[2019] UKFTT 620 (TC)

TC07404

INCOME TAX – Claim for relief on gift of shares to charity – Market value of shares on gifting date – Whether struck out appeal can be reinstated on application of HMRC – Effect of HMRC v C M Utilities on withdrawn appeal – Appeals dismissed

FIRST-TIER TRIBUNAL
TAX CHAMBER

Appeal numbers: TC/2016/05632
TC/2017/06142
TC/2017/00184
TC/2017/02922
TC/2018/00977

RE APPELLANTS WHO GIFTED TO CHARITY SHARES IN CLERKENWELL MEDICAL RESEARCH PLC, MODIA PLC, SIGNET HEALTH INTERNATIONAL PLC & YOUR HEALTH INTERNATIONAL PLC

BETWEEN

(1) VIPIN PATEL
(2) RAJAGOPALAN VENKATARAMAN
(3) DAVID FOSTER
(4) KEITH FREEMAN
(5) GEORGE EDWARD JAKEWAY **Appellants**

-and-

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS **Respondents**

TRIBUNAL: JUDGE JOHN BROOKS

Sitting in public at Taylor House, 88 Rosebery Avenue, London EC1 on 9, 10 and 11 September 2019

John Friend, of Kukar & Co Accountants and Tax Consultants, for the First and Second Appellants

The Third, Fourth and Fifth Appellants did not appear and were not represented

James Rivett QC, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents

DECISION

INTRODUCTION

1. These appeals concern arrangements, which HM Revenue and Customs ("HMRC") describe as being for tax avoidance purposes, promoted by Vantis Tax Limited and various associated entities that were entered into by the appellants whereby shares in Clerkenwell Medical Research Plc ("Clerkenwell"), Modia Plc ("Modia"), Signet Health International Plc ("Signet") and Your Health International Plc ("Your Health") (collectively "the Companies") were gifted to charity and tax relief claimed. HMRC contend that the shares in question were placed on the Channel Islands Stock Exchange ("CISX") at inflated prices resulting in overstated tax relief claims in respect of the gifted shares.

2. The sole issue before the Tribunal is the determination the correct market value of the shares in the Companies on the dates they were gifted (the "Gifting Dates").

3. Although James Rivett QC appeared for HMRC and John Friend of Kukar & Co represented the first and second appellants, Dr Vipin Patel and Dr Rajagopalan Venkataraman, the third, fourth and fifth appellants David Foster, Keith Freeman and George Edward Jakeway did not appear and were not represented.

4. However, there has been recent correspondence between them and the Tribunal from which it is clear that they have been notified of and were aware of the hearing. Accordingly, and as I considered it was in the interests of justice to do so, the hearing proceeded in their absence in accordance with Rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (all subsequent references to Rules are, unless otherwise stated, to these Procedure Rules).

PROCEDURAL BACKGROUND AND APPLICATIONS

5. As there were a number of cases which raised common issues, by directions issued under Rule 5 on 18 December 2017 (as varied on 24 January 2018) and directions issued on 19 March 2018, the present appeals were selected as Lead Cases.

6. Dr Patel's appeal concerns the valuation of Clerkenwell shares as at 23 March 2005, Dr Venkataraman's appeal is in relation to the valuation of Signet shares as at 31 March 2006, Mr Foster's and Mr Freemans appeals were in respect of Modia shares as at 18 October 2005 and 8 September 2005 respectively and Mr Jakeway's appeal concerned the valuation of Your Health shares as at 31 March 2006. These dates being the Gifting Dates of the various shares.

7. By selecting these as Lead Cases the Tribunal is able to consider sample sets of facts, particularly in relation to value of shares in each of the Companies on each of the relevant Gifting Dates which collectively is sufficient to resolve all of the other appeals which have been stayed pending the outcome of the Lead Cases.

8. As the date of this hearing approached various applications (which I summarise below) were made in the Lead Cases.

Dr Vipin Patel & Dr Rajagopalan Venkataraman

9. On 29 July 2019 Dr Patel notified the Tribunal of the withdrawal of his appeal in accordance with Rule 17. Dr Rajagopalan Venkataraman withdrew his appeal under Rule 17 on 30 July 2019. In both cases HMRC served a Notice of objection to the withdrawal of the appeal pursuant to s 54(4)(b) of the Taxes Management Act 1970 ("TMA") on the grounds that, as the expert evidence "made plain the amount of tax owing in the closure notices as issued was understated", HMRC wished the appeal to proceed to a hearing so that the Tribunal could determine, in accordance with s 50 TMA the proper amount of tax to be assessed.

10. On 7 August 2019 applications for the reinstatement of their appeals were made by Dr Patel and Dr Venkataraman. These applications were not opposed by HMRC and it was directed that the appeals be reinstated. Skeleton arguments were filed by both Dr Patel and Dr Venkataraman on 28 August 2019 following an unless order issued on an application of 27 August 2019 by HMRC. Both appeals are therefore "live" and before the Tribunal.

Mr Foster and Mr Freeman

11. The position of Mr Foster and Mr Freeman, who have had the benefit of professional advice with the same solicitors acting for both on a pro bono basis, is somewhat different. In breach of the Tribunal's directions neither provided a list of documents, witness statements, expert evidence, dates to avoid or skeleton arguments in support of their appeals. On 28 August 2019, following an application by HMRC, Judge Sinfield extended the deadline for the provision of their skeleton arguments to 14:00 on 29 August 2019. He also directed that a failure to comply would lead to the proceedings being struck out without further reference to the parties.

12. Neither Mr Foster nor Mr Freeman filed a skeleton argument in accordance with Judge Sinfield's directions and consequently their appeals were struck in accordance with Rule 8(1). This provides:

> The proceedings, or the appropriate part of them, will automatically be struck out if the appellant has failed to comply with a direction that stated that failure by a party to comply with the direction would lead to the striking out of the proceedings or that part of them.

An application for the reinstatement of an appeal that has been struck out in such circumstances may be made under Rule 8(5). This provides:

> If the proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a), the appellant may apply for the proceedings, or part of them, to be reinstated..

13. By applications, made by email at 12:00 on 30 August 2019, Mr Foster and Mr Freeman sought to set aside, or alternatively to vary, the directions of Judge Sinfield and for their appeals be reinstated. Also on 30 August 2019, at 15:06, HMRC made an application by email, effectively challenging those directions. HMRC's application sought to vary the terms of the directions so that rather than the appeal being struck out, a failure to comply would result in the appellant concerned being barred from taking any further part in the proceedings.

14. On Sunday 1 September 2019, the solicitors confirmed, by email to the Tribunal, that they had:

> "… been instructed to withdraw the application for reinstatement of Mr Foster's appeal. Please accept this letter as notice the Mr Foster accepts that his appeal has been struck out and that he does not want to interfere with the Tribunal's decision."

15. In a letter, dated 2 September 2019, in response to that email the Tribunal confirmed that Mr Foster's email remained struck out and that there was "no need for him or any[one] representing him to attend the hearing on 9 September."

16. Also, by letter dated 2 September 2018 the Tribunal (Judge Sinfield) directed that, in relation to Mr Freeman:

> "… the appeal is struck out for failure to comply with the Tribunal's directions of 28 August but Mr Freeman may renew his application to have the appeal reinstated at the start of the hearing on 9 September provided that he serve a skeleton argument in support of such application and setting his arguments in

> the appeal to the Tribunal (with a copy to HMRC) no later than 5pm Tuesday 3 September."

The directions of 2 September 2019 gave the parties "liberty to apply for further directions."

17. On 3 September 2019, in an email to the Tribunal, the solicitors confirmed that Mr Freeman had conceded his appeal and requested confirmation that the file would be closed and that, as with Mr Foster, there was no need for him to attend the hearing.

18. Also, by letter of 3 September 2019, HMRC renewed the application to vary the terms of Judge Sinfield's directions of 28 August 2019 and made an application for the reinstatement of Mr Foster's and Mr Freeman's appeals to enable such a direction to take effect.

19. Given the proximity of the substantive hearing (the first day of which was listed for 9 September 2019) the Tribunal, on my instructions, wrote to the parties on 3 September 2019 to notify them that all applications, "including those in HMRC's letter of 3 September 2019" would be considered at the commencement of the hearing. The letter concluded:

> "Contrary to the recent correspondence, the appellants and/or their representatives should attend or least provide written representations to the Tribunal Judge to consider in response to HMRC's application."

20. Although Mr Foster and Mr Freeman did not attend and were not represented at the hearing their solicitors did, by email dated 6 September 2019, make the following written submissions on their behalf:

> "In short, my clients position is as follows:
>
> 1. They do not consent to their appeals being re-instated;
>
> 2. The consequence of this is that the Closure Notices (under appeal) identify the tax which needs to be paid;
>
> 3. I can see no provision within the Tribunal Procedure (First Tier Tribunal) (Tax Chamber) Rules 2009 which allows a tax payer's appeal to be re-instated at the behest of HMRC but against the tax payer's wishes;
>
> 4. It is in any event completely inequitable to allow HMRC to re-instate my clients' appeals (against their wishes) in circumstances where it was HMRC which made the application to strike out my clients' appeals in the first place. Having made the election to apply for the appeals to be struck out, HMRC cannot now change its position and have the strike out orders varied, to the potential detriment of my clients. HMRC needs to accept the consequences of its own actions. It should not be permitted to try and increase the tax liabilities of my clients by reinstating appeals which were struck out at its own instigation.
>
> …
>
> Both of my clients accept the orders which have been made striking out their appeals. They do not want their appeals reinstated and that must be their prerogative in my submission, not HMRC's prerogative. To force unwilling tax payers to prosecute appeals against their wishes offends against the basic human right of free will/freedom of choice.
>
> To conclude, I would like to reiterate that neither of my clients wanted to be Lead Appellants in the first place. They were named as Lead Appellants by default on 17 December 2017 and against the submissions made my counsel in relation to their poor health.
>
> …

> In all the circumstances, it is my submission that my clients should be bound by the figures contained within their respective Closure Notices, but nothing more.
>
> By reason of these appeals having been struck out, my clients will not be in attendance (nor represented) at next week's hearing. No discourtesy to the Tribunal is intended."

21. Mr Rivett, for HMRC, quite properly, accepted that there was no provision in Rule 8 for HMRC to apply for the reinstatement of an appeal that had been struck out for failure to comply with a direction. However, he submitted that the Tribunal was able to reinstate the appeals on HMRC's application by setting aside the earlier directions under its general case management powers under Rule 5, the material part of which provides:

> (1) Subject to the provisions of the 2007 Act and any other enactment, the Tribunal may regulate its own procedure.
>
> (2) The Tribunal may give a direction in relation to the conduct or disposal of proceedings at any time, including a direction amending, suspending or setting aside an earlier direction.

Rule 5(3) describes the powers in paragraphs (1) and (2) of rule 5 as "general powers". I should add that when exercising any power under the Rules or interpreting any rule or practice direction, the Tribunal is required, by Rule 2(3), to give effect to the overriding objective of the Rules to deal with cases "fairly and justly" (see Rule 2(1)).

22. In *Jumbogate Limited v HMRC* [2015] UKFTT 64 (TC) the Tribunal (Judge Sinfield) reinstated an appeal, on the application of an appellant, under Rule 5(2) in the absence of a specific provision in Rule 8 for the reinstatement of an appeal that had been struck out under Rule 8(3)(c) (on the basis of there being no reasonable prospect of the case succeeding) by setting aside the direction striking out the appeal.

23. In reaching his conclusion, Judge Sinfield said:

> "36. Rule 8(5) provides that where proceedings, or part of them, have been struck out under paragraphs (1) or (3)(a) then the appellant may apply for them to be reinstated. It does not state that an appellant may not apply for a direction striking out all or part of proceedings to be set aside. I accept that there is a principle of construction that general words do not derogate from specific words, as stated by Peter Gibson LJ in *Vinos*. In *Vinos*, the issue was whether the court could extend the time for service of a claim form, where the conditions of CPR 7.6(3) which provided for such extensions were not met, by use of a general power to extend time in CPR 3.1(2)(a) or a power to remedy a failure to perform in CPR 3.10. Peter Gibson LJ concluded, in [27], that the court could only extend time where the conditions of CPR 7.6(3) were satisfied. He considered that this was "crystal clear" from the words "[the court may make such an order] only if" that preceded the conditions in CPR 7.6(3).
>
> 37. Rule 8(5) does not state that the FTT may only reinstate proceedings that have been struck out under paragraphs (1) or (3)(a). I asked Mr Vallat [counsel for HMRC] why, if it was intended that proceedings that had been struck out under provisions of rule 8 other than paragraphs (1) or (3)(a), the rule did not say that only proceedings struck out under paragraphs (1) and 3(a) can be reinstated. He said that the word "only" would not add much to the sense of the rule. I disagree. The words "only if" were clearly considered to be significant in *Vinos*. There are no unambiguous and restrictive conditions in rule 8(5) like those referred to by Peter Gibson LJ in *Vinos*. Even if Rule 8(5) implicitly excludes applications to reinstate proceedings that have been struck

> out under provisions other than paragraphs (1) or (3)(a) of the rule, it does not say that an appellant may not apply for a direction striking out proceedings to be set aside under rule 5(2). There is nothing in rule 8 that prohibits the FTT from setting aside a direction under rule 8 that disposes of proceedings. Mr Vallat accepted that a person could appeal against a direction striking out proceedings where there was an error of law in the decision. It seems to me that, just as the right of appeal against a strike out is not excluded by rule 8(5), the power of the FTT to set aside such a direction is not excluded by the rule. In my view, the words in rule 8(5) of the FTT Rules are not specific enough to exclude the general provision in rule 5(2).
>
> 38. I consider that the overriding objective in rule 2 supports my conclusion that the FTT's general power under rule 5(2) to set aside an earlier direction in relation to the disposal of proceedings is not displaced by rule 8(5). The overriding objective is to enable the FTT to deal with a case fairly and justly. If Mr Vallat is correct then the only remedy available to a person whose appeal is struck out under provisions other than paragraphs (1) or (3)(a) would be an appeal on a point of law. Such an outcome does not seem to me to be consistent with the exhortation in rule 2 to avoid unnecessary formality and seek flexibility in the proceedings while also ensuring that parties are able to participate fully in proceedings. Rule 5(2) provides the flexibility to enable the FTT to deal with a situation, such as in this case, where it cannot be said that there is any error of law in the decision to strike out but that decision is challenged on the ground that it arose from a misunderstanding of the nature of the proceedings by the appellant."

24. Therefore, notwithstanding the absence of a specific provision that enables HMRC to apply for the reinstatement of an appeal it would appear (and I reach no conclusion on this point) that an appeal might be reinstated on HMRC's application under Rule 5(2) by way of an application, as here, for earlier directions to be set aside or amended. The procedure for such an application is set out in Rule 6. This was considered by the Tribunal (Judge Mosedale) in *DDR Distributions Limited v HMRC* [2012] SFTD 1249.

25. As in the appeals of Mr Foster and Mr Freeman, the application to set aside an earlier direction in *DDR* was made under Rule 6(5) "as that is the only Rule under which it could be made" (see DDR at [14]). Rule 6.5 provides:

> If a party or other person sent notice of the direction … wishes to challenge a direction which the Tribunal has given, they may do so by applying for another direction which amends, suspends or sets aside the first direction.

26. Having observed that substantive decisions may be set aside under Rule 38 if it was in the interests of justice to do so and there was a procedural irregularity or non-attendance by a party or under Rule 41 and s 9(4)(c) of the Tribunals, Courts and Enforcement Act 2007 following a review undertaken on the basis of an obvious error of law, Judge Mosedale continued:

> "19. It seems likely Parliament intended Rule 6(5) to be used in similar situations and therefore it may be appropriate to make an application for a direction to be set aside where a party did not attend, there was procedural irregularity or there was an obvious error of law in the direction. Whether the judge would order the set aside would of course depend on whether he considered it to be in the interests of justice to so do.
>
> 20. It also seems to me, although not by any parallel with hearings of substantive matters, that Parliament must also have intended Rule 6(5) to be used in one other circumstance, and that is where there has been a change in circumstances. Indeed, it is commonplace for earlier directions to be set aside

and displaced by later directions where the situation has changed, such as where parties have proved unable to keep to the directed timetable. After all, the objective of directions is to get the appeal on for hearing in the shortest possible time commensurate with fairness and ensuring in so far as possible that both parties are fully prepared. Failing to take account of changing circumstances would not achieve such an objective.

21. I note that the White Book (Civil Procedure in the High Court) states, in respect of the High Court's power to "vary or revoke" any earlier order, that this does not include a power to reverse itself simply because it had changed its mind. On the contrary, either an erroneous basis would have to be shown for the original order or a change in circumstances. See Section A 3.1.9. The court cannot act as an appellate court from its own orders. I consider that a similar state of affairs exists in this Tribunal.

22. In conclusion, in my view, Parliament only intended Rule 6(5) to be used in limited circumstances, and in particular where:

- Circumstances have changed;
- Obvious error of law in direction;
- Procedural irregularity in relation to the hearing at which direction made; or
- A party did not appear and was not represented at the directions hearing.

A judge would of course only grant the set-aside where it was in the interests of justice to so do.

23. The above may not be an exclusive list of all the circumstances in which Rule 6(5) may be used: there may be some additional circumstances in which Rule 6(5) would be appropriate, but such circumstances would be exceptional and would not include an application on the grounds simply that a party considers the original direction was wrong. To avoid an anomalous and absurd result Parliament cannot have intended Rule 6(5) to apply simply where a party considers that a direction is wrong: the only proper course of action in such a case would be for the party to apply to appeal it."

27. Although, as a decision of the First-tier Tribunal *DDR* is not binding, as I said in *Ardmore Construction Limited v HMRC* [2014] SFTD 1077 at [19] such decisions do:

> "… constitute persuasive authorities which would be expected to be followed by the FTT. For example in *HMRC v Abdul Noor* [2013] UKUT 71 (TCC) the Tax and Chancery Chamber of the UT, in relation to the decision of one High Court Judge on another (but equally applicable in the case of any persuasive authority), said, at [82]:
>
> > "… although the decisions were not binding on him in the way that a decision of the Court of Appeal would be binding, the decision of a High Court Judge ought to be followed by another [High Court] judge unless that judge thinks that the earlier decision was clearly wrong"
>
> As Lord Goddard CJ put it in *Huddersfield Police Authority v Watson* [1947] KB 842, at 848:
>
> > "I can only say for myself that I think the modern practice, and the modern view of the subject, is that a judge of first instance, though he would always follow the decision of another judge of first instance, unless he is convinced the judgment is wrong, would follow it as a matter of judicial comity."

28. In the present case the non-appearance by a party does not apply as there was not a directions hearing. However, there has been no change in circumstances since Judge Sinfield's directions of 28 August 2019. Neither has any procedural irregularity or error of law been identified. As such, applying *DDR* (which I do not consider to be wrongly decided), HMRC's application that the appeals of Mr Foster and Mr Freeman be reinstated by setting aside the earlier direction cannot succeed. Therefore, Mr Foster's and Mr Freeman's appeals remain struck out and are not before the Tribunal with the effect that their liability to tax is as stated in the respective closure notices.

29. However, given the lack of authority on this issue and in case of any further appeal I have set out in an appendix to this decision the findings of fact and conclusions that I would have reached if Judge Sinfield's directions of 28 August 2019 had been set aside or varied and Mr Foster's and Mr Freeman's appeals been reinstated. I indicated at the hearing that I would take such an approach and would grant HMRC permission to appeal against any decision that Judge Sinfield's directions of 28 August 2019 should not be set aside or varied to effectively reinstate these appeals.

30. Although Rule 39 requires a "written application" to be made for permission to appeal, Rule 7 provides that if a party has failed to comply with a requirement in the rules the Tribunal may take "such action as it considers just". This may include waiving the requirement (see Rule 7(2)(a)). In the circumstances of this case, I waive the requirement for a written application and grant HMRC permission to appeal solely on the issue of whether the respondents are entitled to make an application for reinstatement of an appeal that has been struck out.

Mr Jakeway

31. Mr Jakeway, unlike Mr Foster and Mr Freeman is not professionally represented. He too made an application to withdraw his appeal under to Rule 17. As with the appeals of Dr Patel and Dr Venkataraman, HMRC objected to withdrawal in accordance with s 54(4)(b) TMA on the grounds that at the hearing it would be contended that the amount of tax assessed on Mr Jakeway was understated and should be increased by the Tribunal pursuant to s 50(7) TMA.

32. On 21 August 2019 the Tribunal wrote to Mr Jakeway and HMRC stating that his notice of withdrawal would be considered at the hearing. The Tribunal also noted that, due to his medical condition, Mr Jakeway would not be able to attend but that any written submissions would be put before the judge. Although further directions were made by Judge Sinfield on 28 August 2019 in relation to Mr Jakeway's appeal, these were set aside on 2 September 2019 and the position as set out in the letter of 21 August 2019 restored.

33. In an email sent to the Tribunal on 2 September 2019 Mr Jakeway complained that:

> "HMRC's case appears to hinge on a valuation obtained from "outside" valuer's and not HMRC's Share Valuation Division which might suggest to some people that they were deliberately seeking to get the lowest, not necessarily correct, valuation, irrespective of costs. In 2013 HMRC obtained their first independent valuation, from M H Ruse LLP, which put the valuation of Your Health shares at 3p and on the basis of this HMRC issued their closure notice. I did not have the money to fund my own independent valuation and was advised to enter an appeal against the closure notice in case someone else was to go to Tribunal and hopefully obtain a more favourable result, somewhere between 3p per share and the much higher valuation we were lead to believe at the outset. I paid all of the tax, with interest, based on the closure notice but unfortunately I was taken ill shortly thereafter and have not been able to put my mind to any of this.

> When I did write to HMRC to withdraw my appeal I was threatened with costs unless I carried on to Tribunal otherwise I would not be wasting Tribunal's time with this.
>
> I would ask Tribunal to consider whether it was reasonable for HMRC to have two [bites] of the cherry, as it were, in an attempt to get the lowest valuation and then only put the lowest figures to Tribunal. Have Tribunal been given the opportunity to consider the earlier valuation of 3p or indeed any higher figure?"

34. On 3 September 2019 Mr Jakeway sent a further email to the Tribunals stating:

> "I am told that I am the lead case but I have no idea what this means. I certainly don't remember having any say in this. I see that one of the other appellants was allowed to change from lead case to following case. Again I have no idea what this means but surely I should have been consulted and given the opportunity to "downgrade" from lead. All along HMRC have threatened me with costs if I change my mind and withdraw my appeal but surely this is my legal right without threats.
>
> I think this is something the Tribunal might want to consider."

35. Before considering the effect of Mr Jakeway's notice of withdrawal, as he was not present at the hearing, it is necessary to address the issues he has raised in his emails.

36. First in relation to the use of an "outside" valuer rather than HMRC's share valuation division. As I explain below, the valuer concerned, Daniel Ryan, is an independent expert witness instructed by HMRC to produce two reports and give evidence before the Tribunal. As an expert witness Mr Ryan's duty is to the Tribunal and not the party that paid him. Although I refer to this in greater detail below, Mr Ryan confirmed to the Tribunal that he was aware of and had complied with this duty in writing his reports and in giving evidence.

37. In his email of 3 September 2019 Mr Jakeway asks why his appeal was chosen as a Lead Case. In short, this was because his appeal was the first to be received by the Tribunal in which the value of Your Health shares were in issue. Although, on 4 September 2019, I directed that an appeal which concerned the value of Clerkenwell shares be stayed rather than proceed as a Lead Case, this was because Dr Patel's appeal, which also concerned Clerkenwell shares, was still proceeding and before the Tribunal. While both had originally been selected as Lead Cases to ensure that the value of Clerkenwell shares would be considered by the Tribunal, it was not necessary for both to proceed to a hearing and, to avoid duplication, it was directed, with the agreement of the parties, that Dr Patel's rather than the other appeal would be heard.

38. As for Mr Jakeway not being consulted about his appeal being chosen as a Lead Case and being given the opportunity to "downgrade", the directions issued on 19 March 2018, shortly after receipt of his Notice of Appeal, state:

> IT IS DIRECTED that Unless the appellant [Mr Jakeway] objects in writing (with reasons) within 14 days of the date of these directions the following directions shall apply:
>
> 1. The appeal shall be admitted notwithstanding it is out of time.
>
> 2. The appeal shall be joined with and heard at the same time by the same Tribunal as the "Gift of Shares (Vantis group)" appeals and specified as a lead case subject to direction 3 below the case management directions issued on 24 January 2018 (and appended hereto) (the "Directions") shall apply to the appeal and the appellant be added as a lead appellant in appendix 1 of the Directions.
>
> 3. …

> 4. Either party may apply at any time for these Directions to be amended, suspended or set aside, or for further directions.

39. No objection was received from Mr Jakeway in relation to his appeal being a Lead Case within 14 days of the directions or at all. Accordingly his appeal has proceeded as a Lead Case in accordance with those directions.

40. With regard to Mr Jakeway's application to withdraw his appeal, it is convenient to first set out the material parts of Rule 17. This provides:

> (1) Subject to any provision in an enactment relating to withdrawal or settlement of particular proceedings, a party may give notice to the Tribunal of the withdrawal of the case made by it in the Tribunal proceedings, or any part of that case—
>
> (a) by sending or delivering to the Tribunal a written notice of withdrawal; or
>
> (b) orally at a hearing.
>
> (2) …
>
> (3) A party who has withdrawn their case may apply to the Tribunal for the case to be reinstated.

41. It is clear that there is nothing in Rule 17 to prevent Mr Jakeway from withdrawing his case. He does not need either the permission of the Tribunal or HMRC's agreement to do so. However, by withdrawing his case Mr Jakeway finds himself in the same position as the taxpayer in *HMRC v C M Utilities Limited* [2017] UKUT 305 (TCC).

42. In that case the Upper Tribunal noted, at [20], first, that Rule 17 provided for the process of withdrawal but not the consequences of withdrawal, and secondly that withdrawal of an appeal is expressly subject to statutory provisions relating to both withdrawal and settlement, particularly s 54 TMA. The Upper Tribunal said:

> "35. In our judgment, the effect of statutory provisions of the TMA (and by extension those relating to NICs) is clear and supported by authority. In a case where HMRC give notice of objection to the appeal being treated as withdrawn, and puts the case for an increase, the FTT retains its jurisdiction, and it continues to have a duty, to increase the assessment or determination in accordance with s 50(7) (and analogous provisions) to the extent that it decides that the appellant has been undercharged by the original assessment or determination.
>
> 36. Rule 17 is entirely compatible with that analysis. Not only is it expressly subject to statutory provisions relating to withdrawal or settlement (of which s 54 is plainly one), and says nothing itself about the consequences of withdrawal, it is also drafted in terms that it is the case of the party seeking to withdraw that is the subject of the withdrawal. Where it is the appellant who withdraws, that does not necessarily mean that the whole of the proceedings must be regarded as having come to an end. The proceedings remain to be determined, whether as a matter of statute, as for example, where HMRC do not object, by a combination of s 54(4) and s 54(1), or by a decision by the tribunal, which in relevant circumstances will include consideration of whether the appellant has been undercharged and the assessment should be increased accordingly."

43. Therefore, although I accept that Mr Jakeway has withdrawn his case the matter has not come to an end and remains before the Tribunal. As is clear from *C M Utilities* the proceedings

remain to be determined and it will be necessary for the Tribunal to consider whether he has been undercharged to tax and if the assessments should be increased.

44. Before turning to the evidence before the Tribunal and findings of fact it is convenient to first set out the relevant legislative provisions and principles applicable to in relation to the valuation of shares.

LAW

45. I have referred, above, to s 50 TMA. This provides:

> **50 Procedure**
>
> (1)–(5) …
>
> (6) If, on an appeal notified to the tribunal, the tribunal decides—
>
> (a) that, the appellant is overcharged by a self-assessment;
>
> (b) that, any amounts contained in a partnership statement are excessive; or
>
> (c) that the appellant is overcharged by an assessment other than a self-assessment,
>
> the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.
>
> (7) If, on an appeal notified to the tribunal, the tribunal decides
>
> (a) that the appellant is undercharged to tax by a self-assessment
>
> (b) that any amounts contained in a partnership statement are insufficient; or
>
> (c) that the appellant is undercharged by an assessment other than a self-assessment,
>
> the assessment or amounts shall be increased accordingly.

46. For completeness, I also set out the material parts of s 54 TMA which provides for cases where appeals are settled by agreement:

> **54 Settling of appeals by agreement**
>
> (1) Subject to the provisions of this section, where a person gives notice of appeal and, before the appeal is determined by the tribunal, the inspector or other proper officer of the Crown and the appellant come to an agreement, whether in writing or otherwise, that the assessment or decision under appeal should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the tribunal had determined the appeal and had upheld the assessment or decision without variation, had varied it in that manner or had discharged or cancelled it, as the case may be.
>
> …
>
> (4) Where—
>
> (a) a person who has given a notice of appeal notifies the inspector or other proper officer of the Crown, whether orally or in writing, that he desires not to proceed with the appeal; and
>
> (b) thirty days have elapsed since the giving of the notification without the inspector or other proper officer giving to the appellant notice in writing

indicating that he is unwilling that the appeal should be treated as withdrawn,

the preceding provisions of this section shall have effect as if, at the date of the appellant's notification, the appellant and the inspector or other proper officer had come to an agreement, orally or in writing, as the case may be, that the assessment or decision under appeal should be upheld without variation.

(5) The references in this section to an agreement being come to with an appellant and the giving of notice or notification to or by an appellant include references to an agreement being come to with, and the giving of notice or notification to or by, a person acting on behalf of the appellant in relation to the appeal."

47. The legislation, then in force, 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) 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.

48. The CISX was designated as a "recognised stock exchange on 10 December 2002.

49. 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.

50. 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 *Netley v HMRC* [2017] UKFTT 442 (TC), at [203]:

> "The following principles of valuation are not controversial:
>
> > (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)."

The Tribunal also noted:

"210. The question of what a prudent purchaser would reasonably require is essentially a value judgment, informed by the expert evidence. In *Caton's Administrators*, Dr Brice also had regard to an observation in *Dymond's Capital Taxes*. At page 51a Dr Brice stated as follows:

" *Dymond*, para 23.328 also says that where the holding is less than 25% it may be that the buyer will expect less information but this is a matter for expert evidence. The size of the company is important and a buyer investing £200,000 would obviously be entitled to know more than one investing £2,000. Where the holding was small, say less than £50,000 and less than 5% of the capital, the buyer would not normally be expected to have more than the information which was published or which he could find out without questioning the directors."

211. I respectfully agree with the approach of Dr Brice. It is difficult to see why, in relation to a holding in an AIM company which is small both in terms of value and percentage, a reasonable board of directors would be concerned to reveal any information which was not otherwise public information."

EVIDENCE

51. The only oral evidence was that of Daniel Ryan, the Managing Director of Berkeley Research Group (UK) Limited, who was called as an expert witness by HMRC. He produced two reports. The first, dated 14 September 2018, in relation to software called QARIA (the "Software") used and developed by the Companies and the second, dated 13 November 2018, in relation to the valuation of shares in each of the Companies as at the following Gifting Dates:

(1) Clerkenwell shares as at 23 March 2005 (referred to in Mr Ryan's Report as the First (or 1st) Gifting Date);

(2) Modia shares as at 8 September 2005 and 18 October 2005 (referred to in Mr Ryan's Report as the Second (or 2nd) and Third (or 3rd) Gifting Dates);

(3) Your Health shares as at 31 March 2006 (referred to in Mr Ryan's Report as the Fourth (or 4th) Gifting Date); and

(4) Signet shares as at 31 March 2006 (referred to in Mr Ryan's Report as the Fifth (or 5th) Gifting Date).

52. Mr Ryan is a fellow of the Institute of Chartered Accountants of England and Wales and a member of the Academy of Experts who has over 25 years experience of valuing businesses, shares, intellectual property and other assets in contentious and non-contentious matters. He

has been recognised by Who's Who Legal publications as a leading expert witness and forensic accountant each year since 2014. In evidence Mr Ryan confirmed that he understood and had fully complied with the "Expert Declaration" contained in both of his reports in which he had stated, *inter alia*, that:

> "(i) I understand that my duty in providing written reports and giving evidence is to help the Tribunal, and that this duty overrides any obligation to the party by whom I am engaged or the person who has paid or is liable to pay me. I confirm that I have complied and will continue to comply with my duty.
>
> (ii) I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent on the outcome of the case."

Mr Ryan also confirmed that he has read:

> "Part 35 of the Civil Procedure Rules and the accompanying practice directions and I have complied with their requirements"

Part 35 of the Civil Procedure Rules makes it abundantly clear that it is the duty of experts to help the court or tribunal on matters within their expertise and that this duty "overrides any obligation to the person from whom experts have received instructions or by whom they are paid." The report also states that he had has read:

> … the "Protocol for Instruction of Experts to give Evidence in Civil Claims" and confirm that my report has been prepared in accordance with its requirements. I have acted in accordance with the Code of Practice for Experts."

53. In his 'Summary of Conclusions' in the report on the valuation of shares in each of the Companies, Mr Ryan notes that the share price in each of the Companies increased significantly in a "matter of a couple of days after their listing on the CISX." He observes that there were, "no announcements or new information or any other rational explanation for the increase in the values of the shares." By way of example he refers to an increase of 1,500% in the price of Clerkenwell shares during the initial two-day trading period immediately after its shares were admitted for trading on the CISX when compared with the private placement price paid by shareholders approximately one month before. Similarly, he notes that the prices of Modia, Signet and Your Health shares also increased significantly (by over 1,000% in each instance) during a two to three day trading period following listing on the CISX. In all instances, the two to three days trading that resulted in significant increases in the share prices were followed by no further trading in each of the Companies shares for some period of time.

54. In Mr Ryan's opinion these extreme share prices, which were not supported by any new public information at the time, indicate that the price paid for the Companies shares, as listed on the CISX, are not appropriate indicators of the true market value of a minority share in each of the Companies at each of the Gifting Dates. His 'Overview of Results' continues:

> "2.2.5 I consider that an Investor could not, and should not, have relied on the listed prices as a reference point for the market value of shares in the [Companies] at each of the Gifting Dates.
>
> 2.2.6 In my opinion, given that there were no material changes in each of the [Companies] operations since their respective private placement of shares, an Investor would not have considered any of the [Companies] to have materially changed in value (if at all), since the date of each private placement.
>
> 2.2.7 I consider that the direct market method of valuation is an appropriate way of determining the value of a minority share in each of the [Companies], although by reference to private arm's-length transactions in companies.

2.2.8 I have also considered the value of the shares by reference to the value of the assets of each of the [Companies].

2.2.9 One of the principal assets of each of the [Companies] were their rights in the Software. However, … in my opinion, I consider that it is for the Tribunal to determine whether an Investor would have sufficient information to determine the actual market value of the Software.

2.2.10 Consequently, for the purpose of valuing a minority shareholding in the [Companies], I have considered the value of the shares on two bases: in one scenario (which I refer to as "the Sufficient Information Scenario"), I assume that the Investor was able to determine the actual market value of the Software and, in the alternative scenario (which I refer to as "the Limited Information Scenario"), I assume that the Investor was required to accept that the price paid for the Software by [Clerkenwell] was representative of its market value.

2.2.11 My valuations at each of the Gifting Dates in the Sufficient Information Scenario are summarised in Figure 3 below:

Figure 3 Share valuation summary in the Sufficient Information Scenario

Date	Company	Valuation (Low)	Valuation (High)
1st Gifting Date	Clerkenwell	0.8p	3.0p
2nd Gifting Date	Modia	0.4p	5.0p
3rd Gifting Date	Modia	0.4p	5.0p
4th Gifting Date	Your Health	0.5p	3.0p
5th Gifting Date	Signet	0.3p	3.0p

Source : My analysis

2.2.12 I consider that, due to the significant discrepancies between the market value of the Software and the prices paid by each of the [Companies] for the Software, an Investor is likely to consider the value of the shares to be at the lower end of each of the ranges shown in the table above.

2.2.13 My valuations at each of the Gifting Dates in the Limited Information Scenario are summarised in Figure 3 below:

Figure 4 Share valuation summary in the Limited Information Scenario

Date	Company	Valuation (Low)	Valuation (High)
1st Gifting Date	Clerkenwell	1.2p	3.0p
2nd Gifting Date	Modia	1.0p	5.0p
3rd Gifting Date	Modia	1.0p	5.0p
4th Gifting Date	Your Health	1.1p	3.0p
5th Gifting Date	Signet	0.5p	3.0p

Source : My analysis"

55. Mr Ryan's share valuation report also sets out the several methods commonly used to value business assets and shares. These include income based methods (the most common of which is known as the discounted cash flow or DCF method), direct and indirect market based methods and asset based methods. Although the Report recognises that, for a quoted company, "the easiest, and frequently the most reliable, valuation method is to use the quoted share price", Mr Ryan explains, in his report, that this is not always the case and the that quoted share price "may not be a reliable guide to value".

56. The report gives the following examples where the listed share price "would likely be an unreliable guide to value:

(1) In markets where a company's shares are traded infrequently. Studies have found that serial correlation can be observed in the share price which means that the share price for a future date is based, in part, on the share price from prior periods;

(2) At an initial public offering ("IPO"), there will often be an information asymmetry between the sellers and buyers of the shares, where the sellers have more information about the company than potential buyers. Studies show that, as a result, the IPO price will often have to be lower than fair value in order to compensate the buyer for this disadvantage; and

(3) Where transactions are between connected parties, and therefore not at arm's length, there may be incentives for the parties involved to complete the transaction at a price either higher or lower than the asset's value.

57. In relation to the information used in his valuation of the shares Mr Ryan notes that the information available is an "important factor" in determining the most appropriate methods to apply and also in terms of the resulting value and that his analysis is based on the information he considered would have been available to an investor in the minority shares in the Companies at each of the Gifting Dates. His report states:

> "In my opinion, investing in a business with characteristics similar to any/all of the [Companies] is not the same as investing in shares in a larger more stable business. The specific risks attached to the business are significant and, therefore, I consider that an investor investing in such a business would either be doing so because they had received inside knowledge that allowed them to determine that this was a good investment, or else they would be a relatively sophisticated investor that would have knowledge of similar types of companies and experience in performing due diligence on such businesses to enable them to properly assess the prospects for the business."

He continued:

> "I do not have sufficient information to establish whether it would have been possible for an Investor to have been able to establish the true nature of the Software at each of the Gifting Dates, or by extension the information provided to each Investor would have been sufficient to be able to accurately determine the true market value of the Software at each of the Gifting Dates.
> …
>
> As stated above, I consider that the Investor in shares in one of the [Companies] is likely to have been a sophisticated investor and would have sought to understand the value of the Software in some detail. In my opinion this would include factors such as its intended functionality, state of development, costs of development to date, ease of replication, and competitive positions. I also consider that without such information a sophisticated investor would not have invested in the shares. However, such an outcome does not help to establidh the value of the shares.

58. In the 'Summary of Conclusions' in his report on the valuation of the Software Mr Ryan states that the Companies, "did not spend a significant amount of money on attempting to develop [the Software] into a marketable product during the period from March 2005 to March 2006." He notes that the annual report and financial statements of Clerkenwell for the year ended 30 June 2006 show that it spent £0 (nil) and £91,000 respectively on research and development in the financial years ending 30 June 2005 and 2006. Similarly, in its financial years ending 30 April 2006 and 2007 Modia spent £0 (nil) and £80,000 on research and development. As a result of the lack of investment Mr Ryan concludes that the Software was

"not sufficiently developed for a marketable product", as intended for the healthcare or automotive sectors at any of the Gifting Dates and, as such, he considered that:

> "… at all the Gifting Dates a prudent purchaser would not pay more for the Software than it would have cost to develop up to that point."

59. Mr Ryan therefore concluded that the Cost Approach of valuation was the most appropriate way to determine the value of the Software dismissing the Income and Market approaches as "not appropriate in the circumstances." He therefore, estimated the value of the Software at the First, Second and Third Gifting Dates at £62,200 and at £125,400 at the Fourth and Fifth Gifting Dates.

60. No expert evidence was adduced on behalf of any of the appellants.

61. Although both Dr Patel and Dr Venkataraman filed witness statements, as their evidence did have any bearing on the valuation of the shares on the relevant Gifting Dates, the issue before the Tribunal, it was not challenged and their statements were admitted without the need for them to attend the hearing to give oral evidence and be cross examined.

FACTS

The Companies

62. The following facts in relation to the each of the Companies, as taken from HMRC's statement of case and the skeleton argument of Mr Rivett (which have been served on all of the Lead Appellants), were, as Mr Friend confirmed, not disputed by Dr Patel or Dr Venkatraman. Neither were these challenged by any of the other appellants.

Clerkenwell

63. Clerkenwell was incorporated as Clerkenwell Medical Research Limited on 24 September 2004 with an authorised share capital of £1,000 divided into 1000 ordinary shares of which 500 shares were paid up. On 5 October 2004 Westo Directors Limited resigned as a director of the company and David Perrin (an employee of Vantis Tax Limited), Roy Faichney and Barry Brinsmead were appointed as directors of Clerkenwell. Mr Perrin was registered as a shareholder of 1 ordinary share in Clerkenwell on 5 October 2004 and, on the same day, the directors of Clerkenwell approved the issue of 499 £1 ordinary Clerkenwell shares to Mr Perrin to hold as nominee for the trustees of the Richardson Trust at a price of £499.

64. On or about 18 January 2005 the authorised capital of Clerkenwell was increased to 100,000 £1 ordinary shares by the creation of 99,000 additional ordinary shares of £1 each and then sub-divided into 100,000,000 0.1p shares. Also, around this time, Clerkenwell adopted new Articles of Association and became a public limited company ("Plc").

65. On 20 January 2005:

(1) 49,500,000 Clerkenwell shares were allotted at their par value of 0.1p each to Mr Perrin purportedly to hold on behalf of a Jersey settlement referred to as 'the Richardson Trust';

(2) 500,000 Clerkenwell shares were issued to Mr Perrin in his capacity as a director of Clerkenwell;

(3) 500,000 Clerkenwell shares were issued to Mr Faichney in his capacity as a director of Clerkenwell; and

(4) 200,000 Clerkenwell shares were issued to Mr Brinsmead in his capacity as a director of Clerkenwell.

66. On 21 January 2005 a private placing memorandum was issued to issue up to 48,000,000 of the unissued 50,000,000 Clerkenwell shares at 3p each. In Part I of the private placing

memorandum it was identified that Clerkenwell had been formed as a vehicle for the acquisition rights in the Software and its exploitation. By the placing Clerkenwell proposed to raise up to £1,440,000 before expenses.

67. On 21 February 2005 Mr Brinsmead resigned as a director of Clerkenwell.

68. On 7 March 2005 Simon Tod was appointed as a director of Clerkenwell.

69. On 26 March 2005, 2,000,000 Clerkenwell shares were issued to nine employees of Vantis Tax Limited at their par value 0.1p. Between 21 January 2005 to 18 March 2005 41,932,333 Clerkenwell shares were issued at 3p each pursuant to the private placing memorandum dated 21 January 2005. On 18 February 2005 Clerkenwell acquired 100 Ordinary Shares of £1 each in a trading subsidiary called Harper Yeoward Associates Limited for the cost of £90,000 plus its net asset value.

70. By an agreement dated on or about 2 March 2005 between the trustees of the Richardson Trust and Clerkenwell, Clerkenwell purported to acquire rights in the Software from the trustees of the 'Richardson Trust' for the sum of £500,000 and some unascertained consideration.

71. On 8 March 2005 Clerkenwell made an application to CISX for the listing of 93,543,333 0.1p Ordinary Shares on the CISX.

72. On 14 March 2005 Vantis Corporate Finance Limited provided a valuation (which is disputed by HMRC) of the entire issued share capital of Clerkenwell at £100 million.

73. On 21 March 2005 93,943,333 Clerkenwell ordinary shares were listed on the Official List of CISX.

74. On 23 March 2005 gifts of approximately 43,140,333 Clerkenwell shares were made by various individuals, including Dr Patel, to a variety of charities. On 13 April 2005 Vantis Tax Limited issued letters to those who had gifted shares advising that tax relief should be claimed in respect of the Clerkenwell shares calculated by reference to an assumed value of £1 per ordinary share as at 23 March 2005.

Signet

75. On 2 February 2006 Signet was incorporated and registered in England and Wales under the name Signet International Plc as a public company limited by shares. At the time of incorporation Signet had an authorised share capital of £50,000 comprising 50,000 £1 ordinary shares. On incorporation 25,000 Ordinary Shares were issued at par.

76. On or about 10 February 2006 an offer for subscription to raise up to £1.65 million at a share price of 3p per Signet share was published (the document is undated). The terms of the offer for subscription recorded that the purpose of the offer was to raise up to £1.65 million through the issue of up to 55,000,000 new Ordinary Shares of 0.0125p each at £0.03 per Ordinary Share with the funds to be used to acquire and exploit interests in the Software.

77. On 9 February 2006 Vikash Kukar was appointed as a director of Signet. Also on that date the authorised share capital of Signet was subdivided on the basis that each £1 Ordinary Share became 8000 0.0125p Ordinary shares. Each of the directors in Signet (Simon Tod, David Yeoward and Mr Kukar) subscribed for 200,000 at par.

78. Between 10 February 2006 to 6 March 2006 subscriptions at 3p per Signet share. 57,400,000 Signet shares raised £1.7m.

79. By an agreement dated on or about 10 March 2006 between Clerkenwell and Signet, Signet purported to purchase interests in the Software for £800,000.

80. On 13 March 2006 Signet purchased a trading subsidiary for £15,000 plus net asset value.

81. On 28 March 2006 258,036,862 ordinary shares in Signet were listed on the Official List of the CISX. Purchases of Signet shares were made on two days between 28 March 2006 and 29 March 2006.

82. On an unspecified date Vantis Corporate Finance Limited provided an indicative valuation (which is disputed by HMRC) of the entire issued share capital of Signet of £160,000,000 as at 24 March 2006.

83. Between 30-31 March 2006 56,000,000 gifts of Signet shares were made to various charities by Dr Venkataraman amongst others.

84. On 25 May 2006 Vantis Tax Limited issued letters to Appellants advising that tax relief should be claimed in respect of the Signet shares calculated by reference to an assumed value of 61.25p per Signet share.

Your Health

85. On 31 January 2006 Your Health was incorporated and registered in England and Wales under the name Your Health International Plc as a public company limited by shares. At the time of incorporation Your Health had an authorised share capital of £50,000 comprising 50,000 £1 ordinary shares. 25,000 ordinary shares were issued at par on incorporation.

86. On 9 February 2006 the authorised share capital of Your Health was subdivided so that each £1 ordinary share became 8000 0.0125p ordinary shares. Also on 9 February 2006 each of Simon Tod, George Jakeway, Stephen Long, David Yeoward subscribed for 200,000 ordinary shares in Your Health at par. Mr Tod and Mr Yeoward were directors of Your Health.

87. By undated agreements between Your Health and Bruton Place Consulting Tax Limited, Your Health agreed to pay Bruton Place Consulting Tax Limited sums of £40,000 per annum for certain unspecified management services to be provided by two specific employees of Bruton Place Consulting Tax Limited, namely Mr Jakeway (the Lead Appellant in relation to Your Health) and Mr Long.

88. In or about February 2006, in an undated document, an offer for subscription to raise up to £4.5m at a share price of 3p per Your Health share was published. Between10 February 2006 to 6 March 2006 subscriptions for shares opened at 3p. 154,000,000 Your Health shares raised £4.6m.

89. By an agreement, dated 13 March 2006, between Mr and Mrs C Hall and Your Health, Your Health acquired 100 ordinary shares of £1 each in the capital of Alumedia Limited, for a consideration of £15,000 plus net asset value of Alumedia Limited.

90. By an agreement, dated on or about 14 March 2006, between Clerkenwell and Your Health, Your Health purported to acquire an interest in the Software from Clerkenwell for £2,200,000.

91. On 28 March 2006 355,149,960 ordinary shares in Your Health were listed on the Official List of the CISX. Purchases of Your Health shares were made only between 28 March 2006 and 29 March 2006.

92. On an unspecified date Vantis Corporate Finance Limited provided an indicative valuation of the entire issued share capital of Your Health (which is not accepted by HMRC) of £215,000,000 as at 24 March 2006.

93. Between 30 and 31 March 2006 153,000,000 Your Health shares were gifted to various charities by, amongst others, Mr Jakeway in respect of which tax relief was claimed by

reference to a variety of different valuations of the Your Health shares including 64.25p per Your Health share, 63.25p per Your Health share and 58.03p per Your Health share.

94. On 25 March 2006 Vantis Tax Limited issued letters to Appellants advising that tax relief should be claimed in respect of the Your Health shares should be calculated by reference to an assumed value of 64.25 p per Your Health share.

The Appellants

95. Having set out the position in regard to the Companies, I turn to that in relation to each of the appellants (as explained above, the position of Modia, Mr Foster and Mr Freeman whose appeals concerned gifts of Modia shares are set out in the appendix to this decision notwithstanding their appeals have been struck out and are not before the Tribunal).

96. Much of what follows is from HMRC's statement of case and the skeleton argument of Mr Rivett which was either not disputed or not challenged.

Dr Patel

97. On 23 March 2005 Dr Patel made a gift of 100,000 Clerkenwell shares to the Post Natal Chorionepithelioma Trust, a UK registered charity. Dr Patel claimed relief in respect of that gift of shares in his 2004-05 self-assessment tax return on the basis of a claimed value of £1.00 per share.

98. By letter dated 13 October 2006 HMRC notified Dr Patel that it intended to enquire into his 2004-05 tax return. The enquiry was completed and, on 28 April 2016, a closure notice was issued by HMRC amending Dr Patel's return to reflect HMRC's conclusion that the gift relief he had claimed had been overstated. This was on the basis of an independent valuation obtained by HMRC from Mr M Ruse that the value of the shares when gifted were 3p and, as such, Dr Patel had understated his liability to tax by £38,696.23.

99. Dr Patel appealed to the Tribunal against the closure notice on 19 October 2016.

Dr Venkataraman

100. Dr Venkataraman made of gift of 330,000 Signet shares to a UK registered charity, Rett Syndrome Association UK, on 31 March 2006. He claimed gift relief on the basis of a value of 61.25p per share in his 2005-06 self-assessment tax return.

101. HMRC opened an enquiry into the 2005-06 tax return by letter of 3 May 2007. The enquiry was concluded on 24 April 2017 by the issue of a closure notice amending Dr Venkataraman's tax return in accordance with HMRC's conclusion that, on the basis of an independent valuation obtained from Mr M Ruse, the value of Signet shares as at the Gifting Date of 31 March 2006 was 3p per share, Dr Venkataraman had overstated his claim for relief and understated his liability to tax for 2005-06 by £76,890.

102. On 10 August 2017 Dr Venkataraman appealed to the Tribunal against the closure notice essentially on the grounds that the gift relief had been correctly claimed.

Mr Jakeway

103. Mr Jakeway made a gift of 140,000 Your Health shares to the Rotary Club of Harrow, a UK registered charity on 31 March 2006. He claimed gift relief in his 2005-06 on the basis of a valuation of the Your Health shares at 63.2p per share. On 26 June 2007 HMRC notified Mr Jakeway of an enquiry into his 2005-06 tax return. The enquiry was closed on 14 July 2016 by the issue of a closure notice which stated HMRC's conclusion that Mr Jakeway's 2005-06 tax return should be amended as he had overstated his claim for gift relief and understated his liability to tax by £28,622.76. This was on the basis of an independent valuation obtained by

HMRC from Mr M Ruse that the value of Your Health shares as at 31 March 2006 was 3p per share.

104. On 15 January 2018 Mr Jakeway appealed to the Tribunal.

DISCUSSION AND CONCLUSION

105. As stated above (in paragraph 2) the sole issue before the Tribunal is the determination the correct market value of the shares in the Companies on the respective Gifting Dates. This is a matter for the Tribunal as informed by expert evidence. The expert evidence of Mr Ryan suggests that value of the various shares in the Companies at the respective Gifting Dates was significantly lower than that claimed by Dr Patel, Dr Venkataraman and Mr Jakeway in their self-assessment tax returns and also lower than that identified by Mr M Ruse which formed the basis of the conclusions stated in the closure notices issued by HMRC against which the appellants have appealed.

106. Mr Rivett contends that the evidence before the Tribunal that, for the purposes of s 272 TCGA, the value of the various shares on the various Gifting Dates is properly identified by the "Low Valuation" as set out by Mr Ryan under the "Sufficient Information Scenario" (see paragraph 54, above). In support, he relies on the valuation principles summarised in *Netley v HMRC* (see paragraph 50) and the observation of Lord Fleming in *Findlay's Trustees v CIR* (1938) ATC 437 at 440 that:

> "… the purchaser is a person of reasonable prudence, who has informed himself with regard to all the relevant facts such as the history of the business, its present position, its future prospects and also that he has access to the accounts of the business for a number of years."

107. As such, Mr Rivett says that because the hypothetical purchaser must be taken to have had sufficient information to determine the actual market value of the Software prior to any purchase of share in the Companies, the valuations produced in the "Sufficient Information Scenario" should be adopted and, given Mr Ryan's conclusion at paragraph 2.2.12 of his Report that "an Investor is likely to consider the value of the shares to be at the lower end of each of the ranges shown in the table above" (see paragraph 54, above), that it is the low valuation shown in that Sufficient Information Scenario which should be applied.

108. In the circumstances Mr Rivett invited me to exercise the Tribunal's powers under s 50(7) TMA to increase the amount of the assessments, the subject of the closure notices under appeal, to the amounts to reflect the "Low Valuation" identified by Mr Ryan in the "Sufficient Information Scenario".

109. In relation to the effect of such an approach in each of the Lead Cases, Mr Rivett says that this would increase the assessments, from that assessed in the closure notices, as follows:

(1) Dr Patel's assessment would be increased from £38,696.23 to £39,576.23;

(2) Dr Venkataraman's assessment would be increased from £76,890 to £80,454; and

(3) Mr Jakeway's assessment would be increased from £28,622.76 to £30,022.76.

110. Although Mr Friend, for Dr Patel and Dr Venkataraman, accepts the figures as correct if such an approach were to be adopted, he contends that it is not appropriate to adopt the "Sufficient Information Scenario". Instead he contends that the direct market method is the correct approach. Under such an approach, at the relevant Gifting Dates, Clerkenwell shares were valued at 52p per share and Signet shares at 61p per share. However, given that Mr Ryan in his report and in evidence, which was not contradicted, explained that in the present case such a valuation was not appropriate (see paragraphs 55 – 59, above) such an argument cannot, in my judgment, succeed.

111. Alternatively, given that Dr Patel had a 0.1% shareholding in Clerkenwell and Dr Venkataraman 0.12% in Signet, Mr Friend contends that it is more appropriate to apply Mr Ryan's Limited Information Scenario. In support of his argument Mr Friend relies on the observations of Judge Cannan at [210] – [211] in *Netley v HMRC* (see paragraph 50, above).

112. However, as Judge Cannan noted in his fifth principle of valuation, which referred to the passage in *Findlay's Trustees* cited by Mr Rivett (see paragraph 106, above), the prudent purchaser would have informed himself as to all relevant facts such as the present position of the business and its future prospects. Indeed, the evidence of Mr Ryan, was that an investor in shares in one of the Companies is likely to have been a "sophisticated investor", that he had sufficient information and is likely to consider that the value of the shares to be at the lower end of the ranges shown in the table to his report.

113. In the absence of any evidence to the contrary I accept the conclusions of Mr Ryan who clearly understood and complied with his duty as an expert witness (as described in paragraph 43, above). Accordingly I find, for the purposes of s 272 TCGA, that the values of the shares in the various Companies as at the Gifting Dates were as stated in the low valuation of Mr Ryan's "Sufficient Information Scenario".

114. Therefore, I find that as at 23 March 2005, the value of Clerkenwell shares was 0.8p per share, with the value of Your Health and Signet shares, as at 31 March 2006, being 0.5p and 0.3p per share respectively and not as claimed by Dr Patel, Mr Jakeway and Dr Venkataraman in their respective self-assessment tax returns or as stated by HMRC in the closure notices issued to the appellants.

115. As a result the appellants have been undercharged to tax by the amendments made by HMRC in the closure notices. In such circumstances it is clear that the appeals of Dr Patel, and Dr Venkataraman cannot succeed. It is also clear from s 50(7) TMA that, having concluded that the appellants have been "undercharged to tax", the amounts assessed on Dr Patel, Dr Venkataraman and also, for the reasons above (see paragraphs 31 – 44) Mr Jakeway "shall be increased accordingly".

116. The appeals of Dr Patel and Dr Venkataraman are therefore dismissed.

117. In accordance with s 50(7) TMA the amounts of the assessments are increased as follows:

(1) Dr Patel from to £38,696.23 as stated in the closure notice to £39,576.23;

(2) Dr Venkataraman from £76,890 as stated in the closure notice to £80,454; and

(3) Mr Jakeway from £28,622.76 as stated in the closure notice to £30,022.76.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

118. 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: 10 OCTOBER 2019

APPENDIX

FINDINGS OF FACT AND CONCLUSIONS IN APPEALS OF DAVID FOSTER AND KEITH FREEMAN IF THEIR APPEALS HAD BEEN REINSTATED.

1. The appeals of David Foster and Keith Freeman concerned gifts of Modia shares to charity.

FACTS

2. Modia was incorporated and registered in England and Wales on 27 April 2005 under the name Modia plc as a public company limited by shares. At the time of incorporation Modia had an authorised share capital of £50,000 comprising 500,000,000 ordinary shares of 0.01p each. On incorporation two ordinary shares of 0.01p were issued to the subscribers to the Memorandum of Association. At all material times the directors of Modia were Mr Perrin, Mr Faichney; and Mr Tod, all of whom were also directors of Clerkenwell.

3. In or about May 2005 an offer for subscription of up to 200,000,000 Modia New Ordinary Shares of 0.01p was published by which Modia sought to raise £10 million by offering shares for subscription in three tranches. The first of 180,000,000 Modia New Ordinary Shares at 3p; the second of 16,000,000 Modia New Ordinary Shares at 20p; and the third, 4,000,000 Modia New Ordinary Shares at 35p, providing a weighted average price of 5 per share.

4. The financial advisor to Modia was identified as Vantis Corporate Finance Limited. Under the terms of the offer for subscription it was identified that the funds raised in the first tranche from the sale of 180,000,000 Modia New Ordinary Shares would be used to acquire certain rights and technology to be used in the passenger motor industry; the funds raised in the second tranche from the sale of 16,000,000 Modia New Ordinary Shares would be used to acquire a company which could be used as a trading subsidiary; and the funds raised in the third tranche from the sale of the 4,000,000 Modia New Ordinary Shares at 35p would be used to attract a key management team, provide further working capital for Modia and to prepare Modia for listing on CISX should the directors of Modia consider such listing appropriate.

5. On 2 June 2005 the two issued ordinary shares in Modia were transferred to Clerkenwell in consideration of an undertaking to pay up such shares in full.

6. On 9 June 2005 Clerkenwell transferred two ordinary Modia shares to the trustees of a settlement known as ‘the CMR Employee Benefit Trust’.

7. On 10 June 2005 Modia allotted in aggregate 255,299,999 ordinary shares of 0.01p each in the capital of Modia at 0.01p per shares to entities or persons who are understood to have been employed by or otherwise connected to Vantis Tax Limited at the material time:

(1) 249,999,999 Modia ordinary shares of 0.1p were allotted to the trustees of the CMR Employee Benefit Trust;

(2) 400,000 Modia ordinary shares of 0.1p were allotted to Barry Brinsmead;

(3) 400,000 Modia ordinary shares of 0.1p were allotted to Peter Legg;

(4) 300,000 Modia ordinary shares of 0.1p were allotted to Gary Rowson;

(5) 300,000 Modia ordinary shares of 0.1p were allotted to Tom Kivleham;

(6) 300,000 Modia ordinary shares of 0.1p were allotted to Antonio Risorto;

(7) 300,000 Modia ordinary shares of 0.1p were allotted to Paul Noble;

(8) 200,000 Modia ordinary shares of 0.1p were allotted to Pamela Chatterjee;

(9) 200,000 Modia ordinary shares of 0.1p were allotted to Gillian Farrell;

(10)200,000 Modia ordinary shares of 0.1p were allotted to Peter Davies;

(11)200,000 Modia ordinary shares of 0.1p were allotted to Richard Heap;

(12)200,000 Modia ordinary shares of 0.1p were allotted to Mr. Steven Pinhey;

(13)200,000 Modia ordinary shares of 0.1p were allotted to Paul Dufty;

(14)200,000 Modia ordinary shares of 0.1p were allotted to Martin Barber;

(15)200,000 Modia ordinary shares of 0.1p were allotted to Anthony Rose;

(16)2000,000 Modia ordinary shares of 0.1p were allotted to David Yeoward;

(17)600,000 Modia ordinary shares of 0.1p were allotted to David Perrin;

(18)600,000 Modia ordinary shares of 0.1p were allotted to Roy Faichney; and

(19)300,000 Modia ordinary shares of 0.1p were allotted to Simon Tod.

8. In the period to 15 September 2005, 75,170,000 Modia ordinary shares were issued at 5p each.

9. On 18 August 2005, pursuant to an agreement between Claire Connolly and Modia, Modia acquired 100 Ordinary Shares of £1 each in the capital of a trading subsidiary known as Lysias Limited for £20,000 plus its net asset value. Also on 18 August 2005 under an agreement between Clerkenwell and Modia, Modia purportedly acquired interests in the Software from Clerkenwell for £2,000,000.

10. On 5 September 2005 330,670,001 ordinary shares in Modia were listed on the Official List of CISX. Purchases of shares in Modia were made on three days between 5 September 2005 and 7 September 2005.

11. On or about 6 September 2005 Vantis Corporate Finance Limited provided a valuation of the entire issued share capital of Modia (which is disputed by HMRC) which valued the share capital of Modia at £350,000,000.

12. On 16 November 2005 Vantis Tax Limited issued letters advising that tax relief should be claimed in respect of the Modia shares calculated by reference to an assumed value of £1 per ordinary share. On 25 September 2006 Vantis Tax Limited issued further letters advising that tax relief should be claimed in respect of the Modia shares calculated by reference to a revised assumed value of 66.25p per Modia share. Subsequently Mr Foster, Mr Freeman and others made gifts of Modia shares to charities in respect of which tax relief was claimed by reference to a variety of different valuations of the Modia shares including £1 per Modia share, 66.25p per Modia share, 34.33p per Modia share and 5p per Modia share.

13. Mr Foster made a gift of 1,100,000 Modia shares to the Post Natal Chorionepithelioma Trust a UK registered charity on 18 October 2005. He claimed relief for this gift of shares in his 2005-06 self-assessment tax return on the basis that the value of the shares was 66.25p per share.

14. HMRC opened and enquiry into the tax return on 13 October 2006 and, on 19 July 2016, concluded the enquiry by the issue of a closure notice. This amended Mr Foster's tax return to reflect HMRC's conclusion that the gift relief claimed had been overstated as the value of the Modia shares, on the basis of an independent valuation obtained from Mr M Ruse as at the Gifting Date, was 5p per share. As a result Mr Foster's liability to tax for 2005-06 was understated by £269,500.

15. On 16 December 2016 Mr Foster notified the Tribunal of his appeal against the closure notice.

16. Mr Freeman also made a gift of Modia shares to a UK registered charity, Dreamstore (UK), doing so on 8 September 2005. He too claimed gift relief on the basis of a value of 66.25p per share in his 2005-06 self-assessment tax return. HMRC opened an enquiry into the return by letter of 13 October 2006. The enquiry was concluded by the issue of a closure notice on 9 August 2016 which stated that Mr Foster's 2005-06 tax return should be amended to reflect HMRC's conclusion that the value of the Modia shares, on the basis of an independent valuation obtained from Mr M Ruse, as at 8 September 2005 was 5p and that, as such Mr Foster had inflated his claim for relief and understated his liability to tax by £24,500.

17. Mr Foster appealed to the Tribunal against HMRC's conclusion in the closure notice on 5 April 2017.

DISCUSSION AND CONCLUSION

18. As is clear from their solicitors email of 6 September 2019 (see paragraph 20 of the above decision in relation to the appellants whose appeals were not struck out - the "Decision") both Mr Foster and Mr Freeman accept that they should be bound by the figures contained within their respective closure notices.

19. However, Mr Rivett contends that, in the light of Mr Ryan's expert report, the closure notices overstated the value of Modia shares at the relevant Gifting Dates and that the appropriate valuation to be applied is the Low Valuation in the Sufficient Information Scenario (see paragraph 54 of the Decision). For the reasons above (see paragraph 113 of the Decision) I agree that this is the appropriate valuation and, as such, find that the value of Modia shares as at 8 September 2005 and 18 October 2005 were 0.4p per share.

20. Therefore, had they not already been struck out. I would have dismissed Mr Foster's and Mr Freeman's appeals. In addition, applying s 50(7) TMA, I would have increased Mr Foster's assessment from £269,500 to £289,740 and Mr Freeman's assessment from £24,500.50 to £26,340.40.