



*CORPORATION TAX – whether claimed expenditure evidenced - No - trading losses reduced to nil - no qualifying expenditure for the purposes of R&D credits - appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**Appeal number: TC/2018/00696**

**BETWEEN**

**TEKSOLUTIONS-INC LIMITED**

**Appellant**

**-and-**

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

**Respondents**

**TRIBUNAL: JUDGE DAVID BEDENHAM  
SIMON BIRD**

**Sitting in public at Central City Tower, Birmingham on 16 September 2019**

**Mr Emmanuel Quarm, director, for the Appellant**

**Mr Max Simpson, litigator of HM Revenue and Customs’ Solicitor’s Office, for the Respondents**

## DECISION

### INTRODUCTION

1. On 28 September 2017, HMRC issued to the Appellant a closure notice in which HMRC concluded that:

- (1) for the period ended 30 January 2015, the amount of trading loss should be reduced from £174,025 to Nil;
- (2) for the period ended 20 October 2015, the amount of trading loss should be reduced from £224,300 to nil; and
- (3) the Corporation Tax payable by the Appellant for each period was nil.

2. The Appellant appeals against the decision to reduce the trading losses to nil. The Appellant's position is that those losses should properly have been allowed. The Appellant further states that on the basis of the expenditure that gave rise to the claimed trading losses, the Appellant is entitled to Research and Development ("R&D") credits pursuant to Chapter 2 of Part 13 of the Corporation Tax Act 2009 ("CTA 2009").

3. In relation to the R&D credits, HMRC's position is that if the Appellant's appeal against the decision to reduce the trading losses to nil is dismissed then the conditions that must be met before the Appellant is entitled to claim an R&D credit will not be satisfied (specifically, there will be no qualifying expenditure for the purposes of s1044 CTA 2009). If the Appellant's appeal is allowed (in full or in part), HMRC submits that the Tribunal should permit HMRC an opportunity to consider whether the other conditions for payment of an R&D credit are met on the facts of this case.

### BACKGROUND

4. There has been a significant amount of correspondence between the parties. What follows is a summary of the key interactions and events. Where reference is made to correspondence as being to/from Mr Quarm this simply reflects that he was the named recipient or author respectively (as opposed to indicating that the correspondence was sent to him other than in his capacity as a director of the Appellant).

5. During 2015, the Appellant liaised with HMRC in relation to claiming R&D Credits. HMRC informed the Appellant that such a claim needed to be made within a corporation tax return. HMRC also made clear that R&D credits could only be claimed if there was qualifying expenditure which had been actually paid at the time of the claim.

6. On 3 November 2015, the Appellant filed its tax return for the period 28 February 2015 to 21 October 2015. This return recorded expenses of £246,500 and trading losses of £224,300. The expenses were recorded as follows:

Salaries and wages	£75,000
Subcontractors' payments (construction industry only)	£62,000
Accountancy and audit	£30,000
Consultancy	£24,000
Legal and professional charges	£2,600
Light, heat and power	£5,300
Rent and rates	£3,600

Advertising and promotion	£7,900
Bad debts	£11,000
Donations	£500
Entertaining	£5,000
Interest paid	£3,000
Travel and subsistence	£12,000

The Appellant amended that return on 6 July 2016 so as to make a claim for an R&D credit.

7. On 9 December 2015, the Appellant filed its tax return for the period 28 February 2014 to 30 January 2015. This return recorded expenses of £182,825 and trading losses of £174,025. The expenses were recorded as follows:

Salaries and wages	£75,000
Accountancy and audit	£30,000
Consultancy	£24,000
Legal and professional charges	£2,600
Light, heat and power	£5,300
Rent and rates	£3,600
Advertising and promotion	£7,900
Bad debts	£7,000
Donations	£375
Entertaining	£5,000
Insurance	£7,000
Interest paid	£1,500
Travel and subsistence	£3,500
Vehicle expenses	£7,000
Administration and office expenses	£1,750
Sundry expenses	£1,300

8. The Appellant amended that return on 6 July 2016 so as to make a claim for an R&D credit. The Appellant also provided to HMRC a summary and time line relating to three separate projects that the Appellant said it had been working on, together with a list of expenditure said to have been incurred in relation to each of those projects. The Appellant was concerned that details of its projects should not enter the public domain, so we will not describe them in any detail in this decision. However, the expenses said to have been incurred in relation to these projects can be summarised as follows:

- (1) Project one (expenditure between December 2013 and April 2014):
  - (a) £16,000 on nozzles

- (b) £28,000 on metal
  - (c) £10,500 on fuel
  - (d) £3,500 on energy
- (2) Project two (expenditure between May 2014 and April 2015):
- (a) £7,400 on PMMA/Graphene
  - (b) £6,500 on fuel
  - (c) £1,800 on energy
  - (d) £5,000 on waveguides
  - (e) £40,000 on Graphene material
- (3) Project three (expenditure between February 2014 and August 2015)
- (a) £50,000 on polymer
  - (b) £5,000 on fuel
  - (c) £5,000 on energy

9. It was unclear to us the extent to which any of the above expenditure had been included in the expenses recorded in the returns as originally filed. Mr Quarm was unable to assist in this regard.

10. For reasons that remain unclear, the Appellant did not file a tax return for the period 31 January 2015 to 27 February 2015.

11. On 2 August 2016, HMRC notified the Appellant that, pursuant to paragraph 24(1) of Schedule 18 to the Finance Act 1998, HMRC intended to check the Appellant's tax returns (as amended). HMRC requested various information and documentation to assist it in checking the returns, including a detailed breakdown of the salaries, wages and sub-contractor costs claimed and documentary evidence supporting other expenditure said to have been incurred by the Appellant.

12. On 10 October 2016, Mr Quarm acknowledged receipt of the 2 August 2016 letter and provided further information relating to the claim for an R&D credit. However no documentary evidence of the expenses said to have been incurred by the Appellant was provided.

13. On 19 October 2016 (being the date of the cover letter that accompanied the information notice, although both Officer Hopkin and Mr Quarm refer to it being dated 18 October 2016), not having received the information and documentation requested on 2 August 2016, HMRC issued to the Appellant an information notice pursuant to paragraph 1 of Schedule 36 to the Finance Act 2008. The requested information included:

- (1) A detailed breakdown of, and documents relating to, the salaries and wages cost of £75,000 for the tax return period ended 30 January 2015 and £75,000 for the tax return period ended 21 October 2015;
- (2) A detailed breakdown of, and documents relating to, subcontractor payment costs of £62,000 for the tax return period ended 21 October 2015;
- (3) A detailed breakdown of, and invoices relating to, the accountancy and audit costs of £30,000 for the tax return period ended 30 January 2015 and £30,000 for the tax return period ended 21 October 2015;
- (4) A description of what consultancy services were provided to the company and by whom such as to give rise to the consultancy costs of £24,000 for the for the tax return

period ended 30 January 2015 and £24,000 for the tax return period ended 21 October 2015;

(5) Supporting documentary evidence (including but not limited to) all invoices for the expenditure said to have been incurred by the Appellant.

14. The information notice required the Appellant to provide the requested information and documentation by 24 November 2016.

15. On 15 November 2016, Officer Hopkin spoke with Mr Quarm and enquired whether the information and documentation required by the information notice would be provided by the due date (24 November 2016). Mr Quarm stated that the figures relating to wages, salaries and sub-contractor payments had not as yet been paid so there no records available. In relation to other records evidencing the Appellant's other claimed expenditure, Mr Quarm stated that he had been chasing these but did not have the resources to chase them further. Mr Quarm asked that a provisional payment of the claimed R&D credit payment be released to the Appellant.

16. On 16 November 2016, Mr Quarm wrote to Officer Hopkin and referred to the information notice and stated "we do not have all the documents requested and we will need to visit our suppliers again. My initial enquiry shows that some of the suppliers we dealt with have either relocated or out of business." In relation to the five requests summarised at paragraph 9 above, the Appellant's response was stated as follows:

(1) "...wages and salaries are classified as unpaid (accrued) wages that the company owes to its permanent employees. This applies to both accounting periods..."

(2) "[the subcontractor payments] are all unpaid wages that have not been settled by the company"

(3) "[the accountancy and audit cost] has not been settled yet, it had been documented to be paid when funds are available."

(4) "[the consultancy services costs] are no longer included [in the claimed expenditure]"

(5) "[In relation to other expenditure], I am in the process of collecting all relevant document in relation to this matter however, some of the information requested [about] such invoices needs to be collected again from the suppliers located elsewhere. My initial enquiry on following up with this has been very discouraging as there are no funds to embark on long trips to acquire these documents again..."

17. On 18 November 2016, Mr Quarm emailed Officer Hopkin stating that he was in the process of "making a formal enquiry to eBay if there is the possibility of recovering my old invoices. A breach of security by an unknown user led to my entire account purchasing history being deleted."

18. On 19 November 2016, Mr Quarm emailed eBay (copying in Officer Hopkin) as follows:

"I would like to request for full restoration of my purchasing history for my eBay account. I noticed recently that part of my purchasing history is not available in the purchasing section of my account..."

19. On 24 November 2016, Mr Quarm placed a telephone call to Officer Hopkin during which he repeated his view that the Appellant was entitled to an R&D credit and also explained that when the relevant accounts had been drawn up, all of the records had been available. . However, since then, his housemate had moved out, and during that process the records had been lost. Mr Quarm further explained that the Appellant does keep a cash book recording the

expenditure incurred but he had thrown away the cash book for the period under enquiry. Officer Hopkin asked Mr Quarm to provide a copy of the current cash book.

20. On 24 November 2016, Officer Hopkin wrote to the Appellant stating:

“...[For R&D credits] not only must the expenditure be qualifying, it must also be paid...We have not received any evidence that this expenditure was incurred or paid as we have not seen the underlying records which relate to it; the records which were requested within the information notice.

...for those documents that are not in your possession, if you provide me with the name and contact details of the suppliers which were used, I can approach them requesting a copy of the documents that relate to the expenses...Following our phone call on 24 November, I appreciate that you do not know the names of the suppliers that were used, but that you can access this information through a third party. Therefore, I am willing to postpone the penalty that is charged for failing to comply with the information notice to allow you more time to make this information available to me. Please provide me with:

(1) The name and contact details of all suppliers relating to the [expenditure specified in the information notice];

(2) A copy of the cash book, as described by you during our phonecall...

Once these have been received, I will be satisfied that you have complied with the information notice dated 19 October 2016. Please provide what I have asked for by 8 December 2016...”

21. On 24 November 2016, Mr Quarm emailed Officer Hopkin as follows:

“I will have to stress that your extended time given is not realistic due to the many reasons given. I am at the moment incapable of performing any duties related to the business without any funds...”

22. On 29 November 2016, Mr Quarm emailed to Officer Hopkin a limited number of documents. These documents were summarised in Officer Hopkin’s letter of 12 December 2016 (see below).

23. On 30 November 2016, HMRC Officer Darryl Hoy (an officer with specialist R&D knowledge) refused the Appellant’s request for a provisional payment of the claimed R&D credit. The 30 November 2016 letter also reiterated:

“The enquiry into the general returns and accounts is intrinsic to the R&D claims as HMRC needs to establish if the loss for tax purposes is correct to establish what the correct figure is as the claim for an R&D credit is reliant on the company surrendering available losses.”

24. On 30 November 2016, Mr Quarm wrote to Officer Hoy referring to Officer Hoy’s 30 November 2016 letter and to a telephone between Officer Hoy and Mr Quarm. Mr Quarm stated that Officer Hoy’s letter “[gives] the impression that you either did not take a word from our conversation or ignoring facts of the matter for this claim.” Mr Quarm went on to state:

“One important factor we discussed [on the telephone] was about retrieving documents and invoices missing. I had most of these invoices on my eBay account where most of the materials were purchased but I noticed a while ago that my account setting has been compromised. I copied [Officer Hopkin] in the letter I sent to eBay requesting for my account to be retrieved...”

...

In regards to the query about R&D activities, I am not sure how to put this for your understanding but I will do my best...The project listed for the R&D claim explains the processes used to obtain information. Please refer to the project sheets and if you don't understand then I believe it is time you call in an expert. I don't think it is my job to explain how science works here but to provide you with details of work done through my project reports, any expert should know the activities that exist in a phrase or scientific word used..."

25. On 1 December 2016, Mr Quarm sent an email to eBay (copying in Officer Hopkin) stating that part of his purchase history had been deleted, and requesting that it be restored.

26. On 1 December 2016, Mr Quarm emailed to Officer Hopkin a limited number of further documents. These documents were summarised in Officer Hopkin's letter of 12 December 2016 (see below).

27. On 12 December 2016, Officer Hopkin wrote to Mr Quarm as follows:

"...so far the documents I have received are:

- A mortgage statement relating to [residential premises]
- Documents relating to debts owed by you, with correspondence from debt collection agencies
- A Lloyds bank statement covering the period 14 October 2016-24 November 2016
- Npower electricity bills relating to [residential premises] covering the period 6 January 2015 – 9 November 2015
- An invoice for services received from Hazelvine Limited
- A lapsed contract for insurance relating to [residential premises]
- A pre-contract credit agreement with HomeServe
- Confirmation of you seeking access to records held by eBay and Eon
- A notice from Coventry Council

In my letter dated 24 November 2016, I stated that there were two points outstanding that you would need to provide to comply with the information notice, which were:

- 1) The name and contact details of all suppliers relating to [the expenditure said to have been incurred]...
- 2) A copy of the cashbook, as described by you during our phonecall of 24 November 2016...

Both of these points remain outstanding, and I still require them to be able to progress the compliance check. Therefore the company will be liable to an initial penalty of £300...

I explained during our phonecall dated 24 November that, although you are struggling to gain access to records from suppliers yourself, HMRC can approach them, using formal powers if necessary, if you provide me with their details (as at point 1 above). This information is within the company's power and possession to provide...,you say that most of the invoices are stored on eBay. I can continue to escalate this enquiry should you so wish but, in order to do so, I need your written consent that you agree to HMRC contacting eBay...we are [also] still yet to receive the names and addresses of all other suppliers used, for example those used for expenses relating to legal and

professional charges, advertising and promotions, travel and subsistence and vehicle costs. Please provide these.

...”

28. On 24 December 2016, Mr Quarm emailed Officer Hopkin stating that, as he had previously stated, the old petty cash book was not available but that he had started to prepare a new petty cash book which was an “incomplete copy of the old one...[with most of the important information...not yet recorded.]. Mr Quarm also authorised Officer Hopkin to liaise with eBay.

29. On 6 January 2017, Officer Hopkin wrote to Mr Quarm to acknowledge the 24 December 2016 email (and a voicemail left on 16 December 2016). Officer Hopkin repeated the request to see the copy cash book (whilst acknowledging that the copy would be incomplete). Officer Hopkin also stated “I have still not received the names and contact details of the suppliers used by the company except for eBay and electricity suppliers Npower and Eon”. Officer Hopkin requested that the supplier details and the copy cash book be provided by 16 January 2017 failing which the Appellant would be charged daily penalties.

30. On 9 January 2017, Mr Quarm emailed Officer Hopkin stating:

“I have no accounts of the details for the other suppliers and I could not get to the page while making a copy of the old cash book. The details of most suppliers should be in my eBay account.

I will send the new cash book as requested but please note that it is just three pages compared to the old book which was around 18 pages.

As I mentioned earlier on during our telephone conversation...hard copies of the documents has been misplaced whilst moving goods to another property from the shared office.

...”

31. On 13 January 2017, Officer Hopkin wrote to Mr Quarm and asked him to provide, by 13 February 2017:

(1) A list of all bank accounts used by the Appellant or used for transactions relating to the Appellant, during the period 28 February 2014 - 21 October 2015; and

(2) Bank statements for the period 28 February 2014 - 21 October 2015 for all bank accounts used by the Appellant.

32. On 16 and 21 January 2017, the Appellant provided to HMRC statements for two bank accounts (one with Lloyds, the other with Natwest). On 24 January 2017, Mr Quarm stated that he had also had a personal TSB account which was closed in September 2015, and which had been used for a “few business transactions”. Mr Quarm went on to say that he was making attempts to obtain statements for this account.

33. On 2 March 2017, Officer Hopkin wrote to Mr Quarm stating:

(1) The R&D element of the compliance check into the Appellant would now be dealt with by Alan Bamford rather than Darryl Hoy due to a team restructure;

(2) A request had been made of eBay but no response had yet been received;

(3) The cash book had still not been received; and

(4) In relation to the request for a provisional/interim payment of the R&D credit, HMRC had still not received sufficient evidence to conclude that the Appellant was entitled to such a credit.

34. On 4 March 2017, Mr Quarm emailed Officer Hopkin stating that he would “send another copy of the cash book since this has not yet been received, but please bear in mind that it is just a three page book made up of names and nothing else because I did not have time to get this completed.”

35. On 4 March 2017, Mr Quarm wrote to Officer Hopkin stating:

“... ”

The company has showed through the R&D expenditure that we are entitled for Tax relief according to qualifying cost and expenses on materials and other resources. A part payment will not require a complete review of the application since my application shows clearly in the documents provided that losses were made...”

36. The request for a provisional part payment of the claimed R&D credit was repeated on 13 March 2017.

37. On 17 March 2017, Officer Hopkin wrote to Mr Quarm to confirm that HMRC had refused the Appellant’s request for a provisional part payment of the R&D credit because, *inter alia*, the Appellant had not provided evidence to substantiate the expenditure claimed.

38. On 17 March 2017, Mr Quarm emailed Officer Hopkin stating that the Appellant was going to appeal HMRC’s decision not to release a provisional part payment of the claimed R&D credit.

39. On 22 March 2017, the Appellant filed a Notice of Appeal against the decision not to release a provisional part payment of the claimed R&D credit.

40. On 10 April 2017, Officer Hopkin wrote to Mr Quarm stating that the decision not to release a provisional part payment of the R&D credit was not an appealable decision although the Appellant could seek to commence judicial review proceedings if it so wished.

41. On 10 April 2017, Mr Quarm emailed Officer Hopkin stating “the case is now in the hands of the tribunal court and you will have to wait for outcome.”

42. On 17 May 2017, HMRC obtained access to the records from the eBay account said by Mr Quarm to have been used to make purchases claimed by the Appellant as expenditure. Those records showed purchases only of a personal nature including a child’s bike, a pair of trainers and a games console.

43. On 14 August 2017, Officer Hopkin wrote to Mr Quarm as follows:

“... ”

The purpose of the compliance check is to establish what, if any, losses are available to the company. Therefore a decision by HMRC to disallow the company’s losses for tax purposes will also mean that there is no tax credit payable, as the losses available to utilise are nil.

...the company has not been able to provide HMRC with evidence that any of the expenses shown in the account have been incurred by the company, be it through eBay or any other record. On this basis, HMRC’s view of the matter remains unchanged with regard to disallowing the losses claimed by the company for tax purposes.”

Officer Hopkin also gave notice of proposed penalties and asked that any response be provided by 8 September 2017.

44. On 15 August 2017, Mr Quarm emailed Officer Hopkin stating that he would not read any documents sent by HMRC until he heard the outcome of the Appellant's appeal (against the decision not to release a provisional part payment of the R&D credit).

45. On 28 September 2017, HMRC issued the closure notice giving rise to this appeal. HMRC also issued the Appellant with a penalty assessment in the sum of £25,791.21 pursuant to Schedule 24 of the Finance Act 2007. The penalty was calculated on the basis that the Appellant's behaviour in claiming on its tax returns expenses that were not properly claimable was deliberate and prompted. HMRC then applied a 15% reduction for the quality of disclosure provided by the Appellant.

46. On or about 27 December 2017, the Appellant sent to the Tribunal and served on HMRC a slideshow document which set out, including by reference to various equations, the methodology and results of research said to have been conducted by the Appellant.

47. On 17 January 2018, Judge Morgan heard HMRC's application for the Appellant's appeal against the decision not to release a provisional part payment of the R&D credit to be struck out for want of jurisdiction. Judge Morgan indicated that that appeal would be struck out and further indicated that if the Appellant wrote to the tribunal stating that it wished to appeal the 28 September 2016 decision that appeal could progress given that HMRC agreed not to take any point relating to the fact that the appeal would be outside of the statutory time limits.

48. On 28 January 2018, the Appellant filed a Notice of Appeal which triggered the present appeal proceedings.

49. On 30 May 2018, Judge Morgan released a decision striking out, for want of jurisdiction, the Appellant's appeal against HMRC's decision not to release a provisional part payment of the R&D credit, and making procedural directions for the progression of the present appeal.

#### **THE APPELLANT'S CASE**

50. The Appellant's case was that it had incurred the expenditure claimed in its tax returns and has incurred the expenditure, said to relate to the three projects, summarised at paragraph 9 above. Mr Quarm was unable to explain whether (some or all of) the expenditure said to relate to the three projects (i.e. those summarised at paragraph 9 above) had been included in the expenses claimed in the tax return (as summarised at paragraphs 6 and above).

51. The Appellant acknowledged that it has not produced documentation to support the claimed expenditure (save limited documents relating to energy costs) but nonetheless says that this expenditure ought to be allowed. During the hearing Mr Quarm repeatedly said that the Appellant could not have conducted the extensive research that it had (which research was evidenced by the project summaries and slide show document produced by the Appellant) without incurring the claimed expenditure.

52. In relation to the Schedule 24 penalty, Mr Quarm said that that no appeal had been filed against this penalty because the Appellant had appealed against the closure notice and if that appeal was allowed then surely the penalty would also be removed. Mr Quarm said the same logic would have been applied in deciding not to appeal the penalty for failure to comply with the information notice.

#### **HMRC'S CASE**

53. HMRC's case was that the expenses claimed in the R&D analysis and the tax returns did not correlate in any meaningful way. HMRC was unclear as to the extent that the expenditure

said to have been incurred in relation to the three projects had already been included in the expenses claimed in the tax returns. As noted above, even at the hearing, the Appellant was unable to provide any clarity on this.

54. In any event, HMRC's case is that, despite being given ample opportunity, the Appellant has failed to provide any documentary evidence to support the claimed expenditure (i.e. the expenditure claimed on the tax returns and the expenditure claimed in relation to the three projects). HMRC is not willing to simply accept Mr Quarm's word that the Appellant incurred the expenditure claimed. Therefore, HMRC has reduced the trading losses claimed by the Appellant to nil for both the period ended 30 January 2015 and the period ended 20 October 2015. Given that no expenditure has been evidenced, HMRC's position is that the Appellant is not entitled to the claimed R&D credit.

55. HMRC further submitted that the Appellant has not appealed against the Schedule 24 penalty assessment or the penalty for failure to comply with the information notice.

### **THE LAW**

56. Paragraph 21 of Schedule 18 to the Finance Act 1998 ("FA 1998") provides that a company which may be required to deliver a company tax return for any period must keep such records as may be needed to enable it to deliver a correct and complete return and preserve those records until the sixth anniversary of the end of the period for which the company may be required to deliver a company tax return.

57. Paragraph 24 of Schedule 18 to the FA 1998 provides that an officer of HMRC may enquire into an amended company tax return if they give notice of an intention to do so by the 21<sup>st</sup> January, 30<sup>th</sup> April, 31<sup>st</sup> July or 31<sup>st</sup> October next following the first anniversary of the day on which the amendment was made.

58. Paragraph 32(1) of Schedule 18 to the FA 1998 provides that an enquiry into a company is completed when a closure notice is issued.

59. Section 54 CTA 2009 provides:

“(1) In calculating the profits of a trade, no deduction is allowed for—

(a) expenses not incurred wholly and exclusively for the purposes of the trade, or

(b) losses not connected with or arising out of the trade.

(2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part or identifiable proportion of the expense which is incurred wholly and exclusively for the purposes of the trade.”

53. Part 13 of CTA 2009 provides for additional relief for expenditure on R&D. Section 1044 CTA 2009 sets out the conditions that a company needs to meet before it is entitled to R&D corporation tax relief. One of the conditions is that the company has qualifying expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.

54. Section 1288 CTA 2009 provides:

“(1) This section applies if—

(a) an amount is charged in respect of employees' remuneration in a company's accounts for a period,

- (b) the amount would, apart from this section, be deductible in calculating income from any source for corporation tax purposes, and
  - (c) the remuneration is not paid before the end of the period of 9 months immediately following the end of the period of account.
- (2) If the remuneration is paid after the end of that period of 9 months, the deduction for it is allowed for the period of account in which it is paid.
- (3) No deduction is allowed for the remuneration if it is not paid.”

## EVIDENCE

60. We heard evidence from Officer Hopkin. His evidence was that he had given the Appellant every opportunity to produce evidence to support the claimed expenditure. However, despite this, the Appellant had not provided this evidence.

61. The documentation that the Appellant had provided (which was summarised in Officer Hopkin’s letter of 12 December 2016) related to Mr Quarm personally and did not support the expenditure claimed on the company tax returns. Officer Hopkin acknowledged that the Appellant’s address was the same as Mr Quarm’s residential address so it might be that some of the expenses (eg electricity bills and home insurance) could possibly relate to both Mr Quarm and the Appellant. However, the Appellant produced no breakdown or apportionment. Further, the energy bills provided covered the period 6 January 2015 to 9 November 2015 and totalled £286.62. Further, the home insurance policy (for which the premium was £255.40) specifically refers to the property covered as being a “main residence” with no reference being made to business use. In any event, a policy with a premium of £255.40 could obviously not support claimed insurance costs of £7,000.

62. In relation to the expenditure said to have been incurred in relation to the three projects, the Appellant relied on purchases said to have been made from various suppliers via eBay. However, the Appellant adduced no evidence to support this, and the evidence obtained from eBay suggested that no such purchases had been made.

63. Officer Hopkin had reviewed the Appellant’s bank statements but these showed no evidence of the expenses claimed on the Appellant’s tax returns or the expenditure said to have been incurred in relation to the three projects. Further, the total incomings and outgoings were substantially less than the expenses being claimed, suggesting that the Appellant did not have the requisite funds available to pay the costs it claimed to have incurred.

64. Officer Hopkin also reviewed the slide-show presentation prepared by the Appellant (which the Appellant said demonstrated the research it had undertaken). This presentation was provided to HMRC on or about 27 December 2017. Officer Hopkin reached the view that the slideshow presentation provided no evidence of any expenditure being incurred or indeed any practical work being undertaken.

65. We found Officer Hopkin to be a truthful and credible witness who gave the Appellant every reasonable opportunity to provide evidence of the expenditure said to have been incurred. Indeed, by agreeing to contact suppliers and eBay on the Appellant’s behalf, we feel that Officer Hopkin went above and beyond what could reasonably be expected of him.

66. We also heard evidence from Mr Quarm. He told us:

- (1) he has a background in physics and is an engineer by profession;
- (2) he had noticed that there was a gap between manufacturers and the R&D work conducted by academics.

- (3) he established the Appellant in 2012 with a view to it being an R&D company that could fill the gap he had identified. He is the sole director and shareholder. The Appellant has no employees but sometimes “colleagues” will give Mr Quarm advice and he will tell them that when the Appellant makes money, he will give them some monetary payment (but no amounts were ever agreed);
- (4) the Appellant’s business operated from Mr Quarm’s residential premises where Mr Quarm had a “small study in a corridor”. Mr Quarm also worked on the Appellant’s business from other places in the house and at the public library;
- (5) laboratory work could not be conducted at Mr Quarm’s residential premises and so he conducted this in a laboratory in Holland. Mr Quarm went to this laboratory on one occasion for a two week period at the beginning of 2014. We note here that Mr Quarm’s evidence as to the nature of this laboratory work was extremely vague and unclear. When asked for more details he said that his research work was very complicated and that only a few people in all of Europe would understand it;
- (6) he explained that he reads journals and articles to identify problems that exist and then seeks to develop a solution to the identified problem. Once a solution was found, the plan was for the Appellant to seek to sell the solution to the problem to an appropriate manufacturer;
- (7) the appellant was conducting R&D on a number of projects but there were three main projects (details of which the Appellant asked not be put into the public domain due to confidentiality concerns) on which significant costs had been incurred (as explained in the Appellant’s 6 July 2016 letter);
- (8) in relation to the expenditure claimed on the tax returns:
- (a) salaries and wages, consultancy, accountancy and audit, and legal/professional charges: these have not been not paid but he (Mr Quarm) feels that they are due because, although these amounts were not agreed with the providers of these services, these are the amounts that he would like to give them;
  - (b) Subcontractor payments: he said that he understood these had been “removed” from the claimed expenses and gave no further detail;
  - (c) Light and heat: he accepted that this expenditure was not solely and exclusively for business as it related to his residential home, and that no information in relation to apportionment had been provided;
  - (d) advertising and promotion costs: he adopts unconventional methods of advertising. He explained he has “ways and means” including word of mouth. Accordingly, he attended seminars and conferences for which he could have obtained proof if only someone had asked;
  - (e) bad debts: this related to consulting work that the Appellant undertook for an acquaintance. Specifically, the Appellant told the acquaintance how to make his website better. No fee for this work was agreed and no invoice was ever sent to the acquaintance but he (Mr Quarm) would expect to the Appellant to be paid £7,000 for this work;
  - (f) Travel and subsistence: this related to business travel to the Netherlands and Germany. He has been unable to provide any evidence of this as he can no longer access the email account through which the travel was booked. He accepted he also visited Germany for personal reasons unconnected with the Appellant; and

(g) As to other claimed expenditure (interest, rent and rates, vehicle expenses etc), he gave no details and did not suggest he had produced any evidence in support of these.

(9) In relation to the expenditure claimed in relation to the three projects (as summarised in the Appellant's letter of 6 July 2016):

- (a) all of the claimed expenses had been incurred;
- (b) the expenses all related to purchases made from a single supplier on eBay;
- (c) the laboratory work for the three projects could not have been undertaken without these supplies;
- (d) the proof that laboratory work had been undertaken was the results as summarised in the documentation provided;
- (e) his eBay account had been hacked and the record of purchases made for the purposes of the Appellant's business had been deleted (although his personal purchases had not been deleted);
- (f) he does not know who hacked the eBay account but believes there is sabotage going on by someone that wants to make thing very difficult for him;
- (g) in addition to the eBay account being hacked, he has experienced other "cyber-bullying" including:
  - (i) being locked out of his PayPal account because someone logged in without permission (in relation to which he had made a complaint to PayPal by email, which emails he handed up to the Tribunal);
  - (ii) attempts to hack into the Appellant's Companies House account (in relation to which he had correspondence with Companies House, which correspondence he had passed to Judge Morgan);
  - (iii) he had sought to purchase something using his bank card but eBay showed it as being a PayPal purchase which suggested further sabotage; and
  - (iv) August 2019 he had sought to pay for a plane ticket with a Lloyds debit card but the "confirm payment" screen said it was a Barclaycard which suggested further sabotage.
- (h) the eBay purchases were paid for through a money transfer service (rather than via a bank payment). The receipt for this had been lost; and
- (i) the money paid to the supplier via the money transfer service had been paid to the money transfer service in cash. That cash had been received from "peer to peer" funding, that is from people "who believe in my research and wish to assist me".

67. We found Mr Quarm to be a deeply unsatisfactory witness who was willing to say whatever he thought would assist the Appellant's case regardless of whether it was true or not. In reaching this view we have specifically taken into account:

- (1) Mr Quarm's incredible account as to why the Appellant could not produce evidence of the purchases said to have been made via eBay (i.e. the claim that those purchases, but not Mr Quarm's personal purchases, had been deleted by a saboteur). This account became increasingly elaborate during Mr Quarm's oral evidence. For example, it was

only when asked why the bank statements did not show the payments made to eBay (or the eBay suppliers) for the supplies said to have been made to the Appellant that Mr Quarm stated that there had been only one eBay supplier and that payment had been made by way of a money transfer service (Officer Hopkin commented that this was the first time that any reference had been made to use of a money transfer business). Similarly, when asked whether there was any proof that payment had been made via the money transfer service, Mr Quarm asserted that the receipt had been lost and that the monies had been paid to the money transfer service in cash. Similarly, when asked whether there was any proof of where this cash had come from, Mr Quarm said it had been provided by “peers” (although no documentation or evidence from any of these peers was produced by the Appellant). Further, the assertion that the eBay supplies had all been made by a single supplier was not consistent with Mr Quarm’s statement in the 16 November 2016 letter where he said that his initial enquiries had revealed that the suppliers (plural) “have either relocated or [are] out of business”.

(2) The attempt to bolster the “sabotage” claim by seeking to show that the Appellant and/or Mr Quarm had been victim to other “cyber-bullying”. Yet there was no clear evidence of this. Rather, Mr Quarm produced complaints that he had made to the likes of PayPal about unauthorised activity and then used the response provided by, for example, PayPal (acknowledging his complaint/concern) to support that there had in fact been such unauthorised activity. We do not think that that this in any way proves that there had been such nefarious activity. In any event, even if the Appellant had persuaded us that its PayPal and/or Companies House account had been “hacked”, given the finding we have made at paragraph 67(1) above, we would still not have accepted that the eBay account had been accessed and the business purchases deleted.

(3) Mr Quarm asserted that that the work product he had produced (various graphs and equations set out in a slide show presentation) was proof that the expenses (specifically those claimed in the 6 July 2016 letter) had been incurred. Yet the work product that we saw did not in any way satisfy us that the claimed expenses had necessarily been incurred. When we asked Mr Quarm about the laboratory work said to have been conducted, he was extremely vague (stating that it all very complicated).

(4) When asked about claimed travel expenses, Mr Quarm stated that the tickets, confirmations and all other documents were contained on an email account that he could no longer access. Whilst we accept that access to email accounts can sometimes be lost, we would expect there to be *some* available proof of these business trips (for which expenses totalling £16,000 were claimed).

(5) Some of the claims made on the tax return are not only not supported by satisfactory evidence but do not on any view seem to be justified. For example, the Appellant claimed insurance costs of £7,000 and yet made no attempt to justify that figure (instead providing in support a copy of a home insurance policy where the premium was £255.40).

## DISCUSSION AND DECISION

68. Given our findings in relation to Mr Quarm’s evidence, we are not willing to accept his assertions that the claimed expenses were incurred by the Appellant wholly or exclusively for the purpose of its trade (or at all). In those circumstances, in the absence of clear documentary (or other objective) proof (of which there is none), we do not accept that the Appellant has established that it incurred the expenses claimed in its tax returns and the 6 July 2016 letter. We further note that, pursuant to s1288 CTA 2009, remuneration (salaries and wages) that remain unpaid 9 months after the end of the relevant accounting period, are not allowable as a

deduction (and, here, the Appellant confirmed this remuneration remained unpaid). In all the circumstances, Officer Hopkin's decision to, by way of the closure notice, reduce the trading losses to nil cannot be impeached. Further, given that the Appellant has not established any of the claimed expenditure, there can clearly be no entitlement to an R&D credit (and there is no need to go on to consider whether the expenditure – none of which has been established - was “qualifying” or whether the other conditions for an R&D credit were met).

69. Accordingly, we dismiss the Appellant's appeal.

70. In relation to the Schedule 24 penalty, Mr Quarm was specifically asked whether the Appellant had appealed against that penalty, and he replied that it had not (because he was of the view that if the appeal against the closure notice was allowed, the penalty should also be removed). Therefore, there was no appeal against the Schedule 24 penalty before us. But, for the avoidance of doubt, had such an appeal been before us, we would have dismissed it. There were clearly inaccuracies in the returns given that the Appellant sought therein to claim expenses that it was not entitled to claim. Further, consistent with the findings we have made in relation to Mr Quarm above, we are of the view that these expenses were claimed despite the Appellant knowing that it was not entitled to claim them, such that a “deliberate” penalty was justified. Further, we are of the view that, as HMRC concluded, this was a “prompted” case (i.e. the Appellant did not tell HMRC about the inaccuracies before the Appellant had reason to believe that HMRC were about to discover them). Nor can HMRC's decision as to the level of reduction for “disclosure” be impeached. The Appellant did provide some documentation but, as shown in the chronology set out above, this was limited in scope and was only provided after repeated requests by HMRC.

71. In relation to the penalty for failure to comply with the information notice, Mr Quarm was again specifically asked whether the Appellant had appealed against that penalty, and he replied that it had not. Therefore, there was no appeal against the information notice penalty before us.

#### **RIGHT TO APPLY FOR PERMISSION TO APPEAL**

72. 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.

**DAVID BEDENHAM  
TRIBUNAL JUDGE**

**Release date: 07 November 2019**