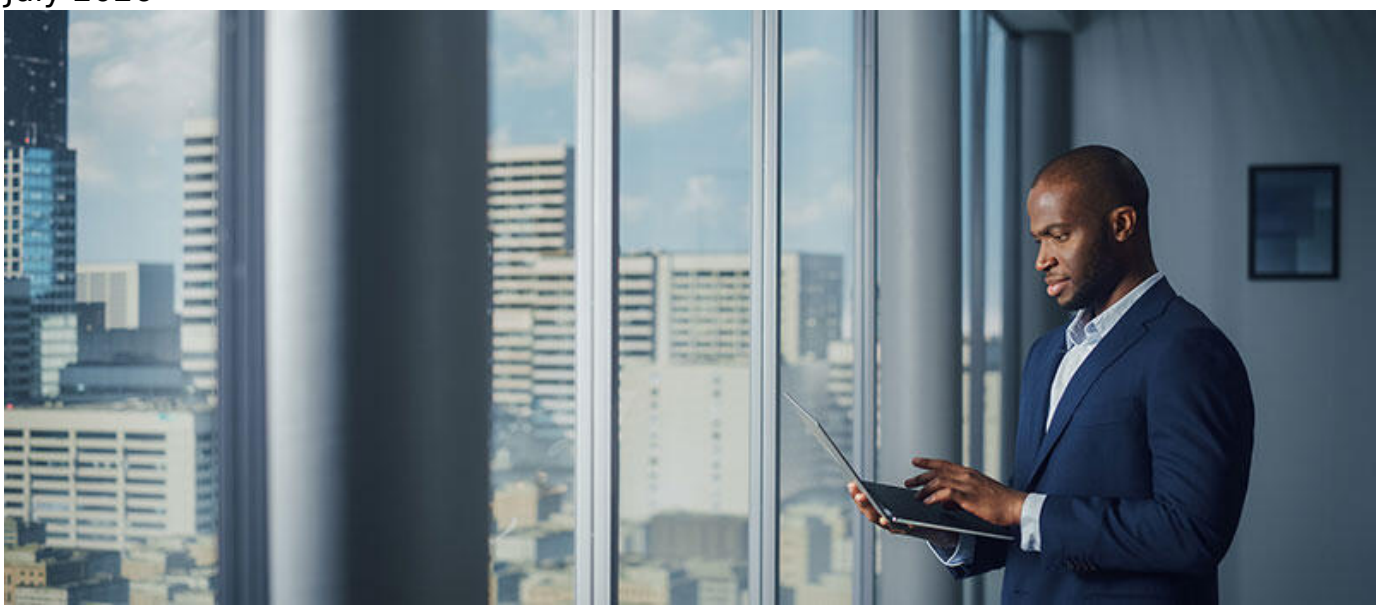
Orsted West of Duddon Sands: CIOT feedback

Large Corporate **Property Tax**

July 2026



22 June 2026

CIOT has provided feedback for HMRC and HM Treasury on the implications of the Supreme Court judgment in *Orsted West of Duddon Sands* (previously known as *Gunfleet Sands*) in relation to pre-construction studies for plant and machinery capital allowances.

In a unanimous judgment in the case of *Orsted West of Duddon Sands (UK) Limited v HMRC* [2025] UKSC 69, published on 15 April 2026, the Supreme Court allowed HMRC's appeal, overturning the Court of Appeal's earlier decision in favour of the taxpayer. The central question was whether costs associated with pre-construction studies, such as environmental assessments, marine surveys and technical studies, could be treated as spending incurred 'on' the provision of plant for capital allowances under Capital Allowances Act 2001 s 11(4)(a).

Broadly, the Supreme Court held that the requirement for expenditure ‘on’ the provision of plant is a narrow test that requires a close connection with the plant. The court rejected the argument that expenditure on studies that inform the design of the plant or machinery is ‘on’ the provision of plant as being too remote.

Feedback from CIOT members and others indicates that the consequential uncertainty on the dividing line between eligible and ineligible design costs adversely affects businesses’ ability to plan for capital projects involving pre-development expenditure. This affects any business undertaking a capital project that requires feasibility studies, ground investigations, design research and technical or environmental surveys, as well as real estate funds that invest in the sector.

Our members report that the uncertainties arising from the judgment have created nervousness in the renewables sector. There is concern that buyers will factor these uncertainties into pricing mechanisms, potentially slowing deal activity. Management of this uncertainty is likely to become a key focus of the due diligence process.

Capital allowances flow into the financial models of Offshore Transmission Owners bidders and other renewables bids. Changes to eligibility for capital allowances affect the modelling and risk. Uncertainty is also potentially distortive if bidders are working on slightly different assumptions.

The uncertainty has implications for other parts of the tax system where similar wording is used in statute. For example, the test for Business Premises Renovation Allowance claims was for expenditure ‘on or in connection’ with the physical conversion of a property. Although the relief was withdrawn in 2017, there are ongoing claims under HMRC enquiry.

A key question is how the judgment will affect HMRC’s approach to the pragmatic pro-rata apportionment, and which elements are included in the apportionment. Apportionment has provided a longstanding pragmatic approach, removing otherwise significant administrative burdens for both businesses and HMRC.

Members point out that capital project costs are clearly legitimate commercial costs. It therefore seems commercially illogical that relief is not available at the time expenditure is incurred or, if later, when the trade commences.

In terms of the policy intent for capital allowances, feedback indicates a gulf in understanding. In some parts of government, capital allowances are (apparently) perceived as akin to a tax-free loan. Businesses, on the other hand, view them as delayed relief for expenditure incurred upfront that adversely affects cash flow.

Consultation?

It is vital that HMRC guidance is updated to clarify their position as soon as possible. In our view, this clarification is needed more urgently than any consultation on the issue.

However, given the impact of the decision on investment in the sector, it is also important that any consultation proceeds sooner rather than later. It is far from ideal that businesses have waited for years for litigation to establish the tax treatment and, now that is concluded, face a further wait for government to consult or introduce new legislation to provide relief for expenditure.

If a consultation is to go ahead, we suggest aspects to consider should include:

- the interaction and alignment with wider government policies for net zero and promotion of alternative energy;
- the absence of relief for legitimate business expenses and the extent to which this undermines the coherence of the tax system;
- international comparatives and the attractiveness of the UK as an investment location; and
- if relief is to be given within the current tax system, consideration of how it should be given and at what rate.

Consideration could be given to extending the scope of any consultation beyond relief for pre-construction expenditure towards wider structural reform. This could include reforming the archaic schedular system which leads to tax ‘nothings’, ad hoc changes and piecemeal reform discussions.

The full feedback is available here: www.tax.org.uk/ref1684

Kate Willis *kwillis@ciot.org.uk*