

The Infrastructure Forum

Response to the Tax Treatment of Predevelopment Costs Consultation

Taxation Working Group

September 2026

The Infrastructure Forum, through its Taxation Working Group, brings together investors, operators, project developers, lenders and professional advisers involved in the development and renewal of the UK's critical national infrastructure. This response draws on evidence and views provided by the Forum's Taxation Working Group at a roundtable with HM Treasury and HM Revenue and Customs on 7 September 2026. It addresses those consultation questions on which the Forum has specific evidence or observations to contribute, rather than responding to every question.

Introduction

Infrastructure projects in the UK incur significant expenditure before construction commences. This includes feasibility studies, site investigations, planning and permitting, among many other costs which are necessary for a successful project, and many are a mandatory part of the development process.

Legislation currently leaves a gap between expenditure that qualifies for a deduction as a revenue expense and expenditure that qualifies for capital allowances. Capital expenditure that does not fall within an available capital allowance category can therefore receive no deduction for corporation tax purposes. This is inconsistent with a regime intended to tax a company's profits and with this Government's stated objective of encouraging the construction of infrastructure in the UK to boost growth.

The Infrastructure Forum welcomes the consultation following the Supreme Court's judgment in *Orsted West of Duddon Sands (UK) Ltd and others v HMRC* [2026] UKSC 12. Although the judgment clarifies the treatment of the studies and surveys considered by the Court, it does not provide a sufficiently clear or workable boundary for other design, survey and indirect construction costs. In practice, the Forum is concerned that uncertainty has widened rather than narrowed.

Government should address both the immediate uncertainty and the underlying policy problem through legislation. Guidance may help businesses apply the current rules, but it cannot provide binding certainty or correct a statutory framework that leaves necessary commercial expenditure without tax relief.

Key Recommendations

1. The Government should legislate to address the gap that leaves necessary commercial expenditure on infrastructure projects without tax relief.
2. The approach should be based on clear principles rather than a granular list of qualifying and non-qualifying costs. Design is an iterative process, and both early and later design costs

should be recognised as part of the continuous process of providing plant and machinery, including where design continues during construction.

3. Pending legislative change, HMRC guidance and operational practice should provide greater clarity about the treatment of surveys, design costs, professional fees, preliminaries and wider indirect construction costs.
4. The tax system should not produce materially different outcomes according to whether an economically equivalent asset is acquired or developed, or encourage design, survey and construction work to be moved offshore.

Question 1: How has the Supreme Court's judgment in *Orsted West of Duddon Sands (UK) Ltd and others v HMRC* [2026] affected your understanding of the tax treatment of predevelopment costs?

The judgment has made the practical position more difficult for infrastructure businesses. It confirms that expenditure being necessary to a project is not, by itself, sufficient to qualify for capital allowances, leaving necessary commercial costs without relief. It has also created uncertainty about expenditure beyond the particular studies and surveys considered by the Court.

Before the litigation, many businesses and advisers understood that commercially incurred costs relating solely to the delivery of a project would generally obtain relief. The judgment has called that understanding into question across a wider range of development and indirect construction costs, without providing a clear basis for determining where the boundary now lies.

Businesses must therefore reassess costs previously understood to qualify and make more cautious assumptions about the relief available. A key concern of the Forum is that the judgment has widened uncertainty and increased the tax risk incorporated into project models, making it harder to establish the cost of delivering infrastructure with confidence.

Question 2: To what extent has the judgment clarified the treatment of these costs in practice?

The judgment provides clarity about the particular expenditure and circumstances considered by the Court, but its wider practical effect is limited.

It does not provide businesses with a workable basis for determining precisely when expenditure moves from being too remote to sufficiently connected with the provision of plant or machinery. This is particularly difficult because surveys and design work can take place at several stages of a project. Design is iterative, may take many years and frequently continues while the asset is being constructed.

Question 3: In light of the judgment and HMRC's updated guidance, are there specific aspects where uncertainty remains? Please provide examples and explain why.

Uncertainty remains in several areas.

Surveys may be undertaken more than once and at different stages of development and construction. Describing expenditure as a "survey cost" therefore does not, by itself, establish its relationship to the plant or machinery ultimately provided.

As mentioned in Question 2, design is similarly iterative and a complex project may go through numerous versions of a design. Certain elements of an early design may remain unchanged in the asset ultimately built, while others are subsequently revised. The Forum does not consider it

workable to assume that only the final design is sufficiently connected with the provision of the asset, particularly where design continues during construction.

The judgment is clear about the treatment of the costs considered in the immediate context of *Orsted*. However, clear guidance is needed on the boundary between those costs and other expenditure, including professional fees, preliminaries, project overheads and wider indirect construction costs, so that taxpayers and HMRC inspectors understand and apply the rules consistently.

The Forum does not consider that the current guidance provides sufficient certainty about where the boundary lies.

Question 4: What practical challenges do businesses face in applying the current rules to predevelopment costs?

Businesses must determine the purpose and stage of surveys, design work, professional fees and indirect expenditure against an uncertain boundary. Similar descriptions may appear several times in cost information supplied by contractors, even though the underlying work was undertaken at different stages or for different purposes.

This uncertainty also affects financial modelling. Businesses may need either to assume that indirect expenditure will not qualify or to risk-weight the amount expected to receive relief. This also means advisers must similarly qualify their advice where they cannot determine with confidence where the boundary will be drawn.

An exhaustive list would not resolve this difficulty because the same type of cost may have a different relationship with the asset depending on the circumstances in which it is incurred. The differing tests applied to plant and machinery allowances, the Structures and Buildings Allowance and research and development allowances create further complexity.

Question 5: Has the judgment affected how businesses structure or incur predevelopment costs? If so, please provide examples, where possible.

The tax treatment is a live issue in discussions with project sponsors. Businesses are currently considering whether established commercial models may need to change because of the tax treatment, rather than because an alternative model would deliver the project more efficiently.

Options under consideration include procuring more of an asset through a single turnkey arrangement, carrying out more design or construction activity offshore, or using a separate development company before transferring the project. These options are not practicable for every project, particularly large critical infrastructure schemes.

The current position can therefore create a material difference between an acquired asset and an economically equivalent asset developed by the business itself. It may also encourage high-value design, engineering and survey work to be moved outside the UK. These are genuine active commercial discussions that have been shared with the Forum and not just theoretical concerns.

Question 6: What types of predevelopment costs are incurred in investment projects?

Infrastructure projects can incur:

- feasibility studies and other work required to determine whether and how a project can proceed;
- site surveys and investigations, which may be undertaken at several stages;
- planning, permitting and other costs associated with securing necessary approvals;
- design and engineering expenditure incurred throughout development and, in some cases, during construction;
- professional fees, preliminaries and other indirect expenditure connected with developing and constructing an asset; and
- site mobilisation, security, temporary buildings, site cleaning and cybersecurity expenditure.

The composition and scale of these costs vary considerably between sectors and projects.

Question 8: Why are these predevelopment costs incurred? For example, are they incurred for regulatory reasons, to inform business decisions, or other purposes? If costs are incurred for multiple purposes, please indicate where this is the case.

These costs are incurred because they are necessary to develop and deliver the project and many are mandatory parts of the planning, permitting and regulatory processes.

Feasibility work and site investigations help determine whether a project can or cannot proceed. Surveys and design work provide information required to develop the asset and may need to be repeated or refined as the project progresses. Professional fees, preliminaries and indirect costs support the wider development and construction process.

These are not discretionary additions than promoters can choose to undertake or not. Without them, a business may be unable to make an investment decision, obtain permission to proceed or construct the infrastructure.

Question 10: To what extent do you consider that predevelopment costs should qualify for capital allowances or other forms of tax relief? Please explain your reasoning and indicate which types of predevelopment costs you believe are most important to have tax relief.

Necessary commercial expenditure incurred in developing and delivering an infrastructure project should receive tax relief.

This should be considered first as a question about the correct taxation of profits, rather than solely as an investment incentive. Where a genuine business cost receives neither a revenue deduction nor capital allowances, the resulting tax charge does not reflect the economic profit of the project.

Priority should be given to necessary feasibility and site-investigation expenditure, mandatory studies and surveys, iterative design and engineering costs, professional fees, preliminaries and indirect costs connected with developing and constructing the asset.

Legislative change is required to address the underlying gap and provide lasting certainty for developers. The mineral extraction regime may provide a useful reference point because it contains a concept of necessary expenditure.

If the Government is not prepared to legislate immediately, clearer guidance and consistent operational practice would still be helpful. However guidance is not binding and cannot bring expenditure within the legislation where it does not meet the existing statutory test.

Question 12: Does the tax treatment of predevelopment costs impact business and investment decisions? If so, why is this and what are the impacts?

Yes. Infrastructure investment decisions are based on long-term financial models incorporating financing costs, operating expenditure, tax cash flows, expected revenue and the equity return required by investors.

Whether expenditure receives tax relief affects those cash flows and, therefore, the price an investor is willing to bid or the revenue required for a project to proceed. Additional tax payable over the project's life is reflected in the financial model and ultimately increases the cost of delivering the infrastructure.

Timing is also important. Relief available many years later is worth less than relief available during development or early operation. Increasing the rate of relief elsewhere does not necessarily compensate for the absence of relief on these costs or for a substantial delay before it can be used.

For projects supported through arrangements such as Contracts for Difference or a regulated asset base, this increased cost will ultimately be borne by consumers or taxpayers. The treatment therefore conflicts with the government objective of delivering infrastructure cost-effectively and reducing costs for consumers.

Question 14: Are there other impacts that the Government should be aware of in relation to the tax treatment of predevelopment costs?

The current treatment risks encouraging more design, survey and construction work to be undertaken offshore, with more complete assets then imported into the UK. This would move high-skilled work overseas and disadvantage businesses developing their own assets here.

The uncertainty extends beyond offshore wind and early-stage expenditure. Similar issues arise in other infrastructure sectors, real estate and data-centre developments. HMRC enquiries have already raised questions about design, site mobilisation and wider indirect construction costs and although some enquiries have not progressed, the possibility of challenge makes it harder for businesses to rely on the treatment previously assumed in their project models.

The Government's assessment of reform should recognise that many businesses had expected necessary commercial expenditure to receive relief and had invested on that basis. Treating reform wholly as the introduction of additional relief overlooks this starting point. The concern is to restore confidence in the treatment of costs previously understood to qualify.

It's worth noting that the scale of preparatory expenditure also differs between asset classes. Offshore wind and other projects supporting the energy transition can require extensive work before construction begins and newer technologies and more challenging locations may increase the proportion of expenditure devoted to design and other preparatory activities.

There is also a wider question about whether the present policy outcome was intended. The interaction of the revenue and capital rules can result in some project costs receiving no relief, other capital expenditure receiving immediate relief and some revenue expenditure receiving relief over a much longer period as it is recognised through depreciation. This combination adds complexity and makes it harder to understand how the overall regime supports simplicity, certainty and investment.

Although the consultation addresses a particular category of expenditure, investment decisions depend on the tax treatment of the project as a whole. The Government should therefore consider how these rules interact and their combined effect on infrastructure delivery, alongside the specific uncertainty arising from the judgment.

Question 15: How does the tax deductibility of predevelopment costs compare in value to other potential tax changes, such as features of the Corporation Tax system reducing the ability to claim Full Expensing? If there are particular incentives you would prefer to see, please set out what those are and any supporting evidence where possible.

For the businesses represented in the Forum's recent discussion with HM Treasury and HMRC, the principal concern is the availability and certainty of relief, rather than a higher rate of relief for a narrower category of expenditure.

Full expensing is recognised as generous for expenditure that qualifies, but it does not assist expenditure that falls outside the regime. Some large infrastructure and utility businesses may also have difficulty using accelerated deductions, reducing the value of further increases in the rate of relief.

Long-term certainty is particularly important because infrastructure projects can take several years to proceed from development into construction. Businesses need confidence about both the availability of relief and the consistent treatment of expenditure throughout that period.

Relief for necessary predevelopment expenditure should not, therefore, be treated solely as one possible incentive competing with other measures. Addressing the gap in the tax base and establishing a clearer boundary are separate questions from the rate at which qualifying expenditure receives relief.