

The meaning of 'negligible value' for capital gains purpose was given a comprehensive examination in *Barker Harper & Wickes v HMRC* [2011] UKFTT 645, but two recent cases have added some further gloss on the subject. These are *Dyer v HMRC* (TC03073) and *Robert Brown v HMRC* (TC03118).

In each case, the taxpayer claimed that shares in a company in which they had invested had become of negligible value. In each case, the tribunal considered whether the shares were worth 'next to nothing' (although not necessarily nil) or whether the shares had a market value. If they had a market value, they are not of negligible value, even if that value is negligible compared with the taxpayer's acquisition value.

In *Dyer*, there was no dispute that the shares were worthless; HMRC claimed that they were worthless when the taxpayer acquired them, so they had not become of negligible value and were therefore ineligible for loss relief under TCGA 1992 s 24. Interestingly, one of the reasons why HMRC took the view that the shares had no value was that the driving force behind the company, Miss Dyer, was not tied to the company by any enforceable contract. The value of the company was dependent upon her continuing presence so any purchaser would be at severe risk that at any moment; all the business could walk out the door. Accordingly, the shares could only be worth what they would yield on a liquidation – which was absolutely nothing.

Of course, in the real world, a purchaser would insist upon the continuity of the services of the key employee and no doubt a number of other conditions. However, this is not something which can be reflected in a valuation for fiscal purposes. The hypothetical purchaser does not have the luxury of walking away and insisting on better terms. Accordingly, the company could not be valued on the assumption that it had other assets or rights which it did not possess at the date of the valuation.

In the case of *Brown*, the taxpayer invested significant sums in a company when it had some value but by the time of the valuation, things had seriously declined. There was no possibility of any dividends (because of the substantial accumulated losses) and there was a deficiency of assets. Accordingly, Mr Brown claimed the shares were worthless. This sounds pretty good – except there was another shareholder who kept putting in money by subscribing for shares in the hope everything would come good in the end. For this reason, the company was not about to cease trading and the possibility existed that it might at some time become profitable. These are reasons that HMRC always likes to put forward to suggest that shares have not become of negligible value. However, the tribunal decided that it is not necessary for the company to have ceased to trade or to be put into liquidation for it to be of negligible value. The fact that the shares had no market value was enough for Mr Brown to qualify for the relief.

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