



ADVANCE TAX CERTAINTY FOR MAJOR PROJECTS

Issued 11 June 2025

ICAEW welcomes the opportunity to comment on the consultation entitled 'Advance tax certainty for major projects' published by HM Treasury on 26 March 2025, a copy of which is available from [this link](#).

1. We welcome the additional certainty that advance clearance facilities could provide. We believe that HMRC should look to make the proposed service wider in scope over time if it proves successful.
2. HMRC should commit to providing clearances within a set target timeframe and be dealt with via named contacts (if not by the business' CCM) at HMRC so that it is easy for the business or agent to follow up on progress.
3. We suggest that the service should act as a co-ordinating facility to ensure that all clearances being sought in relation to a single project are received, as far as possible, at the same time.
4. We do not believe that HMRC should be charging for the provision of clearances.

This response of 11 June 2025 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

5. We welcome the additional certainty that advance clearance facilities could provide. We believe that HMRC should look to make the proposed service wider in scope over time if it proves successful.
6. There is a generally held public perception that the tax system is more favourable to large business than to the SME sector. Introducing a new service that is only accessible to businesses large enough to carrying out large scale infrastructure projects could reinforce that viewpoint. Larger businesses also already have access to customer compliance managers (CCMs) that can help them to explore and resolve uncertainties.
7. We do not believe that HMRC should be charging for the provision of clearances. As above, this could create the perception that larger businesses are at an advantage because they will have the funds available to pay any fees charged.
8. To aid confidence in the service, HMRC should commit to providing clearances within a set target timeframe and be dealt with via named contacts (if not by the business' CCM) at HMRC so that it is easy for the business or agent to follow up on progress.
9. Ideally, the clearance process would take the form of a dialogue between the business and HMRC (and the agent, where appropriate) rather than a written application and written response. The formal written correspondence could be confirmation of what has already been discussed. If the business has a CCM, they could help to co-ordinate this, bringing in colleagues from across HMRC where appropriate
10. We do not believe that eligibility for the scheme should be based solely on the total actual or authorised spend on the project concerned. Other factors should be considered in determining the national or strategic importance of the project to the UK, including the number of jobs created, the impact on other UK businesses and whether it helps to further other government objectives beyond economic growth.
11. We agree with HM Treasury's proposal that where there is an existing, more appropriate advance certainty process, the service would not seek to duplicate it but instead act as a front door. We suggest that the service should act as a co-ordinating facility to ensure that all clearances being sought in relation to a single project are received, as far as possible, at the same time. If, say, four clearances were sought but only one was outstanding, this could hold up a project from being taken forward.
12. It is important that businesses have the facility to continue to touch base with HMRC as a project progresses to check whether any material changes to facts and circumstances affect the validity of the clearance previously given and where necessary, obtain an updated clearance.

ANSWERS TO SPECIFIC QUESTIONS

CHAPTER 2: ELIGIBILITY

- 1) ***What is the impact of giving eligibility to corporate entities that are or will be subject to CT and are directly undertaking major investment projects? Does this exclude any other structures investing in major projects which would significantly benefit from being in scope?***
13. We anticipate that some overseas entities may decide to open a permanent establishment (PE) in the UK rather than a subsidiary, but the profits earned by the UK PE will still be subject to UK corporation tax. We request that this still allows the overseas entity to be eligible, even before the proposed UK PE is set up. We also request that UK tax issues relating to non-resident directors and employees are within scope.

14. There may also be some partnerships or LLPs that would wish to take advantage of this facility. However, as the largest of these in the UK are primarily legal and professional services firms, this seems unlikely.
15. There may also be other situations where entities can be treated as transparent for tax purposes, such that tax liabilities arise on those with an interest in the entity concerned. HMRC may also wish to extend the clearance system to these entities, including UK property rich collective investment vehicles where an election has been made under para 12 sch 5AAA TCGA 1992.

2) *How can advance tax certainty provide material wider benefit beyond the entity receiving the clearance?*

16. We anticipate that HMRC may wish to restrict the issues on which entities are able to seek clearance to those directly related to the specific proposed project, although the tax issues on which clearance may be sought could encompass a variety of taxes and regimes (eg, eligibility for capital allowances, employment status of workers involved, VAT treatment of supplies etc).
17. The success of this scheme relies on HMRC being able to recruit individuals with sufficient expertise in the tax and commercial matters concerned. If it casts the net of issues eligible to be consulted on too widely, HMRC risks reducing the quality and reputation of the service offered.

3) *What is the best way of quantifying the fixed and intangible investment for the purposes of assessing whether a project meets the threshold? Do you agree that authorised project spend is a suitable metric?*

18. Any entity wishing to obtain clearance will wish to do so before the exact cost of the project is known. Hence, it would be difficult to set a threshold based on actual spend as this would not be known at the time that the clearance is sought.
19. We assume that ‘authorised project spend’ refers to the total expenditure that the board of directors has agreed can be spent on the project. If this measure were used to determine whether the threshold has been met, we recommend that minutes of the board meeting where that expenditure was authorised are provided to HMRC in advance to help it to confirm whether the project is eligible for the clearance procedure.
20. The actual spend on the project may differ significantly from the authorised spend and so if HMRC uses authorised spend to test eligibility, it would need to be open to the possibility that the projects it gives clearance on are not actually the largest by actual project spend.

4) *Is there a set amount of expenditure that would prompt you to seek a clearance or certainty, or would this be more attributable to the amount of tax and uncertainty in treatment?*

21. While we support the proposal that applicants would not need to demonstrate genuine uncertainty, we do believe that HMRC should still assess eligibility based on the level of certainty or, to put it another way, the level of impact on the UK economy of the entity *not* having certainty over the tax treatment of the project.
22. This is because when determining the tax impact of a particular project, large corporates will consider the level of probability that a particular tax outcome arises, or risk that it doesn’t. Removing or reducing this risk makes it much easier to determine the tax outcome and therefore whether to go ahead with the project.
23. We therefore believe that eligibility should be based on a combination of factors, including a comparatively low minimum authorised spend, whether the project is of strategic importance

to the UK economy and the impact of the business not having certainty over the tax treatment of the project. As the number of eligible projects is expected to be in the dozens, rather than the hundreds each year, it should be possible for businesses to enter constructive dialogue with HMRC via their customer compliance managers (CCMs) to determine whether the project is eligible for clearance.

5) *Are there supplementary criteria, which are objective and measurable, which could capture projects below the quantitative threshold which are nevertheless of a national or strategic importance, are highly impactful on a relative basis within their sector, or that have large growth potential despite starting small?*

24. Criteria that could be used to determine national or strategic importance include:

- a) The number of jobs created, including where those jobs would be located (to further the government's ambitions of developing parts of the UK that have historically seen lower levels of investment).
- b) The expected impact of the investment on other UK businesses (eg, whether the proposed project expenditure would be on goods or services manufactured or provided from the UK).
- c) Whether the project furthers the government's priorities in areas other than economic growth (eg, to bolster defence spending, provide education or health care facilities or support projects that would help the government to meet its net zero target).

CHAPTER 3: SCOPE

6) *In which areas of UK tax legislation would advance tax certainty have the most impact on investment decisions? Where possible please give examples of where lack of certainty has had a negative effect on an investment decision.*

Capital allowances

- 25. One of the most challenging areas in recent years has been determining eligibility for capital allowances on expenditure that is preliminary and incidental to the installation of plant and machinery for major energy production facilities. HMRC is informally consulting on this area following the recent Court of Appeal decision in [Orsted West of Duddon Sands \(UK\) Ltd v HMRC](#). We note that at the time of writing this response, HMRC had lodged an application to the Supreme Court to appeal this decision.
- 26. This is a significant area of contention because the types of expenditure involved (feasibility studies, ground preparation, etc) are generally capital in nature and therefore would attract no tax relief at all if they were not eligible for capital allowances. As these forms of expenditure take up a significant proportion of the overall project spend, ineligibility would play a significant factor in determining the project's overall financial feasibility.

R&D tax relief

- 27. Another area where uncertainty has increased in recent years is the availability of R&D tax relief in respect of early-stage expenditure on projects which involve an advancement in science or technology. There is an additional [consultation](#) open on the introduction of an advance assurance scheme for R&D tax relief, which could help to reduce uncertainty in this area. However, we believe there would be value in including clearance on the availability of the relief within the proposed facility for major projects. This would ensure that only one application is required, hence reducing costs and delays for the business.

Employment taxes

28. Value would also be gained from certainty over the employment status of workers involved in a project where they are engaged in significant numbers on the same or similar terms as this has a significant impact both on the administration involved in the project (eg whether the workers are put on the company payroll) and the overall tax cost (eg whether employer's national insurance is payable).
29. Other employment tax-related issues on which clearance would be useful to obtain include the following:
 - d) Permanent Establishment (PE) (ie, whether a PE is created) and PAYE presence (whether the PE itself necessarily creates a PAYE presence) or confirmation of host employer obligations (certainty over whether an entity will be held accountable as a host employer).
 - e) Immediate/combined PAYE reference and payroll set up, including modified payroll, App 5 and STBV as one combined application where required – use this as an opportunity to simplify these processes.
 - f) Advance rulings on the taxation or deductibility of pensions, foreign employer social security and the acquisition of work visas.
 - g) Classification (or otherwise) of termination payments as payments in lieu of notice.
 - h) Application of the off-payroll working rules and which entity in the supply chain has the associated employment tax obligations around filing and withholding taxes.
30. Advance clearance on the social security issues (eg where certificates are slow to be processed/provided and contributions are paid and processed incorrectly as a result) would also be welcome.

VAT

31. Where the project involves a transfer of business, obtaining clearance on VAT (especially whether the transfer of a going concern treatment is available) would be useful. Uncertainty arises, for example, when properties with existing tenants are transferred as part of a change in business ownership.
- 7) ***Are there areas for which certainty would be of value that are not currently addressed by the non-statutory clearance process? What do you see as potential benefits and barriers to their inclusion?***
 - 8) ***Who do you consider should be bound by an advance certainty clearance and to what extent. What form should that take?***
32. We see a tension here between making clearances sufficiently binding on HMRC such that businesses think they can rely on them while recognising that the exact details of the proposed transaction or arrangements may not be fully established at the time that the business wishes to seek clearance.
 33. We anticipate that businesses will find it helpful in some cases to at least receive an indication of HMRC's viewpoint before committing to making a major investment. Therefore, any clearance given will need to be caveated on the basis that it only applies to the circumstances and facts shared with HMRC and that an updated clearance may be required should the business seek to rely on this, based on the updated facts and circumstances.
- 9) ***What are the circumstances under which you consider it important to be able to continue to rely on a clearance?***
34. In line with the paragraph above, it is important that businesses have the facility to continue to touch base with HMRC as a project progresses to check whether any material changes to facts and circumstances affect the validity of the clearance previously given and where necessary, obtain an updated clearance.

CHAPTER 4: PROCESS

10) Do you consider that an early engagement facility would be helpful and why?

35. Yes, for the clearance obtained to be considered valuable by business, it needs to be capable of being relied upon. Early discussion would help to clarify the point(s) in the project at which HMRC would feel comfortable to provide a clearance that the business could rely upon.

11) How would this process work with typical commercial decision-making timescales?**12) What facility would be helpful for unsuccessful clearance applications? Do you consider for example that the process should include reconsideration by HMRC on request?**

36. It would be helpful if HMRC included a reconsideration process because two different HMRC officers could come to different conclusions based on the same facts. However, it would be helpful if any such process included an opportunity for the business to answer any concerns that HMRC may have and address any misunderstandings. Ideally, the clearance process would take the form of a dialogue between the business and HMRC (and the agent, where appropriate) rather than a written application and written response. The formal written correspondence could be confirmation of what has already been discussed.

13) Do you consider a scoping meeting to obtain clarity on scope of clearance, timing and inputs to be useful? What would a scoping conversation need to include?

37. Yes, a scoping meeting could clarify:
- i) the scope of the transaction(s) or arrangements on which clearance is being sought;
 - j) the taxes in scope;
 - k) the timing for the clearance and how that fits with the timing of the arrangements;
 - l) what information HMRC needs to consider the clearance application.

14) Are there process elements you would consider helpful during the clearance consideration phase?

38. As set out in our answer to question 12, we believe that the clearance process should take the form of an ongoing dialogue, which would help to bring elements into the process as and when it seems appropriate. If the business has a CCM, they could help to co-ordinate this, bringing in colleagues from across HMRC where appropriate.

15) What do you consider the advantages and disadvantages of publishing summarised and anonymised clearances to be? Has publication by other clearance jurisdictions aided tax certainty as a result?

39. Publishing clearances could help to give other businesses reassurance about the tax treatment of subsequent transactions and arrangements. However, any clearance given will be based on the facts and circumstances of the individual case so may be of limited value to other businesses, even where their proposed arrangements are only a little different to those on which clearance was obtained.
40. Given that this process will only apply to the most significant of projects, it is likely that many projects would be known about in advance, especially if planning applications and other advance assurances involving public consultation are needed. Anonymisation may therefore be of limited use as those in the know would probably recognise the project in any event. As such, it seems that in most cases, publication is unlikely to be problematic. However,

businesses could have the option to refuse publication if this would lead to the disclosure, for example, of commercially sensitive information.

16) *What would you wish to see in terms of engagement for clearances where impacted post issuance by legislation, ownership, case law or key facts and assumption changes?*

41. We understand that to monitor every clearance issued by HMRC for the impact of changes in legislation, case law, key facts, etc, would be prohibitively costly. We therefore believe that the onus should be on the businesses that obtained the clearances to monitor whether they can still be relied upon and enter dialogue with HMRC where they have any concerns. HMRC should provide reassurance where appropriate or provide an explanation of any aspects of the clearance that it believes can no longer be relied upon.

17) *What should a renewals process look like, and is five years an acceptable trigger point?*

42. Anything between three and five years appears to be an appropriate trigger point. Any sooner could be prohibitively expensive for HMRC to administer. Any longer risks the clearance being based on extremely out of date facts, legislation, case law and guidance, all of which could change considerably over that period.
43. We believe that at the trigger point, the business could confirm whether it still wishes to rely on the clearance. The business could set out any material changes to the facts and circumstances and its analysis as to the continued validity of the clearance based on those changes. HMRC could then either agree a renewal of the clearance or explain how and why it disagrees.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).