2025

R&D Tax Relief for Construction

R&D and DSIT Analysis in the Construction Industry

WILBY JONES

An Overview of R&D in Construction

There is a clear link between the R&D scheme and the construction industry – in fact the two landmark R&D cases that have gone to court (both of which one by the tax payer) were construction companies – Quinn Construction Limited and Collins Construction Limited. It is important to note that likely 80-90% of your work WILL NOT qualify for the relief. It is also important to note that R&D is not an all or nothing relief, we look for aspects of an individual project – not the whole project.

Areas we find challenges in are:

Sustainability & listed buildings

Complex engineering to overcome site problems

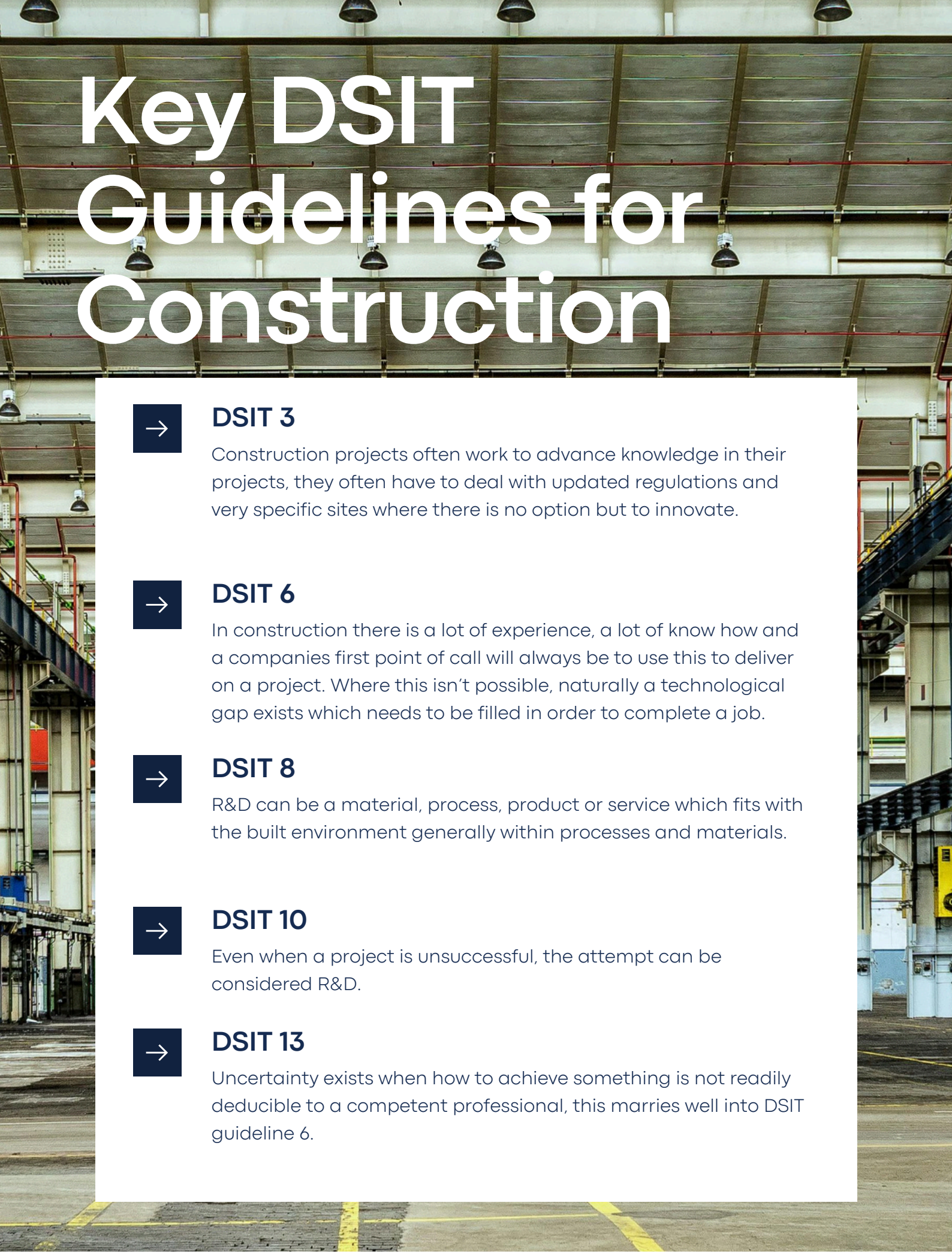
Difficult site conditions

Changes in build regulations

Value engineering using complex combinations

New build methods

This is not an exhaustive list, nor is it encompassing and should be viewed as a starting point – each project needs to be assessed on its own merits.



Key DSIT Guidelines for Construction

DSIT 3

Construction projects often work to advance knowledge in their projects, they often have to deal with updated regulations and very specific sites where there is no option but to innovate.

DSIT 6

In construction there is a lot of experience, a lot of know how and a companies first point of call will always be to use this to deliver on a project. Where this isn't possible, naturally a technological gap exists which needs to be filled in order to complete a job.

DSIT 8

R&D can be a material, process, product or service which fits with the built environment generally within processes and materials.

DSIT 10

Even when a project is unsuccessful, the attempt can be considered R&D.

DSIT 13

Uncertainty exists when how to achieve something is not readily deducible to a competent professional, this marries well into DSIT guideline 6.

HMRC Construction Examples

You will notice that HMRC use construction examples frequently, for example on guidance for sub-contracting rules the following are used (these are included to show R&D is rife within the construction industry, not as illustrative to your projects):

Overseas Restrictions

A construction business sends a team of UK engineers overseas for 18 months to work on a specific construction project for a client, which includes developing new construction techniques on-site. The UK engineers continue to be paid via UK payroll and also work with locally based EPWs who need to be present on-site to support the R&D activity. The overseas restrictions do not apply to staff costs so does not affect the payment for the UK engineers. As the EPWs need to be on-site, and the site is abroad (and clearly can't be replicated in the UK) then the EPW costs will also satisfy CTA09/1138A although the business should be prepared to state why they need to be on site

Innovating for Foreign Markets

A company is conducting R&D to develop a prefabricated wall panel for an overseas market which has different regulatory standards/ building practices to the UK. Development requires the company to work closely with construction companies local to this market to evaluate the constructability of prototypes. This clearly requires conditions (the presence of alternative construction practices) that are not present in the UK. It would be wholly unreasonable to replicate these conditions in the UK and these conditions exist in places outside of the UK. Therefore, this activity would satisfy CTA09/1138A(2) if undertaken in a location where the necessary conditions arise.

Addressing Parameters in Building Projects

Company A, whose trade is letting accommodation in buildings, commissions Company B, a construction firm, to supply a landmark new building. The building's size, location, and required performance parameters (carbon neutrality, safety features, lifespan etc) mean that company B will need to conduct R&D. While company A appreciates this, it does not, in contract negotiations or the eventual contract itself, specify this work in anything but a general sense. It does not state what it requires to be done or how this should be done (and it neither uses internal expertise nor seeks external input, for example from consultants or partners, on this). What is important to Company A is the result, ie that the building performs as required. In approaching contract negotiations with potential suppliers, Company A takes expert advice on Company B's capability to carry out the required work, looking at their track record and general proposals. But it does not take advice on the detail of the R&D, nor does it plan or scope the R&D and it would not be able, for example, to state what advances might need to be sought or how that is to be done. It does not have an R&D project. Company A is not in a position to intend or contemplate that R&D of a particular "sort" (as referred to in section 1133(2)(c) will be undertaken. In this instance Company A does not therefore meet the definition for contracting out R&D and any claim would rest with Company B.

Contracting Out Net Zero Design Elements

Company A is a construction company albeit one that does not have the required resource to design elements of the landmark building in Example 2a which meet certain net zero criteria, then where competent professionals of company A input into the contractual requirements for the work contracted out to Company B, this may be considered evidence that Company A was clearly intending or contemplating R&D was required (on the basis that those individuals providing input from Company A are considered to be competent professionals in the specific area of R&D that will be undertaken by Company B).

Wilby Jones Experience

Many companies will talk about low enquiry rates, and success – we have a lot of those examples and we are lucky to have over 200 clients in the built environment. It is more important for you to have examples of where HMRC have challenged our work in the built environment, specifically in construction. We have been able to defend all claims in the built environment with no changes to the claim value. We have taken the three enquiries we have dealt with in the last year and provided a synopsis.

Client 1

R&D Claim Value	**£205,155.23**
Turnover	£39m
Location	Kent
Enquiry outcome	Successfully overturned

1. Development of a methodology to raise and reuse an existing transfer beam in a listed property. This sub-project was the development of a methodology to successfully raise the load bearing transfer beam within a listed building.

The normal routes, and therefore the baseline, for this kind of work prior to this project were:

a) Adding structural mass below the beam to create stability within a structure, this is a well documented and proven strategy.

b) Propping the beam and jacking the structure upwards before pinning in place through the existing beam into the walls of the building. Again, this is a standard method. The company developed a method of raising the beam from above without the need for props, jacks or additional support which would reduce ceiling height below the structure.

2. The client worked on the restoration of an existing roman fort. They aimed to develop a hybrid structure allowing them to achieve a 60 degree rammed earth rampart structure. This was necessitated by the current structure and proposed method by Heritage England being impractical due to the excessive risk of land slippage, which was not an option in an open-to-the-public setting.

Whilst this development centred around the replication of an existing method, no competent professional would be expected to be well versed in ancient Roman piling techniques, nor would these be useable in the building industry today due to health and safety regulations. Therefore, there was a defined gap in knowledge on how to achieve this particular structure, which led to a period of R&D and the development of a process to bridge this gap in knowledge.

Client 2

R&D Claim Value	**£646,897.00**
Turnover	£51m
Location	London
Enquiry outcome	Successfully overturned

1. The client sought to develop aspects of their bespoke washroom solution, to restrict acoustic levels, facing both spatial constraints and within stringent governing dimensions. To undertake this, they would have to undertake multiple sub-projects surrounding different aspects of their solution to ensure all requirements were met. The successful outcome of this project would see an industry-leading washroom solution that could overcome tight spatial and acoustic restraints whilst meeting governing dimensions not previously seen within the industry

2. The client developed ceiling panels for a specific luxury apartment design. they sought to develop a ceiling panel access point which allowed for access to hidden services and ceiling cables, with a design that met strict aesthetic and spatial requirements of the apartment. Despite the 45+ years within the industry, the project leaders had only seen something vaguely similar to this access panel and had no readily available information to aid the development of their design

Client 3

R&D Claim Value	**£274,241.53**
Turnover	£19m
Location	Essex
Enquiry outcome	Successfully overturned

1. The commercial facing project began in July 2020 with pre-commencement tasks, and concluded June 2022 with final handover to the customer. The R&D activities detailed in the claims made by the company fall within these time periods and appropriate apportionments have been made to ensure that a conservative estimate of project time has been allocated to the claim in line with Ss.33-34 DSIT Guidelines. Please see the attachments provided with this report for invoices and completion certificates evidencing these dates.

The areas of the roof where access was required would normally be carried out by a 'bird cage' scaffold access platform. This was indeed in place for part of the work however, due to material shortages, the safe scaffold access had to be removed to permit sequenced work to progress. Accordingly, alternative methods of safe access which allowed works below the work area had to be considered. This is the key difference in methods, and the adoption of 'climbing' equipment was borne from considerations regarding safe access to the work area while maintaining adequate progress below of other work elements, and allow relatively free movement in the roof itself.

Client 3

R&D Claim Value	**£274,241.53**
Turnover	£19m
Location	Essex
Enquiry outcome	Successfully overturned

2. The company sought to develop a novel and structurally stable foundation solution for use on weakened load bearing soil. The solution itself was a hybrid between two existing foundation concepts; raft and strip foundations, as the company determined that existing foundation solutions were not feasible. For example, a traditional strip foundation would be around 600mm wide and 1m deep. This wouldn't have worked as the foundation was required to sit on unstable ground and would not have sufficiently supported the building. Piled foundations were another potential solution, and this solution was deemed inviable for similar reasons; being that piled foundations would rely on the unstable ground for stability.

Finally a standard raft foundation solution was considered, which was also inviable due to the loadings imparted by the specified structure. The hybrid foundation subsequently developed was a 2m wide strip foundation, utilising the load bearing capacity of a strip foundation as well as the load distribution capability of raft foundations. As an untested and new application of foundation design, it was important for the company to follow proper procedure and to fully test the product alongside calculations to ensure that the technology functioned properly. To the company's knowledge, this blend of foundation types had never been attempted and therefore the development of a low penetration strip foundation solution was entirely novel for the industry and provides adequate precedent for undertaking large construction projects on poor ground conditions where there were limited cost efficient solutions available on the market.

Wilby Jones Limited
01603 213444
48 – 52 Surrey Street
NR1 3PA, Norwich