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Tax treatment of predevelopment costs

Response from ICAS

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About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. 12,000 of our members are based in Scotland and 10,000 in the rest of the UK.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. We welcome the opportunity to respond to the HM Treasury consultation – [Tax treatment of predevelopment costs](#). We appreciated the opportunity to discuss the proposals with the consultation team at the roundtable meeting on 13 August.
5. A significant part of the consultation focuses on whether the Supreme Court decision in *Orsted West of Duddon Sands (UK) Ltd and others v HMRC [2026]* has provided certainty for businesses on the tax treatment of predevelopment costs. Orsted itself dealt with costs related to the development of windfarms. However, the approach to interpreting the relevant legislation adopted by the Supreme Court has implications for similar costs incurred (to obtain regulatory and planning approvals) in other renewable energy and broader infrastructure projects.
6. We were told that the uncertainty caused as Orsted progressed to the Supreme Court (with conflicting judgements at different stages) was affecting investment decisions. The Supreme Court ruling has now confirmed that no tax relief will be available for significant essential business costs, where they are similar to those incurred in the Orsted case. However, there will continue to be uncertainty about exactly where to draw the dividing line between qualifying and non-qualifying expenditure for capital allowances purposes. This is unhelpful in terms of incentivising investment, particularly in renewable energy projects.
7. The government's 2024 Corporate Roadmap commented that "a core pillar of our Growth mission is to encourage investment in renewable energy and major infrastructure projects". It is, therefore, disappointing that the consultation states that the government is "not currently minded to legislate to change the tax treatment of these [predevelopment] costs."
8. The UK and Scottish Governments both support UK community renewables projects. We have been told that these projects generally raise funding from sources other than grants (which are largely unavailable). Typically, funding may come from equity investments by business angels, venture capital options, bank debt and community shares. The ability to obtain capital allowances on predevelopment costs is often critical to the funding and financial sustainability of these projects in the early years. The confirmation in Orsted that no tax relief will be available for substantial predevelopment costs, combined with other economic challenges, is likely to lead to projects not going ahead in future.
9. From the perspective of international investment in renewables projects, we have received feedback that the UK competes with many markets across Europe and beyond. In Europe these include Germany, Spain, France, the Netherlands, Nordic countries and Poland. Tax relief is not the only consideration for investors, but it is an important one, particularly in the early stages of a project. If investors choose to go elsewhere because of the unfavourable tax treatment of predevelopment costs, the UK loses future tax revenues, employment opportunities and

increased capacity for generating clean energy. Restricting or slowing down clean energy investment may also be a limiting factor for government plans for AI in the UK.

10. As a general principle, we believe that some form of tax relief should be available for genuine business expenditure, unless there are specific policy reasons for excluding some costs. In the case of renewable energy projects, but also infrastructure projects more generally, various environmental surveys and assessments are required to obtain regulatory and planning consents. It is desirable that these surveys are undertaken to ensure that environmental risks are properly assessed and managed, so it is difficult to see why there would be any policy reasons for denying tax relief.
11. We suggest that the government should reconsider its position on changing the tax treatment of predevelopment costs, so that the absence of tax relief does not deter investment in infrastructure projects, particularly those related to renewable energy. Further consideration should be given to the mechanism for providing tax relief, and whether using the capital allowances regime would be the best approach.
12. For community renewables projects, it might be preferable to undertake a broader review of the tax treatment of these community projects, with a view to introducing a specific tax regime that is simpler and provides relief for essential costs.

Specific Questions

Existing tax treatment

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?

13. The Orsted case considered the availability of capital allowances for predevelopment expenditure incurred in the course of planning and designing offshore windfarms. The significant costs related to a range of environmental and marine surveys, technical reports and studies undertaken to allow Orsted to produce Environmental Impact Assessments and obtain regulatory consents for the construction of the windfarms.
14. The main question for the courts was whether the expenditure qualified for capital allowances under section 11(4) of the Capital Allowances Act 2001 as "capital expenditure on the provision of plant". The case illustrates the complexity of the rules and how difficult it can be to apply the legislative wording to modern infrastructure projects with any certainty.
15. The First Tier Tribunal held that most of the expenditure did qualify for capital allowances under section 11. In 2023 the Upper Tribunal allowed HMRC's appeal and decided that none of the expenditure qualified. The Court of Appeal then allowed Orsted's appeal and held that the expenditure did qualify, prompting HMRC's appeal to the Supreme Court.
16. The Supreme Court adopted a narrow interpretation of the legislative wording and found in HMRC's favour. It rejected Orsted's argument for a broad construction of section 11(4)(a), which would have allowed the predevelopment costs necessarily incurred to qualify as expenditure 'on' the provision of plant. Instead, it decided that the statutory wording requires a close connection between the expenditure and the plant provided; here the connection was not close enough. Lady Rose commented "I do not regard these studies and surveys as close to the boundary between what should be regarded as "on" plant and what is too far away from the plant itself to be so regarded."
17. The judgment still leaves considerable uncertainty in practice on exactly where the line should be drawn between qualifying and non-qualifying expenditure but does indicate that substantial predevelopment costs will not qualify for relief.

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

18. See our response to Question 1. The judgment still leaves considerable uncertainty in practice on exactly where the line should be drawn between qualifying and non-qualifying expenditure.

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.

19. See our response to Question 1. The boundary between qualifying and non-qualifying expenditure has moved following the Orsted judgment, with more essential expenditure likely to fall on the non-qualifying side of the line. However, there remains considerable uncertainty as to exactly where the dividing line should be drawn. Determining whether there is a close enough connection between the expenditure and the plant provided will not be straightforward.

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

20. As noted in our general comments, we have received feedback related to community renewables projects. These usually involve reports that cover initial options with an appraisal of various sites; these costs would not be allowable. However, one site will usually go on to be developed, with expenditure being incurred on a range of surveys that are required to obtain planning and regulatory permissions.
21. We understand that HMRC's guidance does not provide clarity on which side of the dividing line these survey costs would fall. The pro-rata approach introduces further uncertainty into the process. Carrying out the necessary analysis presents significant practical challenges for smaller community projects.
22. The existing tax structure was not designed with this type of project in mind, ie projects with community ownership and environmental outcomes rather than purely commercial objectives. Orsted has not improved the position; complex analysis will still be required but with increased amounts of expenditure likely to be determined to be non-qualifying. Potentially, a specific tax regime could be put in place for these projects. We discuss this further in our responses to Questions 10 and 15.

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

23. We understand that some businesses are considering different commercial structures for undertaking renewables development projects. However, this is challenging for many reasons, for example, interaction with financing arrangements. It seems an unnecessary obstacle to obtaining tax relief for essential business costs – see our response to Question 10, for further discussion of this point.

Types of costs

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

24. In the context of community renewables projects, we understand that the surveys and studies required prior to construction are extensive and can cover a long period of time (a minimum of one year but often longer). Many of the surveys are site specific, for example, wind studies, ground condition surveys, otter surveys, traffic surveys (due to construction traffic and the transportation of abnormal loads) and ornithological studies.
25. The surveys are initially required to obtain planning permission but subsequently inform the construction of the windfarms or hydro schemes themselves.

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?

26. As set out in our response to Question 6, the costs incurred for community renewables projects can be spread over a long period.
27. We have been given an example of three community owned windfarm projects, with total capital expenditure ranging from approximately £2 million to approximately £10 million. The amounts of the predevelopment costs of the type mentioned in our response to Question 6, were broadly similar. However, the percentages of total capital costs represented by this expenditure were 0.7% in the largest project, 3.5% in the smallest project and 2.1% in the other. Based on this small sample of projects, the tax treatment of these costs could be more significant for smaller projects than larger ones.
28. More generally on renewables projects, we have feedback that around 3 to 5% of total capital spend relates to predevelopment costs and around 50 to 60% of that is impacted by the Orsted judgment.

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.

29. See our responses to Questions 6 and 7.

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.

30. We have not been given any evidence of this happening in practice. It is unclear how likely it would be that other businesses would be interested in pursuing an identical project on a site that one business has already rejected. We assume there may also be contractual restrictions that might prevent the first business selling the professional surveys it had commissioned.

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.

31. As a general principle, we believe that some form of tax relief should be available for genuine business expenditure, unless there are specific policy reasons for excluding some costs.
32. In the case of renewable energy projects, but also infrastructure projects more generally, various environmental surveys and assessments are required to obtain regulatory and planning consents. It is desirable that these surveys are undertaken to ensure that environmental risks are properly assessed and managed, so it is difficult to see why there would be any policy reasons for denying tax relief.
33. We suggest that the government should reconsider its position on changing the tax treatment of predevelopment costs, so that the absence of tax relief does not deter investment in infrastructure projects, particularly those related to renewable energy (which have an important place in the government's strategy for delivering clean energy.)
34. Further consideration should be given to the mechanism for providing relief, and whether using the capital allowances regime would be the best approach.
35. As set out in our response to Question 4, the existing tax structure was not designed with community renewable projects in mind. These are projects with community ownership and environmental outcomes, rather than purely commercial objectives. Orsted has not improved the position – complex analysis will still be required but with increased amounts of essential expenditure likely to be determined to be non-qualifying.

36. It might be helpful to undertake a broader review of the tax treatment of community renewables projects, with a view to introducing a specific tax regime that is simpler and provides relief for essential costs. This could encourage investment in projects with a role in delivering clean energy and support the government's aim to increase UK community ownership of renewables projects.

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

37. See our responses to Questions 6 and 7.

Impacts

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

38. We have been told that the tax treatment of predevelopment costs has a significant impact on UK community renewables projects. These projects generally raise funding from sources other than grants (which are largely unavailable). Typically, funding may come from equity investments by business angels, venture capital options, bank debt and community shares.
39. The ability to obtain capital allowances on predevelopment costs is often critical to the funding and financial sustainability of these projects in the early years, to assist in putting them on a secure financial footing. For example, bank covenants will require debt servicing and maintenance reserves to be funded as a priority, before using income derived from renewable energy to help fund other community projects.
40. The confirmation in Orsted that no tax relief will be available for substantial predevelopment costs, combined with other economic challenges, is likely to lead to projects not going ahead in future.

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?

41. From the perspective of international investment in renewables projects, we have received feedback that the UK competes with many markets across Europe and beyond. In Europe these include Germany, Spain, France, the Netherlands, Nordic countries and Poland.
42. Tax relief is not the only consideration for investors, but it is an important one, particularly in the early stages of a project. If investors choose to go elsewhere wholly or partly because of the unfavourable tax treatment of predevelopment costs, the UK loses future tax revenues, employment opportunities and increased capacity for generating clean energy. Restricting or slowing down clean energy investment may also be a limiting factor for government plans for AI in the UK.
43. We understand that the UK approach now appears less favourable than several competing jurisdictions for the specific category of early-stage development expenditure affected by Orsted. While the UK is not uniquely uncompetitive on capital allowances for renewable projects overall, it appears unusually restrictive in denying relief for compulsory predevelopment and regulatory consent expenditure that forms an essential part of bringing offshore renewable generation assets into existence.

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

44. We have no comments on this question.

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.

45. See our responses to Questions 4 and 10. From the perspective of community renewable energy projects, the availability of tax relief on predevelopment costs is very important.
46. It might be helpful to undertake a broader review of the tax treatment of these community projects, with the intention of introducing a specific tax regime that is simpler and provides tax relief for essential costs. This could encourage investment in projects with a role in the government's plans for delivering clean energy and support the government's aim to increase UK community ownership of renewable energy projects.



CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH
+44 (0) 131 347 0100
connect@icas.com
icas.com

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