TC04328

Appeal number: TC/2014/01854

Corporation Tax – small and medium-sized enterprises – research and development costs – whether deductible – Yes – Section 1119 CTA 2009, Commission Recommendation (EC) No 2003/361 – Appeal allowed

FIRST-TIER TRIBUNAL
TAX CHAMBER

PYREOS LTD **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE & CUSTOMS **Respondents**

TRIBUNAL: JUDGE KENNETH MURE, QC
MR S A RAE, LLB, WS

Sitting in public at George House, 126 George Street, Edinburgh on 8, 9 and 10 December 2014

Appellant:- John Tallon, QC, instructed by Johnston & Carmichael LLP

Respondents:- Graham MacIver, Advocate, instructed by Eric Brown, Solicitor, Office of the Advocate General for Scotland

DECISION

Preliminary

1. This appeal relates to two claims by the Appellant company for tax relief for expenditure on research and development, viz £108,977 for 2010 and £238,697 for 2012. During the Years in question a substantial shareholding (between 25% and 50%) in the Appellant was owned by Siemens Technology Accelerator GmbH ("STA"). It was agreed at the outset that the material issue for us to determine was whether STA was a "venture capital company". As the appeal unfolded a related question of the economic and financial independence as a matter of fact of the Appellant from the Siemens Group of companies, emerged.

The law

2. Part 13, chapters 2-4, of the Corporation Taxes Act 2009 provides for tax relief on research and development costs for "small and medium-sized enterprises" ("SME's"). These are defined in Section 1119, which provides:-

> "(1) In this Part 'small or medium-sized enterprise' means a micro, small or medium-sized enterprise as defined in Commission Recommendation (EC) No 2003/361, but subject to the qualifications in section 1120." [It was agreed that these qualifications are not material to the matters in dispute in this Appeal.]

In the Annex to the Recommendation it is provided in Article 3, para 2 —

> "'Partner enterprises' are all enterprises which are not classified as linked enterprises within the meaning of paragraph 3 and between which there is the following relationship: an enterprise (upstream enterprise) holds, either solely or jointly with one or more linked enterprises within the meaning of paragraph 3, 25% or more of the capital or voting rights of another enterprise (downstream enterprise).

However, an enterprise may be ranked as autonomous, and thus as not having any partner enterprises, even if this 25% threshold is reached or exceeded by the following investors, provided that those investors are not linked, within the meaning of paragraph 3 either individually or jointly to the enterprise in question:

(a) public investment companies, venture capital companies, individuals or groups of individuals with a regular venture capital investment activity who invest equity capital in unquoted businesses ('business angels'), provided the total investment of those business angels in the same enterprise is less than EUR 1 250 000."

Paragraph 3 defines "linked enterprises" which include —

> "'Linked enterprises' are enterprises which have any of the following relationships with each other:
>
> (a) ….

(b) …

(c) …

(d) an enterprise, which is a shareholder in or member of another enterprise, controls alone, pursuant to an agreement with other shareholders in or members of that enterprise, a majority of shareholders' or members' voting rights in that enterprise."

3. It was accepted for the purposes of the appeal that the Appellant was not affected by the "linked enterprise" rule. Rather, what was material was the sense of "venture capital companies". If STA so qualified, then the Appellant company was not a "partner enterprise", and the relief sought fell to be granted.

4. Reference was made to only limited case-law on the topic, viz:-

Italian Republic v Commission [2004] ECR I-04355;
Pollmeier Malchow v Commission [2004] ECR II-03541; and
HaTeFo GmbH v Finanzamt Haldensleben (date of decision 27 February 2014)

In fact only *HaTeFo* relates to the present and applicable form of the definition.

The evidence

5. Evidence was taken only from two witnesses, **Dr Ann Simon** and **Mr Christian Weisinger**, both of whom were called by the Appellant. Extensive documentation has been produced, and in response to our enquiry Counsel indicated that they both are content that we could refer to it all even although it had not been spoken to in oral evidence.

6. Dr Simon gave her evidence first. She is Chief Financial Officer of the Appellant company. Her professional background is in both science and corporate finance. She has a PhD (Cantab) in physics and undertook scientific research work thereafter both in the UK and in Germany. Thereafter she qualified as a member of the London Stock Exchange. She has worked in several corporate financial and investment concerns including Cazenove, and has held various directorships and consultant roles. Her interests are in technology and healthcare, assisting venture capital investment therein. Previous to her working for the Appellant company she had worked with Sphere Medical, another company supported by STA.

7. Her involvement with the Appellant company started in about 2011. While she was not able to speak directly to the company's administration and management in 2010, she had made extensive reference to its documentary records, and she felt confident that she could deal satisfactorily with this in her evidence.

8. Dr Simon read out and adopted the terms of her Witness Statement which is produced as Core Bundle/7. At the outset she explained the role of STA in the Siemens Group. There would be items of intellectual property, such as scientific processes, developed by Siemens which were not ultimately of use by them in their various business operations. These would be transferred to STA which would

establish companies to further their development with a view to their eventual sale, introducing venture capital and similar support to achieve this. In particular Dr Simon emphasised that in 2010 and 2012 the Appellant's management and administration was not directed by STA but by its own Board, on which STA had only one Investor/Director. The other shareholders of the Appellant had an equal "say" through their board representatives. (Other Investor/Directors as defined – see Doc 7 cl 8). The shareholding of STA had diminished from an original 85% over the years to a current 36%. In 2010 it had fallen from 49.98% to 49.65% and in 2012 from 44.46% to 36.59%.

9. Dr Simon acknowledged that there had been limited trading between the Appellant and Siemens. That she considered was *de minimis* in relation to the scale of Siemens' operations and insignificant in relation to Pyreos' overall sales.

10. Pyreos, Dr Simon explained, specialised in electrical sensors and modules. The company had a strong research emphasis. It sold its products internationally. It was not yet profitable (after six years' trading). It required external funding by venture capital investors. To date total funding of £16.1M had been secured, of which £4.5M (28% approx) had come from STA. Its Investor/Director had behaved strictly as a venture capital investor. The objectives of all the investors in Pyreos was to achieve an "exit event" producing a financial return on their capital investment. Pyreos' own R&D work has expanded the business, with two-thirds of its staff being involved in research and production development.

11. Initially STA held 85% of Pyreos. This is now reduced to 34%. Further investment was introduced since 2007. Its continuing relationship with STA and the Siemens Group was on an arms-length basis, Dr Simon stressed. Its other investors, Braveheart Ventures, the Scottish Venture Fund, and later Robert Bosch, Seraphim Capital and Noble Venture Finance, had equal rights in its management and control. Whenever another venture capitalist was introduced, new Articles of Association would be drawn up. In effect there would be a radical restructuring of the company. No single investor, including STA, had a controlling right or veto power. STA was in no way dominant nor had it undue influence. The executive management of the company was undertaken by a small team including the CEO, and CFO, and Chief Technical Officer. The investors and Investor/Directors are not involved.

12. Dr Simon described the general relationship between STA and the companies in which it invested. Presently it holds a stake in seven such companies. Since its inception in 2001 it has invested in 15 companies and in 2012 it held investments in 12 companies. The technology developed by these companies has originated within the Siemens Group, but in areas in which Siemens has no direct or strategic interest. Pyreos fits this category. STA's objective is to profit from these non-core technologies and acts as any other venture capital investor. Siemens business focus is as a systems integrator whereas Pyreos is a components business operating outwith Siemens' areas of activity. While STA was involved in the initial establishment of Pyreos, it was not involved in its executive management. Dr Simon considered that all along STA adhered to "best practice" as an investor and in accordance with its

contractual rights. She noted that Pyreos' audited accounts for 2009 indicated that "there is no controlling party", with which she agreed.

13. Interests in the intellectual property transferred to Pyreos initially were regulated by the formal agreement of 2007 (Doc 9 – "Intellectual Property Transfer Agreement"). Pyreos had full control of it. It was not subject to re-acquisition by STA or the Siemens Group while Pyreos continued to use and develop it. Pyreos has not entered any agreement affecting its ability to exploit it.

14. The Siemens Group and STA are commercially independent of Pyreos. There are no preferences or other obligations affecting Pyreos' business. While Pyreos sold a small percentage of its products to Siemens, these were not significant to either's operations. Pyreos had outsourced to certain suppliers including Siemens but all on an arms-length basis. While this was significant over a short period to Pyreos, it was trivial so far as Siemens was concerned.

15. In the "spin out" process in which Pyreos was established, it acquired three process patents and "know-how" from Siemens relating to infra-red sensors, all in terms of the IP transfer agreement in 2007. Pyreos itself developed and invested in this technology without any support or involvement by the Siemens Group. The product strategy was determined by Pyreos' management independently, driven only by external customers' requirements.

16. At the conclusion of her Witness Statement Dr Simon summed up her view in support of Pyreos as being an independent entity, and STA being a normal venture capital company, and only one of several experienced independent venture capital investors in it. In short Pyreos' Board operated independently. Other than the initial investment by STA, the Siemens Group had no other financial interest by way of royalties or otherwise from Pyreos. The IP transferred to Pyreos was for its exclusive use. STA had no special rights in relation to Pyreos. It's status was the same as other investors, Dr Simon emphasised. The Siemens Group could not secure control of Pyreos or its assets. Its Investor/Director had no special rights over those held by other Investor/Directors. Any commercial arrangements with the Siemens Group had been concluded at arms-length and in the normal course of business.

17. In cross-examination Dr Simon adhered to her earlier evidence. Some aspects were developed further. She explained that she had never worked for STA or the Siemens Group but previously to Pyreos she had worked for another STA "spin off", Sphere Medical. That had been sold via an IPO (Initial Public Offering) in 2011, and then Dr Simon had joined Pyreos, acquiring executive powers in 2012. She insisted that she was able to speak to STA's affairs via her knowledge of it from working with both Sphere and Pyreos. She considered that Pyreos' Articles of Association prevented any one investor from exercising undue influence. An Investor/Director had only one vote. STA had all along acted in accordance with best corporate governance, she stressed. It did not have any disproportionate influence. While Pyreos had in 2010 outsourced (at arms-length) half its supplies to Siemens, it was trivial in value to Siemens.

18. Eventually when Siemens developed a process which became removed from its main business activities, it sought to "spin it off" via STA. In Pyreos' case STA's shareholding had diminished from 85% to just over 30%. She spoke to the Investment Agreement (Doc 7) and the IP transfer (Doc 9). Siemens' retained interest in the IP was conditional and very restricted in effect. On extra investment by other venture capitalists STA's interest in Pyreos diminished correspondingly.

19. Dr Simon noted the initial (August 2007) business plan (Doc 14). Its purpose was to give information to potential investors. The IP transfer took place, she explained, over an extended period of about 18 months. She explained the technical nature of the "sputter" process. She spoke also to the 2009 business plan (Doc 24). Patents had been registered in Germany because both the Patent Agent and Chief Technical Officer were both resident there and spoke German. In the Information Document (Doc 27) there was reference to Siemens as being a "strategic partner" of Pyreos. Notwithstanding, Dr Simon insisted that Pyreos was independent of Siemens – all IP had been transferred. However, the association with Siemens was useful for promotional purposes. All continuing relations with Siemens, she maintained, were at arms-length.

20. In a brief re-examination Dr Simon confirmed that she had previous working experience of VCC's and other investment vehicles, particularly when she worked for Cazenove. She confirmed that the processes, when acquired from Siemens, were embryonic, not complete. She indicated that in terms of the Articles of Association adopted in December 2007 (doc 20) each share conferred one voting right without any complication from "swamping rights". STA held less than 50% of the shares and voting rights at the material times. It did not use its voting power to change Pyreos' business direction. Pyreos used fully the IP transferred: that was its business.

21. Dr Simon indicated that Pyreos was too small to be of strategic value to STA or the Siemens Group. She agreed with the description of Pyreos as a UK backed venture company. STA had no special rights or power over it.

22. **Mr Christian Wiesinger** next gave evidence. He, too, read his Witness Statement (Core 8). There was in attendance a German interpreter, Mr Danku, whose assistance, it was thought, might have been required in relation to technical language. In the event his intervention did not prove necessary.

23. Mr Wiesinger is the financial director of STA and has held that office since its incorporation in 2001. He serves also as Investor/Director of Pyreos and Odos Imaging Ltd, which is also within STA's company portfolio. He confirmed that STA is a wholly-owned subsidiary of Siemens AG and runs its venture capital interests. STA's purpose is to commercialise technology and IP originating from Siemens, but which it itself does not wish to pursue. STA takes these over at their initial stage and endeavours to make profits from them. (This is the essence of STA's Objects, which are set out in para 5 of his Witness Statement.)

24. STA is a separate company within the Siemens Group, with its own directors (two) and managers. It is the holding company of those subsidiaries to which

Siemens "unwanted" technological "know-how" and IP is "spun off". Its activities are supervised by a committee of Siemens and non-Siemens members and a shareholder delegation.

25. STA's role is to acquire technological "know-how" and IP from Siemens research, in which the Group has no continuing interest. After eliminating any possible internal use STA then proceeds to commercialise it, by sale or licensing or by "start-up" companies supported by external investors. STA evaluates these users. Creating an autonomous company is the most complicated route to commercialisation. A potential high return is required with low market risks. The nature of the divestment has to be gauged carefully, having regard to any continuing needs of the Siemens Group. STA seeks to establish "set up" companies as minority investments by attracting external investors. It seeks to ensure that the technology or IP is fully assigned, with any interest retained by Siemens being limited. STA does not retain any special shareholder right or control of the Boards of these companies. Typically it recruits experienced CEOs external to the Siemens Group. In this way STA's stake in the company diminishes. The exit route may be directly to external parties or via a stock-market placing. Siemens Group has not re-acquired any interest in any of these "spin off" companies.

26. Mr Wiesinger noted two exceptions where STA had retained a majority interest in "spin off" companies. In one, funding arrangements had failed at about the time of the 2009 financial crisis. After buying it back, the company had to be dissolved. In the other, there were problems affecting financial backers too. While STA still holds a majority shareholding in it, it is insufficient to achieve control because of another significant interest.

27. Finally, Mr Wiesinger referred to HMRC's observations. While all STA's investments related to technologies developed by the Siemens Group, these were fully assigned to the subsidiary companies. STA had no special rights in these subsidiaries, nor had it executive control.

28. He accepted that ordinarily STA was actively involved in the initial stages of a subsidiary, but this was pre-incorporation. Subsequent involvement tended to be at arms-length. He rejected the description of STA's investment in subsidiaries as "strategic" when that interest was intended to diminish and indeed did so following further external third-party investment.

29. We noted that Mr Wiesinger had considered and approved the terms of Dr Simon's Witness Statement.

30. In cross-examination Mr Wiesinger spoke of the means of Siemens divesting itself of unwanted technology. Finding a purchaser for an incomplete process was complicated. Investors might view the prospect as too risky. The process of "spinning-out" was a possible means of deriving value from the unwanted technologies at a later stage. It was demanding in that not only a company would have to be set up, but also personnel recruited and funding raised. STA provided an alternative means of deriving some value from incomplete technologies.

31. Mr Wiesinger acknowledged that the association with the Siemens Group would be used in connection with marketing purposes. However, STA's involvement declined after the new company was set up. Typically such a company (like Pyreos) had an arms-length relationship with Siemens. He confirmed as accurate the comments of Dr Simon in the penultimate paragraph of her reply to HMRC dated 26 November 2012 (doc 55).

32. In re-examination he was referred to the items produced at Doc 84. He indicated that these related to marketing the technologies.

33. As explained in our conclusion we found both Dr Simon and Mr Wiesinger entirely satisfactory witnesses. The foregoing narrative of their evidence may be looked upon as representing our **findings-in-fact**.

Submissions

34. Both the Appellant and HMRC had lodged Skeleton Arguments in advance (authorities nos 9 and 10). They adhered to these and addressed us further in turn. They were in agreement that the crucial question was whether STA was a venture capital company ("VCC") or not: that was resolutive of the status of Pyreos as an SME and its entitlement to tax relief for expenditure on research and development under CTA 2009. The Parties' arguments may be summarised as follows.

35. In his introductory remarks Mr Tallon for the Appellant observed that UK domestic law adopted the terms and definitions of the European Commission Recommendation no 2003/361. (We note the qualifications to Section 1119 CTA 2009 contained in Section 1120.) While it was accepted that STA was a "partner enterprise" as it held over 25% of Pyreos' shares, that company could still be *autonomous*. It was agreed by Parties that STA was not "linked" to Pyreos for the purposes of the definition. Mr Tallon referred us to the terms of the European Recommendation and Recital 10. (Reference to *Google*, he observed, had been unhelpful in providing a satisfactory definition of a VCC.)

36. Mr Tallon commended the evidence of both witnesses as being honest and straightforward. He submitted that on the evidence there was no significant interaction between the Appellant company, Pyreos, and STA or the Siemens Group after the transfer of the intellectual property.

37. We then heard from Mr MacIver. He urged us to refuse the appeal and uphold the Closure Notice, which had the effect of denying tax relief. He confirmed that the sole issue was whether or not STA was a VCC. The availability of tax relief for research and development depended on the interpretation of the Commission Recommendation (EC) no 2003/361 (authorities no 1). That interpretation, he suggested, should be purposive. Pyreos and STA were not "linked", it was agreed, for the purposes of interpreting Article 3(2). STA's holding was in the 25-50% range. Such a holding means that the subordinate company "<u>may</u>" be ranked as autonomous: it was not mandatory, but rather a matter of discretion, Mr MacIver suggested. Mr MacIver then assessed the witness evidence. While he did not seek to "attack" either witnesses' credibility or reliability as such, he urged us to be circumspect where

aspects of evidence were outside the witnesses' direct knowledge. He suggested that Dr Simon had been somewhat cavalier in her account, in particular at para 10 of her Witness Statement about the relationship between STA and Pyreos. Her view stemmed from a review of documentation, not an immediate familiarity with the matters in question. The decision as to the status of STA as a VCC was for the Tribunal to determine on the whole evidence and arguments, not for Dr Simon.

38. Mr MacIver then considered the terms of the Recommendation. He noted recitals 9 and 10. These, he submitted, indicated that only genuine SMEs should benefit from the grant of tax relief for research and development. Tax relief should not be available where a taxpayer has support from a larger entity. Here the economic factors were paramount.

39. Mr MacIver referred next to three decisions of the ECJ, none of which, he acknowledged, were factually "on all fours" with the present appeal. (He acknowledged also that the first two considered the earlier wording of the Recommendation in relation to SME status.) In the appeal of the *Italian Republic* it was emphasised at paras 50-51 that only genuine SMEs should benefit. Access to economic power and ability to raise finance were crucial. In *Pollmeier Malchow* access to funds and financial assistance from a larger economic entity were again stressed in determining a taxpayer's economic status. Finally, Mr MacIver referred to *HaTeFo GmbH* which considered the Recommendation in its present form. There again the Court stressed economic factors in determining SME status and entitlement to consequential benefits. In light of these decisions he maintained his argument that a purposive approach should be adopted.

40. Mr MacIver then referred us to HMRC's Guidance as to the meaning of a VCC. (See Doc 7, CIRD92100). He acknowledged that this statement was not, of course, law. Reference is made there to the "strategic aims" of a business group. (That phrase is not echoed in the legislation.) He argued that the existence or purpose of STA was indeed strategic to the business of the Siemens Group. STA was a means of making the "orphan" technologies of Siemens profitable. It was a wholly-owned subsidiary of Siemens. It used Siemens' (unwanted) technology. The initial link *via* the transfer of intellectual property was preserved: in certain prescribed circumstances rights to the intellectual property transferred could be re-acquired by Siemens. (See Doc 9, cl 2.6). Further, Siemens had assisted Pyreos at various stages of its business operations: an "Information Memorandum" (doc 57 p4) referred to Siemens as a "strategic partner". That, Mr MacIver submitted, reflected the commercial reality of the relationship with the Siemens Group.

41. The policy of the legislation was to assist genuinely independent SMEs. Pyreos should not and did not so qualify, Mr MacIver continued. The company did not have to face the ordinary commercial "head winds" because of STA and the connection with the Siemens Group. It did not face the difficulties identified in the policy.

42. Accordingly, Mr MacIver submitted, the appeal should be dismissed.

43. In his concluding address on behalf of the Appellant Mr Tallon referred firstly to the terms of the Recommendation. "May" where it occurs in Article 3(2) should be construed as "shall". If STA was a VCC then Pyreos should be ranked as autonomous in terms of that Article. There was no discretion to the contrary or a basis set out for its exercise.

44. Then Mr Tallon commended the evidence of Dr Simon. There was no good reason to be circumspect in considering it. Her evidence had been researched, and while she might not have had immediate personal knowledge of certain aspects, it was confirmed by documentation and, indeed, her account generally was confirmed by Mr Weisinger.

45. The change in the form of the EC Recommendation should be acknowledged as not supporting continuity in its interpretation, Mr Tallon suggested. Recital 9 was satisfied in the circumstances of the present case. Recital 10 acknowledged VCCs as having a positive role in business financing. Recital 12 was not of general application.

46. Mr Tallon then referred to HMRC's guide (CIRD 92100 Authorities 7). That suggests (para 4) that in the context of a large company group HMRC would question VCC status of a member company where its activities were "closely" linked with the "strategic aims of the group business." That, he suggested, contrasts with the role of STA within the Siemens Group. STA was involved in the process of divestment of technology by Siemens, and not the expansion of the Group business. STA was not involved in the Group's core business. After divestment of the technology there was no continuing benefit to Siemens. Except in limited and exceptional circumstances divestment was absolute. Any subsequent contact between Pyreos and the Siemens Group had been trivial and conducted at arms-length, Mr Tallon added.

47. The case-law noted by Mr MacIver was not relevant in Mr Tallon's view in determining the (sole) issue of whether STA was a VCC. The cases did not deal with VCC status. Only *HaTeFo* considered the present form of the Recommendation.

48. The User Guide published by the EU (Doc 83) noted by the Respondents had stressed access to capital as disqualifying a company from being an SME. (Page 2 of that document contains a disclaimer to the effect that it has no legal value and that it represents only the views of its author.) Here, the Siemens Group and STA did not in fact or in law "control" Pyreos. It had at the material time ie 2010 and 2012, other investors. The ownership by Siemens of STA did not determine whether or not it was a VCC: rather that depended on what STA actually did. STA gave the Siemens Group a means of disposing of non-core, non-strategic intellectual property. Pyreos, according to Mr Weisinger, was a "minnow". The prospect of a return of IP rights to Siemens by Pyreos was a very remote eventuality, Mr Tallon observed, and outwith STA's control. Its value was likely to be small and fell to be re-acquired at market value.

49. Pyreos, Mr Tallon concluded, was at the material time a free-standing company with its own directors. The role of STA was to provide finance to make it and other

fledgling companies "fly". The profit derived by STA was on the sale of shares in the fledgling companies. In Mr Tallon's view, HMRC had relied mistakenly on their Guidance in deciding that STA was not a VCC. Their interpretation of the facts was distorted, he added.

50. In short, Mr Tallon submitted that STA was a VCC within the sense of the European Recommendation. Accordingly the tax relief sought should be granted and the appeal should be allowed.

Conclusion

51. This appeal relates to tax relief sought by the Appellant company in respect of research and development costs in terms of the CTA 2009, and that on the basis that it is a "small or medium-sized enterprise" in terms of Section 1119. That provision refers in turn to Commission Recommendation (EC) No 2003/361. Its original form has been superseded by the provision included in the authorities (no 1). The definition of an SME is set out in Title 1 thereof. A relevant consideration is the ownership of its share capital. In the present appeal the company was held by STA to the extent of just under 50% of its shares in 2010 and reducing to about 36% of its shares in 2012.

52. A shareholding by STA in excess of 25%, although less than 50% control, would exclude Pyreos from qualifying as an SME unless that shareholding is held by a venture capital company, all as prescribed in Article 3. Thus the crucial issue arises, *viz* whether STA is a venture capital company. It is accepted that if STA so qualifies, then Pyreos, the Appellant, is entitled to the tax relief sought, and the appeal should succeed.

53. A preliminary point of interpretation of the provisions relates to the sense of the word "may" in the opening words of the second sub-paragraph of Article 3(2) – "… an enterprise may be ranked as autonomous …". While Mr Tallon argued that it meant "shall" and that it did not allow any discretion, Mr MacIver considered that "may" was not mandatory.

54. We read the word as permissive. There is no prescribed restriction as to its application nor is there reference to any discretion or the basis on which that might be exercised. Accordingly we consider that the benefit of the provision should be given, reading "may" as equivalent to "shall" or "must". That view, we think, is also consistent with the context of categorisation of only financing institutions, having only a pecuniary interest. We note also the later wording in Article 3(2), *viz*:

> "There is a presumption that no dominant influence exists if the investors listed in the second sub-paragraph of paragraph 2 are not involving themselves directly or indirectly in the management of the enterprise in question, without prejudice to their rights as stakeholders."

In any event we note as the overriding principle that the provision is intended to benefit genuinely autonomous companies. We have not been referred to any definition of VCC in this context. Nor were we addressed at length on its

interpretation by counsel. We note that there is no definition in the EU Recommendation or the subsequent 2014 Report (Authorities 8). The sense of the concept is, we think, a matter within judicial knowledge. We construe it in its dictionary sense of a company whose interest is in maximising the financial return on its investments in new businesses and speculative ventures. Matters of commercial risk will motivate it too, and no doubt the date of realisation of potential benefits. But the day-to-day executive management of the subject concerned in which it invests, would not. The nature and pattern of their trading, other than their profitability, would not ordinarily be a matter of concern. A VCC's interest is in short, in the balance sheet value and revenue generation of its investments, and the ability to realise these.

55. We have no hesitation in accepting the broad accounts given by Dr Simon and Mr Wiesinger. They were consistent and entirely candid and credible in our view. The narrative of their evidence may be accepted as our findings-in-fact, as already indicated, for purposes of determining the factual issues arising.

56. On the basis of that evidence STA in our view meets the criteria of a VCC as we understand the term. STA's objective is to maximise the financial worth of the Siemens Group's orphan technology. That IP is not of use within the Siemens Group's own business structure. Any continuing commercial contact between the Appellant, Pyreos, (or for that matter the other "fledgling" companies launched by STA) and the Siemens Group was at arms-length. So far as the Siemens Group was concerned its value was so trifling as to be commercially irrelevant. Pyreos did contract for supplies from Siemens, and while that was of greater significance for it (Pyreos), it was short-term and conducted at arms-length.

57. The management of Pyreos at the material time was conducted independently of STA. While STA no doubt had financial hopes for the Appellant, it did not involve itself in the matter of routine management or the pattern of trading. We accept that Mr Wiesinger as Investor/Director did not exercise any powers to influence any matter extraneous to enhancing the value of STA's investment nor had he any extraordinary powers to do so as compared with the other Investor/Directors.

58. We note too that whenever a new investor was introduced into Pyreos, its Articles of Association were changed. In effect the pattern was to "restructure" the company and its powers and regulation to meet any new ownership structure.

59. In reaching our conclusion we have interpreted the term venture capital company as raising issues of fact and law. We have considered it in relation to the changing pattern of ownership, diminishing over the years, and our comments, we consider, are apt in respect of both the Years 2010 and 2012.

60. For these reasons we consider that Mr Tallon's argument is well-founded. STA in our view meets the criteria of a venture capital company in this context. We find too that Pyreos Limited was autonomous in the context of Article 3(2) of the Commission Recommendation. It follows that as a "small or medium-sized enterprise" in the context of Sections 1119 and 1120 CTA 2009 the Appellant, Pyreos Limited, is entitled to the tax relief sought. The Appeal is allowed.

61. 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.

KENNETH MURE
TRIBUNAL JUDGE

RELEASE DATE: 18 March 2015