

Advance tax certainty for major projects

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.
- 1.2 We are submitting these comments in response to the consultation on *Advance tax certainty for major projects* published on 26 March 2025. We welcome the proposals for a new process that will give major investment projects increased tax certainty in advance because tax certainty, alongside a stable and competitive tax regime, is highly valued by businesses. We support the overall process outlined in the consultation document and encourage the design to ensure a focus on big-ticket issues that will impact investment decisions. We agree that the new clearance service cannot exhaustively provide certainty on every tax implication.
- 1.3 Successful delivery of this new process will depend largely on resource. It is important that HMRC retains skilled resource to fulfil its existing services, while also ensuring that this new service is sufficiently and effectively resourced. This only feels achievable if HMRC can successfully recruit new highly skilled tax professionals to deliver it (or perhaps to backfill internal moves), so that the new service is not resourced to the detriment of other services provided by HMRC.
- 1.4 We urge the government to expand the process to include taxes other than corporation tax. By their very nature, the largest and most complex projects may have exposures across the full range of taxes. For this proposal to be successful momentum is needed from the outset, and all areas of tax where uncertainty would affect the decision about whether to proceed with a project eligible for a clearance should be within scope.
- 1.5 While a clear quantitative threshold will provide clarity, which is welcome, and we recognise the need to ensure HMRC has capacity to deliver the service, the need for clearance is derived from the level of uncertainty in relation to the tax treatment, rather than the level of expenditure. We agree that projects that

are of national or strategic importance, or highly impactful on a relative basis within their sector should be eligible, regardless of size.

- 1.6 The impacts of changes in law, HMRC practice or material facts considered when the clearance is given, and the specific circumstances in which clearances can and cannot be relied on, must be clarified in the design of the process, with clarity around how HMRC will apply the rules in practice. This is crucial, so businesses can make an informed decision on making clearance applications and the usefulness of them, and the scope of the certainty provided by the clearance is clearly understood from the outset.
- 1.7 We are generally in favour of publishing summarised and anonymised clearances but recognise that this may be challenging because of the nature of the major projects that will be considered. Regardless of whether the clearances are published, the knowledge obtained through the clearance process should be used to improve certainty generally, through sharing this within HMRC, updating guidance and, where appropriate, seeking changes to legislation.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

- 3.1 We welcome this consultation and the recognition in it, and the Corporate Tax Roadmap, that tax certainty and a stable and competitive tax regime are factors highly valued by businesses. Our stated objectives for the tax system include greater simplicity and clarity, so people can understand how much tax they should be paying and why and greater certainty, so businesses and individuals can plan with confidence, as well as a responsive and competent tax administration, with a minimum of bureaucracy. These comments build on our discussions with HMRC about these proposals at a meeting on 9 June 2025. Abbreviations and definitions used in the consultation document are also used in this response.
- 3.2 Although much of the flavour of the consultation document appears to be considering inward investment, the proposals are not limited to major projects involving investment from outside the UK. Wholly domestic major projects appear to be within scope. This is welcomed.
- 3.3 We support that the focus of the new advance certainty clearance process are projects of the most value and that clearances will focus on key issues that will impact the investment decision. It seems sensible (and

realistic) that the advance certainty clearance process should be limited to fundamental, big ticket tax issues that will impact on investment decisions. We agree that an advance certainty clearance cannot and should not mean exhaustively providing certainty on every tax implication within a project. The statutory process and accompanying guidance and communications should encourage applicants to focus on what is important and to limit assumptions to ensure the clearance team at HMRC is able to work at pace to deliver the clearance within a useful timeframe.

- 3.4 We note the suggested focus on CT but urge the government to expand the process to include other taxes where these are relevant to the project. By their very nature, the largest and most complex projects may have exposures across the full range of taxes. Although this may make management of the clearance process more complicated in some cases, potentially involving more specialists from across HMRC, the amount of issues that are considered in any particular case may not increase to any great extent if there is appropriate scoping by the business and HMRC so that the clearance application focuses on the key points of uncertainty that are impactful on the investment decision.
- 3.5 Also, even where there is a corporate principal investor, personal tax issues may be relevant. Large house-building schemes would easily meet the quantitative threshold being suggested and many of the tax issues that hold up development, are around personal tax for the landowners whose land is the vital first stage to getting developments going – particularly around land-pooling issues. Therefore, a focus just on CT is unduly restrictive, and we encourage the government to consider a broader scope.
- 3.6 Members have recently reported promising experience of working with HMRC across teams and taxes to achieve a clearance on a large house building project, including addressing the issues around double tax that can arise on land pooling. This indicates some evidence of an existing informal process that is possible for large projects, although the availability of this may rest with a helpful CCM. Formalising the process will help.
- 3.7 However, while this proposal could be a very useful addition to the UK's tax compliance offering, and help to provide tax certainty in appropriate circumstances, we would also urge the government to keep an open mind as to what it can deliver and not expect it to do too much. It will remain important to continue to consider how certainty can be improved using existing mechanisms alongside this new clearance service.

4 Eligibility

- 4.1 **Question 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?**
- 4.2 Providing eligibility solely to corporate entities may exclude other significant investment structures such as partnerships, joint ventures, and funds, which play a critical role in infrastructure and technology projects. Expanding eligibility to include these structures could boost investment confidence and economic growth across a wider range of entities. For example, the clearances will focus on investment into fixed and intangible assets in the UK, which will include UK real estate. Many investors into UK real estate are not UK CT taxpayers, for example, pension funds.
- 4.3 It is welcome that the consultation document recognises that the relevant entity that will be liable to CT may not have a UK presence at the time the application is made. However, it should also be recognised that it may not exist at all. Therefore, the proposal that eligible entities will be those that are, or will be, subject to CT may not be sufficient to ensure that all the potential major projects are eligible to make a clearance application at the most appropriate time.

- 4.4 For example, an overseas group parent of an infrastructure group may evaluate a potential project but the UK resident project vehicle may not be formed unless or until the project proceeds. In these circumstances, we suggest that the clearance service should be available to the overseas group parent.
- 4.5 We suggest that eligibility should be driven not by who makes the clearance application, but who can rely on it. Also, depending on the structure, and who will have a taxable presence in the UK because of the major project, it should be possible to have more than one person who can rely on the clearance.
- 4.6 **Question 2: How can advance tax certainty provide material wider benefit beyond the entity receiving the clearance?**
- 4.7 The availability of advance tax certainty clearances will send a strong signal about the government's aims to provide certainty to businesses and should increase investor confidence. Well delivered, it will mitigate fiscal risk for the major projects within its scope. Whether or not anonymised clearances are published (discussed below), the knowledge accrued from the clearance applications can be utilised to improve certainty around the issues considered, whether by improving HMRC's guidance, or, possibly, legislating in an area of certainty. This should broaden the general understanding of UK tax laws for future investments, reducing uncertainty in future projects.
- 4.8 **Question 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?**
- 4.9 We welcome the clarity for potential applicants that a clear quantitative threshold would provide (although see also response to question 4 below).
- 4.10 Authorised project spend is a suitable metric, as it reflects committed investment. This would include capital expenditure on tangible investments in assets such as buildings and machinery, as well as R&D costs and costs on intangible assets required for a major project. It will be important to define this as pragmatically as possible to align with businesses' financial models and not require adjustments from the businesses financial modelling to meet the definition for an advance certainty clearance threshold. It will also be necessary to consider that projects are often developed in phases, and the plans around investment in later stages may not be as detailed as earlier phases or may depend on the outcome of earlier phases.
- 4.11 We would expect that the level of expenditure should include costs that will arise over the lifetime of the project, and not only upfront costs. For example, taxable amounts relating to employment income, employer duties/PAYE responsibilities and any CT deductible amounts might only arise several years post investment (for example if there is a holding/vesting period of employment related securities). As such businesses would be concerned about the potential future values rather than immediate values.
- 4.12 **Question 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?**
- 4.13 As noted above, a clear quantitative threshold will provide clarity, which is welcome. But it is difficult to set a level of expenditure that would prompt the seeking of a clearance. The need for clearance is derived from the level of uncertainty in relation to the tax treatment, rather than the level of expenditure. There could be substantial projects for which the tax treatment is reasonably certain, and less substantial projects affected by significant uncertainty.
- 4.14 We also agree that HMRC's capacity to deliver the service is very important and the need for HMRC to recruit new highly skilled tax professionals is noted in the consultation document. It is important that there is new resource, and this service is not resourced to the detriment of other services provided by HMRC.

- 4.15 However, we suggest that, if the scope of the clearance service is clearly focussed on key investment decisions, a quantitative threshold may not need to be as high as envisaged to manage the number of potentially qualifying applicants (noting the aim of ‘dozens not hundreds’ to ensure that HMRC has sufficient resource), as a well-designed service may be somewhat self-limiting in the number of applicants. We also support the suggestion that there should be supplementary criteria, discussed in question 5 below.
- 4.16 **Question 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?**
- 4.17 While expenditure thresholds can offer a baseline, the primary driver for seeking advance clearance should be the complexity of the tax treatment and uncertainty surrounding the project. For projects involving novel tax treatments, international elements, or significant tax incentives (for example, R&D tax relief or capital allowances), the certainty that could be achieved by an advance clearance would be welcome even if the expenditure falls below the set threshold. Going forward, the aim should be to expand this service, delivering advance certainty to a greater number of businesses, thereby further encouraging economic growth and increasing the wider benefits beyond the entity receiving the clearance.
- 4.18 As a starting point, we agree that, if the projects are of national or strategic importance, or highly impactful on a relative basis within their sector, they should qualify regardless of scale and welcome the consideration of how best to include these projects from the outset.
- 4.19 As noted in the consultation document HMRC already offers a tax support service for overseas entities looking to make a significant (above £30m) or strategic investment into the UK. This process seems to expand this service beyond cases of inward investment and formalise it, though also introducing a higher threshold. For investments that are below the £30m that is considered significant, HMRC will help if they agree the project may be of importance to the national or regional economy. The learning around this decision making can be used here in determining whether a project is of national or strategic importance.
- 4.20 Relevant supplementary criteria might include contribution to key government policy aims such as the transition to net zero, digital infrastructure, or strategic innovation. Recognising the sector basis, criteria could also consider whether the project would provide significant benefits in key industries or underdeveloped regions and the potential for long-term employment generation and economic benefits.
- 4.21 The consultation document mentions safeguards to prevent inappropriate bundling of separate projects to meet the threshold. While something along these lines may be necessary, we suggest that there are circumstances where bundling would be appropriate to ensure that important projects are brought within scope. This could be an area that is considered as supplementary criteria to bring projects below the quantitative threshold within scope. For example, new events and new technology may give rise to uncertainty for a taxpayer in respect of 100 projects of £1m each, which would benefit the economy and boost growth just as much as one project of £100m.
- 4.22 The focus on single projects alone (and single entities) also means that the process would not cover other challenges and tax uncertainty arising from significant government changes that may not be tax changes but have significant tax implications. One recent example is the requirement for cladding remediation under the Building Safety Act. These changes affect the whole industry. Any one remediation project alone is unlikely to meet a quantitative threshold of hundreds of millions, but in aggregate there will be major investment above this threshold for the industry and delivery of the statutory obligations has given rise to significant tax uncertainty that spans several taxes including VAT and the construction industry scheme. Members have reported difficulties in engaging with HMRC through available channels such as non-statutory clearances. Going forward, consideration should be given to whether the advance tax certainty clearance process (and the

team of deep technical specialists and policy leads) could be utilised to provide a 'class clearance' and certainty in an important area such as this where there is a significant impact on economic growth across a sector.

5 Scope

5.1 **Question 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.**

5.2 As discussed above, we suggest that the advance certainty clearance process should apply more broadly than CT. CT may not be the biggest issue for some projects, and if the clearance is limited in this way, it may rule out investment projects that would be beneficial for the UK from getting a clearance that could provide much needed tax certainty. For this proposal to be successful we suggest that momentum is needed from the outset, and all areas of tax where uncertainty would affect the decision about whether to proceed should be within scope.

5.3 Some key areas that would impact investment decisions if relevant to a particular project are:

- **Rate of tax:** will the main rate of CT apply, or patent box.
- **Capital expenditure:** which categories of capital expenditure qualify for capital allowances or other relevant allowances.
- **Transfer Pricing:** multinational projects require certainty to mitigate risks related to cross-border tax treatment (see below).
- **Financing:** will it be treated as debt or equity.
- **Withholding tax:** lack of clarity in this area can prevent effective financing structures.
- **VAT:** are supplies taxable or exempt? In appropriate circumstances, will a transfer of a property or business be a transfer of a going concern for VAT purposes.
- **Employer duties and employee remuneration:** for major transactions there will often be some adjustments needed to share schemes, and consideration of earn-outs that might be liable to capital gains tax or employment income can be complex, resulting in very different outcomes for employers (and employees). Similarly, the tax treatment of employment related securities and potential uncertainty of treatment might be a disincentive to investment. For example, a US LLC or Inc considering investing in the UK or buying an UK company may be accustomed to awarding employees, directors and consultants with stock awards over rights in the US corporate. The structuring of those awards may or may not give rise to immediate or future CT deductions, restricted securities charges or other UK tax and NIC obligations as part of an overall investment package. Some of the tax treatment is a 'well-trodden' route, though limited legislation, guidance or case law leaves arrangements open to challenge. Sometimes the need to match US structures means there is significant uncertainty, which hampers and sometimes reduces inward investment.
- **SDLT:** for example, there is no guidance currently on the SDLT treatment of land pooling and whether case law on shares can be read across to land transactions.

- 5.4 It is sensible that the new process will attempt to avoid duplication, and the consultation document suggests that questions about certainty around transfer pricing will be introduced to the APA program. While supporting this approach in principle, given the time lag in achieving an APA, while this may be appropriate for agreeing the pricing detail of an arrangement, it would be helpful if the advance clearance process could rule on the basic transfer pricing model design. This would provide an overall understanding at the investment decision point about how HMRC would look at something from a transfer pricing perspective. Alternatively, or in addition, this may be an area where the limitations of an advance tax certainty clearance should be recognised, and consideration given as to how to tackle an area of uncertainty in other ways. We discussed with you that unilateral APAs may be helpful in some circumstances. Also, the APA program could be expanded to consider questions of principle as well as pricing. In either case the aim should be achieving certainty around HMRC's view on transfer pricing issues at an earlier time.
- 5.5 It would also be useful for HMRC to consider any areas on which a clearance would not be given. For example, HMRC have historically given only limited clearances as regards the Real Estate Investment Trust (REIT) rules. Similarly, the guidance on unallowable purpose indicates a reluctance to grant clearances. While both areas could present barriers to tax certainty for major projects, it would be preferable to the guidance around this service to be clear if there are limits on the subject matter in respect of which clearances can be sought.
- 5.6 **Question 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.**
- 5.7 The consultation document notes that a key distinction between the proposed new process and non-statutory clearances is that it will not require the demonstration of genuine uncertainty. This is welcome because it will remove a barrier that is often encountered in obtaining a non-statutory clearance, namely agreeing with HMRC whether there is genuine uncertainty. HMRC can decline to consider an application, though there may be appeal routes. Businesses often encounter situations where HMRC refuses a request for a non-statutory clearance on the basis that one is not needed because the law is clear but then refuse to be drawn on how it is interpreted in the fact pattern provided. This is unsatisfactory because from the business's perspective there is uncertainty, which is why the non-statutory clearance was requested.
- 5.8 More generally, the non-statutory clearance process primarily applies for new legislation. Typically, the uncertainty arises from seeking to apply existing legislation to a peculiar set of facts, which might be considered outside the scope of a non-statutory clearance. Therefore, the circumstances in which a non-statutory clearance can be obtained are often fairly limited in practice.
- 5.9 **Question 8: Who do you consider should be bound by an advance certainty clearance and to what extent. What form should that take?**
- 5.10 HMRC should be bound by the advance certainty clearance to the greatest extent possible to ensure trust and certainty. It will be important that HMRC approach this service and the giving of clearances with this in mind. We understand that the experience of previous clearance regimes – for example, the Open for Business campaign in 2011 – is a perception amongst some who invested in the UK, particularly US groups, that HMRC did not stand by clearances that were given. The clearance should be in writing, providing clear outcomes based on stated facts and assumptions so that there is clarity for both parties.
- 5.11 The clearance should be binding on HMRC unless there are material changes in the facts of the project (see paragraph 5.13 below) or a change in law that overrides the clearance (see response to question 9).
- 5.12 However, it will be difficult for HMRC to give a cast iron guarantee that it will not open an enquiry or other type of compliance check despite giving an advance certainty clearance. Even if HMRC says that it will not open a statutory enquiry (for example, under FA 1998 Schedule 18 paragraph 24), HMRC will still have its discovery powers, albeit limited by statutory conditions and assessment time limits. It will also still have its error penalty

powers (FA 2007 Schedule 24). Therefore, we suggest that the guidance published around this clearance process needs to be clear so that taxpayers are aware that HMRC could use enquiries and discovery (coupled with its FA 2008 Schedule 36 information powers) to reverse (partly or fully) a previous clearance and charge error penalties where appropriate. Advisers will need to ensure their clients are aware of this, so they are fully informed of the usefulness of the clearance received from HMRC.

- 5.13 Dealing with a change in facts, where the facts disclosed are materially correct (compared to the actual major project undertaken) then the clearance should be considered as binding as to HMRC's view of the project. If the facts differ materially, it is reasonable for HMRC to take a different view. But the government needs to define what is material in this context. After all, the facts may differ slightly from the ones submitted for the clearance for various reasons: the final transaction varied for a commercial reason, a different entity is used to that envisaged when the clearance was sought, a mistake was made in the clearance paperwork or deliberate wrongdoing. What is material, thus permitting HMRC to take a different view, may be a policy decision for the Minister as part of the design of this service, and it should be made clear how HMRC will approach this issue.
- 5.14 The taxpayer should not be bound by the clearance if it disagrees with it. As discussed in response to question 12 below, the taxpayer should be able to dispute it and go ahead on another basis. Ultimately, the clearance is only confirmation of HMRC's interpretation of the law or view of how it should be applied, and a commitment not to change that interpretation/view for a period.
- 5.15 **Question 9: What are the circumstances under which you consider it important to be able to continue to rely on a clearance?**
- 5.16 As noted above, it is envisaged that the clearance should remain valid unless there is a material change in facts or, possibly, a change in law that impacts on the questions of tax law which are addressed in the clearance. The implications of a change in facts, and how this should be treated, is discussed in response to question 8 above. The implications of a change in law are potentially more complicated.
- 5.17 A change in law can arise in several ways: either from a legislative change (which we hope would be prospective and not retrospective but may be retroactive) or a change resulting from judicial interpretation (Upper Tribunal or court decision). There is also the possibility of a change in HMRC's guidance on, policy approach to or interpretation of an aspect of tax law. It is important to consider that these changes will have a different impact on clearances that relate to a one-off tax-event which predates the changes and clearances that relate to ongoing (for example, annual deductions) tax-events that straddle the change. In any of these circumstances the business may find their liability is materially different to what it thought it agreed on the relevant questions of tax law – and would probably be aggrieved if the clearance offers no protection.
- 5.18 The design of the advance tax certainty clearance service should consider each of these types of change in law and practice and the outcomes so that there is clarity as to which change in law risks the taxpayer would be taking. We suggest that overall, the aim should be to provide the maximum amount of certainty that is possible. Taxpayers that have relied on the clearances given and where the facts presented remain materially accurate, should be grandfathered and excluded from the impact of subsequent changes in law or practice to the greatest extent possible. However, we recognise that that it may not be possible to provide certainty against all future changes. The consultation document says that HMRC would not seek to change its reading of the law as it applies to the issues and fact patterns on which clearance is given where recipients rely upon it, *except in specific circumstances* (emphasis added). It is important that these specific circumstances are clarified, with legislation where necessary and in the guidance issued around it, so businesses can make an informed decision on making clearance applications and the usefulness of them.
- 5.19 We suggest that each of the possible circumstances set out in the following table should be considered, so that there is clarity about the outcome in each scenario.

	One off change	Ongoing change
Change in legislation	A change in legislation should not be retrospective and the clearance should therefore be able to confirm that even if there is a future change in legislation it will not be backdated.	We recognise that Parliament cannot irrevocably bind its successor. Therefore, it is beyond the powers of government to commit that there will not be any future legislative changes that will not alter the tax treatment of events after the change in law. However, we would hope that the government will commit not to change the legislation (or to provide an exception within any new legislation for the specific projects affected) for the remaining duration of the present Parliament.
Change from case law	We suggest that the legislation for this clearance service includes a provision along the lines of the limitation to discovery powers found in FA 1998 Schedule 18 paragraph 45 ¹ , which would effectively confirm the treatment in the clearance if the giving of clearance is treated as 'prevailing practice'.	Judicial interpretation usually says what the law has always been and is therefore retrospective. This is discussed at paragraph 5.20 below. This is probably a change in law risk that will rest with the taxpayer.
Change in HMRC practice/interpretation	Similarly to above, a provision along the lines of FA 1998 Schedule 18 paragraph 45 should ensure that any change in HMRC practice or interpretation does not impact a clearance around the tax treatment of a previous one-off event.	A change in practice or approach by HMRC may lead to a change in law (if the point is subsequently resolved through the Courts or results in legislation). It raises questions of legitimate expectation and estoppel. Businesses may have invested to their detriment in reliance on a particular situation remaining the case and that would give them a legitimate expectation to counter any unilateral action taken by HMRC to take a contrary view in a judicial review case. This is discussed further in paragraph 5.21-5.23 below

¹ There are similar provisions around prevailing practice in TMA 1970 section 29(2) and Inheritance Taxes act 1984 section 255.

- 5.20 We recognise that it is difficult for HMRC to agree to disobey the law, and that HMRC has limited ability to make a ‘forward agreement’ or agree a tax position for the future. HMRC has a statutory duty to secure the best practicable return for the Exchequer, and in practice, HMRC cannot bind itself to a contract that prevents it from taking account of future changes to law². It is also necessary to consider HMRC’s Litigation & Settlement Strategy and Code of Governance on Settling Tax Disputes, part of the purpose of which is to ensure parity of treatment in dispute settlements on similar cases. Therefore, we understand that HMRC could not, based on current governance be in a situation of giving one result to a taxpayer with a clearance and one without, unless this is enshrined in legislation. However, this outcome would give rise to questions of perception about trust and fairness in the system. In any event, the government should consider this question in designing this new clearance service and ensure that the legislation is clear about what HMRC can and cannot stick by in terms of the clearance in circumstances where there is a change in law.
- 5.21 HMRC’s approach to changing its interpretation of a particular area of law also needs careful consideration. As noted above, where the taxpayer has invested huge sums in reliance on the law remaining the same as HMRC agreed it was in a clearance, a change in approach by HMRC would raise questions of legitimate expectation and estoppel. The consultation indicates that HMRC would not seek to change its reading of the law, except in specific circumstances. Does this mean that HMRC will commit in a clearance that, even if they do change their interpretation, they will not do so for project that is the subject of the clearance?
- 5.22 There are recent examples of where HMRC has adopted an approach that was generally considered to be different from the prevailing view, and HMRC’s previous approach: the meaning of contracted out and subsidised expenditure for the purposes of R&D tax relief, and the availability of capital allowances for predevelopment expenditure on offshore windfarms. In both cases, HMRC’s approach, and the resulting lack of clarity around the points of law in question has damaged trust in the tax system and HMRC. It is not unreasonable to assume that a clearance given by HMRC in either of these areas to a taxpayer before the change in approach leading to litigation would have been on a different basis to that adopted by HMRC subsequently.
- 5.23 How would a clearance that has been given be treated in similar circumstances? If the clearance was allowed to stand, this would raise questions of fairness and equality in treatment as between taxpayers. Also, a commitment to stand by a clearance unless there is an ‘external’ trigger or change in law may unduly restrict HMRC from taking a different position where there are stronger arguments for taking that position than the downside of effectively resiling from a clearance that has been given. But, as noted above, changes in HMRC’s view can be damaging to the wider tax system, as well as being damaging to trust in this new clearance process if this were to happen often.
- 5.24 In considering the design and implementation of this new clearance process, the opportunity should be taken to ensure that the circumstances in which a change in practice or interpretation by HMRC may arise are reduced as much as possible. A clearance will provide an opportunity for HMRC to consider the application of relevant points of law in some detail. HMRC should ensure that the knowledge accrued from the clearance process is utilised across HMRC to ensure that this considered view of HMRC is applied consistently going forward.
- 5.25 The case of *Orsted West of Duddon Sands (UK) Limited and others (Respondents) v Commissioners for His Majesty’s Revenue and Customs* [2025] EWCA Civ 279 (known as *Gunfleet Sands*) is a useful case study in the importance of stability and certainty for businesses, supporting the overall policy aims of these proposals. The pre-development costs considered in these cases are particularly relevant to larger building and construction projects as well as infrastructure assets, such as windfarms, water and electricity assets owned and operated by utility companies. Many of the investors and businesses have multi-national or foreign ownership and thus they have a wide choice of where in the world they invest their own resources. The uncertainty generated by

² *The Serpentine Trust Limited v HMRC* [2018 UKFTT 535 (TC)]

these cases over a considerable period has been unhelpful for business confidence in investing in the UK. Increased certainty that could be provided by a clearance service along the lines being considered is welcome.

- 5.26 In summary, with regard to change in law risks, given the long-term nature of the projects that would qualify for this process, there is an argument that ‘certainty’ should mean that the UK government stands behind the clearances that are given for the full duration of the project, provided that the fact pattern of the project is in accordance with the clearance, regardless of any change in law or practice. Clearly the more change of law risk that sits with the taxpayer, the less value they will be perceived to give to businesses. However, we recognise that it is reasonable that some changes in law should defeat a clearance, and that this risk should sit with the taxpayer. The imperative is to ensure that the ‘specific circumstances’ in which HMRC may seek to change its reading of the law are clear to businesses at the time of applying for a clearance. We also welcome that HMRC will seek to engage with taxpayers if a clearance is impacted by a change in law as part of the process (see question 16 below).

6 Charging for the service

- 6.1 The consultation document raises the possibility of the government charging for this service, saying that it would be voluntary and valuable to those who are eligible. The consultation document also acknowledges that an unpaid service would be ‘consistent with HMRC’s and other tax authorities’ general approach’. The need for a clearance reflects the lack of certainty within the UK’s tax system that it is incumbent on the government to address, and it is in its interest to address to achieve its policy aims of encouraging investment, and especially internationally mobile investment, in the UK.
- 6.2 However, although a fee would be a departure for HMRC in its approach to tax compliance, CIOT’s view is that there are good reasons for charging for an advance tax certainty clearance service that has real value to the taxpayer, over and above the current statutory framework. A fee (even a modest one) would make businesses think carefully about when the right time to apply is and not to apply for things when obviously not necessary.
- 6.3 There are different ways that a fee could be structured, for example, either a flat fee, or a fee linked to the size of the project. We would favour a flat fee of around £15,000 – £20,000 (to rise in line with inflation). For the size of projects that will be eligible, this is a relatively small amount in the overall context of the project costs but would nonetheless provide a filter on the taxpayer side to discourage speculative applications. A flat fee saves having to negotiate quantum with HMRC as part of the entry into the clearance process and is used in other parts of government (for example, probate fees). This is preferable to an ad valorem charge, which could feel like another tax. In either case, it would have to be clear that the fee is not dependent on an agreeable outcome.
- 6.4 One suggestion would be to set the fee by reference to, say, three months’ salary for a technical specialist that will be key to the clearance process (envisaging that this is around the length of time that each application may realistically take). While it may not be possible to hypothecate the fees to the resourcing of the scheme, carefully structured, the aim would be for the service to be numerically self-financing, so that, in due course, it can be expanded to smaller projects and other types of taxpayers.
- 6.5 To some extent a fee would help guard against the perception that large corporates are getting a better service from HMRC because they are eligible for this service for major projects. However, there is also a perception risk that this may be viewed as corporates paying for ‘sweetheart deals’ even if that is not the case. This perception can be countered by careful use of the knowledge and learning from the clearance process and ensuring that outcomes are shared to the greatest extent possible and applied consistently by HMRC going forward (see paragraph 5.21 above and question 15 below).

- 6.6 The downside of linking the fees to the delivery of the project is that it is not sufficiently resourced at the outset, and that it is a target for future cost-cutting by government. As noted above, resource for this service will be key to its successful delivery. It is important that new resource is provided, and that the resource of deep technical specialists and policy leads is not taken from other work undertaken by HMRC for taxpayers.
- 6.7 Clearly the take up of the advance certainty clearance service would be impacted by charging a fee and on the amount of the charge. Ultimately this would be a cost v benefit analysis for taxpayers. Therefore, it would depend upon what is being offered by HMRC as to whether the service is attractive. Taxpayers would probably be willing to pay a fee to achieve certainty, but this would depend on the quality of certainty being provided.

7 Process

7.1 Question 10: Do you consider that an early engagement facility would be helpful and why?

- 7.2 Yes, early engagement would be highly beneficial. It would help taxpayers and HMRC to address potential issues early, reduce misinterpretations, and allow for better planning. Early clarity around the issues that will be included within a clearance application would also reduce the overall administrative burden later in the process. The process should encourage HMRC and businesses to focus on the big-ticket issues and limit the assumptions. For the process to work most effectively, it should be incumbent on the taxpayer to work out what they want to ask HMRC. We support the aim of the process explained in the consultation document which is to identify the areas where tax certainty would be of most value and recognising that the clearance cannot exhaustively provide certainty on every tax implication.

7.3 Question 11: How would this process work with typical commercial decision-making timescales?

- 7.4 While we welcome the envisaged flexibility around the timing of making a clearance application, clearly, it would only be a clearance given at the first time point suggested – in advance of investment in a major project – that will have a direct impact on an investment decision. The consultation document raises the question as to when a business will have sufficient reliable facts on which to base a technical conclusion. The timing of the clearance application, and the ability of the business to make it, is relevant to the discussion in response to questions 8 above about material facts, and changes to them. It is possible, for example, that at the decision-making stage, the question of entity (and whether it exists) maybe undetermined (see question 1 above). HMRC's approach to what facts are material and are required to reach a technical conclusion will be important. But we suggest that there are likely to be sufficient details in relation to the key tax questions that will influence an investment decision, as the business will have had to identify and explored these in preparing its project plans. This will be helpful in the overall scoping of the clearance application and ensuring focus on the fundamental areas of uncertainty for the project. It is also important to understand the varied ways in which investment decisions are made – particularly in relation to large projects (and specifically those requiring infrastructure investment with long time frames before revenues/profits are anticipated). Typically, in such cases approval may be sought for various tranches of spend throughout early stages of the project and the regime should be flexible enough to accommodate these various stages and the degrees of certainty required at each stage of the investment approval process. It would be more typical for a Board or investment committee to make decisions based on projections that take the outcome of a clearance into account, than to wait until the decision has been made by the Board or decision-making committee before requiring the certainty.
- 7.5 Although not directly impacting on the investment decision, the availability of clearances at the later times around finalisation of accounts to support tax reporting, or in advance of submission of the CT return would also be valuable to taxpayers and will demonstrate more generally that the UK government wishes to help business with tax certainty. We understand that a common experience of large businesses with complex tax

affairs is that they file their CT return, HMRC opens an enquiry on some basis or another, and that enquiry rumbles on for quite some time before a decision must be made around closure notices. The period of uncertainty can be significantly increased depending on whether HMRC decides to go to court to defend its position with which the taxpayer does not agree. This process leaves the taxpayer's tax affairs open and uncertain for a considerable amount of time. The proposed advance tax certainty clearance would expediate that process for key tax issues, reaching a position of certainty much sooner. However, it will be more difficult for businesses and HMRC to scope an advance tax certainty clearance and remain focussed on key areas of uncertainty that impact on the investment at these later stages.

7.6 Question 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?

7.7 A structured appeal mechanism would be useful for unsuccessful applications. Taxpayers should be able to request reconsideration from HMRC, with an independent review process if necessary. We suggest that this could be offered quickly and within the commercial timeline for the project.

7.8 A fuller appeal process, to the point of reaching certainty through the courts would take considerably longer. As noted in response to question 8 above, if it disagrees with the clearance, the taxpayer should be free to submit its tax return based on its view of the correct application of the law, recognising that if this is different to the approach taken by HMRC during an advance tax certainty clearance process, an enquiry is most likely to follow. It would be useful for an appeals process against the clearance to run alongside this usual compliance process. This is because the appeal process may be able to run ahead of the return/enquiry process to achieve certainty sooner, particularly if the question of tax law under consideration relates to a part of the project some way down the line, meaning that it will not be reflected in returns of the taxpayer for some years.

7.9 Question 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?

7.10 Yes, scoping meetings would be invaluable. These could include ensuring that there is clarity on:

- **Eligible tax treatments:** understanding which treatments applicable to the project are to be covered by the clearance.
- **Key facts and assumptions:** ensuring that there is a clear understanding of the key facts and assumptions being presented in the clearance application.
- **Documentation requirements:** identifying the necessary evidence and documentation for submission of the application.
- **Timeframes and review criteria:** setting expectations for review and decision timelines. The consultation document suggests some timeframes for HMRC (for example, a scoping meeting within 30 days). While it will be important that HMRC can operate to a commercially driven timetable to ensure that the clearances are useful, and we welcome the ambition of what is proposed, we would caution against legislating for a regimented timetable. Flexibility should be permitted, with this to be agreed between HMRC and the businesses, to reflect the timing of the project planning and decision making for individual projects.

7.11 Question 14: Are there process elements you would consider helpful during the clearance consideration phase?

7.12 It would be helpful for each clearance to have a designated case officer as a point of contact and milestone tracking system would be beneficial to ensure the process is transparent and monitored. A published decision timeline would also provide clarity to the applicant.

- 7.13 HMRC should allow agents to submit requests for advance clearance on behalf of their clients, just as agents can submit tax returns etc. However, it will be important to clarify whether an advance certainty clearance submission would fall within the scope of proposals in the recent consultation on Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance. The CIOT recently responded to this consultation (<https://www.tax.org.uk/ref1488>).
- 7.14 **Question 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?**
- 7.15 We are generally in favour of publishing summarised and anonymised clearances. This would be consistent with international approach, for example in Luxembourg and The Netherlands.
- 7.16 The advantages are that published clearances would create precedents that could be useful to other taxpayers. Publication would improve overall certainty, and increased transparency helps reduce uncertainty and enhances investor confidence. This would be a positive development to help taxpayers more widely with understanding HMRC's technical positions.
- 7.17 However, if the advance tax certainty clearances will only be available for the very largest, major projects, it may be challenging to anonymise them. There will be confidentiality concerns for taxpayers if the scale of the projects means that even if anonymised, it is possible to identify the taxpayer involved. This could be managed by delaying publication until the project had got underway – at which point it is likely to be in the public domain in any event through planning applications and similar. Also, again, given the nature of the projects that will be considered by the process, the clearances may have a somewhat limited relevance to other taxpayers. Also, anonymisation could remove specific context to such an extent as to give rise to a risk of misinterpretation of how the rules would apply to different projects.
- 7.18 It is also important to consider the implication of publication on HMRC. Would the knowledge that a clearance will be published engender a particular caution in an HMRC official who is required to 'sign off' on a particular point—with the unfortunate result that a clearance granted under this scheme might be less likely to be helpful than might otherwise have been the case. That would, clearly, be counterproductive and achieve precisely the opposite of a helpful outcome that HMT is looking to achieve.
- 7.19 We suggest that, regardless of whether the clearances are published, consideration should be given to how the knowledge obtained through the detailed consideration of the clearance applications and the decisions reached are shared within HMRC and used more broadly. We suggest that clearance decisions – both under this new process and generally - should be widely shared within HMRC to ensure consistency. It is not uncommon for members to share with us that HMRC has taken different views on the same question for different clients in non-statutory clearances (see also question [7] above). Achieving consistency in interpretation across HMRC would help to improve overall taxpayer certainty.
- 7.20 HMRC should also build an internal review into the process and consider what updates could and should be made to relevant areas of guidance more generally reflecting the points considered as part of a clearance and, possibly, whether changes to legislation are required to achieve greater certainty on any particular points of law.
- 7.21 The CIOT has had informal engagement with HMRC around trialling a project to anonymise clearances for publication. In those instances, HMRC concluded that it was too difficult to arrive at something that was suitably anonymised and useful. However, further work on this could establish a workable precedent that could potentially be extended to the publication of anonymised non-statutory clearances. As mentioned above, we are generally in favour of publishing summarised and anonymised clearances.

- 7.22 **Question 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?**
- 7.23 It will be important for a taxpayer to be able to engage with HMRC to discuss a clearance that is impacted by a change in law (whether by legislation or case law) or a change in ownership or key facts and assumptions. Any one of these events could trigger an early renewal process so that the tax position of the project can be reassessed and, hopefully, tax certainty for the business re-established.
- 7.24 **Question 17: What should a renewals process look like, and is 5 years an acceptable trigger point?**
- 7.25 We recognise the difficulties in providing a clearance for a very long period or, indeed the duration of a project. Five years is a reasonable timeframe and aligns with the standard corporate tax planning cycle. However, it must be recognised that five years is not a long time for many major projects, particularly those involving property/ construction that tend to extend over a much longer period often in phases. Major projects can take considerably more than five years to plan, finance, and deliver, and could require multiple renewals. Achieving the policy aim of delivering tax certainty means this is an important area to consider and get right.
- 7.26 A limited period for a clearance inevitably reduces its value if the project will run for longer than that period. For example, when undertaking a major project, one of the key areas of uncertainty for investors and developers is the level of tax due over the project's lifetime. However, as noted above, Parliament cannot irrevocably bind its successor. Therefore, although a project may be planned to run for considerably longer than five years, it is beyond the powers of government to commit that there will not be any future legislative changes that will not alter the tax treatment of events. All that is possible are the indications of what will remain stable for the current Parliament, such as those in the Corporate Tax Roadmap.
- 7.27 That said, we assume that there will be a presumption of renewal after five years, if there has not been any significant change – either a change in law or a change in ownership, or of key facts and assumptions. If the law has not changed, HMRC should reach the same conclusion on the same fact pattern. The government would be mindful that a significant investor in a major project in the UK would be understandably disgruntled if HMRC changed its mind on the tax treatment of the project after five years.
- 7.28 However, notwithstanding the possibility of a renewal of the clearance, it would be helpful if the process had some flexibility over the period for which the initial clearance is given for projects with differing needs. For projects with longer lifespans (for example, infrastructure or energy projects) a longer renewal period of, say, seven or ten years, may be more suitable. Similarly, projects with shorter timelines may benefit from a three-year review period.
- 7.29 It would be helpful for the government to consider the following features when designing the renewals process:
- **Automatic review notification:** HMRC should notify taxpayers, say, 12 months before the renewal deadline.
 - **Simplified reassessment:** a streamlined process should apply if there are no material changes.
 - **Full review for significant changes:** If project scope, ownership, or tax legislation has changed, a full reassessment should be required.
 - **Binding decision continuity:** Where no substantial changes exist, previous clearances should remain valid.
- 7.30 As per our response to question [16] above, it would also be useful if a renewal process could be triggered following a change that impacts the clearance.

8 Acknowledgement of submission

- 8.1 We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation
17 June 2025