21 September 2026

Tax treatment of predevelopment costs

Comments from Saffery LLP

Saffery

1. Executive summary

1.1 We welcome the opportunity to comment on the government's consultation on the tax treatment of predevelopment costs.

1.2 In summary, our key points are as follows:

- The *Orsted* decision has clarified the boundary for relief on predevelopment expenditure but applying that boundary in practice remains difficult, particularly on large and complex projects.
- Many predevelopment costs are incurred as a necessary part of bringing forward productive investment but may fall outside the current capital allowances framework.
- Predevelopment activities are often interconnected with later design, engineering, planning and construction decisions, making direct attribution challenging.
- HMRC guidance should provide greater clarity on the treatment of mixed-purpose expenditure and include practical examples reflecting real-world development projects.
- Where direct attribution is not possible, HMRC should recognise reasonable apportionment methodologies supported by appropriate evidence.
- Businesses already maintain extensive project documentation. Future guidance should build on existing commercial records rather than requiring artificial or burdensome record-keeping.
- The absence of relief for certain predevelopment costs can increase the after-tax cost and risk of investment decisions, particularly where projects may not proceed to completion.

1.3 Section 2 covers our responses to the specific questions raised in the consultation document.

1.4 We would be happy to discuss the points raised here in further detail. If you have any questions, or would like any further information, please contact: Sean McGinness, National Tax Partner, on +44 (0)131 221 3217 or email sean.mcginness@saffery.com or Ami Jack, Partner, National Tax, on +44 (0)330 094 3079 or email ami.jack@saffery.com.

2. Specific consultation questions

2.1 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?

2.1.1 The judgment has confirmed that expenditure must be sufficiently connected with and incurred 'on the provision of' plant and machinery to qualify for plant and machinery allowances.

2.1.2 Expenditure incurred at an earlier stage to determine whether a project should proceed, how it should be designed, or whether permissions can be obtained, may not meet that test, even if the project ultimately results in significant qualifying plant and machinery.

2.1.3 HMRC's CA95010 summary of *Orsted* is particularly important because it identifies the Supreme Court's 'narrow test' and HMRC's view that preparatory studies and surveys of the Orsted type are not sufficiently closely connected to the actual provision of plant. This reinforces the need for claimants to distinguish early feasibility, planning and enabling work from later asset-specific expenditure.

2.1.4 This is important because large-scale development projects can require substantial upfront expenditure before a specific item of plant or machinery can be identified with certainty. Costs such as planning strategy, environmental work, feasibility studies, surveys, utilities assessments and early design may be essential to progressing the project but may arise before expenditure is clearly 'on the provision of' plant and machinery.

2.1.5 A practical concern is that the current rules may leave necessary business investment costs outside relief purely because they are incurred at an early stage. That may not reflect the economic reality of major development projects, where predevelopment work is an unavoidable step in enabling productive investment.

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

2.2.1 The judgment has clarified the legal principle, but it has not removed practical uncertainty. In construction projects, workstreams often overlap. Feasibility, design, planning, procurement, construction and fit-out do not always fall into sequential phases. The same consultants may work across early feasibility, planning submission, technical design and construction delivery.

2.2.2 The practical difficulty for businesses is identifying when a cost moves from general predevelopment expenditure into asset-specific design or installation support. For example, an engineering appointment may begin with options analysis and feasibility, then move into technical design that directly informs the specification of building systems and plant. Similarly, a design consultant may support both planning consent and detailed fit-out or building services work.

2.2.3 For example, one of our clients has demonstrated that project appointments can cover architect, lead consultant, accessibility consultant, principal designer for Construction (Design and Management) (CDM), plant mechanical works, façade panel installation, Cat B strategy and consultant fee proposals and building regulations, with appendices covering scopes of services, programmes, client briefs, supplementary design information, planning conditions and Section 106 (S106) trackers. This demonstrates that design, regulatory, accessibility, building safety and planning workstreams are most often interconnected rather than neatly separated.

2.2.4 Therefore, the judgment improves understanding of the boundary but increases the importance of documentation, evidence and apportionment. It would be helpful for HMRC to provide guidance on how businesses should approach mixed-purpose costs and phased professional appointments.

2.3 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.

2.3.1 Uncertainty remains for costs that serve more than one purpose. Development projects commonly involve planning, environmental, engineering, utilities, infrastructure, design and project management work that is required for regulatory approval and commercial viability, but which also informs the eventual construction and specification of assets.

2.3.2 HMRC CA20070 is helpful but also demonstrates why uncertainty remains. It states that professional fees such as survey fees, architects' fees, quantity surveyors' fees, structural engineers' fees and service engineers' fees only qualify where they relate directly to the acquisition, transport and installation of plant or machinery. However, on some developments, these professional services often span planning, feasibility, detailed design and delivery.

2.3.3 The principles in *JD Wetherspoon* [2012] UKUT 42 (TCC), now reflected in HMRC CA20070, are useful because they support apportionment of preliminaries where direct attribution is not possible or economic. A similar practical approach would be helpful where predevelopment costs evolve into asset-specific plant design or installation support.

2.3.4 We would welcome further HMRC guidance on reasonable apportionment and evidence required for these costs.

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

2.4.1 The main practical challenge is evidence. Project records are prepared primarily for project management, cost control, procurement, governance, and lender/investor reporting. They are not necessarily designed to distinguish whether each element of expenditure is incurred on the provision of plant and machinery for tax purposes.

2.4.2 In practice, businesses and their advisers may need to review scopes, purchase orders, invoices, cost plans, payment tracker, project stages etc to determine the correct treatment. This can be difficult where costs are grouped under broad headings such as soft costs, design, development management, infrastructure or professional fees.

2.4.3 For example, a recent development report showed approved budget, spending to date, costs to complete, total forecast costs, trade packages procured and yield on cost. That reporting is valuable commercially, but it does not itself determine whether professional fees, preliminaries or infrastructure costs qualify for capital allowances.

2.4.4 There is also a timing challenge. Capital allowances analysis may be undertaken months or years after expenditure is incurred, when the project has evolved, and when the project team's focus has moved to delivery. The business may then need to reconstruct the details of historic costs. This creates additional compliance burden and uncertainty, particularly on long-running projects.

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

2.5.1 The judgment may cause businesses to request more detailed scopes, separate workstreams, more granular invoices, and clearer descriptions of deliverables. This may help evidence, but it can also create tax-driven documentation that does not reflect how projects are managed.

2.5.2 Projects are managed by integrated development milestones, such as planning deliverables, structural surveys, Mechanical, Electrical, and Plumbing (MEP) strategies, Cat B delivery strategy, Environmental Impact Assessment (EIA) deliverables, S106/Community Infrastructure Levy (CIL) negotiations and consultant selection. For tax purposes, claimants may need a more granular breakdown than the project team would ordinarily require for commercial delivery.

2.5.3 Claimants would support guidance that recognises this practical reality. A reasonable and evidence-based apportionment approach would allow businesses to use project records sensibly without having to restructure commercial arrangements purely for tax reasons.

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

2.6.1 Claimants incur a wide range of predevelopment costs in major development and regeneration projects. These include feasibility and viability studies, planning consultancy, planning application costs, S106-related support, environmental impact work, sustainability studies, surveys, legal support, development management, project management, architectural design, engineering design, utilities studies, infrastructure design and public realm interface work.

2.6.2 Other examples include structural surveys, planning application deliverables, consultation response, cost plan review, Local Plan examination, MEP strategy, Cat B delivery strategy, Cat B consultant fee proposals, CAT A; EIA deliverables, CIL/S106 negotiations, fire/façade engineering and façade access consultant selection.

2.6.3 All this shows construction-stage activities that can overlap with professional/design decisions.

2.6.4 These examples show the nature of technical/project costs, but each item would still need its own tax analysis to determine whether it is predevelopment, qualifying plant expenditure, preliminaries or another cost type.

2.7 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?

2.7.1 The proportion varies significantly depending on the scale, location, complexity, and regulatory context of the project. In urban regeneration and estate development projects, predevelopment expenditure may be a relatively small proportion of total capital expenditure but can be significant in absolute terms.

2.7.2 Large developments have material cost categories and continuing cost-to-go profiles sometimes over several years, so even a modest percentage of predevelopment or mixed-purpose professional costs can be material in absolute terms.

2.8 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.

2.8.1 Businesses incur predevelopment costs for multiple reasons. Some costs are required for regulatory or statutory reasons, including planning, environmental assessment, building regulations, accessibility, health and safety, CDM and S106-related obligations. Other costs are needed for technical feasibility, commercial viability, investor approvals, lender due diligence, procurement, design development and project governance.

2.8.2 A single cost may have more than one purpose. This multi-purpose nature is central to the concerns of businesses we act for. The tax rules require a classification exercise that may not align with how development costs are incurred in practice. Guidance should therefore recognise that reasonable apportionment may be necessary and appropriate.

2.9 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.

2.9.1 In our experience, recovery of predevelopment costs is generally limited where a project does not go ahead. Reports, surveys, planning work, technical advice and design outputs are usually prepared for a specific site, project, design assumption and client instruction. They may be subject to confidentiality, reliance limitations, expiry dates or changes in planning context.

2.9.2 Where a project does not proceed or is materially redesigned, some information may still inform future options for the same site or estate. However, that does not necessarily mean there is meaningful commercial recovery. The output may not be capable of being sold to another party, or it may have limited value without the wider project context.

2.9.3 This demonstrates why tax treatment matters. Predevelopment costs are incurred at a stage where project risk is high and recovery is uncertain. If no tax relief is available, the after-tax cost of exploring and bringing forward investment increases.

2.10 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.

2.10.1 There is a strong policy case for clearer relief for predevelopment expenditure that is mandatory or commercially unavoidable in bringing forward productive investment.

2.10.2 The HMRC CA20070 position confirms that not all professional fees or preliminaries qualify. However, where professional fees relate directly to the acquisition, transport or installation of plant or machinery, they can form part of expenditure on the provision of plant. Similarly, only the part of preliminaries properly regarded as on the provision of plant can qualify. The request is not for automatic relief for all project costs, but for more usable guidance on how to apply that distinction to complex, phased developments.

2.10.3 We would support guidance or targeted reform that recognises final detailed design work directly connected with specific plant, technical engineering work required for plant specification or installation, project preliminaries that reasonably relate to qualifying works and professional fees that move from feasibility into asset-specific delivery.

2.10.4 The Barclay Curle principle, reflected in HMRC CA21190, is also relevant by analogy for existing buildings: alterations incidental to plant installation can qualify where there is a direct link to the installation of plant. That direct-link principle could help frame guidance for refurbishment and repurposing projects.

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

2.11.1 The proportion will vary by project, but the difficult categories are likely to be meaningful because many major development costs are mixed purpose. Design, engineering, environmental, utilities, infrastructure, project management and professional fees often span feasibility, consent, design development and delivery.

2.11.2 This is a practical point rather than a precise percentage. In our examples this shows several recurring categories that are likely to require review, including soft costs and infrastructure, planning deliverables and surveys, MEP and Cat B strategy, EIA, CIL/S106 and Local Plan policy and viability work.

2.11.3 The difficulty arises because the expenditure is often embedded within broader project cost categories rather than separately recorded.

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

2.12.1 Yes. The tax treatment can affect investment decisions because predevelopment costs are incurred at the highest risk stage of a project. At that point, there may be no planning certainty, no construction certainty, no final valuation, no lender commitment and no income generation. Non-relief increases the after-tax cost of reaching an investment decision.

2.12.2 For large projects the absolute amounts can be material. Even if predevelopment costs represent a minority of overall capital expenditure they can be significant and they are often incurred before the investment has been de-risked. This can affect project viability, investment committee analysis, hurdle rates, funding requirements and the relative attractiveness of UK development projects.

2.12.3 Greater clarity or relief would support more confident investment decisions. It would also align with the policy objective of supporting investment, infrastructure and growth, particularly for complex regeneration projects that require substantial upfront planning, technical and infrastructure work.

2.13 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?

2.13.1 No comment.

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

2.14.1 The current rules create administrative and compliance impacts. Businesses may need to spend considerable time reviewing historical project documentation, invoices and project records to determine whether costs are deductible, qualifying for capital allowances, or non-relieved capital costs.

2.14.2 The rules may also influence behaviour by encouraging more granular scopes and invoices for tax purposes. While better evidence is useful, there is a risk that commercial project management becomes more complex because documentation needs to be structured around tax classifications.

2.14.3 The issue is especially important for large regeneration and infrastructure-enabled projects. These projects often involve planning complexity, environmental requirements, utilities, transport interfaces, public realm, sustainability, building safety, and multi-party governance. The more complex the project, the greater the likelihood that early-stage costs will be significant and difficult to classify.

2.15 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.

2.15.1 Full Expensing and the Annual Investment Allowance are valuable parts of the UK capital allowances regime, but they do not fully address the issue raised by predevelopment costs. The difficulty is that many predevelopment costs arise before expenditure is sufficiently connected with the provision of plant and machinery. As a result, the business may not reach the point at which existing plant and machinery incentives are available.

2.15.2 HMRC CA20070 and CA95010 show why this distinction matters. Professional fees, preliminaries and survey/design-type costs require careful analysis. Preparatory studies and surveys may fall outside PMA even if commercially necessary. Therefore, existing plant and machinery incentives do not necessarily help if the expenditure falls outside the 'on the provision of' boundary.

2.15.3 Any guidance that addresses early-stage project costs would complement existing capital allowances support. It would provide certainty at the stage when investment decisions are being made and when project risk is highest.

2.15.4 Our clients would support practical measures such as clearer guidance on phased professional fees; a reasonable apportionment framework for mixed-purpose costs; recognition of mandatory planning, environmental, utilities, design and technical work; and an evidence standard that can be applied consistently across long-running projects.

2.15.5 Major developments involve long-running, high-value, multi-disciplinary programmers. A targeted predevelopment cost solution would complement, rather than replace, existing capital allowances incentives by addressing cost categories that arise before the usual plant and machinery claim point.

3. About Saffery LLP

3.1 At Saffery, we're more than just chartered accountants and tax and business advisers. We're a partner-led and people-focused firm, committed to our clients and honouring our heritage.

3.2 Since 1855, we've evolved in size and scope, but our unwavering dedication to exceptional client service remains the same.

3.3 As a proud member of Nexia, a worldwide network of trusted member firms, we've got access to local insight on a global scale.

3.4 In the UK, Saffery LLP is the 15th largest accountancy firm by fee income, with 90+ partners and 1,300+ staff across nine offices. Saffery also has an office in Dublin, Ireland.