Neutral Citation: [2026] UKFTT 00672 (TC)

Case Number: TC 09873

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

Heard at Alexandra House, Manchester

Appeal reference: TC/2024/05221

*CORPORATION TAX – research and development – whether the tests in the BEIS Guidelines had been met – appeal dismissed*

**Heard on:** 8 April 2026
**Judgment date:** 06 May 2026

**Before**

**TRIBUNAL JUDGE JENNIFER DEAN**
**MEMBER MOHAMMED FAROOQ**

**Between**

**BEER EXPRESS LTD**

**Appellant**

**and**

**THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Mr N. Monk of T M Sterling Ltd instructed by the Appellant

For the Respondents: Mr S. Dingley, litigator of HM Revenue and Customs' Solicitor's Office

## DECISION

### INTRODUCTION

1. This is an appeal by Beer Express Ltd ("the Appellant") against HMRC's decision to issue Closure Notices under paragraph 32 of schedule 18 to the Finance Act 1998 ("FA 1998") for APE 30 June 2020 in the sum of £5,768.78 and APE 30 June 2021 in the sum of £9,618.56.

2. The closure notices also rejected the research and development (hereafter "R&D") tax credits as claimed by the company in the amounts of £301,721.51 (APE 30 June 2020) and £190,857.70 (APE 30 June 2021).

3. We are grateful to Mr Dingley and Mr Monk who confirmed that the sole issue for us to determine was whether the Beer Express Ltd had discharged the burden of proving it had met the tests set out in the guidelines published by the Department for Business, Innovation and Skills ("the Guidelines)") so as to be entitled to the enhanced R&D relief (per *Gripple Ltd v The Commissioners for HMRC* [2010] EWCH 1906 (Ch) at [12]).

### BACKGROUND

4. There was no dispute about the background facts and the following chronology is taken from the parties' helpful written submissions.

5. The Appellant was incorporated on 18 June 1998 and the nature of the business is wholesale of wine, beer, spirits, and other alcoholic beverages.

6. On 18 November 2021 HMRC received an amendment to the CT return for APE 30 June 2020 which included a claim for R&D relief. On 8 May 2022 HMRC received an amendment to the CT return for APE 30 June 2021 which included a claim for R&D relief. On 26 October 2022 notices were sent to the company opening compliance checks into the company's CT returns for the APEs 30 June 2020 and 30 June 2021.

7. On 15 March 2023, following consideration of evidence provided by the Appellant, HMRC issued a pre-decision letter stating that in their view, the projects did not meet the requirements as set out in the BEIS guidelines. On 18 April 2023, the Appellant's agent responded, disagreeing with HMRC's view and providing further evidence. On 7 June 2023 HMRC issued their closure explanation letter to the company and advised that the R&D claims were to be disallowed for APE 30 June 2020 and APE 30 June 2021.

8. On 8 June 2023 HMRC issued closure notices to give effect the decision letter of 7 June 2023. The Appellant did not dispute that the closure notices were validly issued and that they satisfied the applicable legislation.

9. On 7 July 2023, the HMRC received the Appellant's Appeal against the decision to issue Closure Notices. On 22 December 2023 HMRC issued their View of the Matter Letter.

10. On 11 January 2024, the Appellant accepted the offer of independent review and on 12 September 2024 HMRC issued their Review Conclusion Letter, upholding the closure notices for both Accounting Periods.

11. By Notice of Appeal dated 26 September 2024 the Appellant appealed to the Tribunal against both closure notices.

### ISSUES

12. The sole issue for the Tribunal to determine is whether the Appellant was entitled to claim tax relief for R&D expenditure for the Accounting Periods Ending 30 June 2020 and 30 June 2021 in respect of the projects conducted and, if so, how much of the claimed expenditure directly or indirectly contributed to an R&D project.

13. It came to light shortly before the hearing that there was a discrepancy between the parties arising from the costs claimed in relation to R&D. We were grateful to the parties who agreed that in order to avoid undue delay, we could proceed to hear the appeal and reach a decision on the issue of R&D in principle, with the costs element being determined at a later date if necessary.

**THE LEGISLATION**

14. We set out below the provisions relevant to the issue in this appeal.

15. The Appellant is a Small or Medium-sized Enterprise. The tax reliefs for R&D expenditure incurred by such companies are contained within Chapter 2, Part 13 CTA 2009.

16. Within Part 13 of CTA 2009, section 1039 CTA 2009 provides that relief is available to a company which is a SME where the cost of in-house direct R&D or contracted out R&D is incurred by the company. It also provides for the payment of R&D tax credits in certain circumstances.

17. Section 1044 is headed "additional deduction in calculating profits of trade", and reads:

> "(1) A company is entitled to corporation tax relief for an accounting period if it meets each of conditions A to D.
>
> (2) Condition A is that the company is a small or medium-sized enterprise in the period.
>
> (3) [repealed]
>
> (4) Condition C is that the company carries on a trade in the period.
>
> (5) Condition D is that the company has qualifying Chapter 2 expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.
>
> (6) For the company to obtain the relief it must make a claim…"

18. HMRC did not dispute that Conditions A and C are met. However, it disputed that Condition D has been met.

19. Section 1051 is headed "qualifying Chapter 2 expenditure" and reads:

> "For the purposes of this Part a company's "qualifying Chapter 2 expenditure" means
>
> (a) its qualifying expenditure on in-house direct research and development (see section 1052), and
>
> (b) (b) its qualifying expenditure on contracted out research and development (see section 1053)."

20. To qualify under s1052 CTA 2009, expenditure must meet each of the following conditions, A, B D and E:

21. Condition A is that the expenditure is:

> (a) incurred on staffing costs,
>
> (b) incurred on software or consumable items,
>
> (c) qualifying expenditure on externally provided workers or
>
> (d) incurred on relevant payments to the subjects of a clinical trial

22. Condition B is that the expenditure is attributable to relevant research and development undertaken by the company itself.

23. Condition D is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.

24. Condition E is that the expenditure is not subsidised (see section 1138).

25. Section 1053 CTA 2009 places three conditions for expenditure incurred by the Appellant to be qualifying expenditure on contracted out R&D. These are:

- Condition A is that the expenditure is attributable to relevant research and development undertaken on behalf of the company.
- Condition C is that the expenditure is not incurred by the company in carrying on activities which are contracted out to the company by any person.
- Condition D is that the expenditure is not subsidised.

26. HMRC submitted that neither Condition B under section 1052, nor Condition A under section 1053 were met as the expenditure was not attributable to relevant R&D.

27. For the purposes of s1052(3) CTA 2009 and s1053(2) CTA 2009, s 1041 CTA 2009 provides that "research and development" is defined by s1138 CTA 2010. Section 1138 CTA 2010 provides that activities either will or will not constitute R&D depending on whether they constitute R&D for the purposes of s1006 ITA 2007.

28. Section 1006(2) ITA 2007 provides that R&D means activities that fall to be treated as R&D in accordance with GAAP. Section 1006(3) allows for the Treasury to make regulations to specify what is and is not to be treated as R&D for the purposes of that section. These regulations are found at SI 2004/712.

29. The Research and Development (Prescribed Activities) Regulations were made under the vires given by ITA s 1006, and Reg 2 of those Regulations reads:

> "For the purposes of section 837A of the Income and Corporation Taxes Act 1988
>
> (a) activities that fall to be treated as research and development in accordance with the Guidelines on the Meaning of Research and Development for Tax Purposes issued by the Secretary of State for Trade and Industry on 5 March 2004, are research and development; and (b) activities that do not fall to be treated as such in accordance with those guidelines are not research and development."

30. The reference to ICTA s 837A is to the earlier version of ITA s 1006, but there was no issue raised by the parties that the Regulations should be read as if they referred to the current version of the statutory provision nor was there any dispute that the Business, Energy, Innovation and Skills (BEIS) Guidelines carry the force of law as tertiary legislation.

**THE GUIDELINES**

31. We set out the key principles relevant to this appeal below.

32. The guidelines define R&D at paragraphs 3 to 5. Paragraph 3 states:

> "R&D for tax purposes takes place when a project seeks to achieve an advance in science or technology."

33. A project for the purpose of Paragraph 3 is defined at paragraph 19 as:

> "a number of activities conducted to a method or plan in order to achieve an advance in science or technology... It should encompass all the activities that collectively serve to resolve the scientific or technological uncertainty associated with achieving the advance."

34. Paragraph 4 of the 2004 guidelines states that:

> "the activities that directly contribute to achieving this advance in science or technology through the resolution of scientific or technological uncertainty are R&D".

35. An advance in science or technology is defined at paragraph 6 as:

> "an advance in overall knowledge or capability in a field of science or technology (not a company's own state of knowledge or capability alone). This includes the adaptation of knowledge or capability from another field of science or technology in order to make such an advance where this adaptation was not readily deducible."

36. Overall knowledge or capability in a field of science or technology is defined at paragraph 20 as:

> "the knowledge or capability in the field which is publicly available or is readily deducible from the publicly available knowledge or capability by a competent professional working in the field."

37. Paragraph 22 goes on to state:

> "the routine analysis, copying or adaptation of an existing process, material, device, product or service will not advance overall knowledge or capability, even though it may be completely new to the company or the company's trade".

38. "Science" is defined at paragraph 15 as:

> "Science is the systematic study of the nature and behaviour of the physical and material universe. Work in the arts, humanities, and social sciences, including economics, is not science for the purpose of these guidelines…."

39. "Technology" is defined at paragraph 17 as:

> "…the practical application of scientific principles and knowledge where 'scientific' is based on the definition of science above."

40. Paragraph 9c introduces the concept of an "appreciable improvement to an existing process, material, device, product or service" through scientific or technological changes.

41. The Respondents submitted, and we agree that paragraph 9 must be read in the context of the definition at paragraph 6. It is not sufficient to demonstrate that a product with some improved functionality has been produced. Rather, it is only where that functionality is sought/achieved by materially advancing the underlying scientific or technological knowledge in the field that it amounts to R&D.

42. Paragraph 23 defines "Appreciable improvement" by reference to changing or adapting the "scientific or technological characteristics of something to the point where it is 'better' than the original" such that it would be "acknowledged by a competent professional working in the field as a genuine and non-trivial improvement."

43. Paragraph 24 stipulates that improvements arising from applying existing science or technology to a new context or trade with only minor or routine changes are not appreciable improvements.

44. Paragraphs 13 and 14 read:

> "Scientific or technological uncertainty exists when knowledge of whether something is scientifically possible or technologically feasible, or how to achieve it in practice, is not readily available or deducible by a competent professional working in the field. This includes system uncertainty. Scientific or technological uncertainty will often arise from turning something that has already been established as scientifically feasible into a cost-effective, reliable, and reproducible process, material, device, product, or service.

> Uncertainties that can readily be resolved by a competent professional working in the field are not scientific or technological uncertainties. Similarly, improvements, optimisations and fine-tuning which do not materially affect the underlying science or technology do not constitute work to resolve scientific or technological uncertainty."

45. The term "Competent Professional" (see paragraphs 13, 20 and 23 of the Guidelines) is not defined. The Respondents highlighted *Flame Tree Publishing v HMRC* [2024] UKFTT 00349 (TC) at [68] where the Tribunal stated that the term:

> "…is self-explanatory and that it goes beyond having an intelligent interest in the field…to be accepted as a competent professional, an individual would need to be able to demonstrate appropriate qualifications, experience and up-to-date knowledge of the relevant scientific and technological principles involved."

**THE PROJECTS**

46. During the enquiry periods, the Appellant undertook of 4 projects in respect of which they claimed enhanced R&D expenditure relief. Two projects were carried out in APE 30 June 2020 and two projects in APE 30 June 2021. The two applications in support of the claims for relief were submitted on behalf of the Appellant by a Company called RDT Active. We were told by Mr Narang that he had tried to contact RDT Active following notification of HMRC's decision to reject the Appellant's R&D claims, however he had been unable to make contact.

47. The following sets out relevant extracts from the applications.

**Project 1 – Developing a Level Loading Facility based on AI-enabled forecasting**

> "Level loading is a technique that ensures inventory optimisation and helps improve the value of businesses. By reducing waste and the excess of physical inventories that can result from an absence of level loading, a company can significantly improve its cash flow and lower its costs. Excess inventory also hides operational inefficiencies such as equipment failure or uneven production levels on the floor.
>
> …
>
> Beer Express opted to develop a comprehensive Level Loading system through forecasting software. The software is based on data analytics-based algorithm development. The hardware systems in the value chain are integrated through specially developed embedded systems that record inventory, production, and delivery. The route-scheduling is optimised based on dynamic delivery needs at various facilities. The system is currently undergoing various stages of development, installation, and testing.
>
> …
>
> The most critical element of the load levelling system is to correctly forecast product demand and ensure that the production and delivery are synchronised to ensure just the right amount of inventory at each stage. The forecasting process is complex and involves a range of internal and external factors. Mastering the forecasting process was the biggest uncertainty in the project.
>
> For the solution to be effective, it has to be synced with the entire machinery value chain. That involves production and loading bay facilities. The system also has to be in sync with wholesaler inventory systems. This requires a carefully calibrated hardware and system design and involves a range of hardware integration challenges. This remains another uncertainty in the project.
>
> Beer Express wanted to make sure that the delivery vehicles and their deliveries were tracked, and the information regarding deliveries was recorded in real-time. This was also a major challenge involved in the project."

48. Having set out the steps taken to resolve the uncertainties, the report explained why the knowledge being sought not readily deducible by a competent professional as follows:

> "Beer Express wanted to develop an integrated value chain solution to implement level loading and JIT inventory. This involved developing a demand forecasting solution for effective JIT inventory management, linking it to hardware across the value chain, enhancing the delivery algorithms, and improving the delivery routing mechanism. All this required extensive research, data analytics, Intelligent algorithm development and finetuning, and developing embedded systems to link the hardware across the value chain. This could not be readily deducible using the available market solutions."

49. The scientific, investigative, and experimental activities carried out as part of the project were set out as follows:

- A detailed review of the company's production and value-chain to identify JIT level loading implementation plan
- Research into JIT inventory management
- Data analysis of historical sales, macroeconomic, industry, raw material, and other trends
- Developing mathematical models for demand forecasting of various products
- Hypothesis testing of demand forecasting algorithms
- Live training and optimisation of demand forecasting algorithms
- Identifying hardware requirements for the system
- Selection and installation of the loading bay
- Developing embedded systems and integration interfaces to make hardware compatible with the system
- Developing tab-based apps to monitor inventory and delivery information on delivery vehicles and wholesalers
- Developing traversing-based optimised route scheduling algorithms for demand based delivery
- Development of the software system
- Integration of the hardware components

**Project 2 – Developing Penny Gill Lager**

50. The project was explained as follows:

> "Beer Express sells a range of alcoholic products. It mostly sources its products from third parties. However, it produces some products based on market demand. With an enhanced focus on natural beer products, the company realised that there would be a demand for the pre-prohibition pale lager. It carried out extensive market research and decided to develop pale lager beer with the pre-prohibition lager process. Pre-prohibition lager beer is closest to the earliest traditional lager produced in the late 19th century and earlier 20th century.
>
> The market research also identified a taste profile for the beer. The desired alcohol content had to be around 5%. The taste was to be less bitter and should contain grainy sweetness. Also, the freshness and longer shelf-life were also the desired features.

> Beer Express began the project with extensive research into various ingredients. It identified Czech floor-malted pilsner and Maris Otter. It also experimented with adding a little bit of Mexican corn to the mix. The types of yeasts were identified based on research into the pre-prohibition lager processes and proximity. The most critical elements were the question of hops and fermentation techniques. Cold fermentation was the process of choice for the lager. The hops were selected to add spiciness, floral aroma, and woodsy flavour to the lager.
>
> The company, through research, identified five different recipe combinations. Each of the recipes was brewed and tested by a focus group comprising industry experts. Their feedback led to one more iterative improvement round. After the second round, the company realised that the beer produced had a higher pH than desirable for the requisite taste. The company is now researching processes and ingredients to solve this problem. It is also in the process of developing various packaging for the beer."

51. The uncertainties were said to be hop selection to ensure the requisite taste while ensuring sufficient preservative characteristics. Alcohol content was also a challenge as was shelf life and defining the suitable technique to control microbial growth. Extensive research and tests were carried out to resolve the uncertainties.

52. The application stated that the knowledge was not readily deducible by a competent professional because "each producer of beer wants to perfect the recipe and formula and strives to develop a unique product that gives it a competitive advantage…Though the beer-making process is age-old, the producers keep trying to improve the taste and adaptability of the product. This can only be achieved through research and experimentation…each Brewery has its own ingredients, processes. Therefore, the best course of action the company chose was to utilise its experienced brewers for input. It also sought help from industry specialists where required in this research-based product development."

53. The application then set out the investigative and experimental activities carried out as part of the project including an investigation into various beer-making processes and techniques, research into the impact of various forms/quantities of sugar on alcohol content and taste and research and experimentation into various types of hops.

54. For APE 30 June 2021 two further projects were undertaken.

**PROJECT 1 – DEVELOPMENT OF NEW AND IMPROVED PRODUCT AND PROCESSES**

55. This project entailed:

> "As far as the improving the process is concerned, the company, Beer Express Limited revisited their current market offerings, and planned for adaptation of 'Penny Gill Lager' and 'Penny Gill Beer' brand, from bottles to keg, and remarketing them and selling them as 'Beer Express lager and beer'. The whole initiative was launched to diversify the company's portfolio and make more products in their product offerings.
>
> …
>
> The company initiated a plan to establish and implement 'Beer Express Lager and Beer' by sourcing 'Penny Gill Lager' and 'Penny Gill Beer', from keg to bottles and remarketing and rebranding them to include in their supply chain for effective distribution and increased sales. By leveraging the opportunity, the company has anticipated to increase their sales and revenue and diversify their portfolio with new beer and lager products. The opportunity resulted in a blessing in disguise and projected to help the company achieve their goals and objectives."

56. The uncertainties were said to include measuring the changing demand in consumer buying and consumption patterns and streamlining operational challenges in terms of consistency of production and storing.

57. The uncertainties were resolved by creating an effective remarketing strategy, the company considered consumer taste, preferences and consumption patterns at the core and created marketable elements and branding. There was extensive market research and supply chain issues were resolved by introducing a new Logistic and Delivery Optimisation software. Inhouse storing and handling was improved by introducing a Stock Monitoring software.

58. The application explained:

> "The whole project was carried out under the supervision of veterans and experts with decades of experience in the beer and wine merchant industry. None of this could be readily deducible through the body of knowledge of the competent professionals."

**Project 2 – Development of B2B Web platform and Automation of internal systems for Logistics, Delivery and Stock Monitoring**

59. This project was described as follows:

> "The company also made significant improvements across different software and systems to gear up their operations, in-house activities, reduce costs across different business domains, and assist and aid business functions.
>
> At the forefront of them was creating and developing a highly-responsive and stable B2B website with seamless navigation and sales funnel to increase their sales and revenue…. the company restarted the website project which was meant for creating a B2B website/portal for online ordering by B2B or commercial customers. The website had to be fully-functional and optimised to process bulk wine, beer, lager, spirit, cider and other similar alcohol-based product orders.
>
> Moreover, the company also wanted to a have an effective logistics and delivery software in place that may help the company to optimise their supply chain network, monitor and track their delivery vehicles across multiple locations, and create a visible difference in the fuel efficiency. The company considered and evaluated many off-the shelf delivery and logistics software solutions but none of the ready-made solutions could meet exact required features and functionalities desired by the company…the company developed and successfully implemented a software, which could meet their desired criteria of taking delivery vehicle tracking information and combining with the driver's manifest route to optimise fuel use.
>
> The company wanted to have a robust stock monitoring software into the company's mainstream operations. The core reason for the development of an effective stock monitoring software across all depots was to enable sourcing of products from different locations. This way beer, wine product stocks across all locations will be organised in a more systematic way where the stock management, tracking, monitoring, and control could be leveraged by the company from one place."

60. Cost handling and scheduling was included as an uncertainty as a big issue for the firm to effectively monitor, track and control. The Company also had to acquire the services of different software developers, experts, specialists, technical engineers, marketing experts working in different capacities to give their software and remarketing ideas a reality. However, onboarding different development teams for different projects was a challenge involved in the project.

61. The company accomplished the project by undertaking extensive investigations, research, analyses, and experiments, along with a close review of all the development processes. It was overseen by professionals with decades of experience in software development for beer and wine industry. The body of knowledge of competent professionals could not easily deduce any of this.

**THE APPELLANT'S EVIDENCE**

62. On behalf of the Appellant Mr Narang gave evidence, he is the owner and founder of the Company.

63. In his written evidence, Mr Narang explained that the Appellant owns a single retail outlet in the form of a pub, the Penny Gill, alongside six small wholesale depots geographically spread across the North of England. The business model provides same day deliveries, seven days a week with each of the depots covering their local geographical area.

64. Mr Narang's active role in the business is to review performance and help develop strategy for the Company alongside the company directors, whose focus is on operational management.

65. He described the projects as follows:

> "In the 2020 year the company undertook two projects, the first to take the principles of the manufacturing model which optimises ordering of parts and layout of the production process and to use Al to develop a wholesale equivalent, thus minimising picking times and reducing over/under stocking. The aim initially would be to save costs within the company but also to develop a software package that could be marketed to other wholesalers both within the drinks industry and from other sectors.
>
> The second project was to develop a new and uniquely flavoured beer initially to be trialled in the retail outlet, then if successful to be further developed for wider distribution through the wholesale outlets…
>
> …in the 2021 year the company looked to further develop the 'cask' offerings which contain live yeast making them difficult to manage and having a relatively short shelf life.
>
> …the company also began a second software development project looking to create a website for customer ordering to link in with the operational software as well as being able to connect to supplier systems for stock ordering."

66. Mr Narang was approached by a firm specialising in R&D advice who suggested that the work could qualify for tax incentives under the Research and Development guidelines. Having made enquiries about the company, Mr Narang agreed to appoint them.

67. A subsequent tax refund was then paid to the appointed tax advisors and then passed to the Appellant after deduction of their fees. In June 2023 the Appellant received letters from HMRC rejecting the claims in full and asking for repayment. Mr Narang attempted to contact RDT Active, but the company appeared to have disappeared.

68. In oral evidence, Mr Narang confirmed he had seen the reports compiled by the agents which appeared to follow the relevant guidelines and accurately described the projects.

69. Mr Narang explained the significance of attempting to create a new beer with a different flavour to be bottled rather than put in a keg, which was not a readily available product at the time. He explained that the former head brewer from a brewery in Lancaster who had, at the time, been made redundant, obtained a testing kit for the Appellant which was used to try and get the recipe right.

70. In terms of the level loading project, Mr Narang explained that he had seen a similar system in operation using robots but that the software he aimed to create was intended to be used alongside a human. It required a bespoke product to suit his industry which could be used in similar businesses. Mr Narang stated he did not have any background in software engineering and that it was Mr Shivam, a former shareholder of the Appellant, who had been involved in the project. He explained that Mr Shivam understood the beer industry and had also set up a software company. He had since retired and lives in India.

71. Mr Narang could not recall any specific difficulties or challenges raised by Mr Shivam at the time. Mr Shivam would show him different features of software and Mr Narang chose those which best suited the Appellant on a day to day basis. Mr Narang explained he was not an expert in software so he could not say if the software created by Mr Shivam was "any better than the next guy".

72. Mr Narang clarified that the applications submitted to HMRC had been prepared by RDT Active with information provided by himself and others within the company regarding how the projects occurred. He did not believe that RDT Active had spoken to Mr Shivam.

**SUBMISSIONS ON BEHALF OF THE APPELLANT**

73. Mr Monk submitted that HMRC's case heavily relied on the formal identification of a competent professional which is not a formal requirement of the Guidelines.

74. Mr Monk submitted that the projects undertaken fell within the meaning of R&D under Part 13 CTA 2009, interpreted in accordance with the BEIS Guidelines and deductions were appropriately claimed, in accordance with Section 1044.

75. The Respondents have, the Appellant contended, misapplied the BEIS Guidelines, in relation to the role of a "competent professional", the existence of scientific or technological uncertainty and the concept of an advance in science or technology. The guidelines do not require formal designation of a competent professional, nor do they require that such a person has particular qualifications or is an expert witness. The correct question is whether the uncertainties encountered would have been readily deducible to a competent professional.

76. In this case the projects were undertaken by individuals with relevant practical experience in software systems, logistics integration, and brewing processes. Technical input was provided by those directly engaged in developing and implementing the relevant systems and processes.

77. Mr Monk submitted that although the absence of an off-the-shelf solution is not, of itself, determinative, it is relevant insofar as it reflects the existence of technical challenges that could not be resolved through routine application of existing knowledge

78. The Appellant submitted that the projects involved resolving scientific or technological uncertainties which were not readily deducible and the work undertaken was systematic and investigative in nature such that it satisfies the Guidelines and the appeal should be allowed.

**THE RESPONDENT'S SUBMISSIONS**

79. Mr Dingley submitted that the Appellant had not met the evidential burden given the absence of cogent evidence from a competent professional regarding the projects and lack of clarity as to what was achieved or sought to be achieved.

80. In relation to project 1, the evidence does not demonstrate with clarity any technical uncertainties or how any such certainties were addressed such that the Guidelines can be said to be met. There was also no clear evidence as to how the work undertaken went beyond any existing technologies and therefore did not demonstrate any advance in science/technology or any scientific/technological uncertainty.

81. The largest obstacle faced appeared from the evidence to be the bespoke nature sought by the Appellant, however, the Respondents submitted, this is insufficient to meet the Guidelines.

82. Similarly, project 2 involved trial and error in experimenting with new beer and processed of bottling, but there was no evidence to demonstrate a technological uncertainty or advance. Rather, testing kits were provided by a third party to allow the Appellant to experiment, however this does not meet the test of the Guidelines.

83. The Respondents submitted that project 3 could only be loosely described as a "project" within the meaning of the Guidelines, as there were too many variables involved and no cogent evidence regarding uncertainties or advancement in technology.

84. Project 4 was similar to project 1 in the sense that the bespoke nature of the product sought appeared to be the greatest uncertainty. However, where a bespoke product is sought, it will always require an element of creativity to meet that challenge but this falls short of the requirements laid down by the Guidelines.

85. Overall, there was no evidence from a competent professional to speak to the nature of the projects, the uncertainties, how those uncertainties were overcome and how any advancement was made. Little weight should be given to the documentary evidence which was produced on behalf of the Appellant by a company with no competent professional to speak to those documents which were provided to HMRC in support of the claims for R&D.

**DISCUSSION AND DECISION**

86. We make clear that despite not setting out all of Guidelines above, we have considered and applied them in full in reaching our Decision.

87. In order to succeed, the parties agreed that the burden was on the Appellant to prove that in the relevant periods it had undertaken R&D within the meaning of the legislation and the Guidelines.

88. We note at this point that although the Appellant also needed to prove what activities had been undertaken as part of the R&D and the costs which related to those R&D, for the reasons set out at [13] above we only considered whether the activities fell within the meaning of the legislation and guidelines and we did not consider the issue of costs.

89. We will say at the outset that we found Mr Narang to be a truthful and credible witness who did his best to assist the Tribunal. The difficulty for the Appellant, as we set out below, is that we found that Mr Narang did not have any in-depth knowledge of the projects, and although he may have overseen the projects or had a vision for the Appellant's future, he had not been responsible for the design, creation, planning and implementation such that he satisfied the Guidelines as a competent professional.

90. The importance of such evidence was explained in the FTT decision of *AHK Recruitment Limited v HMRC* [2020] UKFTT 232 (TC), where the FTT commented:

> "[69] In the reports submitted to HMRC and in its case before us, the Appellant through Optimal Compliance made assertions as to the aim of the project and as to the technology it had sought to develop to achieve the project's aims (and why it said that constituted an advance in technology). The Appellant, through Optimal Compliance, also referred to a number of uncertainties that it said it faced and how it had sought to overcome them. However, to meet the burden on it, the Appellant needed provide evidence that proved: (1) the technology it sought to develop was not already readily available; (2) the technology it sought to develop to achieve the project's aims amounted to an advance in technology within the meaning of the Guidelines and, specifically that it amounted to more than "routine...copying or adaptation of an existing product [or] process..."; and (3) that there were technological uncertainties which a competent professional working in the field could not have readily resolved.
>
> ...
>
> [73] We find it remarkable that the Appellant did not provide evidence from someone that was contemporaneously involved in the project (such as Mr Jones or Mr Philby) and/or from someone with relevant expertise who, having reviewed records of the project, might have been able to address the issues set out at paragraph 69 above preferably by reference to supporting materials."

91. Whilst we agreed with the Appellant that the Guidelines do not mandate that a competent professional must hold specific qualifications or expertise (and we did not understand the Respondent to argue otherwise), we agreed with and adopted the comments in *Flame Tree Publishing Limited v HMRC* [2024] UKFTT 349 (TC) in which Judge Redston stated:

> "[65] Mr Lewis submitted that the Guidelines required a claimant to provide evidence from a "competent professional". He referred to *AHK v HMRC* [2020] UKFTT 232 (TC) ("*AHK*"), a decision of Judge Bedenham and Mr Adrain, where the Tribunal said at [29]:
>
> "In order to satisfy the burden of proof, the Appellant would have needed to provide witnesses who could have testified to the facts necessary for me to conclude that the criteria set out in the Guidelines were satisfied and who could then have been subjected to cross-examination by the Respondents. In the absence of that, I am unable to conclude that, on the balance of probabilities, the expenditure in question satisfied the relevant criteria."
>
> [66] In his skeleton argument, he said that the term "competent professional" is not defined, but that:
>
> "its natural meaning is self-explanatory, and that it goes beyond having an intelligent interest in the field...to be accepted as a competent professional, an individual would need to be able to demonstrate appropriate qualifications, experience and up-to-date knowledge of the relevant scientific and technological principles involved."
>
> [67] He submitted that neither Mr Wells nor Mr Herbert was a competent professional. FTP's claim related to the digitisation of FTP's archive and making that archive available to users; in that context a competent professional would have up-to-date software, programming and computing skills and knowledge. Instead, Mr Wells was a publisher with some familiarity with computing, but no IT qualifications; he was plainly not a professional in that field. Mr Herbert was familiar with using computers but not a professional in the fields of programming or software development. As a result, said Mr Lewis, FTP could not show that these key provisions in the Guidelines were met."

92. At [68] the FTT said that it had "no hesitation in agreeing with HMRC, for the reasons given by Mr Lewis" and provided additional reasons of its own, concluding:

> "[69] [The Appellant] has failed to show that the Project had either (a) resolved uncertainties which could not have been resolved by a competent professional or (b) made an improvement which a competent professional would have acknowledged as being "non-trivial". As Mr Lewis said, its claim must therefore fail."

93. The BEIS Guidelines (at [30]) describe a project as a number of activities conducted to a method or plan to achieve an advance in science or technology. The next issue to consider is whether the projects were seeking to resolve a scientific or technological uncertainty. We noted, as recognised by the Guidelines, that a project does not need to succeed in order to be considered R&D:

> "What counts is whether there is an intention to achieve an advance in science or technology, not whether ultimately the associated scientific or technological uncertainty is completely resolved, or resolved to the degree intended. Scientific or technological planning activities associated with projects which are not taken forward (e.g. because of insurmountable technical or commercial challenges) are still R&D."

94. In order to satisfy the legislation and Guidelines, evidence was required to prove that the projects sought to achieve an advance in science or technology and, as part of that project, the Appellant carried out activities which sought to resolve a scientific or technological uncertainty as defined by the Guidelines.

95. However, the Appellant's case was premised on the claims made in the applications and the written and oral evidence of Mr Narang added no further information of material value. There author of the applications did not give evidence and therefore could not speak to the contents of the documents. Moreover, we found the contents of the documents vague and loosely termed and we concluded that no weight should be attached to them in the absence of cogent and clear evidence from a competent professional in support.

96. There was also no evidence called from Mr Shivam, who was the only person specifically named in relation to specific projects and who, it was claimed, had a level of expertise, or at the very least the knowledge and experience to be deemed a competent professional.

97. There was, therefore, no evidence in relation to each project upon which we could be satisfied that the technology it sought to develop was not already readily available or that the technology the Appellant sought to develop amounted to an advance in technology within the meaning of the Guidelines and in particular that it was more than "routine… adaptation of an existing product [or] process…". By way of example, there was no cogent evidence to demonstrate that the development of the Penny Gill ale went beyond a brewer trialling a different flavour of ale or why the process of bottling rather than use of a keg went beyond products already in existence.

98. There was also no cogent evidence that there were technological uncertainties which a competent professional working in the field could not have readily resolved. We should make clear that we make no criticism of Mr Narang in this regard and we accepted that challenges had been brought to his attention but which he could not recall due to the passage of time. However, taken together with the absence of more detail from a person with who had been "on the ground" and who had a level of involvement and knowledge such that they could explain the advance sought that was not readily available, the uncertainties and how they sought to resolve those uncertainties and why they could not be readily resolved by a competent professional, we found that the evidence was insufficient to meet the requirements of the legislation and the Guidelines.

99. As we have stated, although the reports prepared on behalf of the Appellant claimed that these requirements were satisfied, we concluded that the reports were no more than bald assertions unsupported by evidence from a competent professional with contemporaneous involvement in the projects or documentary evidence in support to demonstrate what technology was available in the relevant periods and why the projects advanced that knowledge and technology and accordingly we attached no weight to the reports.

100. We noted Mr Narang's evidence that he had seen the reports before submission to HMRC and was satisfied that they accurately represented the position. However, whilst we considered that Mr Narang was clearly successful as his role as owner of the Appellant and had a substantial amount of experience and understanding of the industry generally, there was no evidence upon which we could conclude that his level of knowledge or expertise was sufficient in relation to the specific nature of each project.

101. Mr Narang also stated that persons involved in the projects had been spoken to in the compiling of the report. However, there was no clear evidence as to who those persons were, the level of their involvement in the projects or whether they would constitute a competent professional. We noted that the expenditure reports were in the name of Maureen McDonald, however there was no clear evidence as to who this was, their level of involvement or whether they were a competent professional or had expertise in the relevant fields such that they were appropriately placed to say what technology or was not readily available during the

relevant periods or how the projects constituted an advance in science or technology as defined by the Guidelines.

102. In summary:

- As to whether the technology was already readily available, there was no evidence from anyone involved in the projects, whether separately or taken together, who could be considered a competent professional in a field of science or technology. Mr Shivam was the only individual identified who may have had a level of expertise in software relevant to project 1 in 2020 and project 2 in 2021, however there was no evidence from him to establish his level of skill and experience in a specific area, how that was relevant to the project and the activities that he carried out.
- As to whether the technology that the Appellant sought to develop to achieve the projects' aims amounted to an advance and amounted to more than "routine…copying or adaptation of an existing product [or] process…": there was no cogent evidence setting out the baseline of scientific or technological knowledge for any of the projects, the uncertainties faced or advances sought as against that baseline. We considered that the claims made in respect of each project set out product development but did not establish why the specific activities of each project went beyond standard development such as to become an advance in science or technology.
- As to whether there were technological uncertainties which a competent professional in the field could not readily resolve: we considered that the claims made were no more than assertions unsupported by evidence from a competent professional involved with each of the projects to explain why the activities undertaken would not be readily deducible to a competent professional working in the field.

103. By way of example, there was no clear evidence as to how the use of AI to adapt software to meet the specific needs of the Appellant (project 1 in 2020) went beyond the baseline of scientific or technological knowledge, no evidence explaining the use of AI forecasting or algorithms created or how the activities resolved uncertainties.

104. Similarly, the claim in relation to project 2 in 2020 was premised on uncertainty in ingredient selection, flavour and storage and there was no clear evidence as to why this went beyond standard product development common in the industry.

105. Project 1 in 2021 related to the development of new product and processes but there was no evidence to demonstrate why this went beyond the usual day to day challenges in the industry or how the activities resolved uncertainties.

106. Project 2 in 2021 related to the development of a web platform and use of software to manage operational logistics and stock monitoring, however there was no clear scientific or technological uncertainty identified nor why the activities represented an advancement to the baseline of underlying technology such that a competent professional in the field could not have readily resolved the issue.

107. In *Hadee Engineering Co Ltd v Revenue & Customs* ([2020] UKFTT 497 (TC) the FTT stated at [214] & [217]:

> "The BIS Guidelines at paragraph 3 set out that R&D takes place when a project seeks to achieve an advance in science and technology. The activities must also directly contribute to achieving this advance through the resolution of scientific or technological uncertainty. Paragraph 19 defines a "project" as consisting of a number of activities conducted to a method or plan. The BIS Guidelines state that "it is important to get the boundaries of the project correct" in that it should include all of the activities "which collectively serve to resolve the scientific or technological

> uncertainty associated with achieving the advance". The Guidelines clarify that a project could include a number of sub-projects or be part of a larger commercial project although in the latter situation the wider project which does not address the scientific or technological uncertainty would not be R&D.
>
> …
>
> …We considered that the BIS Guidelines reflect the ordinary everyday meaning of "project" and that formulation of a plan is required for R&D activities. Although there is no requirement for a plan to be recorded in a particular manner, we would expect some record or documentary evidence or, in the absence of which, a detailed explanation which identified the uncertainty and the way in which the activities were designed to resolve it; in doing so the "boundaries" highlighted by the BIS Guidelines would be clearly identified and the activities which contributed to seeking the resolution of the uncertainty would also be identifiable."

108. We agreed with the comments set out above. In considering each of the projects in respect of which R&D relief was claimed, we concluded that the same deficiencies existed in relation to each of the projects. In summary, there was an absence of a competent professional operating in the relevant field or a person with relevant expertise to provide clear and cogent evidence as to what existing technology was available during the relevant period, why that technology was not suitable to achieve the aims of the respective projects. There was no record or documentary evidence of a plan nor any detailed explanation identifying the uncertainties in each project or the way in which the activities were designed to resolve those uncertainties or why they were not readily resolvable by a competent professional in the field. In those circumstances we concluded that the burden of proof had not been discharged by the Appellant.

**CONCLUSION**

109. The Appellant's appeal is dismissed.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

110. 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.

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