

# Tax treatment of predevelopment costs consultation: CIOT response

Property Tax

Large Corporate

November 2026



23 October 2026

CIOT responded to the Treasury's consultation on predevelopment costs following the *Orsted West* case (aka *Gunfleet Sands*) with a clear message about the lack of tax relief for legitimate business expenses.

The Treasury's predevelopment costs consultation asks for views on the nature of predevelopment costs, the understanding of their tax treatment following the Supreme Court's judgment in *Orsted West of Duddon Sands (UK) Limited and others v HMRC* [2026] UKSC 12 ('*Orsted West*') and how far the tax treatment affects business and investment decisions.

The central issue is the lack of tax relief for legitimate business expenses that are a prerequisite for the development of renewable energy infrastructure and other infrastructure projects. The CIOT's view is that the lack of relief for essential business costs undermines a rational business tax system and encourages investors

to look elsewhere. We urged the government to consider the strong case for implementing legislative change in the short term to ensure there is both clarity and tax relief for legitimate business expenses.

The way that change might be achieved would merit further consultation. Initial feedback from members indicates support for evaluating a widening of the test in Capital Allowances Act 2001 s 11(4) as a relatively simple solution to ensure relief without undermining the integrity of the structure of the capital allowances regime.

---

## **Current position**

We noted that it has always been the case that not all capital costs are eligible for capital allowances. This position has been largely understood. *Orsted West* has narrowed the scope of qualifying expenditure, extending the range of capital costs that are not eligible for relief.

The precise boundary between eligible or ineligible predevelopment costs is now very unclear in its application and will need to be assessed on a project-by-project basis. There is no clear temporal test; this matters in practice as developers may commission initial feasibility surveys years before any final investment decision.

On 10 July 2026 HMRC updated the Capital Allowances Manual to reflect their position following *Orsted West*, including a new section headed 'Design costs'. The updated guidance confirms HMRC's acceptance of a pro rata apportionment for both preliminaries and professional fees. However, it is not entirely clear whether HMRC's acceptance is wholly consistent with the narrow test established by the Supreme Court, creating ongoing uncertainty.

In terms of design fees, HMRC's updated guidance differentiates between design fees carried out at a 'preparatory or early stage' (non-qualifying) and design costs that form 'an integral part of constructing or installing a specific item of plant' (qualifying). It is fundamentally uncertain where that line should be drawn between conceptual design, detailed design and fabrication. Some costs may have more than one purpose, being required for regulatory purposes at an early stage while also being essential for physical construction.

The uncertainty also makes it challenging for HMRC officers to ensure consistent treatment of taxpayers.

The full response: <https://www.tax.org.uk/ref1738>.

Kate Willis

[kwillis@ciot.org.uk](mailto:kwillis@ciot.org.uk)