

# ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



## Craig Kay v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 861 (TC)

First-Tier Tribunal, Tax Chamber, K Sukul J, 12 October 2023

An appeal concerning the valuation of shares gifted to a charity.

**Key words:** Tax, United Kingdom, Gift, Shares, Alternative Investment Market, Valuation

1. Mr Kay was a taxpayer who made a gift of shares in a company to a charity.
2. He claimed relief under section 587B of the [Income and Corporation Taxes Act 1988](#) (ICTA 1988) on the basis that the gifted shares were worth £80,750.
3. His Majesty's Revenue and Customs (HMRC) reduced the amount of relief due on a gift of shares from the amount claimed to £17,936. HMRC valued the shares at 9.44p per share, differing from Mr Kay's claim of 42.5p per share.
4. Mr Kay appealed the assessment.
5. The burden of proof rested with Mr Kay to show that the amendment made by HMRC was wrong, with the standard of proof being the civil standard of on the balance of probabilities.
6. The company shares were traded on the Alternative Investment Market (AIM) of the London Stock Exchange.<sup>1</sup>
7. Previous cases had established that AIM shares are unlisted shares and not in the official list of open share markets for the purpose of tax legislation, and that the price of trades without more could not be viewed as a reliable proxy for the open market value of shares.
8. Mr Kay argued that he used publicly available information to value the shares for tax purposes, relying on the quoted AIM share price on the date of the gift.
9. HMRC argued that the expert valuation it sought was correct, being based on what a prudent buyer, possessing relevant information, would pay for the shares on the gifting dates, and that a prudent investor would follow similar

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<sup>1</sup> The Alternative Investment Market (AIM) is a specialized unit of the London Stock Exchange (LSE) catering to smaller, more risky companies. The companies listed on AIM tend to be smaller and more highly speculative in nature, in part due to AIM's relaxed regulations and listing requirements.

valuation methods to those undertaken by HMRC's expert, namely considering business value, benchmarks, and cross-checks to determine a realistic share valuation.

10. Mr Kay thought AIM was a recognised stock exchange and that this was the basis upon which he arrived at his valuation, but the Tribunal noted that the hypothetical purchaser was a reasonably prudent purchaser who had informed himself as to all relevant facts.
11. Mr Kay pointed to some trades of the company shares, but these were of limited number, and took place on only 5 days out of a possible 123. They were not a reliable proxy for the open market value of the shares.
12. The Tribunal refused the appeal against the HMRC valuation of the shares.

## COMMENT



In Australia, property gift deductions require valuation by the ATO, and the threshold means small value items are not eligible.

Shares or property valued by the ATO at more than \$5,000 is deductible:

- Provided the property is purchased more than 12 months before donating it; and
- For the amount the ATO valued the property at on the valuation certificate.

Refer to the ATO valuation program at <https://www.ato.gov.au/non-profit/gifts-and-fundraising/claiming-taxdeductions/how-donors-get-valuations/>

A slight relaxation is that taxpayers may be able to claim a tax deduction if they donate to a deductible gift recipient (DGR) and:

- the property is listed shares valued at \$5,000 or less; and
- the shares were acquired at least 12 months before being donated.

Additionally, to meet the requirements of this gift type:

- the shares must be in a listed public company; and
- when the shares are donated, they were quoted on the Australian securities exchange (shares must not be suspended from trading or removed from the Australian securities exchange list).

## VIEW THE CASE



This case may be viewed at: <https://www.bailii.org/uk/cases/UKFTT/TC/2023/TC08962.html>

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