 1.6 million shares (as opposed to the 2.7 million referred

retained 1,522,586 shares in Taskcatch, representing approximately 4.74% of the issued share capital. This disposal was publicly announced by the Company on 6 October 2004, although the price was not published a price for this transaction (at 3.3p per share) is referred to in the report of the Appellant's expert.

(29) Four very small trades were registered on the AIM:

Date	Number of Shares	Price
31 March 2003	2,875	32.5p
11 April 2003	1,500	32.5p
1 September 2003	2,000	40p
15 September 2003	1,374	40p

The Individual Appellants

Mr Dwan

(30) As noted above, Mr Dwan acquired 500,000 shares in Taskcatch for the price of 1p each on 6 February 2003 (i.e. £5,000) prior to the Amended Offer for Subscription on 7 February 2003. He then gifted 400,000 of these shares to one charity, the NSPCC, on 31 March 2003, and the other 100,000 shares to another charity, the Rainbow Family Trust, on the same date. He claimed tax relief on the gifts on the basis that the shares were worth 32.5p at that date (ie £162,500).

(31) Mr Dwan also gifted 605,000 shares to various charities on 5 October 2004 as follows:

- (a) 155,000 shares to the MacMillan Cancer Relief;
- (b) 300,000 shares to the Rainbow Family Trust;
- (c) 100,000 shares to the Princes Trust; and
- (d) 50,000 shares to Cancer Research UK.

(32) Mr Dwan claimed tax relief on these gifts on the basis that the shares were worth 40p at that date.

(33) HMRC opened enquiries into Mr Dwan's tax returns for the tax years 2002-03 and 2004-05. In closing these enquiries, HMRC concluded that the tax relief claimed was excessive on the basis that the value of the shares gifted on 31 March 2003 was 10.35p each, and the value of the shares gifted on 5 October 2004 was 5.09p each.

Mrs Dwan

(34) Ms Dwan gifted 121,000 shares to the following charities on 5 October 2004:

- (a) 71,000 shares to The Breast Cancer Research Trust; and
- (b) 50,000 shares to Macmillan Cancer Relief.

to in HMRC's 'Note on the Evidence') the Company announcement of 6 October 2004 stated that "*Mr Ian William Currie, a director of the Company, notified the Company that on 4 October 2004 he sold 2,742,166 Shares in Taskcatch, representing approximately 8.53% of the issued share capital of the Company. Following such sale, Mr Ian Currie holds 1,522,586 Shares in Taskcatch, representing approximately 4.74% of the issued share capital of Taskcatch.*"

(35) She claimed tax relief on the gifts on the basis that the shares were worth 40p at that date.

(36) HMRC opened enquiries into Mrs Dwan's tax return for the tax year 2004-05. In closing this enquiry, HMRC concluded that the tax relief claimed was excessive on the basis that the value of the shares gifted on 5 October 2004 was 5.09p per share.

Mr Hunnisett

(37) Mr Hunnisett gifted 242,000 shares to a charity on 6 October 2004 and claimed tax relief on the gift on the basis that the shares were worth 39.75p at that date.

(38) HMRC opened enquiries into Mr Hunnisett's tax return for the tax year 2004-05. In closing this enquiry, HMRC concluded that the tax relief claimed was excessive on the basis that the value of the shares gifted on 6 October 2004 was 5.09p per share.

Mr Openshaw-Blower

(39) Mr Openshaw-Blower gifted 242,000 shares to a charity on 6 October 2004 and claimed tax relief on the gift on the basis that the shares were worth 39.75p at that date.

(40) HMRC opened enquiries into Mr Openshaw-Blower's tax return for the tax year 2004-05. In closing this enquiry, HMRC concluded that the tax relief claimed was excessive on the basis that the value of the shares gifted on 6 October 2004 was 5.09p per share.

Mr Parkinson

(41) Mr Parkinson gifted 242,000 shares to a charity on 6 October 2004 and claimed tax relief on the gift on the basis that the shares were worth 39.75p at that date.

(42) HMRC opened enquiries into Mr Parkinson's tax return for the tax year 2004-05. In closing this enquiry, HMRC concluded that the tax relief claimed was excessive on the basis that the value of the shares gifted on 6 October 2004 was 5.82p per share.

4. Notwithstanding the broad agreement on the facts between the parties there was some difference between them in relation to the acquisition dates and price paid for the Taskcatch shares by the appellants other than the acquisition of 500,000 shares by Mr Dwan on 6 February 2003 for 1p per share and the acquisition of 11,000 shares by Ms Dwan, as part of the August 2004 Placing, at 32p per share.

5. HMRC say that it is difficult to ascertain when and at what price Mr Dwan acquired the further 605,000 shares he gifted on 5 October 2004, Mrs Dwan the additional 110,000 shares gifted on 5 October 2004, and Mr Hunnisett, Mr Openshaw-Blower and Mr Parkinson acquired the shares they gifted on 6 October 2004 and raise the possibility that a large proportion of the shares were acquired from Mr Hughes and Mr Currie shortly before they were gifted. To counter this Mr Turner referred to two letters to HMRC. The first, in chronological order, from Mr Openshaw-Blower, dated 31 July 2006, and, the second, from CLB Coopers, Chartered Accountants, dated 30 November 2006, sent on behalf of Mrs Dwan. Both letters were in response to requests from HMRC to provide the amount subscribed for the Taskcatch shares and details of how this was financed.

6. Mr Openshaw-Blower, a partner in Turner Parkinson LLP, Solicitors, writing on behalf of himself and his fellow partners and appellants in this appeal, Mr Hunnisett and Mr Parkinson, answered:

“as per offer document – see attached. Payment was made by cheque.”

However, any attachment that there may have been to this letter was not included in the Hearing Bundle and, perhaps not surprisingly given the passage of time, is no longer available.

7. The letter from CLB Coopers, Mrs Dwan's then advisers, explained that Mrs Dwan had paid 32p per share "financed from personal funds." The letter continued:

"Please refer to enclosed documentation. This is the **only** documentation pertaining to the transactions." (emphasis added)

That enclosed documentation was a share certificate from WH Ireland detailing the acquisition by Mrs Dwan of the 11,000 Taskcatch shares she acquired at 32p per share as part of the 5 August 2006 Placing and, as such, does not provide any further clarification in relation to acquisition of the additional 110,000 shares that she gifted to charity on 5 October 2004. Neither, in my judgment and in the absence of any additional evidence, can it support the inference that Mr Turner contends should be drawn, that all of the Taskcatch shares were acquired by the other appellants through the August 2004 Placing at the same price, 32p per share.

8. Additionally, in relation to the acquisition of the shares, Mr Hamilton, the expert for the appellants who had in his Report assumed that they must have been acquired "as part of the [November 2003 Placing], the August 2004 Placing, the November 2004 Placing or by AIM trades", accepted that the investors in the November 2003 Placing do not include any of the appellants. He also accepted that at the time the share register was run on 24 June 2004, Mr Dwan had only acquired (and disposed of) the initial 500,000 shares, that none of the other appellants appeared on this register and unless any of the appellants' shares were owned through the nominee companies recorded on the register (and there is no suggestion that this is the case) it would follow that Mr Dwan's further 605,000 shares, and all the shares of Ms Dwan, Mr Hunnisett, Mr Openshaw-Blower and Mr Parkinson were acquired after 24 June 2004. Mr Hamilton also agreed that the August 2004 Placing concerned 437,374 shares and cannot account for the total number of shares gifted on 5 and 6 October 2004 (ie 1,452,000 shares).

9. Also, as they had been acquired and gifted before the November 2004 Placing, the shares could not have been acquired then. Therefore, in the circumstances, it is not possible to rule out the suggestion by HMRC that a large proportion of the shares might have been acquired from Mr Hughes and Mr Currie shortly before they were gifted.

LAW

10. The legislation, in force at the time and under which relief for the gift of shares was claimed by the appellants in this case was s 587B of the Income and Corporation Taxes Act 1988 ("ICTA"). This provided:

587B Gifts of shares, securities and real property to charities etc

(1) Subsections (2) and (3) below applies where, otherwise than by way of a bargain made at arm's length, an individual ... disposes of the whole of the beneficial interest in a qualifying investment to a charity.

(2) On a claim made in that behalf to an officer of the Board—

(a) the relevant amount shall be allowed—

(i) in the case of a disposal by an individual, as a deduction in calculating his total income for the purposes of income tax for the year of assessment in which the disposal is made;

...

(4) Subject to subsections (5) to (7) below, the relevant amount is an amount equal to—

(a) where the disposal is a gift, the value of the net benefit to the charity at, or immediately after, the time when the disposal is made (whichever time gives the lower value);

...

(8A) The value of the net benefit to the charity is—

(a) the market value of the qualifying investment,

...

(9) In this section—

...

‘qualifying investment’ means any of the following—

(a) shares or securities which are listed or dealt in on a recognised stock exchange;

...

(10) Subject to subsection (11) below, the market value of any qualifying investment shall be determined for the purposes of this section as for the purposes of the 1992 Act.

11. It is not disputed that the Taskcatch shares were, by virtue of being “dealt in” on AIM, a “qualifying investment” for the purposes of s 587B ICTA, (see s 841(1) ICTA).

12. The 1992 Act, to which s 587B(10) refers, is the Taxation of Chargeable Gains Act 1992 (“TCGA”) the relevant parts of, at the material time, provided:

272 Valuation general

(1) In this Act “market value” in relation to any assets means the price which those assets might reasonably be expected to fetch on the open market.

(2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.

(3) Subject to subsection (4) below, the market value of shares or securities quoted in The Stock Exchange Daily Official List shall, except where in consequence of special circumstances prices quoted in that List are by themselves not a proper measure of market value, be as follows—

(a) the lower of the 2 prices shown in the quotations for the shares or securities in The Stock Exchange Daily Official List on the relevant date plus one-quarter of the difference between the 2 figures, or

(b) halfway between the highest and lowest prices at which bargains, other than bargains done at special prices, were recorded in the shares or securities for the relevant date,

choosing the amount under paragraph (a), if less than that under paragraph (b), or if no such bargains were recorded for the relevant date, and choosing the amount under paragraph (b) if less than that under paragraph (a).

(4) Subsection (3) shall not apply to shares or securities for which The Stock Exchange provides a more active market elsewhere than on the London trading floor; and, if the London trading floor is closed on the relevant date, the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value.

...

273 Unquoted shares and securities

(1) The provisions of subsection (3) below shall have effect in any case where, in relation to an asset to which this section applies, there falls to be determined by virtue of section 272(1) the price which the asset might reasonably be expected to fetch on a sale in the open market.

(2) The assets to which this section applies are shares and securities which are not quoted on a recognised stock exchange at the time as at which their market value for the purposes of tax on chargeable gains falls to be determined.

(3) For the purposes of a determination falling within subsection (1) above, it shall be assumed that, in the open market which is postulated for the purposes of that determination, there is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length.

13. The principles to be adopted in the valuation of shares for the purposes of s 272 TCGA, which were not disputed or challenged, were helpfully summarised as follows by the Tribunal (Judge Cannan) in *McArthur and Bloxham v HMRC* [2021] UKFTT 237 (TC) (“*McArthur*”) at [14]:

“ There are a number of authorities as to the basis on which a court or tribunal should approach the task of identifying the market value of assets including company shares pursuant to section 272. The following summary of the principles to be applied was common ground:

(1) The sale is hypothetical. It is assumed that the relevant property is sold on the relevant day (see *Duke of Buccleuch v IRC* [1967] AC 506 at 543 per Lord Guest).

(2) The hypothetical vendor is anonymous and a willing vendor, in other words prepared to sell provided a fair price is obtained (see *IRC v Clay* [1914] 3 KB 466 at 473, 478).

(3) It is assumed that the relevant property has been exposed for sale with such marketing as would have been reasonable (*Duke of Buccleuch v IRC* at 525B per Lord Reid).

(4) All potential purchasers have an equal opportunity to make an offer (*re Lynall* [1972] AC 680 at 699B per Lord Morris).

(5) The hypothetical purchaser is a reasonably prudent purchaser who has informed himself as to all relevant facts such as the history of the business, its present position and its future prospects (see *Findlay's Trustees v CIR* (1938) ATC 437 at 440).

(6) The hypothetical purchaser embodies whatever was actually the demand for the asset at the relevant time in the real market (*IRC v Gray* [1994] STC 360 at 372).

(7) The market value is what the highest bidder would have offered for the asset in the hypothetical sale (*re Lynall* at 694B per Lord Reid).”

14. I should also mention s 50 of the Taxes Management Act 1970 (“TMA”) under which the Tribunal, if it concludes that an appellant has been either overcharged or undercharged to tax by an assessment, is required to reduce or increase the amount assessed accordingly.

VALUATION EVIDENCE

15. Both parties called expert evidence, the appellants Mr James Hamilton FCA and HMRC Ms Susan Blower FCA. Each produced reports, Mr Hamilton's dated 25 June 2020 (the "Hamilton Report") and Ms Blower's, dated 8 November 2019 (the "Blower Report"). A joint report dated 16 October 2020, (the "Joint Report") reflected the discussions between Mr Hamilton and Ms Blower during a video conference on 23 September 2020 and sets out their respective areas of agreement and disagreement.

16. During the enquiries HMRC had relied on a report by a Mr Daniel Ryan and had issued the closure notices against which the appellants have appealed on the basis of that report. However, given his involvement in the enquiry, for which he was provided documents that may not necessarily have been provided to an independent expert instructed for litigation purposes, HMRC instructed Ms Blower for the purposes of these proceedings and it is solely the Blower Report on which they now rely.

Hamilton Report

17. Mr Hamilton, who spends what he described as a "significant portion" of his time writing or reviewing reports similar to that prepared for these appeals, explained that the Hamilton Report was written in response to Mr Ryan's report. He said that, although the Blower Report was dated 8 November 2019, he had not seen it when writing his report but was instructed to review Mr Ryan's report, comment on it and produce his own review and valuation. He confirmed that he had only been provided with the main body of Mr Ryan's report and not any of the exhibits to it and that while the Hamilton Report had been based on a combination of the information contained in Mr Ryan's report and his own research the conclusions were based on his experience and on the evidence provided to him. Mr Hamilton also confirmed that he did not obtain copies of the original Offer, Amended Offer or Prospectus but relied solely on the description of these documents in Mr Ryan's report.

18. Mr Hamilton considered that investors in a small parcel of shares in Taskcatch, such as the appellants, would rely only on publicly available information and would not undertake any other type of valuation, verification or cross check. However, the Hamilton Report does not take into account all of the publicly announced transactions but focusses on the most recent AIM trade or private share placing. Mr Hamilton accepted, in cross-examination, that if he had considered all of the relevant public documents his report would not have looked the same. However, he also said that he was "not sure" whether this would have led him to reach any different conclusions as to the valuation of the Taskcatch shares as at the Gifting Dates.

19. The Hamilton Report concluded that the value of Taskcatch shares was 32.5p per share, as at 31 March 2003, and 32p per share, as at 5 and 6 October 2004.

20. Mr Hamilton confirmed in evidence that his valuation of the Taskcatch shares, at 32.5p per share as at 31 March 2003, was based on the March 2003 Placing (at 28p) and AIM trade of 2,875 shares at 32.5 per share (see paragraph 3(29), above) and nothing else.

21. With regard to his valuation at 32p per share as at 5 and 6 October 2004, Mr Hamilton relied on the November 2003 Placing, which was publicly announced on 5 December 2003 (see paragraph 3(21), above and referred to in Hamilton Report as the "December 2003 Placing"), the 2003 AIM trades (as set out in paragraph 3(29), above) and the August 2004 Placing (see paragraph 3(26), above). In evidence Mr Hamilton agreed that the August 2004 Placing was the "main, if not only, basis" for his valuation as at 5 and 6 October 2004. He explained that this was because it was as it was the "most recent" transaction at that time.

22. Also, as Mr Hamilton explained when giving evidence, because it was "more focussed on the share transactions and share issues" there is little, if any, reliance in the Hamilton Report

on the acquisition of Soccercity in December 2003 in relation to the October 2004 valuation. However, in his oral evidence Mr Hamilton agreed that this acquisition was a “real” transaction and that he considered such “real transactions in shares” to be “strong valuation evidence.”

Blower Report

23. Ms Blower was instructed by HMRC to assess the market value of the appellants’ shareholdings in Taskcatch taking into account the documents to which a prudent prospective purchaser of the gifted shares, who made appropriate enquiries, would have had access, the most appropriate valuation methods to determine the price that those shares would have reasonably been expected to fetch on a sale in the open market and explain why these methods should be preferred to alternatives and provide her valuation of the price that a minority shareholding of the shares in Taskcatch would have reasonably been expected to fetch on a sale in the open market on the Gifting Dates. She was instructed to ignore any lock-in conditions ascribed to the gifted shares

24. The Blower Report noted that although Taskcatch shares were listed on AIM at 32.5p per share on 31 March 2003 and 40p per share as at 5 and 6 October 2004, the listed share price did not provide a reliable indication of the value of the shares as at those dates. This was because, although there was nothing to suggest that the market was not well informed:

(1) the shares were thinly traded across each of the Gifting Dates and the share prices of 32.5p and 40p were based on limited trades (see paragraph 3(29), above) which amounted to 0.026% of the of the 30,375,000 shares in issue at 31 March 2003;

(2) an arm’s length transaction (ie the acquisition of Skylark) for a 49.4% shareholding on 31 March 2003 (see paragraph 3(16), above) indicated a value of 7p per share (see paragraphs 3(15), above). Ms Blower considered that this reflected both the anticipated listing on AIM (as stated above, at paragraph 3(14), the acquisition was conditional on listing), the size of the shareholding, and the two year lock-in period that applied to the shares.

(3) the March 2003 Placing at a price of 28p per share was not at arm’s length (see paragraph 3(18), above) took place on the same day as the Skylark acquisition; and

(4) there was an unexplained 400% increase in value of the shares between Skylark acquisition and March 2003 Placing both of which occurred on the same day.

25. With regard to the value of the Taskcatch shares as at 31 March 2003 the Blower Report first considered the significant transaction in those shares, ie the issue of 15,000,000 shares to the vendors of Skylark on 31 March 2003 concluding that this produced an implied valuation of the Taskcatch shares at 7p per share. This value was then cross-checked by reference to the extrapolated turnover of Skylark from the available generated turnover of £137,838 for its first two and a half months, to £660,000 for 12 months. This gave a revenue multiple of 3.1 which was applied in the acquisition of the business of Skylark.

26. The Report then considered the earnings basis of valuation based on the application of a revenue multiple to maintainable revenue, adjusted to reflect cash in the business. Having identified the relevant maintainable revenue of between £1,000,000 and £1,200,000 by taking an optimistic view of the extrapolated Skylark revenue, the further cash available to Taskcatch and the good performance of similar market players such as Powerleague Group Limited (“Powerleague”) and Goals Soccer Centre (“Goals”), identified in the Blower Report as, together with JJB Soccerdome, the three principal operators in the five-a-side football sector across the Gifting Dates, Ms Blower identified the revenue multiple of 2.5 to be applied by looking at transactions in comparable companies on the market.

27. Applying that revenue multiple to the maintainable revenue Ms Blower reached an initial share value of 10.2p and 11.9p. However, after applying a discount of 20% for lack of control, but no discount for lack of marketability, she concluded that, as at 31 March 2003, the value of the Taskcatch shares was between 8.2p and 9.5p per share.

28. The valuation was then cross-checked with the average price paid for the 30,375,000 shares that had been issued as at 31 March 2003 ie 6.3p². Ms Blower also assessed the revenue multiple implied by the asserted gifting value (32.5p) of the shares, compared to the multiples observed in comparable transactions and concluded that the multiple implied by the asserted gifting value (10.7) was far outside the bounds of the industry multiples (2.9 to 3.2) and therefore the asserted gifting value could not stand. In a further cross-check Ms Blower compared her valuation to the value of Taskcatch implied by its assets, the Skylark business acquired for £1.1 million and available cash of £600,000, as at 31 March 2003 which would imply a value for the business of £1.7 million which is equivalent to a pro-rata value for the shares of 5.6p per share.

29. Turning to the value of the Taskcatch shares as at 5 and 6 October 2004 the Blower Report first considered the recent transactions that had taken place in regard to the shares. In addition to the acquisition of Skylark and March 2003 Placing, as described above, Ms Blower considered the implied consideration value of shares issued to vendors of Soccercity (see paragraph 3(22), above), the November 2003 Placing (paragraph 3(21), above) and the August 2004 Placing (paragraph 3(26), above). However, Ms Blower dismissed the Soccercity transaction, the November 2003 Placing and the August 2004 Placing as unreliable.

30. There was contrary evidence with regard to the implied consideration value of Taskcatch shares issued to vendors of Soccercity with the public announcement implying a value of 28p per share whereas the financial accounts record a value of 40p per share, something Ms Blower considered would prompt further enquires by a potential investor. With regard to the November 2003 Placing and August 2003 Placing Ms Blower was unable to determine whether these were arm's length transactions which, in any event, reflect a very small minority shareholding of 1% and 1.4% respectively. Also the financial commitments of £90,090 and £139,960 represent 4.5% and 5.8% of the total funds as at 28 November 2003 and 5 August 2004 respectively.

31. The Report then, as with the 31 March 2003 valuation, considered the earnings method of valuation based on the application of a revenue multiple to maintainable revenue, adjusted to reflect cash in the business. It identified the relevant maintainable revenue of between £2,000,000 and £2,500,000 based on the £800,000 annual revenue of Soccercity, £200,000 annual revenue of Three Lions and £800,000 annual revenue of Skylark plus an allowance for organic growth of 10% to 35% which Ms Blower regarded as "consistent" with that exhibited by Powerleague and Goals of 12% and 30% respectively.

² Table of Average price paid per share as a 31 March 2003:

Shares issued	No of shares	Price	Funds Raised (£)	Shareholders	Ref
06/02/03 issue	5,000,000	1p	50,000	Initial subscribers	Para 3(4)
07/02/03 issue	10,000,000	7p	70,000	Subscribers for 07/02/03 supplementary offer	Para 3(9)
31/03/03 acquisition of	15,000,000	7p	1,050,000	Vendors of Skylark	Para 3(15)
31/03/03 Placing	375,000	28p	105,000	Subscribers of 07/02/03 issue	Para 3(18)
Total		6.3p	1,905,000		

32. Having identified transactions in comparable companies in the market and recognising that Taskcatch's EBITDA was negative Ms Blower considered the appropriate revenue multiple to be applied was 1.7. Applying that revenue multiple to the maintainable revenue, Ms Blower came to an initial value of between 8.7p and 11.4p per share before applying a discount of 17% for lack of control and a discount of 25% for lack of marketability resulting in a final value of between 5.4p and 7.1p per share for Taskcatch shares as at 5 and 6 October 2004.

33. This valuation was cross-checked by comparing it with the average price paid per share prior to 5 and 6 October 2004 (6.3p per share). Ms Blower also assessed the revenue multiple implied by the asserted gifting value (of 40p and 39.75p) of the shares, compared to the multiples observed in comparable transactions and concluded that the multiple implied by the asserted gifting value (7.1) was far outside the bounds of the industry multiples (1.8 to 2.3) and therefore concluded that a "prudent investor" could not rely on the asserted gifting valuations.

34. Ms Blower additionally compared her valuation to the value of Taskcatch implied by its assets as at 5 and/or 6 October 2004. At that date, Taskcatch's assets included the Skylark business acquired in March 2003 for £1,100,000 in March 2003, Soccercity acquired in December 2003 for £730,000, and Three Lions acquired in May 2004 for £120,000. It had net debt of £0.6 million which would imply a value for the business of approximately £1,400,000, equivalent to a pro-rata value of 4.4p per share.

Joint Report

35. The Joint Report sets out the areas of agreement and disagreements recorded, in relation to information readily available in the public domain, that:

"2.5.1 We agree that the following documents were readily available, at the relevant times, for free, in the public domain and are potentially relevant to the valuation of Taskcatch:

- (a) AIM listing documents;
- (b) Press releases and articles;
- (c) Companies House filings;
- (d) Share trades involving public companies on regulated markets; and
- (e) Company announcements.

2.6 Information capable of being ascertained with further research

2.6.1 We agree that other information relevant to company valuation can be ascertained via the following:

- (a) subscriber research databases (at a cost), which may provide information on the sale/purchase of other privately owned companies, as well as earnings multiples of listed companies or alternative press commentary on transactions and company house filings which provide information for free;
- (b) websites such as the BDO website which provides data on private company transaction profit multiples (not by sector or company) or yahoo finance (quoted companies' revenue, EBITDA, book value and profit multiples) (both of which are available at no cost);
- (c) financial publications such as the Financial Times which publishes share prices and earnings (profit) multiples on a weekly basis; and

- (d) the London Stock Exchange website which provides daily information on share prices of AIM companies, and various earnings multiples together with peer group comparisons.

2.7 **Information disregarded**

2.7.1 We have both disregarded the following information, given the terms of the Information Standard and the size and nature of the shareholdings being valued:

- (a) Internal unpublished Taskcatch financial information such as management accounts, business plans or forecasts;
- (b) Confidential documents produced by Taskcatch Plc's professional advisors eg PKF's review of working capital produced prior to its AIM floatation; and
- (c) Private share sales not reported on a regulated market and not in the public domain.

36. The Joint Report also noted:

2.8 **Implications of thin trading**

2.8.1 It is agreed that where shares are thinly traded, the market price may not accurately reflect open market sentiment.

2.8.2 It is agreed that the Taskcatch Plc shares were thinly traded at the relevant valuation dates."

37. Although Mr Hamilton agreed with Ms Blower that "in the event a share is thinly traded, the market price may not accurately reflect open market sentiment", he did not agree that such transactions were of "no evidential value especially when considering the valuation of small minority interests." While he accepted, in cross-examination, that the "evidential value of the trades would have been stronger had there been more [trades]", Mr Hamilton maintained his view, as stated in the Hamilton Report, that the AIM market was the "best evidence" available. Ms Blower, however, for the reasons stated in paragraph 24, above, considered that as the shares were thinly traded, a "hypothetical prudent purchaser would not rely on the share price, and would make further enquiries."

DISCUSSION AND CONCLUSION

38. As has already been noted (at paragraph 2, above) the sole issue in these appeals is the determination of the value of the Taskcatch shares as at the Gifting Dates. In this regard I would agree with the Tribunal (Judge Gammie QC and Mr Richard Thomas) which observed in *Green v HMRC* [2014] UKFTT 396 (TC), at [118], that:

"... we think that the issue of tax avoidance is irrelevant to the question we must answer. If the market value of the Gifted Shares on 4 April 2008 was £237,000 as Mr Green claims, it is of no consequence whether or not the arrangement was devised and Mr Green entered into it with the tax advantage exclusively or mainly in mind."

39. I would also agree with Judge Cannan who said, in *Netley v HMRC* [2017] UKFTT 442 (TC) at [276], that share valuation "is in many respects an art not a science". As he (Judge Cannan) observed in *McArthur*, at [165]:

"... the correct approach is straightforward. It is a case of identifying the highest price a reasonably prudent purchaser would pay. Not the highest price a range of reasonably prudent purchasers might pay. Expert evidence is a proxy for the reasonably prudent purchaser and different valuers might come up with different estimates. In that case, it is necessary to consider on the

balance of probabilities and based on the reasoning of the experts who is right or where in the range the highest price lies.”

40. It is therefore necessary to consider the approaches adopted in the Hamilton and Blower Reports in relation to valuation.

41. As noted above (at paragraph 20), Mr Hamilton’s valuation of the shares as at 31 March 2003 was based on the March 2003 Placing at 28 per share and AIM trade of 2,875 shares at 32.5p per share on 31 March 2003 and nothing else. As Mr Henderson submits, this valuation does not take into account that the 31 March 2003 AIM trade represented a very small proportion of the Taskcatch shares both in absolute terms and in comparison with other transactions.

42. Having accepted in the Joint Report that Taskcatch shares were thinly traded and that thinly traded shares may not “accurately reflect open market sentiment” (see paragraph 37, above) Mr Hamilton was unable to adequately explain in cross-examination why he placed significant weight on what was in essence a small transaction rather than the other transaction which took place of the same date, ie the acquisition of Skylark by the issue of 15,000,000 shares (49.4% of Taskcatch’s share capital as at 31 March 2003) at an implied price of 7p per share.

43. Also, notwithstanding his evidence that he relied upon it, the March 2003 Placing at 28p per share does not appear to have been reflected in Mr Hamilton’s valuation of the Taskcatch shares at 32.5p per share as at 31 March 2003, the same date as the March 2003 Placing. As such, it would appear that Mr Hamilton relied solely on the AIM transaction for his valuation of the Taskcatch shares as at the 31 March 2003 Gifting Date.

44. In contrast, as described above (at paragraphs 25 – 28), Ms Blower did take into account the recent transactions in Taskcatch shares, undertook a review of the reasonableness of the price implied by these transactions compared to comparable company transactions and carried out an earnings basis of valuation based on the application of a revenue multiple to maintainable revenue, adjusted to reflect cash in the business.

45. In addition, unlike Mr Hamilton, Ms Blower undertook cross-checks eg given Taskcatch’s limited operating history she considered the average price paid per Taskcatch share prior to the Gifting Dates. She also assessed the revenue multiple implied by the value at which the Taskcatch shares were gifted by the appellants to various charities compared to the multiples observed in comparable transactions and analysed Taskcatch’s financial performance in addition to describing the five-a-side football sector and the economic outlook in general as at the Gifting Dates in arriving at her valuation of the Taskcatch shares of between 8.2p and 9.5p per share as at 31 March 2003.

46. In regard to the value of the Taskcatch shares as at 5 and 6 October 2004, the parties agree that the value of the Taskcatch shares was the same at both dates. However, that is where any agreement between them ends.

47. Although the Hamilton Report mentions the November 2003 Placing, the 2003 AIM trades and the August 2004 Placing, Mr Hamilton agreed in evidence that the August 2004 Placing, as the “most recent” transaction, was the “main, if not only, basis” for his valuation of the Taskcatch shares at 32p per share as at 5 and 6 October 2004. Despite little, if any, reliance on the Soccercity transaction in his Report Mr Hamilton nevertheless sought to rely on it during cross-examination.

48. In doing so, while he accepted that they were “confusing” he did not take account of the four publicly available documents giving inconsistent information (see paragraph 3(22), above). Mr Hamilton also did not take account of the disposal of a 29.99% shareholding in

Taskcatch by Mr Larkin on 21 June 2004 (see paragraph 3 (25), above) or the disposals by Mr Hughes and Mr Currie on 4 October 2003 (see paragraphs 3(27) and 3(28), above) which were described by Mr Henderson, correctly in my view, as being “very significant” and “significant” respectively.

49. Mr Turner, in his closing submissions, also sought to rely on the Socccercity acquisition, which he describes as a “real open market transaction”, in support of the valuations in the Hamilton Report. He contends that the figure of £730,000 for the transaction and the share valuation of 28p per share derived from that value was unchallenged.

50. However, as Mr Henderson submits, this is not the case. Ms Blower considered the conflicting evidence in relation to the implied consideration value of the Taskcatch shares issued to vendors of Socccercity in her Report as something that would prompt further enquires by a potential investor (see paragraph 30, above). Although she accepted when cross-examined that there was nothing to indicate that the Socccercity transaction was not at arm’s length she did not go so far, as Mr Turner contends, as accepting that the 28p per share represented a “genuine real price paid by third parties”.

51. In contrast, as noted above (at paragraphs 29 – 34), the Blower Report took a much broader and thorough approach to valuation than the Hamilton Report. Also unlike the Hamilton Report, Ms Blower’s valuation of the Taskcatch shares at between 5.4p and 7.1p per share as at 5 and 6 October 2004 was supported by cross-checks.

52. Mr Turner compares Mr Hamilton’s approach with that taken by Ms Blower, describing the latter’s as an examination of the financial background of Taskcatch and associated transactions in “microscopic detail, supported by hundreds of pages of exhibits.” This, he says, is not the “defining characteristic” of the prudent purchaser who would not go to such “extreme lengths” when concerned with transactions that were “relatively small” in comparison to the overall number of shares in the Company. As Mr Hamilton put it in cross-examination “there was a difference between documents that are available and documents which your typical purchaser of small shares in companies will go and look at” and that he could “imagine that many investors who wouldn’t” consider all of the documents in the public domain.

53. In my judgment such an approach is inconsistent with the long established concept of the prudent purchaser as described in *Findlay’s Trustees v CIR* (1938) ATC 437 at 440 and cited by Judge Cannan in *McArthur*, as someone:

“... who has informed himself as to **all relevant facts** such as the history of the business, its present position and its future prospects” (emphasis added).

As a result, and given the limited basis on which they were made, I am unable to accept the valuations as stated in the Hamilton Report.

54. Turning to the Blower Report, although the approach to valuation was not materially challenged in cross-examination, Mr Turner contends the Report itself has been “hobbled” or “distorted by the deliberate instruction to ignore the lock-in periods of the original subscribers when carrying out a valuation exercise.” However, as Mr Henderson submits, the question of lock-ins was not raised when the experts met and not considered in the Joint Report. Additionally the lock-ins were personal to the subscribing shareholders concerned (see paragraph 3(11), above) and were not an inherent restriction on the shares. In any event it would appear unlikely that a lock-in would increase, rather than decrease, the value of the shares concerned.

55. Therefore, for the reasons above and given her measured and careful approach to both methodology and valuation, I prefer and accept the valuations provided by Ms Blower rather than those of Mr Hamilton. Mr Henderson submitted that in such circumstances I should adopt

the mid-point of those values and there was no suggestion from Mr Turner that I do otherwise. As such, I find that the market value of the Taskcatch shares as at 31 March 2003 to be 8.85p per share and at 5 and 6 October 2004 to be 6.25p per share.

56. The relief claims made by the appellants were on the basis of the value of Taskcatch shares being 32.5p per share as at 31 March 2003 (Mr Dwan), 40p as at 5 October 2004 (Mr Dwan and Mrs Dwan) and 39.75p on 6 October 2004 (Mr Hunnisett, Mr Openshaw-Blower and Mr Parkinson). Given my conclusions it therefore follows that the appellants have been undercharged to tax and the amount assessed must be increased in accordance with s 50(7) TMA.

57. I have left it to the parties to calculate and agree the tax now payable as a result of my conclusions and trust that they would be able to do so within 56 days of the release of this decision. In the unlikely event that this is not possible the parties may apply to the Tribunal within that time (setting out their respective positions in relation to the tax liability of the appellants) to resolve any outstanding issues between them.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

58. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**JOHN BROOKS
TRIBUNAL JUDGE**

Release date: 03 FEBRUARY 2022