



Neutral Citation: [2024] UKFTT 00614 (TC)

Case Number: TC09235

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

Taylor House, London
Appeal reference: TC/2022/11982

CORPORATION TAX – R&D – whether expenditure incurred in relation to R&D as defined in Section 1041 Corporation Tax Act 2009 – whether the Appellant made a sub-contractor payment for the purposes of Sections 1053, 1133 and 1136 Corporation Tax Act 2009 – scope of closure notice given under paragraph 32 of Schedule 18 of the Finance Act 1998 and scope of the matter to which the appeal relates for the purposes of Section 49I Taxes Management Act 1970

Heard on: 17-18 June 2024
Judgment date: 11 July 2024

Before

**TRIBUNAL JUDGE ROBIN VOS
MRS SONIA GABLE**

Between

TILLS PLUS LIMITED

and

Appellant

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: **MR JAMES FLETCHER** of Counsel instructed by Immisol Solicitors

For the Respondents: **MR DANIEL HICKEY-BAIRD** and **MR MARTIN PRIESTLEY** litigators of HM Revenue and Customs’ Solicitor’s Office

DECISION

INTRODUCTION

1. Generous tax reliefs are available for expenditure relating to research and development (“R&D”). An additional deduction from profits is available over and above the amount of the actual expenditure. If this gives rise to a loss, a cash payment can be claimed from HMRC.
2. The appellant, Tills Plus Limited made claims in relation to expenditure relating to R&D for its accounting periods ended 30 November 2018 and 30 November 2019.
3. For 2018, the additional R&D expenditure claimed was just over £1.5m. A tax credit payment of just over £390,000 was claimed and this was paid by HMRC to Tills Plus in April and May 2020.
4. As far as 2019 is concerned, the additional R&D expenditure claimed was just over £1m. A tax credit payment of a little over £275,000 was claimed but HMRC did not pay this.
5. Following an enquiry into the returns for these accounting periods, HMRC concluded that the additional R&D expenditure and the tax credit claims should be disallowed and issued closure notices giving effect to this on 16 February 2022. They also issued an assessment under paragraph 52 of Schedule 18 to Finance Act 1998 (“Schedule 18”) to recover the tax credit of just over £390,000 which they had already paid.
6. Tills Plus does not challenge the validity of the closure notices. Based on the evidence available to us, we are satisfied that the relevant statutory conditions have been met.
7. HMRC invite the Tribunal to allow the appeal against the paragraph 52 assessment. The reason for this is that they consider the assessment to be unnecessary as, assuming the amendments which they have made to the closure notices are upheld, Tills Plus will not be entitled to the tax credit and will therefore be obliged to repay it.
8. Although, during the course of HMRC’s enquiry, some consideration was given to the question as to whether the expenditure in fact related to R&D, HMRC’s stated reason for disallowing the claims was that (for reasons which we will come on to) Tills Plus had not made a payment to its sub-contractor in respect of what was said to be the R&D (we will refer to this as the payment issue).
9. HMRC’s decision was upheld on review in April 2022. The review only considered the payment issue.
10. Tills Plus has therefore appealed to the Tribunal. Its grounds for appeal were limited to the payment issue.
11. In their statement of case, which was delivered on 10 October 2022, HMRC sought to defend the decision by reference not only to the payment issue but also on the basis that the expenditure did not relate to R&D (the “R&D issue”).
12. Tills Plus did not object to HMRC’s statement of case. However, in his skeleton argument on behalf of Tills Plus, which was delivered at lunchtime on Saturday 15 June 2024 (less than two days before the start of the hearing on Monday 17 June), Mr Fletcher submitted that the scope of the closure notice (and therefore the scope of this appeal) was limited to the payment issue and that HMRC should not be allowed to raise the R&D issue.
13. In the alternative, Mr Fletcher applied for an adjournment of the hearing should the Tribunal conclude that HMRC should be permitted to rely on the R&D issue. We therefore had to consider these matters at the start of the hearing.

THE SCOPE OF THE APPEAL AND THE REQUEST FOR AN ADJOURNMENT

14. For reasons which we summarised at the hearing, we concluded that HMRC should be allowed to rely on the R&D issue and that the hearing should not be adjourned. We did however say that we would record those reasons in writing as part of our decision.

15. An appeal against an amendment of a company's tax return made by a closure notice may be brought under the provisions of paragraph 34(3) of Schedule 18. If so, the relevant provisions of the Taxes Management Act 1970 ("TMA") relating to appeals are applied by s 48 TMA. Section 49G(4) TMA requires the Tribunal to determine "the matter in question". This is defined by s 49I TMA as "the matter to which an appeal relates".

16. In relation to this, the parties referred to the decision of the Supreme Court in *Tower MCashback LLP 1 v HMRC* [2011] UKSC 19, the decision of the Court of Appeal in *Fidex Limited v HMRC* [2016] EWCA Civ 385 and the decision of the Court of Appeal in *Investec Asset Finance Plc v HMRC* [2020] EWCA Civ 579.

17. The parties were agreed that the principles to be applied were those set out in *Fidex* at [45] and approved in *Investec* at [66] as follows:

The scope and subject matter of an appeal are defined by the conclusions stated in the closure notice and by the amendments required to give effect to those conclusions.

What matters are the conclusions set out in the closure notice, not the process of reasoning by which HMRC reached those conclusions.

The closure notice must be read in context in order properly to understand its meaning.

Subject always to the requirements of fairness and proper case management, HMRC can advance new arguments before the F-tT to support the conclusions set out in the closure notice.

18. One point arising from this which it is perhaps worth highlighting is that it is open to the Tribunal to permit HMRC to raise additional arguments in support of the conclusions set out in the closure notice even if they are not mentioned in the closure notice.

19. Unfortunately we were not provided with copies of the relevant closure notices. Mr Hickey-Baird, on behalf of HMRC, explained that closure notices are generated automatically and that HMRC do not keep a copy. Although Tills Plus must presumably have copies of the closure notices, these did not find their way into the bundle.

20. However, we did have a copy of HMRC's covering letter dated 16 February 2022. This rehearsed the conduct of the enquiry including HMRC's concerns about whether the expenditure related to R&D but ended up noting that there had been no changes in their position "as the paid condition had still not been met".

21. The letter went on to explain the amendments which would be made to the tax returns in the form of a table. Immediately below the table, the letter stated that "as a result of the enquiry into the R&D claims for APEs 2018 and 2019 tax credit has been reduced to zero".

22. The letter then considered penalties for inaccuracies in the tax returns noting that "as a result of the enquiry, the company's claims for R&D tax credit have been removed as the paid condition has not been met."

23. At the end of the letter, HMRC noted that Tills Plus would receive a formal closure notice once the amendment to the tax return had been processed and that "the amendment will reduce qualifying expenditure for R&D to zero."

24. Mr Fletcher submitted that HMRC's conclusion was that the paid condition had not been met and that the reduction of the tax credit to zero is (as stated in the letter) "as a result" of this conclusion.

25. We cannot accept this. In the context of HMRC's enquiry (which in the letter opening the enquiry was said to be in relation to the "figure shown for the company's R&D claim"), it is clear to us that HMRC's conclusion was that the figure for the R&D claim should be reduced to zero. This is exactly what the explanatory letter of 16 February 2022 says will be the amendment made by the closure notice.

26. Given the distinction drawn in *Fidex* and *Investec* between, on the one hand, the conclusions stated in the closure notice and the amendments required to give effect to those conclusions and, on the other hand, the reasons for the conclusion, there cannot be any real doubt that the conclusion is the reduction to zero of the figures for the enhanced expenditure claimed and that HMRC's belief that the payment condition had not been met represented their process of reasoning in reaching that conclusion.

27. It follows from this that the subject matter of the appeal (and therefore the matter in question) for the purposes of s 49G TMA is the reduction of the figures for enhanced R&D expenditure to zero.

28. There is therefore no reason why HMRC should not be able to rely on the R&D issue in supporting that conclusion.

29. Mr Fletcher submits that, nonetheless, HMRC should not be permitted to do so. In support of this, he refers to the correspondence during the course of the enquiry. For example, in July 2021, whilst concluding that the R&D had not been sufficiently evidenced, HMRC noted that, in any event, their conclusion was that the payment condition had not been satisfied and that they did not "require any further information about the R&D activity". They observed that, even if the paid condition had been met "qualifying R&D activity still needs to be evidenced and further information can be provided at that time".

30. Based on these statements, Mr Fletcher submits that it was reasonable for Tills Plus to proceed on the basis that the payment issue was the only point which it had to meet and that it will be put at a severe disadvantage if it is now required to deal with the R&D issue as well given the scope of the evidence which it has so far provided.

31. As we have noted, Mr Fletcher's alternative application was that the hearing should be adjourned or that the Tribunal should deal with the payment issue at this hearing (which may dispose of the appeal if the Tribunal finds in favour of HMRC). If the payment issue is decided in favour of Tills Plus, Mr Fletcher says that the hearing could then be adjourned to enable Tills Plus to provide further evidence.

32. As far as the decision whether or not to adjourn the hearing is concerned, the parties were agreed that this was simply a case management decision which should be taken in accordance with the overriding objective of dealing with cases fairly and justly.

33. In our view, HMRC do not need permission to rely on the R&D issue. It is something which was clearly raised by them during the course of their enquiry. Although their decision was based on a failure to satisfy the payment condition, it is clear from the correspondence (and in particular the letter from July 2021 which we have mentioned above) that the point was left open and that it was made clear that, even if the payment condition were satisfied, the R&D issue would still need to be dealt with. In these circumstances, it was entirely

proper for HMRC to raise both the payment issue and the R&D issue in their statement of case.

34. If we are wrong in this conclusion and HMRC do require permission from the Tribunal to raise the R&D issue, we have no hesitation in giving that permission given the background which we have outlined above. Most importantly, there is no procedural unfairness in allowing HMRC to raise the point given that they did so in their statement of case on 10 October 2022. Tills Plus has therefore been on notice since then that HMRC were relying on this point and was able to address it in its evidence.

35. We therefore need to consider whether it would be right to adjourn this hearing (or only deal with the payment issue) in order to allow Tills Plus to provide further evidence in relation to the R&D issue.

36. In our view, it would not be right to adjourn the hearing. We set out below the factors we have taken into account in reaching this conclusion.

37. Tills Plus has been aware since October 2022 that HMRC were relying on the R&D point. They have therefore had every opportunity to address the point in their evidence or to object to HMRC's reliance on this issue.

38. The reality is that Tills Plus left it until Wednesday 12 June 2024 to instruct Counsel for a hearing starting on Monday 17 June 2024 and so, no doubt, has only recently become aware of the difficulties it may face in proving its case based on the evidence currently available in relation to the R&D issue. However, it would have a very significant impact both for the Tribunal and other Tribunal users if hearings had to be abandoned at very short notice in these sorts of circumstances.

39. In addition, as noted by Mr Hickey-Baird, HMRC went out of their way in their skeleton argument to explain what Tills Plus would need to prove and what evidence would be required in order to succeed on the R&D issue. This reinforces the conclusion that there is no procedural unfairness to Tills Plus in going ahead with the hearing despite the fact that it would now like to provide additional evidence.

40. Mr Hickey-Baird also made the point that Tills Plus has been professionally represented throughout the course of this appeal. It has provided expert evidence in relation to the payment issue and so was clearly aware of the potential need for such evidence and could therefore have considered whether any expert evidence was needed in relation to the R&D issue.

41. The fact that Tills Plus knew that it had to deal with the R&D issue is also apparent from both the witness statement of Mr Kosari (the sole director and shareholder of Tills Plus) and the witness statement of Mr Cowan, one of the experts who has provided a report on behalf of Tills Plus.

42. Mr Kosari's witness statement contends that Tills Plus has discharged the burden of proof in relation to "the requirements of the legislation with regard to ...qualifying R&D activity". Mr Cowan notes that HMRC have not been able to conclude that R&D activity had taken place. He says that this was referred to in a letter from HMRC which he had not seen. He must therefore have been given this information by Tills Plus or by its representative.

43. Whilst we accept that there is prejudice to Tills Plus in not adjourning the hearing and so giving it an opportunity to provide further evidence, our view is that it has had every opportunity to do so. We also note that no reason has been given for its failure to do so.

44. We also accept, as submitted by Mr Hickey-Baird, that if we were to adjourn the hearing this would cause prejudice to HMRC. This is because it can be anticipated that Tills Plus would want to seek permission from the Tribunal to provide expert evidence in relation to the question as to whether the activities in question constituted R&D within the relevant definition, much of which (as we shall see) is assessed by reference to the views of a “competent professional”. HMRC would need to consider such evidence and would need to decide whether to provide their own expert evidence. This could therefore consume significant time and resources of HMRC as well as any adjournment having an impact on the Tribunal’s own resources and on other Tribunal users as we have already mentioned.

45. There are two other points which we consider relevant and which were referred to by Mr Hickey-Baird. The first is the public interest in finality of litigation, including in relation to tax matters. The second is the fact that Tills Plus has £390,000 which has been paid to it by HMRC but which HMRC now say Tills Plus was never entitled to. If the hearing is adjourned, the question as to whether Tills Plus must repay these funds will be deferred.

46. In our view, any prejudice to Tills Plus (which, for the reasons we have explained, it has brought upon itself) is outweighed by these other factors so that it would not be in accordance with the overriding objective to adjourn the hearing.

47. As far as Mr Fletcher’s alternative suggestion is concerned, whilst it would of course be possible to deal with the payment issue and then, if necessary to adjourn before dealing with the R&D issue, if Tills Plus is successful in relation to the payment issue, this runs the risk of having to hold two hearings which, when combined, may well be more costly in terms of time and resources both for the parties and for the Tribunal than if we just adjourned the hearing and dealt with both the payment issue and the R&D issue at a future hearing. Given that we have rejected this approach, we cannot endorse Mr Fletcher’s alternative course of action either.

48. The hearing therefore proceeded on the basis that it would deal both with the payment issue and the R&D issue.

49. We now turn to the main issues in this appeal.

THE EVIDENCE

50. The evidence available to us consisted of a bundle of documents and correspondence prepared by the appellant. This contained witness statements which we have already mentioned from Mr Kosari and from Mr Cowan. It also contained a witness statement from a Dr Latif who, along with Mr Cowan, was put forward as an expert on behalf of Tills Plus in relation to the payment issue.

51. Although it is not a point which was raised by either party at the hearing, we note that, in response to the application made by Tills Plus to rely on expert evidence, a direction was made by Judge Cannan on 27 October 2023 that the question as to whether Tills Plus should be entitled to rely on this evidence should be determined at the final hearing of the appeal. As it is, Mr Hickey-Baird did not object to the reliance by Tills Plus on the statements

provided by Mr Cowan and Dr Latif. However, he submitted that little weight should be given to the views expressed by these witnesses.

52. In the case of Mr Cowan, this is on the basis that he makes no reference to accounting standards to support his opinion and that his conclusions are based on principles of Sharia law in relation to which he is not an expert as well as on sanctions in respect of which he also has no expertise. In addition, Mr Cowan did not attend the hearing and so was not available for cross-examination.

53. We accept that little (if any) weight can be placed on Mr Cowan's report. In any event, we note that Mr Fletcher did not refer to it or rely on it in his submissions.

54. As far as Dr Latif's evidence is concerned, Mr Hickey-Baird observes that it is extremely short and very general in nature. It makes no attempt to grapple with the specific facts of this appeal.

55. Whilst we accept that there is some basis for Mr Hickey-Baird's criticism of Dr Latif's evidence, it clearly does shed light on the ability to transfer funds between the UK and Iran. In addition, Dr Latif did attend the hearing and was cross-examined. We do therefore consider that some reliance can be placed on this evidence although, for the reasons which we explain below, we do not consider that it is relevant to our conclusions.

56. Mr Kosari gave his evidence in two stages. The first related to the payment issue. As far as this was concerned, his evidence was straightforward and consistent with the documentary evidence.

57. Mr Kosari then returned to give evidence in relation to the R&D issue. Given our decision to proceed with the hearing, we agreed that Mr Kosari should be given the opportunity to give further evidence in chief in relation to the R&D issue given that this was not addressed in any detail in his witness statement. He was then cross-examined both in relation to this and in relation to his witness statement.

58. Mr Kosari readily accepted that he is not an expert in IT or artificial intelligence ("AI") but is more of a businessman. This of course has some impact on the extent to which we can rely on his evidence in relation to some of the more technical aspects of the definition of what constitutes R&D.

59. In addition, in answering the questions put to him, Mr Kosari relied heavily on a report prepared for Tills Plus by a Dr Zade in December 2021. When taken to earlier explanations given to HMRC as to what the R&D consisted of, his attempts to explain the apparent inconsistency between these documents was, in our view, unconvincing in the light of the other documentary evidence. We will return to this in more detail in our discussion of the R&D issue.

60. At the start of the second day of the hearing, Mr Fletcher, on behalf of Tills Plus, made an application to admit further documentary evidence. This consisted of an email from Dr Zade dated 7 December 2021 enclosing a copy of a report which was contained in the bundle as well as a copy of Dr Zade's CV which Mr Kosari said he had downloaded from LinkedIn. The purpose of these documents was to demonstrate that the report had come from Dr Zade and that Dr Zade had a certain level of expertise in relation to the matters in question.

61. Mr Hickey-Baird did not object in principle to the admission of these documents although noted that the Tribunal would still need to consider the weight which should be given to the report given that Dr Zade was not available to be cross-examined.

62. Given the nature of the documents, their relevance to the matters to be addressed by the Tribunal and the lack of any prejudice to HMRC, we agreed to admit these documents as part of the evidence.

63. However, at the end of the hearing, following HMRC reporting some difficulty in finding Dr Zade's LinkedIn profile, we directed (with the agreement of Tills Plus) that the representative of Tills Plus should make a witness statement confirming the origin of Dr Zade's CV as well as giving HMRC permission to make representations/submissions in relation to that additional evidence should they wish to do so.

64. We have received the witness statement and HMRC's submissions and have taken these into account in reaching our decision.

BACKGROUND FACTS

65. Tills Plus is a UK company established in 2015 by Mr Kosari who is the sole shareholder and director of the company. At the outset, there was another shareholder who held 20% of the shares (one share out of a total of five shares). However, it appears that this was an error which was discovered in 2018, at which point the share was transferred to Mr Kosari so that he became the sole shareholder.

66. Tills Plus develops technology for the hospitality industry and is involved in particular in electronic point of sale ("EPOS") systems.

67. In around 2017, Tills Plus wished to develop a new product or suite of products. The funding for this was to come from Mr Kosari's father-in-law, Mr Fatoorehchi, a resident of Iran. As a result of international sanctions, it was extremely challenging to move money out of Iran and so Tills Plus looked for a partner in Iran to carry out the necessary development work.

68. Mr Fatoorehchi introduced four possible candidates. Following telephone interviews, Mr Kosari (on behalf of Tills Plus) chose a company called iWond as they had the necessary expertise and had the best English language capabilities.

69. A "Software Development Agreement" was entered into between Tills Plus and iWond on 10 May 2017. The agreed service was to:

"Carry out research and development of a virtual hospitality manager using Artificial Intelligence and Big Data by developing niche data capture platforms."

70. One key fact we need to address is exactly what it was that iWond was asked to do. As we have said, there is potentially conflicting documentary evidence in relation to this as well as evidence given by Mr Kosari. We will address this in our discussion of R&D issues.

71. The agreement between iWond and Tills Plus did not set out any specific fees for the work to be done. It simply provided that Tills Plus would be invoiced every three months.

72. Invoices were duly issued and addressed to Tills Plus. The agreement between Tills Plus, Mr Kosari and his father-in-law, Mr Fatoorehchi was that Mr Fatoorehchi would make a loan to Mr Kosari who would in turn make a loan (recorded on a director's loan account) to Tills Plus. However, as a result of the difficulties in moving money in and out of Iran, it was

agreed that iWond's invoices would be paid direct by Mr Fatoorehchi from his bank account in Iran.

73. The loans from Mr Fatoorehchi to Mr Kosari and from Mr Kosari to Tills Plus were both interest free and repayable on demand. None of this was committed to writing at the time although, as a result of HMRC's enquiries, loan agreements were drawn up and signed by the parties recording the terms of the loans. At that time, the total amount of the loans (and, we infer, the amount of the invoices submitted by iWond to Tills Plus) totalled £2,444,000.

74. The relationship between Tills Plus and iWond came to an end after approximately three years although Mr Kosari was not able to give a precise date.

THE PAYMENT ISSUE

Legal framework

75. The overview contained in s 1039 Corporation Tax Act 2009 ("CTA 2009") of the rules relating to R&D relief confirms that the legislation "provides for corporation tax relief for expenditure on research and development". In particular, it "provides for relief where the cost of ... contracted out research and development is incurred by the company" (s 1039(3) (a) CTA 2009).

76. The expenditure which qualifies for relief is limited by s 1053(1)(a) to "expenditure which is incurred by [the company] in making the qualifying element of a sub-contractor payment".

77. Section 1133(1) CTA 2009 (as in force at the relevant time) defines a "sub-contractor payment" as "a payment made by a company to another person (the 'sub-contractor') in respect of research and development contracted out by the company to that person".

78. Section 1136 CTA 2009 explains how to calculate the "qualifying element" of a sub-contractor payment. Sub-section (1)(a) provides that the section only applies where "a company makes a sub-contractor payment".

79. It will be apparent from this that the question we have to determine is whether Tills Plus has made a payment to iWond within the meaning of this legislation.

80. Mr Hickey-Baird, on behalf of HMRC, submits that the legislation should be interpreted literally and strictly so that the requirement for a payment to be made by the company to a sub-contractor can only be satisfied if there is a physical payment from the company's bank account to the sub-contractor.

81. Mr Fletcher, on the other hand, submits that the legislation should be interpreted purposively and that it cannot have been Parliament's intention that this condition should be interpreted so restrictively. By way of example, he considered the situation where the company paid the sub-contractor's invoice by credit card. In these circumstances, the payment of a sub-contractor would be made by the credit card company which would then be reimbursed in due course by the taxpayer company. On HMRC's interpretation, this would not qualify which, he suggests, cannot possibly be the right the answer.

82. Assuming he is right in this, Mr Fletcher submits that there is no difference between an agreement with a credit card company and an agreement with a lender where the lender makes a direct payment to the sub-contractor and the company incurs an obligation to the lender.

83. In support of his submission that a narrow view should be taken, Mr Hickey-Baird suggests that the requirement that the payment is made by the taxpayer company to the sub-contractor is an anti-avoidance provision. This, he says, can be seen by the fact that Schedule 1 to Finance Act 2024 introduced provisions requiring the same payment conditions to be met

for expenditure on consumables where that requirement had not previously existed. He suggested that this was a tightening up of the R&D provisions.

84. Unfortunately, Mr Hickey-Baird was not able to go through the legislation he was referring to in detail as it was not before the Tribunal and so we have found it difficult to follow his argument.

85. In any event, in the context of the relevant provisions, we consider that the requirement that the taxpayer company makes a payment to the sub-contractor is simply one of the conditions (and, indeed, a fairly obvious condition) for obtaining relief and does not, on the face of it, have the hallmarks of what might truly be described as an anti-avoidance provision.

86. In addition, even if it were an anti-avoidance provision, this does not mean that applying a purposive approach to interpretation would be wrong given the purposive approach to interpretation applies to all legislation (see for example the comments of the Supreme Court in *Rosendale BC v Hurstwood Properties (A) Limited* [2021] UKSC 16 at [9/10] – an authority not referred to by either party but which we mention just to illustrate a point which we do not consider can be viewed as controversial).

87. Mr Hickey-Baird also relies on the comments made by Henderson J in *Gripple Limited v HMRC* [2010] EWHC 1609 (Ch) at [12] where he concludes that, in relation to the R&D provisions:

“a detailed and prescriptive code of this nature leaves little room for a purposive construction, and there is no substitute for going through the detailed conditions, one by one, to see if, on a fair reading, they are satisfied.”

88. However, this comment was made in the context of a submission that the legislation should be given a “generous construction” in order to further a “general intention to provide enhanced relief for expenditure on R&D”. In the light of this, we do not think that Henderson J can have been rejecting the general principle of purposive construction, particularly given his reference to giving the legislation a “fair reading”. However, even if this was his intention, we do not, with respect, see how this can stand given the comments in the later cases decided by the House of Lords/Supreme Court which are referred to in *Rosendale*.

89. We were not referred to any materials which might assist in determining the purpose of the relevant legislation and so we must consider this based on the wording of the legislation within the context of the relevant statutory scheme.

90. In our view, a wider interpretation of ss 1133 and 1136 CTA 2009 is supported by the statutory context. The overview in s 1039 CTA 2009 shows that the purpose of the provisions is that relief should be available where expenditure on R&D or the cost of R&D has been incurred by the company. Section 1853 CTA 2009 confirms this by referring to expenditure incurred by the company in making the sub-contractor payment.

91. This indicates that the purpose of the payment requirement is to ensure that expenditure on R&D has genuinely been incurred and that the expenditure is at the cost of the company making the claim.

92. In our view, it cannot have been Parliament’s intention that the availability of relief should depend on fine distinctions as to the way in which a payment is made to a sub-contractor.

93. As Mr Fletcher submits, it would be very odd if a payment by credit card did not satisfy the requirements of the legislation simply on the basis that there was no physical payment by the company to the sub-contractor.

94. Ultimately, Mr Hickey-Baird accepted that this must be right but still submitted that there was a difference between payment by credit card and a payment using borrowing where the actual payment to the sub-contractor was made by the lender rather than the borrowing company. He based this on the tripartite nature of the arrangements needed to make the payment in the case of a loan whereas, in the case of a credit card payment, all that is needed is for the company making the payment to give the credit card details to the sub-contractor. The credit card company has no involvement in this part of the process.

95. However, again, we cannot see any reason why Parliament would have intended such a distinction. Even if Mr Hickey-Baird is right that the provisions requiring payment to be made by the company to the sub-contractor are anti-avoidance provisions, he could not point to any avoidance or abuse where a payment was in fact made to the sub-contractor at the cost of the company (by incurring the debt to the lender).

96. We invited the parties to consider whether (albeit made in a different statutory context) the comments of the House of Lords in *MacNiven v Westmoreland Investments Limited* [2001] UKHL 6 might be relevant. Mr Hickey-Baird did not consider *MacNiven* to be relevant given that we are dealing with different statutory provisions which, in his submission, must be given a narrow meaning.

97. Mr Fletcher noted that Lord Hope in *MacNiven* observed at [81] that the word “payment” should be given its ordinary meaning and that the examples contained in the extract from *Cairns v Macdiarmid* 56 TC 556 at [576-577] referred to by Lord Hoffmann at [69] make it clear that physical payment is not necessary for there to be a “payment” (for example there may be a set off).

98. Whilst we do not place a great deal of weight on the comments made by the House of Lords in *Macniven* given that, as Mr Hickey-Baird says, it was dealing with different statutory provisions, we can see no reason why, in the context of ss 1133 and 1136 CTA 2009, a payment cannot be made in circumstances where money does not physically move from the company to the sub-contractor.

99. Looking at the context of the legislation, our conclusion is that what is required is that an obligation to the sub-contractor is discharged at the cost or expense of the company. This is, of course, exactly what happens if a sub-contractor’s invoice is paid by credit card. The obligation to the sub-contractor is discharged by the payment which comes from the credit card company and it is at the expense of the taxpayer company as that company now has an obligation to pay a debt to the credit card company when it becomes due.

APPLICATION TO THE FACTS

100. The undisputed facts are that iWond’s invoices were addressed to Tills Plus and were therefore an obligation of Tills Plus. The invoices were physically paid by Mr Fatoorehchi but this was treated by agreement as a loan from Mr Fatoorehchi to Mr Kosari and then a loan by Mr Kosari to Tills Plus.

101. The result of this is that Tills Plus’ obligation to iWond represented by the invoice was discharged and was replaced by an obligation for Tills Plus to repay the loan to Mr Kosari. The discharge of the invoice was therefore at the cost or expense of Tills Plus.

102. Mr Hickey-Baird objects to this on the basis that the loan from Mr Fatoorehchi to Mr Kosari and from Mr Kosari to Tills Plus is not a commercial loan as it carries no interest and there is no fixed date for repayment.

103. However, we cannot see that the commerciality (or otherwise) of the loan can make any difference to the question as to whether a payment has been made by Tills Plus to iWond. HMRC do not suggest that the loans are a sham or that Tills Plus does not have a genuine

obligation to Mr Kosari. It may of course be that Mr Kosari will not enforce repayment of the loan in circumstances where Tills Plus is unable to make the repayment. However this is exactly what would be expected in the context of a shareholder loan. Indeed, Mr Hickey-Baird accepted that HMRC would not be challenging the position if there had just been a straightforward shareholder loan.

104. We should note that Mr Fletcher placed some reliance on the fact that the arrangements were constructed in the way that they were as a result of the difficulty moving money between the UK and Iran. It will be apparent from what we have already said that we do not consider that the reasons why payment was made in a particular way are relevant to the issue of statutory interpretation. As Mr Hickey-Baird says, there is nothing in the legislation which refers to the intentions or motivations of the parties. The question is simply whether a payment has been made by the company to the sub-contractor.

105. As an alternative argument, Mr Fletcher suggested that Mr Fatoorehchi was, in effect, acting as the company's agent in making the payment to iWond. However, he did not refer us to any evidence to make good this submission; nor did he refer us to any principles which we should apply in determining whether one person has become the agent of another.

106. No doubt it can be said that, as a result of the agreement between Mr Fatoorehchi, Mr Kosari and Tills Plus, he was acting on the instructions and with the agreement of Tills Plus in making the payment to iWond. However, given that we have concluded that, in the circumstances, Tills Plus can be said to have made a payment to iWond within the meaning of the relevant legislation, we prefer not to reach any conclusion on the agency point.

107. Having concluded that Tills Plus has made a payment to iWond, and therefore satisfied the payment condition, we now need to go on to consider the R&D issue.

RESEARCH & DEVELOPMENT

Legal Framework

108. As is to be expected, the relevant tax reliefs are only available for expenditure on R&D (s 1044(5) and s 1051 CTA 2009).

109. There is a rather convoluted definition of R&D involving s 1041 CTA 2009, s 1138 Corporation Tax Act 2010 and s 1006 Income Tax Act 2007. These sections in turn lead to the R&D (Prescribed Activities) Regulations 2004 which, in Regulation 2, give legislative force to a document entitled "Guidelines on the Meaning of Research and Development for Tax Purposes" which was originally issued on 5 March 2004 but was updated on 6 December 2010 (the "Guidelines"). It is these Guidelines which determine what activities count as R&D.

110. The combined effect of paragraphs 3 and 4 of the Guidelines is that there must be a project which seeks to achieve an advance in science or technology through the resolution of scientific or technological uncertainty.

111. A project is defined in paragraph 19 of the Guidelines as "a number of activities conducted to a method or plan in order to achieve an advance in science or technology".

112. In this context, Mr Hickey-Baird referred to the decision of the First-tier Tribunal in *Hadee Engineering Co Limited v HMRC* [2020] UKFTT 497 which observed at [217] that:

“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.”

113. An advance in science or technology is something which goes beyond the knowledge or capability in the relevant field which is publicly available or is readily deducible from what is publicly available by a competent professional (paragraphs 6 and 20 of the Guidelines).

114. We are told that 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”. (Paragraph 13 of the Guidelines).

115. As well as the creation of a process, product or service which represents an increase in overall knowledge or capability in a field of science or technology, paragraph 9 of the Guidelines explains that making an “appreciable improvement” to an existing process, product or service through scientific or technological changes will also be R&D. An appreciable improvement is something that would be “acknowledged by a competent professional working in the field as a genuine and non-trivial improvement” (paragraph 23 of the Guidelines).

116. Mr Hickey-Baird accepts that the business of Tills Plus (and the work which iWond was asked to do) involves technology but notes that paragraph 8 of the Guidelines warns that “work which uses science or technology but which does not advance scientific or technological capability as a whole is not an advance in science or technology”.

117. The Guidelines make it clear (paragraph 10) that it is enough to seek an advance in science or technology. The project does not have to be successful.

118. It is common ground that the burden of proof is on Tills Plus to show that the relevant requirements have been satisfied.

119. Taking the Guidelines into account this means that Tills Plus needs to show that the work which iWond was asked to do amounted to a project which sought to achieve an advance in science and technology through the resolution of technological uncertainty.

120. Given the way in which these terms are explained in the Guidelines, the views of a competent professional are highly relevant as the resolution of an uncertainty is not a technological advance if it could readily be deduced or resolved by a competent professional.

FINDINGS IN RELATION TO R&D

121. In relation to who qualifies as a competent professional, Mr Hickey-Baird referred to the Decision of the First-tier Tribunal in *Flametree Publishing v HMRC* [2024] UKFTT 349. The Tribunal in that case accepted at [68] HMRC’s submission at [66] that a competent professional is someone who “is able to demonstrate appropriate qualifications, experience and up-to-date knowledge of the relevant scientific and technological principles involved”. We accept that this is a convenient description of such a person.

122. During the course of HMRC’s enquiry, Tills Plus made a number of attempts at explaining what it was that they were trying to do in the work that had been subcontracted to iWond. The only evidence we have to supplement this is Mr Kosari’s evidence at the hearing.

123. Mr Kosari’s first attempt to explain to HMRC what Tills Plus was trying to achieve was on 4 February 2021, shortly after the enquiry had been opened. This reads as follows:

“In summary, we set out to research and develop the first complete modular eco-system to:

- 1 increase the control of the merchant over the business
- 2 increase business productivity
- 3 reduce staffing costs
- 4 increase bottom line profitability
- 5 digitise all transaction and income records
- 6 create a valuable consumer database covering majority of consumer actions.”

124. A subsequent document provided to HMRC (it is not clear exactly when this was provided but for the reasons explained below, we conclude it was attached to an email dated 4 May 2021) explained that the aim was to create “one unified platform that can provide SMEs with the tools and infrastructure they need to adapt to the technology they need in order to encourage and support growth in their businesses”. This involved using blockchain in the data storage process and finding a solution to access and analyse the stored data. The document refers to a number of different modules, providing different services, which can be aggregated through “a unified, easy to use interface”.

125. A further email from Mr Kosari to HMRC on 8 February 2021 explains the aim of Tills Plus as “an amazing feature-packed EPOS platform with a complete eco-system of solutions so that the merchant will no longer need to integrate with other third party platforms”. It then lists the various solutions that are or will be available.

126. That email goes on to refer to the acquisition by Tills Plus of the customer database for another EPOS re-seller and notes that the target of Tills Plus is to convert a certain number of the merchants on that database to use an average of two of their modules “to improve the running and productivity of their business”.

127. A further attempt at explanation also on 8 February 2021 again refers to an “all-in-one modular eco-system”. It was explained that the technical uncertainty was “combining over 15 key platforms and solutions to work in tandem with one another using the same account and credentials”.

128. Mr Kosari had another go at explaining the R&D which Tills Plus said it was undertaking in an email of 22 February 2021. This stated that:

“The challenge is and was to be able to align all of the solutions required to run an efficient operation into one product with one dashboard and log in credentials no matter if you are setting up and managing your EPOS, pre-ordering portal or your time and attendance. In other words, developing bespoke software that isn’t otherwise available, improve data encryption and security on the components that were available, devising innovative methods of capturing, manipulating, protecting and transmitting data, integrating software components into a single platform and developing algorithms to eventually act as a virtual manager for the merchant using the data captured and processed by each and every component of the solution. The capture of all this data will enable us to complete the development of an intelligent virtual operational manager to manage and assist in the running of the business using the data captured using the above methods.”

129. During a telephone conference call with HMRC on 24 March 2021, Mr Kosari referred to “capturing data in order to develop a virtual manager” and “a one-stop platform” for merchants to select all the different solutions they need.

130. A further document explaining the relevant activities was sent to HMRC under cover of an email dated 4 May 2021. Although Mr Kosari could not recall whether the document referred to at paragraph [124] above is the document which was attached to this email, we have concluded that it is more likely than not that it was. Our reasons for this are as follows:

There is no other email in the bundle of documents we have been provided with which attaches an explanation of the activities as a separate document.

The name of the file attached to the email is “Baseline Tech.pdf” and the document is headed “Baseline”.

The document which was requested by HMRC (and to which the email of 4 May 2021 was a response) was to be based on HMRC’s template and this document follows that template. We also note that HMRC requested that this document should be provided by “the competent professional”. In his response, Mr Kosari identifies the competent professional as “Mohammad Safari” and lists his qualifications. Although the names are slightly different, the list of qualifications mirrors the qualifications of Dr Zade as shown on his CV. We can infer that Mr Kosari may have made a mistake and that this is a reference to Dr Taghi Mohamad Zade, whose CV we were provided with as part of the documents admitted into evidence at the start of the second day.

131. It was shortly after this that HMRC put the R&D issue on one side and relied principally on the payment issue. Nothing further was therefore said about the R&D issue until December 2021 when Tills Plus received a new report from Dr Zade (who was, at the time, still working for iWond) and which was, again, presented in the format of HMRC’s template. The report shows that the work was all about developing a tool to analyse customer reviews in the hospitality sector. In explaining the objective of the activities, the report says:

“The aim is to find upside and downside of each hotel, restaurant and local café based on customers’ comments ... we want to develop a multi-modal deep learning method that is able to process text, image, video and voice to extract sentiment analysis, rumour, racism and sexism, cyber bullying, fake information and toxic comments.”

132. The report explains that the analysis tool will use a form of artificial intelligence known as deep learning in order to analyse customer reviews. The report notes that, at the time it was written, previous work by others has focused on analysing a single type of data whereas the objective in this case was to analyse multiple types of data, as mentioned above.

133. According to Mr Kosari, this report was sent to HMRC in December 2021 but it appears that it did not reach the case officer and so was sent again in the text of an email on 4 March 2022.

134. Mr Hickey-Baird submits that there are clear inconsistencies between what HMRC was told in February-May 2021 and the subsequent report from December 2021 and that, as a result, it is impossible to be satisfied that the requirements for the work done by iWond to constitute R&D are satisfied.

135. When asked to explain the inconsistency between the explanation provided on 22 February 2021 and the December 2021 report during cross-examination, Mr Kosari emphasised the fact that he was not an IT/AI expert and that he was approaching the issue

from the point of view of a businessman so that he inevitably could not go into the level of technological detail contained in the December 2021 report.

136. Mr Kosari also noted that the engagement with iWond developed over time. His evidence was that iWond and Tills Plus were in constant communication and that, as matters developed, changes to the scope of the work were agreed. He stressed however that any changes did not relate to the ultimate objective but to the way in which it could or should be achieved.

137. In justifying the differences between the explanations given in February 2021 and in December 2021, Mr Kosari explained that the various modules or solutions referred to in February 2021 were all part of the exercise of capturing data which the multi-modal analysis tool would then analyse, referring to them as “funnels” for the data.

138. Mr Kosari’s evidence was that the work on these funnels was separate to the work on the data analysis tool and that, following conversations with iWond, Tills Plus accepted that approximately 15% of the expenditure claimed did not qualify as it related to the modules/solutions and not to what he referred to as the main project, being the development of the data analysis tool. Indeed, Mr Kosari described the work on the modules as “taking things others had done and making it a bit better”.

139. Mr Fletcher’s submissions on the question as to whether the activities subcontracted to iWond constitute R&D were made exclusively by reference to the December 2021 report. Based on Mr Kosari’s oral evidence, Mr Fletcher submits that little regard needs to be paid to the previous explanations given between February 2021 and May 2021 as these were prepared primarily by Mr Kosari who is not an IT expert and was approaching these views from the perspective of a businessman.

140. Mr Fletcher notes that the December 2021 report on the other hand was prepared by Dr Zade. Mr Hickey-Baird did not challenge this. Based on the email from Dr Zade dated 7 December 2021 which was provided on the second day of the hearing and which attaches a copy of the report, we accept that the report was written by Dr Zade.

141. Mr Hickey-Baird also accepted the submission made by Mr Fletcher that, based on the information in Dr Zade’s CV (also provided on the second day of the hearing), he can be described as a “competent professional” within the meaning of the Guidelines. As we have mentioned, Mr Kosari makes reference to a person who appears to be Dr Zade in his email to HMRC of 4 May 2021 which corroborates the information in the CV which has been provided. We agree that Dr Zade is a competent professional working in the relevant field for the purposes of the Guidelines.

142. Despite Mr Hickey-Baird’s submissions to the contrary, we also accept, for the reasons set out below, Mr Fletcher’s submissions that the 2021 report describes a project which constitutes R&D within the Guidelines.

143. Based on what is said in the report, the objective of developing a multi-modal review analysis system would indeed represent an advance in technology. The report describes other projects undertaken by third parties in 2020 and 2021 attempting to analyse a single type of data and explains that there is no system which has been developed which can analyse multiple types of data (multi modal analysis).

144. The report also goes into detail about the uncertainties which would need to be overcome in order to produce such an analysis system and why the resolution of these uncertainties is not readily deducible by a competent professional.

145. In our view, the report also demonstrates a plan, in the sense of “a number of activities conducted to a method or plan, in order to achieve the advancing technology” and does therefore constitute a project within the meaning of the Guidelines. For example, it describes the various different elements which need to be designed and how those elements would work together in order to produce a successful data analysis tool.

146. We accept Mr Hickey-Baird’s submission that the weight which can be placed on the report is affected by the fact that Dr Zade was not available to give evidence or to be cross-examined. Much of what Dr Zade says in his report is opinion or assertion. Testing this by cross-examination may well shed a different light on the report.

147. Having said that, we also take the point made by Mr Fletcher that HMRC have had the December 2021 report since at least 4 March 2022 and have, at no point, suggested that any of the technological information or explanation contained in it is incorrect. There is therefore no evidential basis for putting such suggestions to Dr Zade in cross-examination.

148. On balance, in the absence of any evidence from HMRC challenging the contents of the December 2021 report, we would accept that, if it accurately describes the activities which iWond were asked to undertake, this would constitute R&D for the purposes of the Guidelines so that the expenditure related to it would qualify for the relevant reliefs.

149. However, based on the other evidence available to us, we do not consider that the December 2021 report can be relied on as an accurate description of the work which iWond was asked to undertake. As Mr Hickey-Baird submitted, Tills Plus has not provided a consistent explanation of the advance in technology which was being sought.

150. The explanations which were given by Mr Kosari between February 2021 and May 2021 were, broadly speaking, consistent. As we have seen, what was said to be being developed was a series of modules or solutions which together would provide an intelligent virtual operational manager.

151. Whilst this would involve capturing various different types of data, as Mr Kosari explained in his evidence, this was information such as sales records and rostering, an analysis of which would enable a customer to run its business more efficiently.

152. As Mr Fletcher pointed out, one of the descriptions which Mr Kosari was taken to in cross-examination (sent to HMRC on 22 February 2021) refers to the use of big data and artificial intelligence which might indicate that there was some alignment between what was said in February-May 2021 and the December 2021 report. However, the reference to AI and big data was in the context of achieving “our goal of a virtual manager for the hospitality industry”. There was no mention of creating an advanced tool for analysing customer reviews which is the focus of the December 2021 report.

153. As we have said, Mr Kosari described the various modules through which data would be captured as “funnels” which would then provide the data for the multi modal analysis tool to analyse. His evidence was that the analysis tool was 90 per cent of the project. However, if this was the case, we find it very surprising that, as a businessman, Mr Kosari would describe the result as a virtual manager for the hospitality industry rather than an analysis tool enabling his clients to better understand customer perception.

154. A conclusion that the real project, as explained to HMRC by Mr Kosari between February 2021 and May 2021, was developing a virtual hospitality manager using an integrated ecosystem of modules to enable clients to run their businesses more efficiently is of course supported by the description of the work in the agreement between Tills Plus and iWond which, as we have said, reads “Carry out research and development of a virtual

hospitality manager using Artificial Intelligence and Big Data by developing niche data capture platforms”.

155. There is no reference in that agreement to developing a multi modal data analysis tool in order to analyse customer reviews. Had that been the main objective, we do not consider it credible that it would not have been mentioned in the description of the services to be provided in the context of an agreement which (based on the amount of the loan from Mr Fatoorehchi to Mr Kosari) had a value of almost £2.5m.

156. The lack of any mention of the data analysis tool in the description of the services in the contract cannot in our view be explained by Mr Kosari’s evidence that the work being done by iWond developed over time as he made it clear that the overall objective remained the same throughout and it was only the way in which this was to be achieved that evolved during the course of the work.

157. Such a conclusion is also supported by the invoices provided by iWond to Tills Plus. All of these refer to the specific modules which were being developed. There is no mention of work on a multi modal analysis tool. Whilst we accept Mr Kosari’s evidence that Tills Plus had no involvement in drawing up the invoices, had the bulk of the work done by iWond related to the development of such a data analysis tool, it seems extraordinary that the invoices would not refer to this.

158. We also consider it relevant that, although Mr Kosari’s evidence was that the earlier explanations to HMRC were prepared without “too much” input from iWond, there is an implicit acceptance that iWond did have some involvement in putting together those previous explanations. Indeed, as we have noted, the email sent by Mr Kosari to HMRC on 4 May 2021 specifically held out Dr Zade as the competent professional providing the information contained in the report attached to that email.

159. In his evidence, Mr Kosari explained that documentary evidence of the interactions between Tills Plus and iWond, including changes and developments in the work was available. However, this is not evidence that Tills Plus has chosen to provide to the Tribunal.

160. Taking account of all of the evidence available to us both in the form of documents and witness evidence, for the reasons outlined above, we do not accept that the December 2021 report reflects the work which iWond was engaged to carry out and that this is instead to be found in the explanations given to HMRC between February 2021 and May 2021. The December 2021 report cannot therefore form the basis for a conclusion that the work done qualified as R&D.

161. Mr Fletcher did not suggest that the activities explained to HMRC between February 2021 and May 2021 amounted to R&D within the terms of the Guidelines. We have no doubt that he was right not to do so. As Mr Kosari accepted in his evidence, the creation of the virtual operational manager simply involved taking existing technology or products and combining them to provide an integrated system. There is no evidence that this would achieve any advance in science or technology by resolving scientific or technological uncertainties.

162. Such an integrated platform might be novel but, as Mr Hickey-Baird submitted (by reference to the decision of the High Court in *BE Studios Limited v Smith & Williamson Limited* [2005] EHC 1506 Ch at [44-46], the fact that something is new and involves technology does not mean that it qualifies as R&D (as can be seen from paragraph 8 of the Guidelines).

163. It is possible that the integration of the various modules to create the virtual operational manager could constitute an “appreciable improvement” of existing products or processes.

However, without further evidence, we cannot say that what was being done would be acknowledged by a competent professional working in the field as a genuine and non-trivial improvement.

164. Indeed, as we have said, the impression given by Mr Kosari in his evidence, was that this was relatively straightforward. In the absence of any evidence to the contrary, we consider it more likely that what was being done could be described as a routine adaptation of existing products or services.

165. In a similar vein, we note that paragraph 30 of the Guidelines envisages that work on combining standard technologies or processes can involve scientific or technological uncertainty even if the principles for their integration are well known. This would be the case where a competent professional cannot readily deduce how the separate components or subsystems should be combined to have the intended function.

166. However, as Mr Hickey-Baird submits, we have no evidence from a competent professional as to whether there would in fact have been any uncertainties in combining the various modules to create the virtual operational manager.

167. Mr Hickey-Baird also submitted that the work that was sub-contracted to iWond did not constitute a “project” within the Guidelines as there was no evidence of there being a number of activities conducted to a method or plan.

168. Mr Fletcher noted the acceptance by the First-tier tribunal in *Hadee* at [217] that there is no requirement for a plan to be recorded in a particular manner but, like the Tribunal in that case, we would have expected the plan to be recorded in some sort of documentary form even if this was just in correspondence.

169. Mr Kosari said in his evidence that such a document did exist although Mr Hickey-Baird noted that HMRC’s original enquiry letter dated 26 January 2021 requested “copies of any project documentation” and no document explaining the plan was provided in response to that.

170. Whilst there is some force in Mr Hickey-Baird’s submission, on balance we think that the explanation provided to HMRC between February 2021 and May 2021 provides sufficient evidence of the proposed activities and the method or plan to achieve the objects in order for there to be a project for the purposes of the Guidelines. However, we do not need to reach a decision on this point given our conclusion that the objectives do not constitute an advance in science or technology.

171. A further objection from Mr Hickey-Baird is that, even if there were a project which constituted R&D, Tills Plus has not identified the beginning and end of the project. Again, this is not relevant given our conclusions but we would accept that the project started when the services agreement was signed in May 2017.

172. Mr Kosari’s evidence was the project finished approximately three years later (and so after the end of the 2019 accounting period). We have no reason not to accept his evidence on this point.

173. In particular, we do not accept Mr Hickey-Baird’s submission that the start and end of a particular R&D project can only be assessed by a competent professional in the field. This is not referred to in paragraphs 33 and 34 of the Guidelines which provides some commentary on when a project starts and finishes and we can see no reason why a person who is not an expert in the relevant field cannot nonetheless identify the start and end dates for the project.

174. Nonetheless, for the reasons we have explained, our conclusion is that the work sub-contracted by Tills Plus to iWond does not qualify as R&D and so the enhanced reliefs provided for by s 1044 CTA 2009 (Additional Deduction) and s 1054 CTA 2009 (Payment of Tax Credit) are not available.

DECISION

175. Tills Plus made payments to iWond within the meaning of s 1133 and s 1136 CTA 2009 as a result of its obligations in respect of iWond's invoices being discharged and Tills Plus assuming a corresponding obligation (by way of loan) to Mr Kosari.

176. The expenditure was not however on R&D so no enhanced reliefs or tax credits are available.

177. The closure notices in respect of the accounting period ended 30 November 2018 and 30 November 2019 (and the amendments to the tax returns made by those closure notices) are therefore upheld.

178. As accepted by HMRC, the appeal made by Tills Plus against the assessment made under paragraph 52 of Schedule 18 to Finance Act 1998 is allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

179. 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.

**ROBIN VOS
TRIBUNAL JUDGE**

Release date: 11th JULY 2024