

## **The Infrastructure Forum's Taxation Working Group Advance tax certainty for major projects Consultation Response May 2025**

The Infrastructure Forum's (TIF) network brings together investors, operators, constructors, lenders and professional advisors involved in the development of Britain's critical national infrastructure.

The Taxation Working Group of The Infrastructure Forum, which has prepared this response on behalf of the Forum, comprises members from across the infrastructure sector – within both the public and private sectors – and is chaired by Andy Cox, Partner at Deloitte.

### **Introduction**

The Forum welcomes the Government's commitment to driving economic growth and its recognition that the development and renewal of critical national infrastructure is central to that growth agenda, while also helping to meet the UK's net zero and regional development goals.

The Working Group is encouraged by the Government's acknowledgment of the importance of incentivising investment through the UK's tax regime. The Forum has long argued that, while the UK must be innovative with its tax relief system, it must first prioritise increased simplicity, stability, and certainty for business. It is even more important for a business to fully understand and be certain of the tax it will pay than to provide it with tax reliefs. Investors are simply looking for certainty about what can be included in their modelling.

Any degree of tax certainty that can be secured in an uncertain world is positive. These proposals are therefore welcome news, and it is hoped they will allow businesses to gain upfront certainty over their tax affairs and help to incentivise UK investment.

Below, the Infrastructure Forum's Taxation Working Group sets out how such a system can best support the infrastructure sector.

### **Key Considerations**

There are several immediate and important points that the Working Group believes the Government should consider as it moves this proposal forward.

**First**, there is the practical issue of what level of certainty will be offered. By nature, clearances are likely to concern “grey” areas of tax. It must be clarified how HMRC is going to get the correct governance in place to give views on judgmental areas of tax where there is not clear legislative or Court guidance. In order to make commercial business decisions, companies need to balance optimism and pessimism in the cashflows that can be achieved; a degree of risk needs to be accepted in the analysis for the optimal outcome. Generally speaking, most companies will look for comfort around the “probable” cashflows e.g., they seek to calculate the “probable” tax outcome. The tax certainty process will not achieve its objectives unless HMRC can also give a clearance that is based on a “probable” tax outcome. If, by contrast, HMRC will only give a clearance based on a “virtually certain”, or “prudent” analysis of the tax position, then the requirements of the taxpayer and HMRC will not be aligned and the certainty process could be seen as redundant. In other words, HMRC will need to be prepared to agree a clearance based on a “reasonable” interpretation of the facts and legislation, and not seek to apply a higher bar such as “beyond reasonable doubt”).

This issue goes to the heart of why these clearances are needed. HMRC will need to step outside of its standard governance framework to reach agreements that may not be explicitly and unequivocally supported by tax legislation. If an interpretation was 100% backed by the legislation then, by definition, there would be no uncertainty and therefore there would be no need for a clearance.

**Second**, is it appropriate and does it follow appropriate processes to put HMRC in the role of approving the clearances? Is there a risk that HMRC’s objectives are too narrow, related to raising the appropriate amount of tax from taxpayers, to be able to consider the objectives of the clearance in the wider context. Would it be more appropriate for another Government department, or potentially an arm’s length body akin to the General Anti-abuse Advisory panel, to be the arbiter in these situations, with clear boundaries and objectives that would include, as set out in the introduction to the consultation, “supporting the UK as a hospitable investment environment”. Leaving the decisions with HMRC risks them acting as both judge and jury in the process.

**Third**, how can HMRC get sufficiently comfortable with a tax analysis when, as a matter of fact, much/all of the expenditure will not have been incurred and the analysis is based on planned expenditure. As an example, in the case of tax depreciation, if an offshore wind farm seeks clearance on whether it qualifies as a long-life asset, how will that be discussed or agreed in the absence of a definitive, settled view? Equally, for a nuclear power plant, the key issue is the split between short-life, long-life, and non-qualifying spend. These are complex areas where it has proved difficult to reach agreements even after expenditure has been incurred - how will HMRC be able to provide meaningful comfort on such matters within a reasonable timeframe?

**Fourth**, the longevity of the clearances is also critical. Paragraph 4.23 incorrectly states that “for some major projects the lifespan of the investment may extend beyond the five-year maximum

clearance length proposed.” In reality, virtually all major infrastructure projects are likely to exceed five years in duration.

While the proposal states that clearances won’t be invalidated by “small changes” and that renewals should be possible if the “facts and key assumptions haven’t changed,” these criteria are potentially highly subjective. Major projects will almost certainly experience more than minor changes, including changes in facts and key assumptions. The certainty should instead be granted for the life of the project, or at least for a 15 or 20 year period, with the presumption that it will continue to apply, unless there are fundamental changes that justify a review.

Paragraph 3.11 proposes that a change in law would invalidate a clearance. This undermines one of the core benefits of having a clearance in the first place which is to protect the taxpayer from a challenge through the Courts – it doesn’t make sense to have a clearance that HMRC are theoretically bound to comply with if it can be circumvented by HMRC taking a different taxpayer to Court. While it is understandable that it is not possible to bind a future government from making legislative changes, clearances should not be invalidated by case law developments or changes in judicial interpretation. Such changes should not retroactively affect agreed positions.

**Fifth**, the binding nature of the ruling should be optional for the taxpayer. If HMRC issues a ruling that the taxpayer finds acceptable, the taxpayer should be able to choose to be bound by it, but that needs to come with some upside around more flexibility on the certainty of application/renewals (points 1, 2 and 3 above). However, a taxpayer cannot be expected to accept a binding ruling without first knowing its content, especially when no right of appeal exists. Without that safeguard, very few would enter the process in the first place.

**Sixth**, some of the most significant challenges on major projects are related to similar procurement and delivery models. Often, these tax issues are addressed in isolation by individual taxpayers during the bid phase. It would be far more efficient/commercial if the appropriate tax treatment for a given model should instead be established in conjunction with the bid process. This is something the Government should integrate into its broader approach to providing tax certainty; however again it would require certainty being provided based on a “probable” threshold rather than a “virtually certain” threshold otherwise taxpayers will not take up the comfort and instead seek to challenge the position through their tax filings. There is a useful precedent in the case of PFI schemes, where enough clearances on a relatively standardised basis helped to create a degree of precedent and predictability. The oil and gas legislation also operates in a similar way.

### **REITs for Infrastructure / Infrastructure Investment Trusts (IITs)**

Another way that the government could achieve its goal of providing tax certainty on major projects is through the introduction of IITs. A UK infrastructure investment trust would be an infrastructure investment company which, very broadly, simulates (from a tax perspective) direct investment in UK infrastructure. Many of the characteristics build on those already in place in the REIT regime, adapting for the existing tax treatment of infrastructure activities. The IIT

regime would seek to provide a number of commercial and tax benefits, which are set out in The Infrastructure Forum's paper, attached [here](#).

## **Capital Allowances**

In line with The Infrastructure Forum's position, a recent report from the Tony Blair Institute emphasises that, to stand a real chance of reigniting growth, the Government must reinvigorate business investment and restore business confidence. The report, attached [here](#), highlights the need to extend the full-expensing regime, allowing businesses to deduct the full cost of all capital investment from their taxable profits. It also sets out a range of other pro-growth measures, including the importance of reducing uncertainty, calming investor concerns, and fostering a more supportive environment for long-term investment.

## **Chapter 2**

**Question 1** - What is the impact of giving eligibility to corporate entities that are or will be subject to CT and are directly undertaking major investment projects? Does this exclude any other structures investing in major projects which would significantly benefit from being in scope?

It is important to understand more clearly the potential restrictions that might apply to a Special Purpose Vehicle (SPV) being set up to undertake the major project, particularly in relation to who the SPV can share the clearance with – it will need to be made available to investors and lenders, as well as legal and commercial advisors. Clarification is also needed on whether corporate entities that become involved in a project at a later stage would be able to rely on the clearance, or whether certainty is limited solely to the initial applicant. The confidentiality requirements associated with the process are also critical and should be explained in more detail.

A further consideration is that an SPV may not yet exist at the time the Final Investment Decision (FID) is being made - yet it is at this point that clearance is most valuable. The process must therefore accommodate the clearance being made and granted in advance of the formal establishment of the delivery vehicle.

On eligibility, it is worth considering the inclusion of Limited Partnership (LP) structures. Project delivery often involves complex arrangements, and how tax outcomes flow through to Limited Partners can be significant. Although LPs typically hold an interest in the underlying corporate entity delivering the project, ensuring that the benefit of the clearance can cover the flow through of cash to the ultimate investors should be taken into account.

It is also important to recognise that shareholders often enter projects with a planned exit strategy. In this context, it must be clear whether incoming shareholders can rely on the same level of tax certainty. The Forum's view is that certainty should attach to the SPV itself and

remain valid regardless of changes in ownership. This would enhance investor confidence and support more dynamic capital flows into major projects.

**Question 2 - How can advance tax certainty provide material wider benefit beyond the entity receiving the clearance?**

Advance tax certainty can provide significant wider benefits beyond the entity receiving the clearance. It can serve as a reference point for others considering similar investments (as expanded on in Question 15), helping to streamline future evaluations and reduce duplicated effort - ultimately improving efficiency across the market.

**Question 3 - What is the best way of quantifying the fixed and intangible investment for the purposes of assessing whether a project meets the threshold? Do you agree that authorised project spend is a suitable metric?**

Authorised project spend is a broadly suitable metric, particularly if the Government is focused on identifying a relatively small number of major projects each year. However, in practice, many projects are delivered in multiple phases over several years, and not all phases are necessarily authorised at the outset. In cases where approval is conditional or phased—particularly for complex or milestone-based projects—the initial (authorised) phase may fall below the threshold, depending on how that threshold is set.

The Government might therefore consider a more flexible approach that combines authorised spend with validated cost estimates and project delivery timelines. This would be especially important for long-term, multi-year construction periods associated with strategic infrastructure assets.

It is also crucial to recognise that major projects are often subject to change, including shifts in scope, delivery models, or timelines. Given the decades-long horizons of some investments, the regime must include suitable flexibility to ensure that changes do not automatically undermine the certainty granted. Clear guidance is needed on how such changes would affect any clearance provided.

Paragraph 2.9 mentions the need for safeguards to prevent “inappropriate bundling” of projects to meet the spend threshold. While prioritisation is understandable due to resource constraints, the current language lacks clarity. It will be important to distinguish between inappropriate bundling and legitimate grouping of related projects. For example, would a programme of 20 solar farms, each costing £50 million, qualify if delivered under a programme? Such coordinated investments should be encouraged, not disincentivised. Conversely, it is reasonable to prevent unrelated investments, grouped solely under a broad infrastructure fund, from qualifying. Where there is a clear degree of commonality bundling should be deemed appropriate.

**Question 4 - Is there a set amount of expenditure that would prompt you to seek a clearance or certainty, or would this be more attributable to the amount of tax and uncertainty in treatment?**

The decision to seek a clearance or certainty is more attributable to the amount of tax at stake and the level of uncertainty in its treatment, rather than a specific expenditure threshold. What matters most is the potential impact on the economics or go/no go decision for the project.

The scale of the tax uncertainty is therefore more significant than the overall size of the project.

**Question 5 - Are there supplementary criteria, which are objective and measurable, which could capture projects below the quantitative threshold which are nevertheless of a national or strategic importance, are highly impactful on a relative basis within their sector, or that have large growth potential despite starting small?**

There are supplementary criteria, objective and measurable, that could be used to capture projects falling below the quantitative threshold but that are nonetheless of national or strategic importance, or highly impactful within their sector.

Such criteria could include:

- **Job creation**, including not just the number but also the quality of jobs, measured by increases in average net wages;
- **Carbon or emissions reductions**, supporting the UK's net zero goals;
- **Economic impacts on local communities**, such as the attraction of ancillary businesses or services that cluster around the project; or
- **Regional regeneration outcomes** or alignment with levelling-up priorities.

Currently, the non-statutory clearance process allows for the inclusion of projects deemed to be of strategic significance, even where they fall below formal thresholds. A similar principle should be retained and formalised in any new regime.

There should also be a clear link to Strategic Policy Statements issued by relevant government departments, as well as alignment with the Industrial Strategy and Spending Review priorities. These frameworks already articulate the types of projects that the Government views as nationally or strategically important and could offer a basis for assessing eligibility beyond financial thresholds.

### Chapter 3

**Question 6 - In which areas of UK tax legislation would advance tax certainty have the most impact on investment decisions? Where possible please give examples of where lack of certainty has had a negative effect on an investment decision.**

Forum members have identified several key areas of UK tax legislation where advance tax certainty would have the most significant impact on investment decisions. These include:

- Capital allowances and research and development allowances;

- Interest deductibility
- Capital Gains Tax;
- VAT applicability;
- Stamp Duty
- Business Rates;
- Foreign source income / expense i.e. whether certain income or expenditure is in/out of the UK tax net

While it is very difficult to point to specific projects that have been cancelled solely due to tax uncertainty, it is frequently the case that such uncertainty leads to more conservative assumptions in financial modelling. This, in turn, results in increased costs, which are then passed on to consumers. For example, where capital allowance treatment is uncertain, developers may assume the least favourable outcome to protect their position. Certainty will ultimately benefit society through more efficient delivery and lower costs.

**Question 7 - Are there areas for which certainty would be of value that are not currently addressed by the non-statutory clearance process? What do you see as potential benefits and barriers to their inclusion?**

The existing non-statutory clearance process is focused on addressing points of legislative uncertainty; if a request is made for a clearance based on the facts as presented by the taxpayer, then the request is almost always rejected by HMRC. The principal difference with this proposal is that it should give certainty around the facts as presented, by reference to a “probable” certainty threshold, while giving comfort that the clearance will still be valid unless there are fundamental changes to the facts as presented in future.

**Question 8 – Who do you consider should be bound by an advance certainty clearance and to what extent? What form should that take?**

It would not be feasible or effective to require a taxpayer to be bound by an advance certainty clearance at the point of making the application. Doing so could deter projects from engaging with the process altogether, undermining the objective of encouraging investment. Instead, taxpayers should have the option to accept or decline the clearance outcome once it is issued.

Only at that point, after reviewing the outcome, should a taxpayer be able to elect to be bound by it. If a taxpayer does choose to be bound, it should be part of a quid pro quo that reflects the fact that HMRC are applying a different threshold test to the clearance while forgoing the potential benefits of future changes in case law or other fundamental legal shifts that would otherwise alter the basis of the clearance.

**Question 9 – What are the circumstances under which you consider it important to be able to continue to rely on a clearance?**

It is crucial that a clearance can be relied upon throughout the full life of a project, particularly for long-term, multi-year investments, where investors commit capital and assume risk through to

execution and operation. Certainty must be maintained from the point of clearance through to project completion, as disruption mid-project due to changes in tax treatment would materially undermine confidence and increase cost. There would need to be caveats to ensure that the clearance is being applied as intended, but these should be limited to “fundamental” changes in the project.

## **Chapter 4**

### **Section 4.2 – Obtaining Certainty**

Although not formally framed as a question, the consultation invites views on the charging of fees. The Forum believes that fees could be appropriate, but only if they form part of a structured service level agreement between HMRC and the applicant. Fees should be linked to HMRC meeting agreed deliverables within a pre-defined timeframe. If HMRC fails to meet these timeframes, the fees should be refunded. This would ensure that both parties have ‘skin in the game’.

#### **Question 10 – Do you consider that an early engagement facility would be helpful and why?**

Yes, an early engagement facility would be helpful, as it would allow for upfront discussions between HMRC and the taxpayer before significant time and resources are committed. Often for major projects there can be a period of perhaps ten years between conception and the final investment decision, and the ability to discuss potential tax analyses with HMRC over that period will allow the development of commercial options without having to factor in considerable tax uncertainty.

This process should include negotiation and discussion on areas of potential uncertainty, helping both parties to reach an initial view. Submissions would then be made only once a preliminary position has been established.

However, it is essential that the early engagement process does not become overly bureaucratic or prolonged. One of the key risks to the overall system is that it becomes too process heavy. Early engagement must therefore be time-bound and proportionate to maintain momentum.

#### **Question 11 – How would this process work with typical commercial decision-making timescales?**

It very much depends on the nature and scale of the project. That said, there should be a default target for delivery of a clearance, unless otherwise agreed as part of an upfront timeline. Predictability and timeliness are essential to aligning with investment decision cycles.

#### **Question 12 – What facility would be helpful for unsuccessful clearance applications? Do you consider, for example, that the process should include reconsideration by HMRC on request?**



Yes, there should be a mechanism for reconsideration of unsuccessful applications, particularly where there has been a misunderstanding of the facts, or the underlying facts and circumstances have materially changed since the original submission. However, any such reconsideration process should be time limited.

**Question 13** – Do you consider a scoping meeting to obtain clarity on scope of clearance, timing and inputs to be useful? What would a scoping conversation need to include?

Yes, a scoping meeting would be very useful. It would help establish mutual understanding of expectations and streamline the process. Key elements such a meeting should include are:

- Agreement on timelines for submission of information and expected HMRC response dates;
- Identification of key issues requiring analysis or where optional treatments may apply;
- Discussion of any conditions or caveats to the clearance, especially where facts are not yet fully known or remain to be determined.

This occurring at the outset could help to reduce delays and miscommunication later in the process.

**Question 14** – Are there process elements you would consider helpful during the clearance consideration phase?

Continuity in HMRC's handling of the application is key. There should be a consistent customer manager throughout the process, even if responsibility moves between teams, such as from customer relationship to compliance. This consistency ensures that knowledge and context are retained and reduces the risk of conflicting interpretations or delays due to internal handovers.

**Question 15** – What do you consider the advantages and disadvantages of publishing summarised and anonymised clearances to be? Has publication by other clearance jurisdictions aided tax certainty as a result?

Publishing summarised and anonymised clearances would have a number of advantages including:

- Greater transparency in how HMRC approaches different tax issues;
- Increased efficiency, as businesses would be able to self-assess whether a clearance is likely to be successful based on published precedents;
- Wider tax certainty, enabling businesses with similar fact patterns to anticipate likely outcomes without requiring individual clearances.

This approach has been used in other jurisdictions. For example, Canada publishes anonymised clearance decisions; both the taxpayer and HMRC will need to give approval to the content of any anonymised clearances

The main potential disadvantage is the risk of over-reliance by taxpayers on decisions that are not directly applicable to their facts.

**Question 16 – What would you wish to see in terms of engagement for clearances where impacted post-issuance by legislation, ownership, case law, or key facts and assumption changes?**

Clearances should remain valid through to project delivery and operation, even where changes occur. This long-term certainty is essential for investors and the integrity of multi-year infrastructure projects. This should be the case certainly for changes in ownership, changes in case law and anything but fundamental changes in facts and assumptions.

In cases where new legislation is introduced post-clearance, temporary waivers or exemptions should be applied to preserve at least some of the benefits of the original clearance.

The statement in section 4.21 that “HMRC will endeavour to work with the customer to confirm any impact on the scope or ability to rely on the clearance going forwards”, introduces unnecessary doubt and risks undermining the purpose of the clearance process.

The policy intent of the Treasury, which seems to be to improve certainty and drive investment, will only succeed if HMRC implements and upholds the clearance system with the same commitment. It is crucial that any post-issuance engagement is approached with a presumption in favour of continuity unless there are fundamental and material changes.

There is some value in an annual compliance discussion or confirmatory return with HMRC contacts, as long as this process is light-touch and not overly burdensome. It is vital that this does not become a de facto requirement to reapply or reconfirm the clearance each year, which would risk undermining the certainty the process is meant to deliver.

A simple annual confirmatory statement, confirming that no fundamental changes have occurred, should suffice in most cases.

**Question 17 - What should a renewals process look like, and is 5 years an acceptable trigger point?**

The appropriate timing should be flexible and reflect the **length and nature of the project**, the vast majority of which will extend well beyond five years. For large-scale infrastructure projects, five years may represent only a fraction of the overall delivery timeline.

If there is a process at the five-year mark it should not involve an automatic termination of the clearance. Instead, the client should be required to make a positive demonstration that the underlying facts and circumstances supporting the original clearance remain fundamentally unchanged. This could take the form of a formal confirmation submission, accompanied by any necessary evidence, within a specified timeframe. Only if that was not provided should the clearance then lapse, triggering a need for re-approval.