Neutral Citation: [2022] UKFTT 193 (TC)

Case Number: TC08518

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference:TC/2018/00555
TC/2018/00557
TC/2018/06676

INCOME TAX – relief on gift of shares to charity – shares admitted to dealing on AIM – market value of shares — information available to hypothetical prudent purchaser – appeals dismissed – assessments increased

Heard on: 23 and 24 February 2022
Judgment date: 06 May 2022

Before

TRIBUNAL JUDGE CANNAN

Between

(1) NICHOLAS CLOSE
(2) ANDREW NUTTALL
(3) GRAHAM CHISNALL

Appellant

and

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

The First Appellant did not take part in the proceedings

For the Second Appellant: Alistair Webster QC instructed by way of direct access

The Third Appellant appeared in person, with assistance from Mr Frank Cocker

For the Respondents: Edward Waldegrave of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. These appeals have been heard together as they all concern the market value of shares in a company called Readybuy Plc ("Readybuy"). Each of the appellants gifted shares in Readybuy to charity in 2003 and claimed relief for those gifts in their tax returns for 2003-04. The shares in Readybuy had been the subject of a placing and admission to the Alternative Investment Market ("AIM") on 8 September 2003. Mr Close and Mr Nuttall gifted shares on that date and claimed relief based on a value of 53.25p, by reference to the price at which shares were dealt in on AIM on or about the date of gifting. Mr Chisnall gifted his shares on 9 December 2003 and claimed relief based on a value of 50p, also by reference to the AIM price on or about the date of gifting. The respondents ("HMRC") contend in these proceedings that the market value of the shares on both dates was 8.05p per share.

2. HMRC opened enquiries into the appellants' tax returns for 2003-04 on various dates in 2005. Closure notices were not issued until various dates in 2017 and 2018. The closure notice for each appellant amended the relevant self-assessment to show relief based on a market value of the shares at the date of gifting of 14.66p. The effect of the closure notices was that the relief available to the appellants was reduced considerably. In fact, HMRC now contend that the market value was 8.05p and seek to further restrict the relief claimed.

3. It is apparent from that brief description of the circumstances that the enquiries into the appellants' returns took many years. It was some 12 years between the enquiries being opened and the closure notices being issued. Mr Nuttall made an application to debar HMRC from defending his appeal and for the Tribunal to allow his appeal on the basis of an abuse of process. His application relied upon what Mr Webster QC, appearing for Mr Nuttall, described as the "inordinate and inexcusable delay" of HMRC in carrying out the enquiry. I heard Mr Nuttall's application on 21 February 2022 and reserved my decision, partly because there were issues as to what evidence might no longer be available to Mr Nuttall because of the delay and I wanted to see and hear the evidence that was available. I have released my decision on Mr Nuttall's application at the same time as this decision. For the reasons given in that decision I have refused the application. The result is that Mr Nuttall's appeal stands or falls on its merits.

4. Mr Chisnall did not make any separate application for his appeal to be allowed on the basis of delay constituting an abuse of process on the part of HMRC. However, in his evidence and submissions it was clear that he desired a similar outcome. In closing submissions, he stated that his appeal had two main grounds:

   (1) Delay on the part of HMRC meant that it was impossible for him to have a fair hearing, and

   (2) HMRC have treated him as a tax avoider but have engineered the dispute as being one of valuation.

5. For the sake of completeness and clarity for Mr Chisnall I consider that a similar application by Mr Chisnall would have led to the same outcome as the application made by Mr Nuttall. The decision on Mr Nuttall's application will published in the ordinary course and a copy will be made available to Mr Chisnall when this decision is released.

6. Mr Close sought to withdraw his appeal by notice dated 20 December 2020. HMRC objected to that withdrawal on the basis that they intended to invite the Tribunal to increase the assessment from that notified in the closure notice. By directions dated 21 April 2021, Mr

Close's case on the appeal was treated as withdrawn but the appeal itself continued for the purpose of establishing whether he had been undercharged by the assessment. Mr Close declined the opportunity to participate in the appeal.

7. Mr Waldegrave for HMRC invited me to increase the assessments on all the appellants on the basis that the value of the shares was less than the value used in the closure notices. Mr Nuttall and Mr Chisnall invite me to allow their appeals on the basis that the value of the shares was as stated in their self-assessment returns for 2003-04.

8. I heard oral evidence from Mr Nuttall and Mr Chisnall. Mr Neil McArthur also gave evidence on behalf of Mr Chisnall. The appellants did not rely on any expert evidence as to the market value of the shares. HMRC relied on the expert evidence of Mr Andrew Strickland, a chartered accountant and business valuer.

LEGAL FRAMEWORK

9. There is no issue between the parties as to the legal framework relevant for the purposes of these appeals. This section of my decision should not be controversial.

10. In 2003-04 certain shares which were qualifying investments were eligible for income tax relief when gifted to charity pursuant to section 587B Income and Corporation Taxes Act 1988 ("ICTA"). Relief was given by reference to the market value of the qualifying investment as follows:

> (1) Subsections (2) and (3) below apply 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 was common ground that the shares in Readybuy were dealt in on a recognised stock exchange and were therefore qualifying investments. Section 587B(10) provides that the market value of any qualifying investment is to be determined as it would be under the Taxation of Chargeable Gains Act 1992 ("TCGA 1992"). The relevant provisions for present purposes are contained in sections 272 and 273 TCGA 1992 as follows:

> 272(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(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.

12. It was common ground that shares dealt in on AIM are not quoted in the Stock Exchange Daily Official List. As such, section 272(3) does not apply in valuing the Readybuy shares and the price at which the shares are dealt in on AIM is not conclusive as to their market value. Further, shares listed on AIM are not "quoted" on a recognised stock exchange for the purposes

of section 273(2) (see the discussion in *Netley v HM Revenue & Customs* [2017] UKFTT 442 (TC) at [185] – [195]). As such, section 273(3) applies to the valuation of the Readybuy shares. All the information which a prudent prospective purchaser of the shares might reasonably require if he were proposing to purchase them from a willing vendor by private treaty and at arm's length is treated as being available to the prospective purchaser.

13. The parties were agreed as to the principles of valuation that I should apply in valuing the Readybuy shares pursuant to these provisions. I recently set out those principles at [14] of *McArthur & Bloxham v HM Revenue & Customs* [2021] UKFTT 237 (TC):

> 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. In the same case at [160] to [169], I set out some further practical points which, where relevant, I have adopted in the present appeals. Continuing the sub-paragraph numbers, I can summarise those points as follows:

> (8) It would be an error to try and identify the characteristics of a typical market participant and ask what that person would have paid. The exercise is concerned with the price payable by a reasonably prudent purchaser, who is informed from the information available as to all relevant facts concerning the business, its present position and its future prospects. A prudent purchaser will not be unduly cautious or unduly optimistic.
>
> (9) It is necessary to identify 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 those circumstances, 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.
>
> (10) The test can be looked at both ways. The valuer is looking for the highest price the hypothetical purchaser would pay and the lowest price the hypothetical vendor would accept. Where they meet, is the market value of the shares. It is also the case that section 272 envisages a single price which is the market value.
>
> (11) Valuation is not simply a question of choosing one methodology and excluding consideration of other methods. In any particular case it is likely to involve looking at various methods, giving different weight to each method and arriving at a best estimate of the highest price the hypothetical purchaser would pay.

(12) It is not the case that if some purchasers might take an optimistic view, for example as to maintainable earnings, then those views should be taken into account in applying the methodologies. It is not that different reasonably prudent purchasers might take different views as to maintainable earnings. What is relevant is the view of the reasonably prudent purchaser. If a reasonably prudent purchaser considered that there were a range of possible views as to the level of maintainable earnings, it is necessary to identify within that range what would be the highest price the reasonably prudent purchaser would pay, without being unduly optimistic or unduly pessimistic.

(13) It is then necessary to consider what weight to place on the different methods, which might depend in turn on the level of confidence the purchaser has in relation to the assumptions made in applying the different methods. The reasonably prudent purchaser would consider all resulting values and may decide to discount some and use one particular method, or to adopt one method but to adjust the price to reflect the results of other methods.

15. It is necessary to identify the information available to the reasonably prudent purchaser. I agree with the approach of Dr Brice, the Special Commissioner in *Caton's Administrators v Couch [1995] STC (SCD) 34*. I summarised this in *Netley* as follows:

> 204. The effect of section 273(3) and the context in which it came to be enacted were considered by Dr Brice, Special Commissioner in *Caton's Administrators v Couch [1995] STC (SCD) 34*. She concluded as follows:
>
> > " …in my view, s 152(3) [now section 273(3)] is effective to provide that any information, including unpublished confidential information, and even information which might prejudice the interests of the company, is assumed to be available in the hypothetical sale if it would be reasonably required by a prudent prospective purchaser of the asset in question. It is therefore necessary to consider, in each case, what information a prudent prospective purchaser of the asset in question would reasonably require. In the context of s 152(3) I understand the word 'require' to mean 'demand as a condition of buying'; information is 'required' if the purchase would not proceed without it."
>
> 205. 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."

16. Finally, in the context of the Tribunal's powers on this appeal, section 50(7) Taxes Management Act 1970 enables me to increase the amount of tax charged by the closure notices if it appears that the appellants have been undercharged:

> (7) If, on an appeal notified to the tribunal, the tribunal decides –
>
> …
>
> (c) that the appellant is undercharged by an assessment other than a self-assessment, the assessment or amounts shall be increased accordingly.

FINDINGS OF FACT

17. I shall first make findings of fact in relation to the claims for relief made by the appellants on gifting shares in Readybuy. I shall then consider the circumstances of Readybuy, including the nature of its business and the circumstances in which it came to be floated on AIM. I shall

then make findings of fact directly relevant to the valuation of the shares in Readybuy at the material dates in 2003. Finally, I shall consider the circumstances in which the appellants came to invest in Readybuy.

The appellants

18. The basic facts in relation to each appellant are summarised in the following table:

	Mr Close	Mr Nuttall	Mr Chisnall
Shares purchased	130,188	347,167	130,000
Shares gifted	123,000	328,000	100,000
Date of gift	8 Sept 2003	8 Sept 2003	9 Dec 2003
Relief claimed	£ 65,497	£ 174,660	£ 50,000
Adjusted relief	£ 18,032	£ 48,084	£ 14,660
HMRC's re-adjusted relief	£ 9,901	£ 26,404	£ 8,050

19. The table shows the number of shares acquired by each appellant following the offer for subscription and placing of shares in Readybuy described below. It also shows the amount of relief claimed by each appellant in their respective tax returns, the adjusted relief following HMRC's closure notices and what I have termed the re-adjusted relief which HMRC now says the appellants were each entitled to. In relation to Mr Chisnall, it is not clear from the documentary evidence how many shares he originally purchased in the offer for subscription and placing. Mr Chisnall's oral evidence was that he purchased the equivalent of 130,000 shares but nothing really turns on the exact figure. It is not disputed that he acquired shares in Readybuy through the offer for subscription and the placing, and that he gifted 100,000 of those shares on 9 December 2003.

20. The appellants all gifted the shares identified above to charity. Mr Close to the World Wide Fund for Nature, Mr Nuttall to the Prince's Trust and Mr Chisnall to Bolton School.

21. Mr Close subscribed for the equivalent of 123,000 shares in the offer for subscription at a cost of £15,000 giving an acquisition cost of 12.2p per share. He then acquired 7,188 shares in the placing at a price of 48p per share and a cost of £3,450. The total cost of shares purchased by Mr Close was £18,450. Following his gift of shares on 8 September 2003 he retained the shares he had acquired in the placing. The enquiry into Mr Close's self-assessment return for 2003-04 commenced on 19 December 2005 and a closure notice was issued on 11 October 2017.

22. Mr Nuttall subscribed for the equivalent of 328,000 shares in the offer for subscription at cost of £40,000 giving an acquisition cost of 12.2p per share. His offer to subscribe for shares was dated 30 July 2003. He then acquired 19,167 shares in the placing at a price of 48p per share and a cost of £9,200. The total cost of shares purchased by Mr Nuttall was £49,200. Following his gift of shares on 8 September 2003 he retained the shares he had acquired in the placing. The enquiry into Mr Nuttall's self-assessment return for 2003-04 commenced on 15 June 2005 and a closure notice was issued on 28 September 2017.

23. Mr Chisnall acted at all material times through his broker, Brewin Dolphin. His self-assessment return was completed by Deloitte on his behalf and included a claim for gift relief using figures identified by Deloitte. As mentioned, the documentary evidence does not identify the precise sums paid by Mr Chisnall for his shares, but it seems likely that he subscribed on the same terms as Mr Close and Mr Nuttall. The enquiry into Mr Chisnall's self-assessment

return for 2003-04 commenced on 12 July 2005 and a closure notice was issued on 29 May 2018.

24. On 19 June 2018, HMRC sent a letter to Mr Chisnall apparently chasing payment of the tax due as a result of the closure notice. I note the time for appealing the closure notice had not expired. Despite this, HMRC's letter threatened action including distraint to recover the tax said to be due. I can well imagine the outrage this caused Mr Chisnall, especially when the enquiry had taken so many years. However, the purpose of this Tribunal is to determine the appellants' entitlement to relief on their gifts of shares. It is not my role to oversee the general conduct of HMRC. The only relevance of HMRC's conduct is in relation to the abuse of process application made by Mr Nuttall and I have considered it in the context of that decision.

The Sofola report

25. Prior to issuing the closure notices, HMRC obtained a valuation report from Mr Andrew Sofola ("the Sofola Report") which was undated. A copy was provided to Mr Nuttall in February 2017. Mr Sofola was an associate of the Royal Institution of Chartered Surveyors employed in HMRC's Shares and Assets Valuation department. He did not give evidence. I note that his conclusion was that the shares in Readybuy at each valuation date "cannot be more than 14.66p per share". It was this valuation that HMRC relied upon when they issued closure notices to each appellant. The appellants make various criticisms of Mr Sofola. I have not taken the Sofola Report into account in reaching my conclusions on valuation and it is not necessary or appropriate for me to look any further at the criticisms made.

Readybuy

26. Readybuy was incorporated in England and Wales as a private limited company on 29 April 2003, under the name Readybuy Limited. On 18 June 2003, following various share reorganisations, it was re-registered as a public company, Readybuy plc. At this stage it had a small number of shareholders ("the Initial Subscribers") who had paid nominal amounts for their shares, including associates of Zeus Partners ("Zeus"), a corporate finance house.

27. Readybuy published an "Offer for Subscription" on or about 20 June 2003 ("the Offer"). The Offer document stated as follows on the front page:

> [Readybuy]… is seeking to raise up to £750,000 by way of an offer for subscription… of up to 15,000,000 Ordinary Shares of 0.005p each… at 5p per share. Following completion of the Subscription, the Company (assuming full take-up of the Subscription) will have cash assets of approximately £750,000 before expenses. The funds raised will be used to redeem the Redeemable Shares… and to acquire a company or business which requires additional funding and is seeking admission to trading on the Alternative Investment Market of the London Stock Exchange plc…

28. The directors of Readybuy at this time were Mr Ian Currie and Mr Norman Molyneux, both corporate finance specialists. Mr Currie was one of the partners of Zeus.

29. The Offer went on to set out detailed information about Readybuy and its plans. At the beginning of Part I it stated:

> The Directors believe that there are companies and businesses which are seeking admission to trading on AIM but which are being discouraged from proceeding due to the difficulties in raising finance in the current market conditions.
>
> [Readybuy] was formed to be a cash shell to attract such companies and businesses. The Directors believe that they now require additional funds in order to initiate and conclude negotiations with a suitable target. In the light of current market conditions, in particular the

> difficulties involved in raising new equity for small companies, the Directors will seek to value [Readybuy] at a significant premium to its cash balance in any transaction.
>
> The main criteria that the Directors have applied in identifying potential targets is to focus on small businesses which have the capability to grow rapidly and which now require funds to achieve that growth. The Directors' preferred structure for any target would involve the acquisition by [Readybuy] of the entire share capital of a company or business in exchange for the issue of Ordinary Shares and the simultaneous admission of [Readybuy] to trading on AIM, with completion being conditional on such admission. Once the Subscription is completed, the Directors intend to source, initiate and complete negotiations with a suitable target. A number of potential targets have been identified.

30. The Offer also stated:

> It is a term of the Offer for Subscription that the New Shareholders participate in any further fundraising undertaken by [Readybuy] at the time of Admission.

31. The obligation was for shareholders subscribing to the Offer to invest a further amount on admission to AIM equal to 23% of their initial investment. It was not known at this point how many new shares this would equate to, or what price would be paid for those shares. It is not entirely clear whether this obligation was enforceable as such, but nothing really turns on that.

32. The Offer also set out the terms of a "Lock-in" which would apply in relation to shares acquired pursuant to the Offer. In summary, the Offer provided that subscribers for shares in Readybuy would not be permitted to transfer their shares during a period, which would last until the second anniversary of the share issue. The Lock-in was subject to certain exceptions, one of which was that Readybuy would consent to the transfer of restricted shares to a registered UK charity, provided that the charity itself agreed to be bound by the Lock-in.

33. The Offer was fully subscribed and on 4 August 2003 shares were allotted to 25 subscribers, including Mr Close and Mr Nuttall. As mentioned, the evidence was not clear as to how many shares Mr Chisnall was allotted pursuant to the Offer. There was then a further re-organisation of the shares in Readybuy, the effect of which was that Mr Close held 123,000 shares, Mr Nuttall held 328,000 and Mr Chisnall appears to have held 130,000 shares. The cost of subscription for those shares was just under 12.2p per share.

34. Readybuy issued a further 1,640,000 shares on 20 August 2003 by way of private placing. These shares were allotted to 11 individuals, not including the appellants, at a price of just under 12.2p per share, raising a further £200,000. These shares were also subject to the Lock-in. I shall describe these shareholders, together with shareholders who subscribed in the Offer as "the Subscribers".

35. As at 25 August 2003, the average price per share paid by the Initial Subscribers and the Subscribers was 6.82p per share. This figure takes into account the fact that the Initial Subscribers paid a nominal sum of £750 for their shares equating to 0.012p per share.

36. Readybuy published a prospectus on 26 August 2003 as part of a placing of new shares and the admission of its shares to trading on AIM ("the "Prospectus"). At this stage the directors of Readybuy were Mr Molyneux and Mr Keith Salisbury. Mr Salisbury was a chartered accountant who worked in the corporate finance department of Brewin Dolphin.

37. In the introduction, the Prospectus stated as follows:

> Readybuy has conditionally agreed to acquire the entire issued share capital of McDonald Yang [Limited], a developer and manufacturer of chilled Chinese ready meals, for a total consideration of approximately £435,000 to be satisfied by the issue of the Consideration Shares. To fund the costs of the Acquisition, [Readybuy] is seeking to raise £218,500 before

expenses by way of a placing of the Placing Shares [defined as "up to 455,208 new Ordinary Shares"].

38. I describe the business of McDonald Yang Limited ("McDonald Yang") in more detail below.

39. Immediately following admission to AIM it was intended that three further directors would be appointed:

(1) Mr Colin Davies as executive chairman and finance director. Mr Davies had wide experience in such roles and at that time he was a non-executive director of Inter Link Foods Plc, a business which he had co-founded.

(2) Mr Brian Bennett as chief executive. Mr Bennett had wide experience in the food sector, both manufacturing and retail, including branded and private label consumer goods. He had been trading group controller at Asda and business controller at Arla Foods.

(3) Mr Gerry Yeung OBE as non-executive director. Mr Yeung was a well-known restauranteur who had developed the Yang Sing restaurant in Manchester and other restaurant businesses.

40. Mr Malcolm McDonald was identified as senior management of Readybuy, more specifically the operations and technical manager. He had wide experience in the food sector, holding senior positions at Kellogg's and Waterford Dairies. He had been responsible for the planning and design of the McDonald Yang factory, ensuring conformity with hygiene and good manufacturing practice regulations.

41. The Prospectus went on to outline why the directors of Readybuy considered that McDonald Yang represented an attractive acquisition. It described the history of McDonald Yang, the opportunity considered to be available to Readybuy, general market information, and Readybuy's objectives as follows:

> **History**
>
> McDonald Yang began trading in 1999 to research, develop and manufacture frozen Chinese meals under the brand of Yang Sing. The Yang Sing Restaurant is a long established Chinese restaurant of high repute located in the centre of Manchester's China-town. During its research and development stages, the directors of McDonald Yang perceived that sales of chilled ready meals were generally overtaking frozen meals, and the strategy was switched to develop chilled authentic Chinese ready meals which could be heated either by microwave or through conventional cooking.
>
> Through the development stages McDonald Yang incurred significant losses and was financially supported by the Vendors. During this time McDonald Yang did a significant amount of research and development into a process that retained the crisp crunch texture of vegetables when presented in a Chinese ready meal format. The Directors are aware that similar processes are now in use in the food industry, and will consider using a proprietary brand if it is cost effective to do so. The Directors believe that the application of such a process to chilled Chinese ready meals provides a powerful selling point which improves the quality of the products compared to those currently on the market.
>
> The Company will provide McDonald Yang with the working capital necessary to advance to the next stage of its strategy and sell its products to multiple supermarkets.
>
> **The Opportunity**

The Company intends to develop a nationally recognised business producing, for retail, chilled authentic Chinese ready meals.

The majority of chilled Chinese ready meals are currently sold under retailers' own labels and the Directors believe that there is an opportunity for a brand to enter the chilled Chinese foods market. The Company's aim is to manufacture ready meals of a superior quality to those currently available, which can be either microwaved or heated through conventional cooking, and to distribute the products through major supermarkets with the Yang Sing brand. The Yang Sing name has a good reputation and high profile in the North West and this is expected to be a significant factor in achieving product awareness and market penetration. The Directors believe that the Company's use of exclusive Yang Sing recipes could enable the Yang Sing name to become a market leader in chilled Chinese food.

The Market

In its May 2001 report, Mintel International Group Ltd ("Mintel") stated that the Chinese retail food market had achieved good growth, buoyed by the general boom in ethnic foods, and that generally Chinese food had continued to be more popular than Indian. In Mintel's market research 59% of consumers mentioned Chinese food being among their favourite types of food. The report highlighted a real challenge for marketers, identifying a particularly broad appeal for Chinese food across the socio-economic groups that may impact on sales of up-market or more adventurous products. Mintel's analysis identifies good growth prospects for the market, illustrating that improvements in the quality of Chinese chilled ready meals could greatly benefit the sector.

The Company intends to produce a superior quality of chilled Chinese ready meals which will attract a broad cross section of consumers, and particularly appeal to consumers seeking a more up-market product than currently available.

The initial product range will comprise five popular Chinese dishes to be sold under the Yang Sing brand. The Directors intend to continue to develop and expand the range to meet consumer demand.

The Directors are not aware of any other similar branded products for retail in a mainline supermarket.

Customers

Marketing will be directed towards the multiple retail grocers, both regional and national. It is envisaged that initial sales will be on a regional basis and this will gradually grow to national coverage. Initial discussions have been held with two multiple retailers who, following product presentations, have expressed an interest in trialing the products. The Directors intend to present the product range to other multiple retailers at the earliest opportunity.

Objectives

The Company's objective is to build a nationally recognised brand of quality chilled, Chinese ready meals for distribution through major supermarkets. The Directors believe there is a significant number of consumers wishing to purchase top of the range products similar to restaurant quality, for consumption in their own homes. The Yang Sing brand is specifica1ly designed to attract this sector of the market. When the Yang Sing brand has been firmly established, the Directors intend to hold discussions with retailers with a view to producing products under supermarkets' own brand labels.

Financial record

> At 30 April 2003 McDonald Yang had incurred significant losses due to research and development costs over the term, and in order to avoid insolvency has been reliant upon financial support provided by the Vendors.

42. Under risk factors, the Prospectus included the following passage:

> **Trading History**
>
> McDonald Yang is currently not trading and its future success will depend on the Directors' and Proposed Directors' ability to implement their objectives and strategy. Whilst the Directors and Proposed Directors are optimistic about the Group's prospects, there is no certainty that anticipated revenues or growth will be achieved.

43. The Prospectus was accompanied by detailed financial information concerning McDonald Yang which I will summarise in due course. The Prospectus identified that Readybuy intended to apply for admission of its shares to trading on AIM, with trading to commence on 8 September 2003. The nominated adviser, or "Nomad" for the purpose of admission to AIM was WH Ireland Limited, stockbrokers.

44. The evidence included a working capital report and a draft "long form report" dated 12 August 2003 prepared by Readybuy's accountants, Chadwick containing financial information which I refer to later.

45. Readybuy entered into a sale and purchase agreement ("the SPA") on 26 August 2003. Readybuy acquired from third party vendors the entire issued share capital of McDonald Yang. The vendors were Mr Gerry Yeung and his brother, Mr Harry Yeung ("the Yeungs"). The consideration given by Readybuy to the vendors consisted entirely of 3,598,802 newly issued shares in Readybuy ("the Consideration Shares"). The Consideration Shares were to represent 20% of the share capital of Readybuy following admission to AIM. The value attributed to the Consideration shares in the SPA was £435,000 which was the figure identified in the Prospectus as the consideration being paid by Readybuy. On that basis, the Consideration Shares were treated by the parties to the acquisition of McDonald Yang as having a value of about 12.09p each. The Consideration Shares were subject to the Lock-in provisions.

46. The SPA was subject to the condition that the Consideration Shares were admitted to dealing on AIM before 6 October 2003. On completion, Gerry Yeung, Mr McDonald and Yang Sing Limited were to be repaid certain outstanding loans totalling approximately £100,000 and were to be released from personal guarantees to the bank.

47. Readybuy shares were admitted to dealing on AIM on 8 September 2003. At the same time, Readybuy issued a further 455,208 shares (the "Placing Shares"), which were allotted at 48p each to the Subscribers pursuant to the terms of the Offer. Readybuy raised £218,500 from the placing. 7,188 of the Placing Shares were allotted to Mr. Close and 19,167 were allotted to Mr. Nuttall. Again, the position in relation to Mr. Chisnall is not clear. The Placing Shares were not subject to the Lock-in.

48. It is important to note that none of the Subscribers chose to invest in the Placing Shares at 48p per share. They did so pursuant to the Offer. The price and the number of shares issued as Placing Shares was identified to reflect the obligation on Subscribers to invest a further 23% of the amount paid for their shares pursuant to the Offer. The more shares issued as Placing Shares the lower the price those shares would have been. Similarly, the more shares issued, the more diluted the holdings of the Initial Subscribers would become. The Yeungs were not affected because they had agreed the number of Consideration Shares and the percentage they would represent of the enlarged share capital.

49. Mr Strickland's evidence shows that on the day of flotation, the shareholders in Readybuy and the cash amounts paid to Readybuy or in the case the Yeungs, the value attributed their shares, for the allotment of shares were as follows:

	Shares	**Proportion %**	**Cash Paid/ Value Attributed £**	**Price per share**
Initial Subscribers	6,150,000	34.2	750	0.01p
Subscribers	8,245,208	45.8	1,168,499	14.17p
The Yeungs	3,598,802	20	435,000	12.08p

50. One of the shareholders was identified in the Prospectus as Mr Alwin Thompson. He was the Chairman of Inter Link Foods plc and a well-known businessman. He held 620,052 shares at the date of flotation, but the circumstances in which he obtained those shares was not in evidence. The Prospectus states that he had a consultancy agreement with Readybuy dated 26 August 2003 for a period of two years at a fee of £10,000.

51. Whilst it was not explored during the evidence, it appears from the documentary evidence that the shares subject to the Lock-in were the shares owned by the Yeungs, the shares owned by the Subscribers, excluding the Placing Shares, and 195,005 shares held by Mr Salisbury. It appears therefore that some 6,410,203 shares, including the Placing Shares, were not subject to the Lock-in.

52. On 8 September 2003, Readybuy issued a press release announcing the admission of its shares to dealing on AIM. The press release briefly referred to the company's business and stated that "trial listings" of its products had been secured with two major supermarkets.

53. There were a number of transactions in Readybuy's shares on AIM between 8 September 2003 and 21 October 2004. Transactions occurred on 38 days in that period and the shares were traded at prices between 40p and 56p per share. In total, 2.26% of Readybuy's ordinary shares were traded on AIM during this period.

54. The Prospectus showed that McDonald Yang had been loss-making in the three years prior to the sale to Readybuy. As at 1 May 2000 it had losses brought forward of £302,204. Its financial results for the following three years may be summarised as follows:

Year Ended:	**30 April 2001 £**	**30 April 2002 £**	**30 April 2003 £**
Sales	9,099	10,857	0
Gross Profit	7,065	3,435	(232)
Loss after tax	(149,950)	(166,376)	(110,539)
Net current liabilities	(550,692)	(528,530)	(393,907)
Net liabilities	(362,154)	(528,530)	(229,069)

55. The decrease in net liabilities in 2003 was principally a result of the Yeungs converting loans of approximately £400,000 to equity. The Prospectus also included a pro forma consolidated balance sheet of Readybuy after the intended acquisition of McDonald Yang prepared by Chadwick. It showed the following assets and liabilities as if the acquisition and placing had taken place on 20 June 2003:

	£
Fixed assets	674,000
Current assets	1,137,000
Net current assets	503,000
Net assets	1,177,000

56. A note to the pro forma balance sheet in relation to the valuation of goodwill on the acquisition of McDonald Yang describes the "fair value" of the consideration given to the Yeungs as £280,000. It is not clear how this sum was identified or why it differed from the figure of £435,000 identified in the SPA. A value of £280,000 for a 20% holding in Readybuy equates to 7.8p per share whilst a value of £435,000 equates to 12.1p per share.

57. The Prospectus noted that two members of the management team, Mr Bennett and Mr McDonald had been granted share options pursuant to a share option scheme as set out in the table below. The options were exercisable between 8 September 2006 and 8 September 2013.

	Shares	**Exercise Price**
Brian Bennett	1,079,640	12.2p
Malcolm McDonald	179,940	12.2p

58. I note also that paragraph 12.1(f) Part VI of the Prospectus refers to share options being granted to Mark Anthony Shields to subscribe for 179,940 shares at 12.2p. It is not clear what connection Mr Shields had to Readybuy, or if this is simply an error in the Prospectus

The appellants' investment decisions

59. By way of background, Mr Nuttall is a practising barrister. His evidence was that he invested in Readybuy because he believed that the Yang Sing brand was a strong one, that the business model had great potential and that it was unlikely to fail. In 2003 the Yang Sing was famous for its high-quality food and was regarded by many as one of the finest Chinese restaurants in the North of England. Mr Nuttall shared that view. However, later in his evidence he accepted that at the time he committed to purchase shares in the Offer he may not have known that McDonald Yang was the target business.

60. The evidence included a letter to Mr Nuttall from Berkley Morgan, independent financial advisers. It was undated, but all parties accepted that it pre-dated the Offer. The letter referred to Readybuy, enclosed a prospectus and identified a closing date of 21 July 2003, but stated that this had been extended because of a small shortfall in the funding. It went on to state:

> As you are aware many companies are having great difficulty in raising equity. Either from venture capitalists or from a flotation. We have recently seen many companies in this situation and some have raised the equity at a substantial discount to their expected value, and then floated on AIM, raising a small amount of equity at their 'perceived' value. These early so called 'family and friends rounds' often occur at a substantial discount to the eventual flotation value, in some cases at 25% of the float value.

61. The letter went on to illustrate a potential investment Mr Nuttall might make, but those details are not relevant to the issue of valuation I must determine. As stated above, Mr Nuttall's

offer to subscribe for shares was dated 30 July 2003. It seems unlikely that Mr Nuttall knew at this stage that the intended target was McDonald Yang Limited because this was not mentioned in the Offer or in the letter from Berkley Morgan.

62. Mr Nuttall said that he had no reason to doubt that the price at which he purchased the Placing Shares and the price the shares traded at on AIM was a fair price which represented the true value of the shares. He claimed relief for the shares he gifted on 8 September 2003 at a value of 53.25p per share.

63. Mr Chisnall is a successful businessman. In 1981, together with Mr Neil McArthur he set up an engineering business providing services to the nuclear industry. The company prospered and gave rise to several other businesses before it was sold to an AIM listed company. It is now part of Babcock International.

64. In 1997, Mr Chisnall and Mr McArthur set up a telecommunications business called Opal Telecommunications which became very successful. In 2000 it was due to be floated with a market capitalisation of £250m but market conditions led to a postponement of the flotation. In 2002 it merged with Carphone Warehouse and formed Talk Talk. Talk Talk subsequently demerged from Carphone Warehouse and until recently it was a FTSE 250 company.

65. As well as being a successful businessman, Mr Chisnall is also an experienced investor. He has a wide-ranging, balanced investment portfolio, which is managed on a discretionary basis by Mr Peter Martin of Brewin Dolphin, stockbrokers. It was Brewin Dolphin who decided to invest in Readybuy on behalf of Mr Chisnall. Mr Chisnall was not aware of the investment at the time. They had previously invested in a number of similar private companies which were launched as "cash shells" before acquiring a business with growth prospects and floating on AIM or other stock markets. Some of those investments were successful, others were not. Mr Chisnall was not surprised that there was a four-fold increase in the value of the Readybuy shares on flotation compared with the amount he had paid when subscribing for shares. The decision to purchase shares and which shares should be gifted was made by his advisers.

66. Mr Chisnall gave evidence as to his opinion of HMRC's approach to share valuations in relation to similar cash shell investments, and in relation to Readybuy in particular. He was very critical of their enquiry and their approach to share valuation. Mr Chisnall is not an expert witness, and as such his evidence of opinion is not relevant or admissible in these proceedings. It is therefore not appropriate for me to rehearse those aspects of his evidence in this decision. However, Mr Chisnall was keen to make the point, which I have no reason to doubt, that he did not invest in Readybuy as part of a tax avoidance scheme.

67. Mr McArthur gave evidence which was in many respects identical to that of Mr Chisnall. That is not surprising because they were in business together and have adopted similar investment strategies. Mr McArthur also used Brewin Dolphin to manage his investment portfolio on a discretionary basis and that firm subscribed for shares in Readybuy in the Offer on behalf of Mr McArthur. Like Mr Chisnall, he was not surprised that there was a four-fold increase in the value of the Readybuy shares on flotation compared with the amount he had paid when subscribing for shares in the Offer.

68. Mr McArthur also criticised the time taken by HMRC to conduct their enquiry. For example, he drew my attention to an email chain between HMRC officers from which he said it was apparent that HMRC operated a policy during the enquiry of valuing shares in cash shells which had been gifted at the acquisition price paid by subscribers. Whether or not that is right I do not know. I do not consider it to be relevant to the issue of valuation that I must determine, regardless of how HMRC conducted their enquiry. Mr McArthur criticised HMRC's approach to share valuation generally. Again, Mr McArthur is not an expert witness and as such his evidence of opinion for example as to the increase in value attributable to a public listing of

shares, is not relevant or admissible in these proceedings. Mr McArthur was also keen to make the point, which I have no reason to doubt, that he did not invest in Readybuy as part of a tax avoidance scheme.

69. Mr McArthur has gifted shares in many companies, including shares acquired by way of subscription to cash shells, to the Hamilton Davies Trust. That is a charitable trust which he set up in 2004 to support youth, educational, sport and community projects in the areas of Irlam, Cadishead and Rixton with Glazebrook. Mr McArthur's donations to that charitable trust exceed £10m.

Tax avoidance motive?

70. Following the introduction of tax relief for gifts of shares to charity in 2000, HMRC became concerned that tax avoidance schemes were being set up with a view to exploiting the relief. I was referred to a written ministerial statement by the First Secretary to the Treasury dated 15 December 2009. The statement noted the existence of such schemes and whilst not accepting that the schemes were effective, stated that legislation would be introduced in Finance Bill 2010 to remove any doubt. Mr Cocker on behalf of Mr Chisnall drew my attention to the following passage in the statement:

> The legislation will not affect genuine donations to charity where tax avoidance arrangements are not involved and HM Revenue and Customs (HMRC) will be consulting with the charity sector to ensure the legislation achieves its intended effect.

71. It is also the case that certain professional advisers, not connected with this appeal, have been convicted of cheating the revenue in relation to schemes set up to exploit the relief.

72. In his skeleton argument, Mr Waldegrave stated HMRC's position as follows:

> HMRC's position is that whether or not the arrangements could be said to have amounted to "tax avoidance" should be irrelevant. The only question for the Tribunal is what the market value of the shares in Readybuy was at the relevant time. The existence or lack of any "tax avoidance" motive on the part of any of the Appellants is of no direct relevance to that question … Accordingly, HMRC considers that the Tribunal should not need to reach any conclusions as to whether the relevant transactions involved tax avoidance. For the avoidance of doubt, although it does not at this stage anticipate it being necessary to do so (because it is irrelevant), HMRC reserves the right to contend at the hearing that the arrangements involved "tax avoidance".

73. At one stage in the cross-examination of Mr Nuttall it appeared as though HMRC were seeking to allege that Mr Nuttall's investment involved a tax avoidance motive. However, Mr Waldegrave confirmed that HMRC's position was as stated in his skeleton argument and no such allegation was relied upon.

74. I therefore proceed on the basis that whether or not any of the appellants had a tax avoidance motive in subscribing for shares in Readybuy is irrelevant to the question of valuation. It is therefore unnecessary for me to make any findings of fact in that regard

THE EXPERT EVIDENCE

75. The appellants did not rely on any expert evidence on valuation of the shares. They did however challenge the evidence of Mr Strickland. In this section I shall summarise Mr Strickland's evidence.

76. Mr Strickland is a chartered accountant and business valuer. He is a consultant to a firm called Scrutton Bland and a member of the valuation committee of the Institute of Chartered Accountants of England and Wales. He is a member of the board of the International Institute of Business Valuers. In his professional capacity he has given presentations to HMRC employees on business and share valuations. I am satisfied that Mr Strickland is well qualified to give expert evidence as to the value of shares in Readybuy. It was suggested by Mr Chisnall

in his closing submissions that Mr Strickland was influenced by HMRC's desire to achieve the lowest possible price. That is an allegation of actual or sub-conscious bias and is without foundation. It is a serious allegation which should not have been made.

77. Mr Strickland's opinion was that the value of the shares on both valuation dates was 8.05p per share. His reasoning identified three recognised approaches to the valuation of a business, which he described as the cost approach, the income approach and the market approach. Under the cost approach, the value equates to the aggregate net value of all the assets. The principal method under the income approach is to use discounted cashflow techniques. The principal method under the market approach is to use valuation metrics of listed companies or corporate transactions. Those metrics might include for example the price earnings ratios of listed shares. Mr Strickland considered valuations using each of these approaches.

Cost approach

78. The principle behind the cost approach is stated in *International Valuation Standards 2020* as follows:

> The cost approach provides an indication of value using the economic principle that a buyer will pay no more for an asset than the cost to obtain an asset of equal utility.

79. Mr Strickland considered that the best approach to valuation of Readybuy shares at the valuation dates was the cost approach. He considered that it was based on reliable assumptions and the strongest evidence. In his view, the value of Readybuy immediately prior to the acquisition of McDonald Yang was the amount of funds it had raised, taking into account the cost of raising those funds. The best indicator of the value of McDonald Yang at the date of flotation was the consideration received by the Yeungs on sale of the company to Readybuy.

80. In relation to the acquisition of McDonald Yang, Mr Strickland considered that there was no evidence that the transaction was not at arm's length. He noted that the pro forma consolidated balance sheet showed net assets of £1,177,000 which equated to a net asset value of 6.54p per share.

81. However, Mr Strickland considered that transaction costs should be added back to the value of those net assets. He based that opinion on market evidence and academic research which supported a view that launch costs do not initially depress share values. When the transaction costs of £272,750 are added back, the net assets of Readybuy following flotation were £1,449,750 equating to a net asset value of 8.05p.

82. This latter figure was Mr Strickland's opinion as to the market value of the shares on 8 September 2003. In forming that opinion, he took into account the following matters:

(1) The average price per share of 6.82p paid by the Initial Subscribers and the Subscribers.

(2) The price paid for the Placing Shares of 48p per share, but recognising that Subscribers were obliged to invest a further amount on admission to AIM equal to 23% of their initial investment.

(3) The figure of £280,000 described by Chadwick as the "fair value" of the shares issued to the Yeungs for their 20% holding , equating to 7.78p per share.

(4) The figure of £435,000 identified in the SPA as being attributable to the value of the Yeungs' shares, equating to 12.09p per share

83. Mr Strickland considered that there was no further information available to purchasers relating to the financial performance of Readybuy in the period from 8 September 2003 to 9

December 2003. In the circumstances, he considered that a prudent purchaser would adopt the same valuation of 8.05p per share at the later date.

Income approach

84. In order to value the shares using an income approach, Mr Strickland considered that the prudent purchaser would require reliable data for future profits or cashflows. One source of such data for Readybuy was a working capital report prepared for the company by Chadwick ("the Working Capital Report"). A second draft of the Working Capital Report dated 13 August 2003 was included in the evidence. It included projections of profits and losses, cash flows and balance sheets for the three years to 31 July 2006. There was also the second draft of a "long form" report prepared by Chadwick which contained information about the business and its prospects.

85. Based on information in the Working Capital Report, Mr Strickland calculated that the value of the business would be £752,000 equating to a share value of 4.18p. However, he considered that the Working Capital Report would not be information available to the prudent purchaser. I am satisfied that Mr Strickland was right to take that view and the appellants did not suggest such information would be available. The shares gifted by the appellants represented between 0.6% and 1.8% of the issued share capital of Readybuy. As such, the prudent purchaser would not expect to have anything more than published information. In the circumstances, I do not propose to examine Mr Strickland's calculations any further. Nor do I take into account the indicative share value of 4.18p. It is based on information which would not be available to the prudent purchaser.

Market approach

86. Mr Strickland considered that it was not possible to apply a market approach based on the price earnings ratios of similar listed companies because Readybuy had no real earnings in the periods prior to the valuation dates. Further, he considered that alternative valuation metrics based on other corporate transactions would be very unreliable. There were, however, transactions in the shares of Readybuy following its flotation on AIM. The evidence in relation to those transactions may be summarised as follows:

Month	**No of Transactions**	**No of Shares**	**Share Capital %**	**Total Value £**	**Average Price p**
Sept 2003	49	254,771	1.42	138,720	54.45
Oct 2003	11	107,342	0.6	56,195	52.35
Nov 2003	6	15,318	0.09	7,809	50.98
Dec 2003	2	6,250	0.03	3,088	49.41
Total:	68	383,681	2.14	205,812	53.64

87. The shares traded in this period amounted to 2.14% of the total share capital of Readybuy. Mr Strickland did not regard that as a liquid market.

88. Mr Strickland noted that the indicative market capitalisation of Readybuy at a share price of 54.45p was £9.8m. Readybuy's only real assets in the pro forma balance sheet were its cash of £1.1m and its investment in McDonald Yang, which the Yeungs had valued in the SPA at £435,000. Mr Strickland could not understand how the business might be considered to have increased in value to such an extent following the flotation. As a valuer, he would want further

information including details of the transactions summarised above to see whether they were bargains at arm's length between unconnected parties. He specifically identified:

(1) Information on the anticipated results for the year ended 31 July 2007 if it was available in the market place.

(2) Details of the individual market transactions and whether they were at arm's length between unconnected parties.

(3) Witness evidence as to the motivation of purchasers of the shares in September 2003.

89. Information as to projected results for the year ended 31 July 2007 would not be available to the prudent purchaser. At one stage in cross-examination Mr Strickland said that because he was giving evidence so long after the valuation dates, he did not know what evidence might have been in the public domain at the valuation dates. He accepted that the promoters on a flotation would want publicity about the offer and would take active steps to promote the offer. He suggested there might have been press releases, brokers' briefings and investor roadshows. It made sense to Mr Strickland that the promoters would keep files of such briefings and press comments and he accepted such information would be available to the prudent purchaser. However, he was not sure how the provision of such information would interact with AIM rules and the release of confidential information. Later in his evidence he corrected himself and said that the Prospectus would have contained all the relevant publicly available information. There would not be any additional facts about the business beyond what was in the Prospectus because of the risk of market abuse. In the absence of any contrary expert evidence I accept Mr Strickland's later evidence.

90. At the time of his report Mr Strickland only had monthly summaries of the market transactions, similar to the information I have tabulated above. Details of the individual market transactions would not be available to the prudent purchaser directly, but Mr Strickland accepted that some information as to the identity of the parties might be available from the share register. The Sofola Report included the dates, prices and share volumes of transactions on various dates between 8 September 2003 and 4 October 2004. Mr Strickland did not know where Mr Sofola would have obtained this information. He had been told by HMRC that the information was not available, but he accepted that perhaps he ought to have made his own further enquiries. It has not been suggested that any more detailed information as to the market transactions would have been available to the prudent purchaser at the valuation dates beyond the summary in the table above. I am not satisfied on the evidence before me that anything more would have been available.

91. Mr Strickland's evidence was that ordinarily, market transactions would be a very significant factor in valuation to which he would give significant weight. He did not attach weight to the transactions in Readybuy shares because he considered the indicative price could not be reconciled to the publicly available information in the Prospectus. He also regarded the number of shares traded as indicating a very thin market, in other words a market that was not very liquid, and therefore not reliable as a basis of valuation.

92. When Mr Strickland referred to witness evidence as to the motivation of share purchasers in September 2003 he was referring to purchasers following admission to AIM, and not the Subscribers. The prudent purchaser would not have access to such information.

93. Mr Strickland noted a decline in the number of market transactions between September 2003 and December 2003 which he also considered was an indicator of an illiquid market. Overall, he did not consider the information as to market transactions sufficiently reliable to affect his calculation of valuation based on a cost approach.

Mr Strickland's overall conclusion

94. Mr Strickland went on to consider a number of factors which could be relevant to valuation. I have already dealt with Mr Strickland's view of transaction costs. The remaining potentially relevant factors, including those put to Mr Strickland in cross-examination were:

(1) The existence of share options granted to two members of Readybuy's management.

(2) The quality of the brand and the people involved with Readybuy.

(3) The availability of capital to develop the McDonald Yang business.

(4) Admission of the shares to trading on AIM.

95. Mr Strickland did not consider that the existence of the options would have a material depressive impact on the value of the shares. Nor did he consider that the options gave any indication as to the value of the shares at the valuation dates. Indeed, he considered there was a mis-match between the 12.2p at which the option could be exercised and the 48p paid for the Placing Shares. It did not provide any incentive to Mr Bennett or Mr McDonald to add value, if the value was already there. Having said that, he agreed that the share options might operate as a form of golden handcuff, giving an incentive to Mr Bennett and Mr McDonald to remain with the business for at least 3 years.

96. Clearly the Subscribers risked not getting their money back. It was put to Mr Strickland that the Subscribers would attach a premium to the quality of the people sponsoring the Offer, namely Zeus and WH Ireland. Once McDonald Yang had been identified as the target, potential purchasers of shares in Readybuy would also attach significance to the fact that it was a business supported by the Yeungs and other experienced individuals and that the Yang Sing was a very strong brand. Mr Strickland accepted that was the case. But also noted the production difficulties that McDonald Yang had encountered and which were explained in the Prospectus.

97. It was put to Mr Strickland that McDonald Yang had a strong brand and a concept which it had substantially developed, however it lacked capital and experience in the market. The flotation gave them that capital at a time when it was difficult to raise finance and also put experienced professionals in senior roles in the business. Mr Strickland did not take issue with that analysis. He also accepted that WH Ireland were the Nomad but he could not comment on the role of the Nomad. He acknowledged that the AIM rules required a Nomad and that the Nomad had a regulatory role but he was not sure what responsibility the Nomad had for the price at which shares were listed. He thought that was more a matter for the market-maker. He had not seen any documents indicating how the price of the Placing Shares had been identified.

98. Mr Strickland did say that the knowledge and experience of the management team would normally be reflected in their remuneration and so would not be expected to add value as such. However, he accepted that their identity might influence potential purchasers. The Prospectus shows that following flotation, Mr Bennett was entitled to a salary of £65,000pa plus certain benefits. Mr Davies, Mr Gerry Yeung and Mr Salisbury were each entitled to directors' fees of 10,000pa. In valuation terms, Mr Strickland considered that their contributions would be treated as reflected in their remuneration.

99. Mr Strickland's evidence was that what might happen in the future, so called "hope value", would not affect the value of a business unless reflected in future cashflow forecasts which can be discounted to give a present value. No such information was available to the prospective purchaser in the case of Readybuy.

100. Mr Strickland was aware that by March 2003 there was a sense of optimism in markets and the bottom of a stock market fall following the "dot com boom" had been called. He did not take into account any background to the company or the market for chilled foods other than what was contained in the Prospectus. In particular, he did not factor into his valuation the novel nature of the product and the market place for the product.

101. It was put to Mr Strickland that the existing business together with the strong brand, access to capital and a new management team was "greater than the sum of its parts". Mr Strickland did not accept that analysis. He maintained that the Yeungs were in the best position to know the value of the business and there was no evidence to suggest that they sold below market value.

102. Mr Strickland did not consider that admission to AIM would in itself result in any increase in the value of the shares. He acknowledged that on a flotation, where there is a liquid market, one would expect to see an increase in value over the flotation price because the promoters would want to price the shares to achieve a modest premium following the flotation.

103. Overall, Mr Strickland's opinion was that the market value of small holdings in the shares of Readybuy at both valuation dates was 8.05p. He was unable to reconcile those valuations based on the cost approach to the market transactions in shares between September 2003 and December 2003. In the circumstances, he considered that the prudent purchaser of shares would adopt the cost approach without any adjustment.

CONSIDERATION OF THE ISSUES

104. In valuing most assets, courts and tribunals rely on expert evidence. In relation to company shares, the statutory regime in sections 272 and 273 TCGA 1992 distinguishes different types of shares. Shares which are quoted on The Stock Exchange Daily Official List are valued at the price quoted in that list. In that case expert evidence would not be required, unless as a result of special circumstances the price quoted is not a proper measure of market value. The shares of Readybuy were not quoted on the Official List, and therefore it is necessary to have regard to expert evidence. The appellants have not adduced their own expert evidence but they do challenge the expert evidence of Mr Strickland. I shall consider those challenges by reference to the following headings:

(1) Does the fact that Readybuy shares became listed on a recognised stock exchange itself give rise to an increase in the value of its shares?

(2) To what extent should I take into account in valuing the shares of Readybuy that it was entering a market with the benefit of a strong brand, capital to exploit the market and a new and experienced management team?

(3) To what extent should I take into account in valuing the shares in Readybuy the market transactions that took place on AIM, particularly in the period 8 September 2003 to 31 December 2003?

(4) To what extent are various criticisms of Mr Strickland's evidence made out, and if so what adjustments are necessary to his valuation of the shares?

Listing on AIM

105. It was suggested that Mr Strickland had failed to take into account an increase in the value of shares in a private company when those shares are listed on a stock exchange such as AIM.

106. Mr Strickland's starting point and indeed his finishing point was a valuation of Readybuy shares based on a cost approach. He did not accept that when a private company becomes listed on a stock exchange, its shares will necessarily increase significantly in value. He distinguished

the value of the business as a whole, and the value of minority holdings. The value of the business would be determined by future cashflows, which would be the same whether the shares were listed or not. However, the value of a minority interest in an unlisted company may be subject to a discount for lack of marketability. On listing, if the shares were fully liquid then the value of that interest would be closer to the pro rata value of the shares based on the value of the business. Mr Strickland is well-qualified to give that evidence and I accept it.

107. Mr Strickland valued the Readybuy shares pro rata to the value of the business as a whole. He did not include any discount for lack of marketability. In my judgment, therefore, the issue raised by the appellants does not undermine Mr Strickland's evidence on valuation.

108. Mr Strickland acknowledged that the valuation of shares in the context of a public offering or admission to listing was generally a matter for merchant bankers rather than accountants. However, he said he would be surprised if an accountant's valuation was not "on the same page" as the merchant banker. He gave that evidence in light of his previous experience valuing a large transport company which was to be the subject of either a trade sale or a stock market listing and I accept his evidence. There is no evidential basis for me to find that in the context in which Readybuy shares come to be valued, namely a flotation on AIM, the three approaches to valuation described by Mr Strickland do not apply or ought to be modified in some way.

Readybuy's prospects

109. Clearly, if a business has strong growth prospects then that will be reflected in the market value of its shares. It is the appellants' case that Readybuy did have strong growth prospects, derived from its strong brand, the availability of capital, the introduction of a new, experienced and respected management team and the involvement of respected corporate finance professionals with a good track record in similar flotations. Whilst McDonald Yang had no track record in terms of profits, these factors meant that Readybuy had good prospects to establish and grow the business.

110. It was specifically put to Mr Strickland that he failed to recognise any value attributable to these factors. Mr Strickland justified this by saying "we don't know whether they can work their magic". In relation to the introduction of new management, Mr Strickland's evidence was that the value added by new management would be recognised by their remuneration. It seems to me that Mr Webster fairly pointed out that shareholders would not allow the executives to take all of the added value by way of remuneration. Mr Strickland's position may be standard valuation practice, but if so he did not explain it as such.

111. In relation to the availability of capital, Mr Strickland did not accept that there were any benefits of synergy when a good business which was short of cash was provided with cash. He did accept that a business with sufficient capital had more options than a business without sufficient capital which should reflect in a greater value. However, he pointed out that there was no evidence that McDonald Yang was otherwise unable to obtain capital. Having said that, the prudent purchaser would know nothing about what capital might otherwise be available to McDonald Yang.

112. Mr Webster submitted that Mr Strickland had provided no justification for not taking into account the future prospects of Readybuy. He said that if Mr Strickland was right, then no investor would ever take a reasonable risk or ascribe value to the prospect of good management and cash developing a business. The appellants sought to portray this as the difference in approach between an accountant's view and an investor's view. The latter taking into account "market sentiment" Mr Strickland did not accept that analysis. His evidence was that he would expect "market sentiment" to "match reality". The difficulty with Readybuy was that the

business had no track record and no sales. As the Prospectus made clear, future success would depend on the directors' ability to implement their objectives and strategy. However, there were no forecasts available to the prudent purchaser by reference to which he could value the future prospects.

113. In similar vein, Mr Webster criticised Mr Strickland's valuation based on a cost approach because it ignored the views and existence of experienced investors such as Mr Chisnall and Mr McArthur who, through Brewin Dolphin, subscribed for shares expecting to see a four-fold increase in value on flotation. However, it would be wrong for me to treat Mr Chisnall and Mr Webster as some sort of proxy for what a prudent purchaser would pay for the Readybuy shares. It is the expert evidence which is a proxy for the reasonably prudent purchaser.

114. Taking all these submissions into account, even if I accept that Readybuy did have good prospects of establishing and growing the business, the question is how that should be reflected in the market value of the business and Readybuy's shares.

115. Mr Strickland's three approaches to valuation did not expressly take the factors relied on by the appellants into account, including what Mr Webster as "market sentiment". The obvious way in which those factors could be taken into account is if the publicly available information included cashflow and profit forecasts for the business. That would have enabled Mr Strickland to use the income approach to valuation. Whilst Mr Strickland did carry out an income based valuation, he did so using the Working Capital Report which would not have been available to the prudent purchasers at the valuation dates. For that reason, I have not taken it into account. The prudent purchaser could not therefore make any reliable assessment as to the future prospects of the business based on the available financial information.

116. In my judgment, it is not the case that Mr Strickland's evidence fails to take into account the future prospects of Readybuy or market sentiment. Rather, no financial information would be available to the reasonably prudent purchaser by reference to which those factors can be taken into account. Certainly not in any quantitative analysis, and in my judgment it is necessary to adopt a quantitative analysis.

Market transactions

117. Mr Webster recognised in his submissions the difficulties in attributing value to the availability of capital and the involvement of the new management team. He submitted that in those circumstances, the safest course would be to take the market transactions as offering the best indicator of market value.

118. Mr Strickland was unable to reconcile his views on valuation with the market transactions which occurred in the period 8 September 2003 to 31 December 2003. He had no knowledge as to whether those transactions were at arm's length. He did not accept that he had simply failed to understand the views of investors in Readybuy. In his opinion, "hope value" could not explain the difference between his cost-based valuation of 8.4p per share and the values obtained from market trades in the region of 54p per share. He accepted that there was no evidence to suggest that the market transactions were anything other than arm's length transactions.

119. The existence of these transactions would not have been known to the prudent purchaser on 8 September 2003. They would have been known to the prudent purchaser on 9 December 2003. However, they might be taken into account as contemporary comparable transactions reflecting the market for Readybuy shares at both valuation dates. Mr Strickland did not suggest that they could not be taken into account. His point was that they were so far away from his valuation based on the cost approach that they must be discounted.

120. The appellants suggested that whilst the number of shares traded in Readybuy was relatively small, there was a "functioning market" and there were sufficient transactions to give a fair indication of how investors saw the shares. There is no evidence that these were anything other than arm's length transactions. The market transactions were relied upon as evidence of what the shares would fetch on the open market.

121. Mr Waldegrave submitted that I should not assume that the market transactions were at arm's length simply because there is no evidence to the contrary. I should not make any assumptions as to whether or not they were at arm's length. I accept that submission. There was no evidence before me as to the way in which the AIM market operated, in particular the involvement of market makers and how potential buyers are matched with potential sellers. This was not within Mr Strickland's expertise.

122. In relation to the valuation on 8 September 2003, if the market transactions are treated as comparable transactions, they may be said to be an indicator of the demand for Readybuy shares in the market at or about that time. However, Mr Strickland's evidence was that they were not a reliable indicator because they reflected transactions in an illiquid market, amounting to 2.14% of the total share capital. Taking into account that only 6,410,203 shares could be freely traded during this period, the transactions amounted to 6% of those shares. This was not explored in evidence or submissions and I am left with Mr Strickland's evidence that the market transactions are not a reliable indicator. In the absence of any contrary expert evidence I must accept Mr Strickland's conclusion in this regard.

123. In relation to the valuation on 9 December 2003, in my judgment the prudent purchaser would see the disconnect between the cost approach to valuation and the price at which the market transactions were taking place. However, he would not know why there was a disconnect. He would not be able to satisfy himself that the market transactions were a reliable indicator of value and his only other way of valuing would be the cost approach. Mr Strickland is an expert valuer. His evidence was that in the circumstances it is not appropriate to take into account the market transactions. Effectively, all the prudent purchaser can do in those circumstances is recognise the disconnect but base his decision on price by reference to his quantitative valuation analysis based on publicly available information. The prudent purchaser would not give any uplift for the existence of the market transactions. There is no evidential basis on which I can say that Mr Strickland is wrong to take that approach. In the circumstances, I can give no weight to the existence of the market transactions as at 9 December 2003.

124. Mr Webster criticised Mr Strickland for failing to have regard to the witness evidence of the appellants and Mr McArthur, despite saying in his report that such evidence would be relevant to explain the discrepancy between his cost approach and the market transactions. I do not accept that criticism. I have already said that in seeking to explain the discrepancy, it was not witness statements from the appellants and Mr McArthur that Mr Strickland regarded as relevant, but from the purchasers who were a party to the market transactions. Such evidence was not available and would not be available to the prudent purchaser.

125. Mr Strickland did have access to the witness statements served by the appellants and Mr McArthur. Whilst he considered that they contained interesting background material, he did not consider they were relevant to his conclusions. For example, he did not consider that their explanations of why they invested in Readybuy were relevant to his valuation exercise. At one stage in cross-examination, Mr Webster suggested that the appellants were reasonably prudent investors and as such provided evidence of what a reasonably prudent investor would pay for the shares. I do not accept that inference can legitimately be drawn. Expert evidence is a proxy for the prudent purchaser. Non-expert evidence from an actual purchaser cannot be taken as a proxy for what the prudent purchaser would pay for the shares.

General criticisms of Mr Strickland's approach

126. It is convenient to deal with further criticisms of Mr Strickland's evidence under this general heading. The following criticisms were put to Mr Strickland and relied upon by the appellants in submitting that I should not accept Mr Strickland's valuation.

(1) He had no experience of valuing cash shell companies launched to acquire a business and in contemplation of a flotation.

(2) He placed no reliance on the fact that the price of the Placing Shares had been established by W H Ireland, as the Nomad. Having accepted that valuation in connection with a flotation was more a matter for merchant bankers he ought to have relied on the price set by WH Ireland. Their duties as Nomad "encompassed the share price and the contents of the Prospectus".

(3) His approach to valuation would have the effect of undervaluing many listed companies.

(4) He failed to take into account that Brewin Dolphin purchased shares on behalf of Mr Chisnall and Mr McArthur at 14.17p. They must have been satisfied that was at least the market value.

(5) His valuation was based on the price paid to the Yeungs for their shares in McDonald Yang. That was flawed because he had no knowledge of their business acumen or their financial position, in particular whether they had access to capital themselves to establish and grow the business.

127. Mr Webster submitted that given these defects in Mr Strickland's approach, the only reliable measure was the market transactions in circumstances where there is no reason to think they were not at arm's length.

128. I do not accept that the appellants have established any defects in Mr Strickland's approach. In particular:

(1) The fact that Mr Strickland has not previously valued a cash shell launched to acquire a business and in contemplation of a flotation is neither here nor there. He is valuing the shares on the basis of well-established valuation principles. The appellants have not satisfied me that any different principles or expertise is required when it comes to valuing the shares of a company such as Readybuy.

(2) There was no evidence before me as to the role or duties of WH Ireland as a Nomad or by reference to which I could place reliance on the price at which the Placing Shares were issued. What is relevant is the information available to the prudent purchaser. The prudent purchaser would have all the information from the Offer and the Prospectus and would know the price at which the Placing Shares had been allotted. He would know that WH Ireland were the Nomad. However, I am satisfied from Mr Strickland's evidence that such information does not help in identifying the value of the shares.

(3) There is no evidence from which I could conclude that Mr Strickland's approach would have the effect of undervaluing many listed companies.

(4) It does seem to me that Mr Strickland may not have given sufficient weight to the price paid by the Subscribers and value attributed to the Consideration Shares allotted to Yeungs in the SPA. I consider this criticism more fully when I come to consider my conclusions on valuation.

(5) It is not helpful to speculate as to whether the Yeungs had capital available to invest in the business. All the prudent purchaser would know is that the Yeungs sold their shares in McDonald Yang for which they received the Consideration Shares. Mr Strickland did not speculate as to their reasons for doing so or as to their financial position and I am satisfied that he was right not to do so.

129. It remains the case that there is a disconnect between the price attributable to the Consideration Shares in the SPA and the value of the business by reference to the market transactions following flotation. The market transactions suggest a value of the business including the cash raised of £9m, and therefore a value of the business itself of £8m. Yet the Yeungs sold the business for at most some £435,000. The prudent purchaser is left without any explanation for that disconnect. Mr Strickland's evidence was that in those circumstances the prudent purchaser resorts to a valuation based on the cost approach. I accept that evidence.

CONCLUSIONS ON VALUATION

130. For the reasons given above, I accept Mr Strickland's expert evidence on valuation, subject to one point.

131. The cost approach indicates a value of Readybuy's assets following flotation of £1,449,750 which equates to a value of 8.05p per share. It is not clear from Mr Strickland's evidence how Chadwick would have arrived at a "fair value" of the Yeungs' shares in McDonald Yang of £280,000. That was the value he adopted for the value of McDonald Yang in his cost approach. Mr Strickland's evidence did not explain how a fair value might relate to a market value for present purposes. Mr Strickland expressly took the fair value into account, as well as the value attributable to the Consideration Shares in the SPA which was £435,000 and equates to 12.1p per share. He also took into account the price paid by the Initial Subscribers and the Subscribers. However, he appears to have discounted all this evidence in favour of the fair value identified by Chadwick. The evidence leaves me without any explanation as to why these other indicators were discounted.

132. In those circumstances, I must do the best I can with the evidence before me. I do consider that Mr Strickland gave insufficient weight to the fact that the figure of £435,000 was negotiated at arm's length, and that it gave a share price very similar to the amount of 12.2p per share paid by the Subscribers in the Offer. There was also value to the Yeungs in that loans were repaid and they were released from personal guarantees.

133. The 12.2p per share paid by the Subscribers would not in itself be a good indicator of value because it was paid when the Subscribers had no knowledge of the target business. However, I find that the prudent purchaser would consider that the value attributed to the Consideration Shares by the Yeungs together with the price paid by the Subscribers in the Offer would together be a good indicator of the value of the shares on 8 September 2003.

134. Taking into account all the evidence and submissions, in my judgment the highest price a reasonably prudent purchaser would have paid for the shares in Readybuy on 8 September 2003 would have been 12.1p per share. The only additional information available to the prudent purchaser on 9 December 2003 was the fact there had been some transactions on AIM which I have summarised above. The prudent purchaser would have realised there was a disconnect between the prices paid in those transactions and the price of 12.1p indicated by the other information available. In circumstances where there was no explanation for that disconnect, the prudent purchaser would not increase the amount he would pay for the shares. The price paid for the shares on 9 December 2003 would therefore remain 12.1p per share.

135. Neither party suggested that the option exercise price of 12.2p per share would affect the price payable by the prudent purchaser, and I have not taken it into account.

DISPOSAL OF THE APPEALS

136. The closure notices for each appellant gave rise to assessments calculated on the basis of a share price of 14.66p per share. I am satisfied that those assessments should be increased to reflect a market value of 12.1p per share.

137. In the circumstances, I dismiss the appeals and direct that the assessment on each appellant shall be increased accordingly.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

138. 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.

JONATHAN CANNAN
TRIBUNAL JUDGE

Release date: 13 MAY 2022