HM Treasury

Tax treatment of predevelopment costs

Consultation

July 2026

HM Treasury

Tax treatment of predevelopment costs

Consultation

July 2026

This publication is available at: www.gov.uk/official-documents.

Any enquiries regarding this publication should be sent to us at public.enquiries@hmtreasury.gov.uk

ISBN 978-1-917151-71-9

PU 3477

Contents

Ministerial Foreword

Delivering sustained economic growth across the country is the central mission of this government. By putting growth at the very heart of our agenda, the government is demonstrating that Britain is a great place to do business and to invest.

One of the government's seven pillars for growth is investment, infrastructure and planning, where the government is making the reforms needed to deliver sustained economic growth in the long-term. These include ambitious planning reforms and implementing the 10-year infrastructure strategy to restore confidence and boost investment by providing stability on funding and improving how infrastructure projects are planned and delivered.

We know that giving businesses the certainty to invest is crucial to that goal of boosting growth in our country. The tax system is an important part of that for investors, not just rates, but also the system's simplicity and predictability. To this end, at Autumn Budget 2024, the government published its Corporate Tax Roadmap, outlining our commitment to maintain key features of the corporate tax system to promote stability and ensure we remain internationally competitive, and has since delivered on many of the aspects of this Roadmap.

This is also why, as outlined in the Corporate Tax Roadmap, the government announced this consultation to gain a greater understanding of predevelopment costs, for example design surveys, and how impactful the tax treatment of these costs would be on investment.

The Supreme Court has now reached its conclusion on the correct application of the law and whilst the government welcomes the court's decision, we have been told that some uncertainty remains for businesses. That is why, to better provide clarity and certainty in the wake of that decision, we are now publishing this consultation, to better understand the predevelopment costs business face, businesses' understanding of the tax treatment of these costs, and how impactful the tax deductibility of predevelopment costs would be on commercial decision making, investment viability and the UK's competitiveness.

I thank you in advance for your engagement.

Dan Tomlinson
Exchequer Secretary to the Treasury

Chapter 1
Introduction

Background

1.1 The government's partnership with business is at the centre of its approach to delivering strong growth, increasing investment, and developing infrastructure.

1.2 Capital allowances are an important lever to help drive investment. That is why the government has committed to keeping a permanent full expensing system, the £1 million Annual Investment Allowance, and other fundamental features of the capital allowances system in place for the duration of this Parliament.

1.3 The government has also committed in the Corporate Tax Roadmap to providing greater certainty for businesses to invest, including by providing greater clarity on what qualifies for different capital allowances. HMRC has already issued a number of guidance changes following discussions with industry, and will continue to work with businesses, tax professionals and representative groups on this.

1.4 The government is conscious of the long road to certainty following several appeals, the appetite for clarity, and the cost of significantly extending reform, and is not currently minded to legislate to change the tax treatment of these costs.

1.5 However, in line with the commitment in the Corporate Tax Roadmap, the government wants to understand whether, following conclusion of recent litigation at the Supreme Court, businesses believe uncertainty remains regarding the current tax treatment of predevelopment costs and the impact of the current legislation on investment decisions and the UK's competitiveness.

Predevelopment costs

1.6 For some investment projects, significant amounts of expenditure are incurred in the early stages before work begins. We refer to these costs as predevelopment costs in this consultation. Predevelopment costs can include costs to determine the project feasibility and viability, to obtain regulatory approvals such as planning consent, and preparatory activities for the development. The type and amount of predevelopment costs may differ depending on the project and the business or sector that is investing in the project.

Existing tax treatment

1.7 Under legislation, expenditure can generally be deducted when calculating trading profits where it is incurred wholly and exclusively for the purposes of the trade and is not capital in nature.

1.8 Where expenditure is capital in nature and so not deductible from trade profits, it may still be deductible via, for example, the capital allowances regime.

1.9 However, capital allowances do not cover all capital expenditure incurred by businesses. In particular, capital expenditure only qualifies for plant and machinery allowances insofar as it is incurred "on the provision of" the asset.

1.10 Expenditure incurred on the acquisition, construction, installation and transport of plant or machinery will generally be incurred 'on the provision of' the plant or machinery. However, there is some capital expenditure which would not meet this test. For example, capital expenditure on securing planning permission would not normally be incurred 'on the provision of'.

1.11 Therefore, some predevelopment costs are not deductible from business profits. For example, this may happen where costs are capital in nature but do not meet the conditions to qualify for capital allowances. Where this line is drawn was the subject of litigation in the case of *Orsted West of Duddon Sands (UK) Ltd and others v HMRC [2026]*.

1.12 HMRC has updated its guidance regarding the specifics of this case to provide greater certainty to businesses on the current tax treatment of predevelopment costs and continues to engage businesses through a separate process on this guidance.

Purpose and scope of this consultation

1.13 In this consultation, the government is keen to know more about stakeholders' views on the predevelopment costs that businesses incur, businesses' understanding of the tax treatment of predevelopment costs in the wake of the *Orsted* judgment, and how far these costs being deductible or not for tax purposes impacts business and investment decisions.

1.14 The government is not considering wider cases or where there are already special regimes in place. In particular, in this consultation the government is not considering predevelopment costs that relate to intangible assets, land transactions, or abortive expenditure and will instead focus on predevelopment costs that are more directly required before plant and machinery can be installed or operated.

1.15 The objective of this consultation is to understand more about:

- the predevelopment costs incurred when undertaking investment projects
- stakeholder understanding of the tax treatment of those costs under existing legislation
- the impact of whether predevelopment costs are deductible or not for tax purposes on investment decisions, and on wider government goals, such as growth

1.16 The government is seeking views and gathering information on potential areas of uncertainty in order to provide greater clarity to businesses in the wake of recent litigation.

Consultation process

Who should respond to this consultation

1.17 The government is open to receiving representations from all interested parties and stakeholders and is especially interested in responses from:

- Businesses across different sectors
- Business representation organisations
- Tax and accountancy experts

How to respond

1.18 The government welcomes comments by 21 September 2026.

1.19 Please email your response to predevcosts@hmtreasury.gov.uk. When responding, please say if you are making a representation on behalf of a business, individual or a representative body. In the case of representative bodies, please provide information on the number and nature of people you represent.

1.20 For all questions, please submit any supporting data alongside the response, even if it is aggregated and/or anonymised.

1.21 If responding by email, when responding to questions please indicate the number of the question you are responding to. You do not need to provide answers to all the questions in order to submit a response.

1.22 The government will publish a response to the consultation in due course. All respondents will be listed within that document.

1.23 The government will be consulting relevant stakeholders and interested parties through meetings between July and September 2026. If you would like to be included in a consultative meeting, please contact us at the email above by 21 September 2026.

1.24 If there are any questions on aspects of this document, please contact us at the email above.

Chapter 2
Existing Tax Treatment

Background

2.1 The government has been told that, whilst the Supreme Court was clear in its judgment in the case of *Orsted West of Duddon Sands (UK) Ltd and others v HMRC [2026]* that the costs in question were not in scope of capital allowances, some uncertainty remains for businesses in how this judgment could impact wider predevelopment costs.

2.2 HMRC has updated its guidance to address the areas of uncertainty raised by businesses following the judgment, such as the treatment of design costs. The government wants to understand whether businesses remain uncertain on the correct tax treatment of predevelopment costs and the commercial impact of the current legislation.

2.3 For questions set out in this Chapter, where possible, the government would welcome details from businesses on how the case has impacted predevelopment costs both within and beyond the scope of the Supreme Court's recent judgment.

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?

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

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.

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

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

Chapter 3

Types of costs

Background

2.4 The government wants to better understand stakeholders' views on the different types of predevelopment costs, as defined in Chapter 1, that businesses incur when undertaking investment projects, and why they incur these costs.

2.5 For questions set out in this Chapter, where possible, the government would welcome details for investment projects that you have undertaken in recent years, or plan to undertake.

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

Question 7: Typically, what proportion of the total capital expenditure for an investment project is incurred on each type of predevelopment cost, and over how long are these costs incurred?

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.

Question 9: If an investment project does not go ahead, can any of the predevelopment costs be recovered? For example, through sale of surveys to another business interested in pursuing a similar project.

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.

Predevelopment costs where the tax treatment is uncertain

2.6 Stakeholders have previously raised concerns about areas where the tax treatment of some predevelopment costs is uncertain. As set out in Chapter 2, the government is keen to understand more about stakeholders' views on any difficulties in applying the rules of tax deductibility to these costs.

Question 11: For predevelopment costs where the tax treatment may be difficult to apply, what proportion of overall predevelopment costs do these typically represent?

Chapter 4
Impacts

Background

2.7 The government recognises that the tax treatment of predevelopment costs may be a factor taken into consideration when businesses consider investment decisions, although, whilst these costs can be significant, the government understands that they typically represent a relatively small proportion of the total cost of most projects.

2.8 The UK has a competitive regime of investment support, having expanded the generosity of capital allowances in recent years, with the commitment to full expensing and the £1m Annual Investment Allowance. The government wants to maximise impact of support, and to explore the relative importance of capital allowances on predevelopment costs against other potential changes to the tax system that may support businesses to make new investments.

2.9 The government has also heard from stakeholders that the tax treatment of predevelopment costs can have wider indirect impacts on businesses' incentives to invest and the UK's competitiveness. Given the recent litigation and judgment by the Supreme Court, the government is keen to understand this in more depth.

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

Question 13: What is your impression of the tax treatment of predevelopment costs in other jurisdictions? Does this treatment impact whether to invest in those other jurisdictions rather than the UK?

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

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.

Chapter 5
Processing of personal data

Processing of personal data

This section sets out how we will use your personal data and explains your relevant rights under the UK General Data Protection Regulation (UK GDPR). For the purposes of the UK GDPR, HM Treasury is the data controller for any personal data you provide in response to this consultation paper.

Data subjects

The personal data we will collect relates to individuals responding to this discussion paper. These responses will come from a wide group of stakeholders with knowledge of the business tax system.

The personal data we collect

The personal data will be collected through email submissions and are likely to include respondents' names, email addresses, their job titles and opinions.

How we will use the personal data

This personal data will only be processed for the purpose of obtaining opinions about government policies, proposals, or an issue of public interest.

Processing of this personal data is necessary to help us understand who has responded to this discussion paper and, in some cases, contact respondents to discuss their response.

Lawful basis for processing the personal data

Article 6(1)(e) of the UK GDPR; the processing is necessary for the performance of a task we are carrying out in the public interest. This task is inviting views on the tax system, to help us to develop effective government policies.

Who will have access to the personal data

The personal data will only be made available to those with a legitimate business need to see it as part of process of reviewing the tax treatment of predevelopment costs.

We sometimes conduct consultations in partnership with other agencies and government departments. This consultation is being conducted in partnership with His Majesty's Revenue & Customs (HMRC). Personal data received in consultation responses will be shared with HMRC in order for them to also understand who responded to the consultation, unless you explicitly tell us that you prefer not to share this information.

As the personal data is stored on our IT infrastructure, it will be accessible to our IT service providers. They will only process this personal data for our purposes and in fulfilment with the contractual obligations they have with us.

How long we hold the personal data for

We will retain the personal data until work on the issue is complete and no longer needed.

Your data protection rights

Relevant rights, in relation to this activity are to:

- request information about how we process your personal data and request a copy of it
- object to the processing of your personal data
- request that any inaccuracies in your personal data are rectified without delay
- request that your personal data are erased if there is no longer a justification for them to be processed
- complain to the Information Commissioner's Office if you are unhappy with the way in which we have processed your personal data

How to submit a data subject access request (DSAR)

To request access to your personal data that HM Treasury holds, please email: dsar@hmtreasury.gov.uk

Complaints

If you have concerns about Treasury's use of your personal data, please contact our Data Protection Officer (DPO) in the first instance at: privacy@hmtreasury.gov.uk

If we are unable to address your concerns to your satisfaction, you can make a complaint to the Information Commissioner at casework@ico.org.uk or via this website: https://ico.org.uk/make-a-complaint.

HM Treasury contacts

This document can be downloaded from www.gov.uk

If you require this information in an alternative format or have general enquiries about HM Treasury and its work, contact:

Correspondence Team
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ

Tel: 020 7270 5000

Email: public.enquiries@hmtreasury.gov.uk